

	4	Bid Security (Bank Guarantee format)
	5	Summary Statement of Yearly Turnover and Net Worth
	6	Capability Status
	7	Statement of Similar type of order, Orders executed as on date of issuance of NIT
	8	Curriculum Vitae of Key Personnel
	9	Format for Submission of Pre-Bid Queries
	10	Format for Proposed modifications
	11	JV/Consortium Agreement
	12	Power of Attorney
	13	Declaration for Net Minimum Guaranteed Generation
	Annexure	
	1	Proforma of Contract Agreement
	2	Proforma of Bank Guarantee for Mobilisation Advance
Section VII	3	Proforma of Bank Guarantee for Contract Performance
	4	Proforma for extension of Bank Guarantee
	5	Proforma of Indemnity Bond
	6	Completion Certificate
	7	Application for Payments
	8	Taking-Over Certificate
	9	No-Claim Certificate
	10A	Indemnity for Equipment
	10B	Application for Material Gate Pass
	11	Application for material gate pass
	12	Authorization letter

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 uploading 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 his bid.

1.8 SITE VISIT

- 1.8.1 The bidder is advised to visit and examine the geographical location of Sites of work and its surroundings and obtain for himself on his own responsibility all information that may be necessary for preparing the bid, submission of offer

and entering into a Contract for execution of works. The cost of visiting the site shall be borne by the bidder only.

1.8.2 The bidder and any of its authorized personnel or agents will be granted permission by the Purchaser to enter upon its premises and lands/Ponds for the purpose of such inspection, but only upon the express condition that the bidder, its personnel and agents will release and indemnify the Purchaser 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.

1.8.3 The site inspection shall be completed before the Pre-bid Meeting, if applicable or within 20 days after the NIT issue date, whichever is earlier.

1.9 CLARIFICATIONS ON BIDDING DOCUMENTS

1.9.1 A prospective bidder requiring any clarification on bidding documents may notify the WBPDC by uploading the same in the e-tendering portal, which shall be available to all the participant bidders, as per Standard Format enclosed with this document **Form 9** and **Form 10** not later than the date and time specified in NIT. The soft copy of the same must be sent in Excel format at the mail address : **Email: s.sengupta@wbpdcl.co.in**

1.9.2 The WBPDC will issue clarification(s) as it may think fit after pre-bid meeting prior to the deadline/ extended deadline for submission of bids prescribed by the WBPDC. Written copies of the WBPDC's response will be uploaded in the e-tendering portal in the corrigendum folder which shall be available to all the participant bidders

1.9.3 Any queries sent by the bidders after the date and time notified in NIT or any extended date, if any, shall not be entertained.

1.10 PRE-BID MEETING

1.10.1 The bidder or its authorized representative is invited to attend pre-bid meeting to be held on the date, time and location specified **in NIT or any specific change, which will be uploaded before the meeting date**. The purpose of the meeting will be to clarify the exact scope of work, and any issues regarding the bidding documents and the technical specifications for its clarification, if raised at this stage by the bidders. The Purchaser shall not be under any obligation to entertain /respond to the suggestions made or to incorporate modifications sought for by the prospective bidders.

- 1.10.2 Any modification/amendment of the bidding documents shall be made by the Purchaser exclusively through the issue of an amendment pursuant to **ITB. 1.11**
- 1.10.3 Non-attendance at the pre-bid meeting will not be a cause for disqualification of bidders but at the same time shall not entitle them to raise any query at a later date.
- 1.10.4 Any essential requirement not included in the Price Schedules but required for successful commissioning and operation of Works as per scope of Contract shall be indicated by the bidders as per **Form: 9** of Section VI and submitted before the pre-bid meeting by the date specified in the NIT in line with **ITB. 1.9.1**. The Purchaser shall make related modifications/amendments as may be considered necessary based on this form in the bidding documents as per provisions mentioned in this clause.
- 1.10.5 Bidders shall not be permitted to indicate any additional requirements in the bid for any reason whatsoever after the Purchaser has considered such amendments.
- 1.10.6 Venue of Pre bid meeting: WBPDC Corporate office, Kolkata

1.11 AMENDMENT OF BIDDING DOCUMENTS

- 1.11.1 At any time, but not later than seven (7) days prior to the deadline for submission of bids, the Purchaser may, for any reason, whether at its own initiative or in response to a clarification request by a prospective bidder, modify the bidding documents by issue of an addendum/amendment.
- 1.11.2 The addendum/amendment will be intimated through e-tendering portal at corrigendum folder. The Purchaser shall assume that the information contained therein have been taken into account by the bidder in its bid. The Purchaser will bear no responsibility or liability arising out of non-cognizance of the same in time or otherwise by the bidder.
- 1.11.3 In order to afford prospective bidders reasonable time in which to take the addendum/amendment into account in preparing their bids, Purchaser may, at its discretion, extend the deadline for the submission of bids.
- 1.11.4 WBPDC has the liberty to modify the bidding documents by issue of an addendum/amendment or to cancel the bid at any time.

- 1.11.5 For the information of bidders, the addendum/ amendments, if any, shall be uploaded on the e-tendering portal **<https://wbtenders.gov.in>**.

C. PREPARATION OF BIDS

1.12 DOCUMENT CONSTITUTE THE BID

1.12.1 Collection of Bid Document

The bidder can search & download NIT & Bid Document(s) electronically from e-tender portal **<https://wbtenders.gov.in>** once he/she logs on to the portal using the Digital Signature Certificate (DSC). This is the only mode of collection of Bid Documents.

1.12.2 Language of the bid

The bid prepared by the bidder and all correspondences and documents relating to the bid, exchanged between the bidder and the WBPdCL shall be written in the **English language**, provided that any printed literature furnished by the bidder may be written in another language so long as the bid is accompanied by an English translation of its pertinent passages. Failure to comply with this may disqualify a bid. For purposes of interpretation of the bid, the English translation shall govern.

- 1.12.3 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 uploading 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 his bid.

1.13 DEVIATION

This tender is a '**No Deviation**' tender.

Request for any deviation may be considered only if pointed out by any bidder in the Pre Bid meeting. The queries and proposed modification regarding tender must be submitted by writing as per format (**Vide Form -9 and Form-10**) before pre bid meeting (**ITB. 1.10**)

1.14 GENERAL GUIDANCE FOR E- TENDER

Instructions/Guidelines for electronic submission of the tenders have been mentioned below for assisting the bidders to participate in e-Tendering.

1.14.1 Registration of Bidder:

Any bidder willing to take part in the process of e-Tendering will have to be enrolled & registered with the Government e-Procurement System, by logging on to **<https://wbtennders.gov.in>** The contractor is to click on the link for e-Tendering site as given on the web portal.

1.14.2 Digital Signature certificate (DSC):

Each bidder is required to obtain a Class-II or Class-III Digital Signature Certificate (DSC) for submission of tenders from the approved service provider of the National Informatics Centre (NIC) on payment of requisite amount. Details are available at the Web Site stated above. DSC is given as a USB e-Token.

1.15 BID PRICES

Unless otherwise specified in the Technical Specification, Bidders shall quote for the entire works on a “Single Responsibility” basis such that the total bid price covers all the Contractor’s obligations mentioned or to be reasonably inferred from the bidding documents in respect of design, manufacture, including procurement, packing, forwarding transportation, handling, insurance, delivery, installation, testing, pre-commissioning, commissioning, completion of the work and conductance of guarantee tests for the work including supply of spare (if any). This includes the acquiring of all permits, approvals and licenses etc as may be specified in the bidding documents. The bidder shall quote in the appropriate schedule for the proposed bid price for the entire scope of work covered under the bidding documents

1.15.1 PRICE SCHEDULE

1.15.2.1 Price Schedule-1(Supply Schedule): Price Schedule-1 will be consist of Ex-works price of Equipment / Materials, including type tests charges to be manufactured within/outside India i.e. basic cost (ex-factory, ex-works, ex-warehouse, or off-the-shelf, as applicable), then Transport, Loading, Unloading, Insurance Charge. This price shall be inclusive of all Tax and Duties (GST, Customs related Duties etc) payable on components and raw materials incorporated or to be incorporated in the goods. GST, Customs related duties and other tax and duties shall not be included in the ex-works price but shall be quoted separately in this Price Schedule. Local transportation including transit insurance, and Taxes to delivery of Equipment / Materials to the Site shall also be included in Price Schedule -1 i.e. Supply Schedule.

- 1.15.2.2 **Price Schedule-2(Erection Schedule):** Price for Installation and Erection service shall be quoted in the Price Schedule -2 (Service Schedule) and shall include the rates and prices for all labour, Contactor's Equipments Supply of consumables Materials and all matters and things of whatsoever nature, charges for insurance covers other than transit insurance The price schedule shall include the provision of operation and maintenance manuals, training of Purchaser and their nominated personnel and other services, as identified in the bidding documents and necessary for the proper execution of Installation and Erection Services. GST, Customs related duties, BOCW cess and other tax and duties shall not be included in the service and consumables materials price but shall be quoted separately in this Price Schedule.
- 1.15.2.3 **Price Schedule-3(Operation and Maintenance):** Price for O&M contract shall be **10% of the basic project cost(excluding Tax and Duties) for 5(five) years** which is predefined and O&M contract shall be placed on this basis(refer clause-3.8.4.6).
- 1.15.2 The taxes, duties and levies shall be indicated by the bidder in the respective price schedule and shall be quoted as per the rates in force seven (7) days prior to the last date of submission of bids with respect of direct transaction between Contractor and Purchaser. Details of Tax and Duties will be guided by the **clause no. GCC 3.15**.
- 1.15.3 The bidder shall fill in price for all items described in the price schedules. Item against which no price is entered by the bidder will not be paid for by WBPDC when executed and shall be deemed to have been covered in other prices in the Price Schedule where the evaluation is being done on the basis of total prices quoted for all the Price Schedules.
- 1.15.4 All the prices shall be quoted in INR (Indian rupees) only. Foreign exchange component or foreign exchange variation will not be entertained for any reason whatsoever.
- 1.15.5 If any rebate/discount is offered, the overall discount in percentage shall be brought out in the Price Schedule. Conditional rebates/discount, if any, offered by any bidder shall not be considered during bid evaluation.
- 1.15.6 In case WBPDC observes that the L1 bidder has quoted abnormally low bid(less than 80% of estimated cost), the bid will be compared to the average of bid prices quoted by the other bidders. WBPDC then, shall ask the L1 bidder to produce detailed price analysis to demonstrate the justification of

prices quoted in the bid. After evaluation, WBPDC may ask the bidder, at its discretion, to enhance the Performance Guarantee at the bidder's expense, by an extra 10% of L1 bid price as additional performance guarantee. Such additional performance guarantee shall remain valid up to ninety (90) days after the Defect Liability Period of sixty (60) calendar months and project execution period(12) months, with an additional claim period of ninety (90) days, failing which his bid security may be forfeited.

1.15.7 PRICE ADJUSTMENT

Price quoted by the bidder shall be firm during the entire period of contact and Bid evaluation will be done on the quoted price only.

1.16 PERIOD OF VALIDITY OF BIDS

1.16.1 The bids submitted by the bidder shall remain valid for a minimum period of **180 days** from the next day of opening of Technical bid. A bid valid for a shorter period than 180 days shall be rejected by the WBPDC.

1.16.1 In exceptional circumstances, WBPDC may solicit the bidder's consent to an extension of bid validity for a further period without any change in the terms and conditions of the NIT. The request and response thereto shall be made in writing by post or e-mail followed by post confirmation. The bidder may refuse the request without having his bid security forfeited. Bidders agreeing to the request will neither be required nor permitted to modify their respective bids, but will be required to extend the validity of their bid securities correspondingly. The provisions of ITB.1.17 regarding discharge and forfeiture of bid security shall continue to apply during the extended period of bid validity.

1.17 BID SECURITY

1.17.1

A) Value of EMD:

The EMD amount for this tender is **Rs.120 lakh**.

B) Mode of submission:

EMD shall be submitted ONLINE through this portal. Or in the form of Bank Guarantee (BG).

To submit BG, bidders shall have to opt for EXEMPTION in this portal and scanned copy of the BG is to be uploaded in the portal. After completion of the bid-submission

period, the original BG must be submitted at the office of General Manager (M&C), Corporate Office, WBPDCCL, at the specified date and time. Otherwise, your bid shall not be considered for evaluation. .

Bank Guarantee (BG) shall be (Vide Form 4 Section-V) issued from any schedule Commercial Bank of India towards EMD as prescribed in the NIT, in the name of “The West Bengal Power Development Corporation Limited.” Earnest Money in any other form or amount will not be accepted.

Bank Guarantee (BG) shall be initially valid for **180 (One hundred Eighty) days** with claim period of another 3 (three) months, subject to further extension if required.

C) EMD amount (deposited online) of the unsuccessful bidders, shall automatically be returned to the respective debited accounts.

D) Same methodology shall be followed in case of rejected bids.

E) BGs of the unsuccessful bidders, if any, shall be returned after placement of order on the successful bidder.

1.17.2 Bid security of the unsuccessful bidders will be discharged / returned as promptly as possible after the expiration of the validity of bid security or after the date of signing of Contract Agreement with the successful bidder whichever is earlier.

1.17.3 The bid security of the successful bidder will be discharged on furnishing the Performance Guarantee as per **ITB. 1.34** and signing of the Contract Agreement by the bidder.

1.17.4 Not applicable

1.17.5 The bid security shall be forfeited in the following circumstances:

- a) If the bidder withdraws its bid as a whole or in part as per **ITB.1.21**, during the period of bid validity specified by the bidder in its bid.
- b) If the bidder deviates from any clarification/confirmation given by him subsequent to submission of his bid.
- c) If the bidder does not accept the correction of its bid price pursuant to ITB. 1.26

- 1.17.6 If the successful bidder fails, within the specified time limit either to accept the Letter of Award (LoA) and sign the Contract Agreement unconditionally or, to furnish the Contract Performance Guarantee, in accordance with **ITB. 1.34**. No interest shall be paid by the Purchaser on the bid security.

1.18 SIGNING OF BIDS

All documents should be digitally signed by the bidders and uploaded by them.

D. SUBMISSION OF BID

1.19 SUBMISSION OF BID

- 1.19.1 Tenders are to be submitted through online to the website stated above in two folders at a time for each work, one in **Techno-commercial Proposal** & the other is **Financial Proposal** before the prescribed date & time using the Digital Signature Certificate (DSC). Virus scanned copy of the documents are to be uploaded duly digitally Signed. The documents will get encrypted (transformed into non readable formats).

1.19.2 General process of submission:

Bids are to be submitted online through the website **<https://wbtenders.gov.in>**. All the documents uploaded by the Tender Inviting Authority form an integral part of the contract. Bidders are required to upload all the Bid Documents along with the other documents, as asked for in the tender, through the above website within the stipulated date and time as given in the Tender. Tenders are to be submitted in two folders - one is **Techno-commercial Proposal** i.e. technical bid and the other is **Financial Proposal** i.e. financial bid. The bidder shall carefully go through the documents and prepare the required documents and upload the scanned documents in Portable Document Format (PDF) to the portal in the designated locations of Technical Bid.

The bidder needs to download the Forms / Annexure, fill up the particulars in the designated cell and upload the same in the designated location of Technical Bid. The bidder needs to download the BOQ, fill up the BOQ in the designated Cell and upload the same in the designated location of Financial Bid in Excel.

The documents uploaded shall be virus scanned and digitally signed using the Digital Signature Certificate (DSC).

1.19.3 It is a two part bidding process so the offer contains two Proposals: a) Technical Proposal and b) Financial Proposal.

1.19.3.1 TECHNO-COMMERCIAL PROPOSAL:

The Technical Proposal shall contain scanned copies and/or declarations in the following standardized formats in two covers (folders). c1) Statutory Cover & c2) Non- Statutory Cover

c1. STATUTORY COVER:

Statutory contain three folders: 1) “**EMD**” folder 2) “**NIT**” Folder and 3) “**Form**” Folder.

1) “EMD” folder:

i. Earnest Money (EMD)/Bid Security

Bank Guarantee (BG) (**Form-4 Section-VI**) issued from any scheduled Commercial Bank of India towards EMD/bid security as prescribed in the NIT.

2) “NIT” Folder

i. Addenda /Corrigenda: if published

Note: Bidders are to keep track of all the Addendum / Corrigendum issued with a particular tender and upload all the above digitally signed along with the NIT. Tenders submitted without the Addendum / Corrigendum will be treated as informal and liable to be rejected.

3) “Forms” folder:

- i. This folder will contain all the following vide **forms of section-VI**
- ii. Check List (**Form – 1**)-document should submit accordingly,
- iii. Forwarding Letter for submission of Bid Security and Tender Fee(**Form – 2**)
- iv. Bid Form (**Form – 3**),
- v. Summary statement of yearly turnover and net worth (**Form – 5**)
- vi. Capability Status (**Form – 6**)
- vii. Statement of Similar Type of Order. Orders Executed as on date of issuance of NIT [**Applicability up to the extent of meeting Technical QR**]. (**Form – 7**).

viii. Curriculum Vitae of Key Personnel **(Form – 8)**.

ix. JV/Consortium Agreement**(Form-11)** –if JV/Consortium

x. Power of Attorney**(Form-12)**- if JV/Consortium

xi. Net Minimum Guaranteed Generation(NMGG) –**Form-13**

(Only downloaded copies of the above documents duly filled up and are to be uploaded, virus scanned and digitally signed by the bidder).

c2. NON STATUTORY COVER:

Sl. No.	Category Name	Detail(s)
A	Certificate(s)	1. Copy of the GST Certificate
		2. Copy of the PAN certificate/ PAN Card
		3. Declaration of PF Registration Number or Proof of PF Registration ,PF, ESI Challan etc
B	Company Detail(s)	5. Copy of the Registration Certificate under Company Act (Company Incorporation Certificate) or copy of the Registered Deed for Partnership Firm
C	Credential	6. Copy of the Order(s)/ Contract Agreement(s) with the Purchaser / any other Proof of Purchase, as primary agency [Applicability up to the extent of meeting Technical QR]. AND Corresponding Copy of the Completion Certificate(s) /Commissioning report signed by the Purchaser / Ordering Authority to substantiate the proof of completion of the Solar PV Power Plant(s). [Applicability up to the extent of meeting Technical QR].
D		7. Audited Balance Sheet & Statement of Profit & Loss A/c. [Applicability as per Financial capability].
		8. Copy of Acknowledgement of Income Tax returns [Applicability as per Financial capability].

Bidders are requested to submit all the documents as per the same serial in the following table given below.

1.19.3.2 FINANCIAL PROPOSAL

The Financial Proposal shall contain Price Bid and Mode of Transaction in the following standardized format i.e. file named BOQ –in Excels format.

BOQ

- i The BOQ to be filled up and upload is in form of Excel file in the BOQ folder (Cover)
- ii BOQ file consist of one worksheet with two part i.e. 1) Supply Schedule & 2) Erection Schedule
- iii Filling up procedure-
 - a) **Supply Schedule:** To be filled up by the bidders. It is related to the supply items as per **ITB. 1.15.2.1**
 - b) **Erection Schedule:** To be filled up by the bidders. It is related to the corresponding erection of the equipment and other service item of the project as per **ITB.1.15.2.2**

The Material (e.g. civil cost) and Service Component for each item of the “Erection Schedule” should be correctly segregated by the vendor.

1.20 DEADLINE FOR SUBMISSION OF BIDS

- 1.20.1 The original Demand Draft/Banker's Cheque against Tender Fees and Earnest Money Deposit (EMD) must be submitted physically in the tender box at the office of the GM(M&C), Corporate office, WBPDC, under sealed cover super-scribing the name of the work with NIT no., name of the bidder, name of the work etc. on or before the date & time mentioned in the bid data sheet or any extension of date & time . If the bidder fails to submit the original copies within the due date and time his tender will not be opened and his bid will be rejected.
- 1.20.2 Bids must be received by WBPDC at the online e-tendering portal address specified in **NIT**, no later than the time and date mentioned in **NIT**.
- 1.20.3 The WBPDC may, at its discretion, under intimation to the bidders who have downloaded the bidding documents, extend the deadline for the submission of bids / opening of bids by issuing an addendum and hosting the same on the e-tender portal, in which case all rights and obligations of WBPDC and bidders previously subject to the original deadline shall

thereafter subject to the deadline as extended.

1.20.4 In the event, the deadline for uploading of bid is extended by the WBPDC, the bidders who have already uploaded their bids within the original deadline of submission shall have the option to upload their revised bid in substitution either in full or in part of earlier bid. In the absence of a revised bid, the original bid shall be considered for opening and subsequent evaluation. Wherever, the bidder has submitted the revised bid in full, in modification of earlier bid, the earlier bid shall be returned unopened to the bidder.

1.20.5 Submission of original Tender Fee and Bid Security (**EMD**) (Offline Submission)

- a) The original copies of the DD/BC towards Tender Fee and DD/BC/BG towards EMD (Bid security) as per NIT shall be submitted along with a forwarding letter (**Form -2**) within the date and time as specified in the bids.
- b) If the bidder fails to submit the original copies of the Tender fee and the Bid Security within the due date and time, his tender will not be opened and his bid will stand rejected.

1.21 WITHDRAWAL OF BIDS

The bidder shall not be permitted to withdraw their bid during the interval between bid submission deadline (as mentioned in NIT) and the period of bid validity as per **ITB.1.15**. If any withdrawal of bid is made by the bidder during the above period, it shall result in the forfeiture of the bid security

E. OPENING AND EVALUATION OF TENDER

1.22 BID OPENING

1.22.1 As it is a two part Bidding so WBPDC will open the bids electronically at e-tendering portal by the authorized personnel(s) using their Digital Signature Certificate (DSC), at the scheduled date & time for opening of bids as mentioned in NIT for techno-commercial bid(first part) and Financial bid(second part) will be opened on the date and time as intimated to the bidder on successful completion of evaluation of techno-commercial bids. The bidders' representatives who desire may attend/witness the bid opening event through e-tendering portal at their respective end. In the event of the specified date for the opening of bids being declared a holiday for the WBPDC or suspended for any involuntary reasons, the bids will be opened

at the appointed time & date which shall be intimated/ communicated to all the intending bidders.

- 1.22.2 Bids that are not opened at bid opening will not be considered for further evaluation, regardless of the circumstances. The reason for which bids are not being opened will be notified to all the bidders through e-tendering portal.
- 1.22.3 The bidders' names, bid withdrawal and the presence or absence of the requisite bid security and such other details which WBPDC at his discretion may consider appropriate will be notified in the e-tendering portal at the bid opening date.
- 1.22.4 In this case of Single stage two part bids, on the date of opening of bid, the techno-commercial bid shall only be opened. The date for opening of the Price bid shall be intimated electronically at the appropriate time to the bidders whose bid is found responsive in the techno-commercial evaluation.
- 1.22.5 In the event, Purchaser, in its discretion, decides not to open the bid for want of adequate response to the bidding, the Purchaser may either extend the bid submission deadline or cancel the bidding process any time before issuance of Letter of Award(LOA).

1.23 PROCESS TO BE CONFIDENTIAL

- 1.23.1 Subject to ITB. 1.24, no bidder shall contact the Purchaser on any matter related to its bid from the time of opening of the bids to the time the Contract is awarded.
- 1.23.2 Any effort by a bidder to influence Purchaser or others connected in the process of examination, clarification, evaluation and comparison of bids, and in decisions concerning the award of Contract, may result in the rejection of his bid.

1.24 CLARIFICATION OF BIDS

- 1.24.1 During bid evaluation, Purchaser may, at its discretion and if so required, ask the bidders for any clarification in support of their compliance to stipulated Qualifying Requirements (QR) or any other matter related to its bid except to the extent in ITB.1.24.2. The request for clarification required from the bidder and the response thereto shall be in writing and shall be delivered by registered speed post/email/courier / hand delivery under acknowledgement / email / fax so as to reach the Purchaser within the time

specified in the request for clarification issued by Purchaser.

- 1.24.2 Any post-bid change in the price or substance (techno-commercial) of the bid shall not be sought, offered or accepted.

1.25 DETERMINATION OF RESPONSIVENESS

- 1.25.1 The Purchaser will examine the bids to determine whether they are complete, whether any computational errors have been made, whether required securities have been furnished, whether power of attorney of signatory of the bid has been submitted, whether the documents have been properly signed and whether the bids are generally in order and substantially responsive to the requirements of the bidding documents.
- 1.25.2 For the purpose of this clause, a substantially responsive bid is one which conforms to all the Terms, Conditions and Specifications of the bidding documents without material deviation or reservation. The Purchaser's determination of a bid's responsiveness shall be based on the contents of the bid itself without recourse to extrinsic evidence.
- 1.25.3 Any material information/ data/ document required to be submitted by the bidders as per provisions of bidding documents, if not submitted by the bidder, may render the bid to be non-responsive provided such information/ data/ documents is such that it may adversely affect the evaluation.
- 1.25.4 The Purchaser may waive any minor infirmity, non-conformity or irregularity in a bid that does not constitute a material deviation, and that does not prejudice or affect the relative ranking of any bidder, as a result of the technical and commercial evaluation pursuant to **ITB. 1.28 & ITB. 1.29**.
- 1.25.5 If a bid is not substantially responsive to the requirements of the bidding documents, it may be rejected by Purchaser and the same cannot subsequently be made responsive by the bidder by correction.
- 1.25.6 Conditional bid shall not be accepted by Purchaser

1.26 CORRECTION OF ARITHMETICAL ERRORS IN PRICE BID

- 1.26.1 Arithmetical errors will be corrected at the time of evaluation of Price bid and the corrected figure will be considered as evaluated bid price. The corrections in the bid price shall be done as per the provisions of this clause and shall be binding on the bidder. If the bidder does not accept the correction of errors as per the provisions of this clause, his bid will be rejected and the bid security will be forfeited.

- 1.26.2 If there is a discrepancy between the product of unit price and quantity and the total price, the product of unit price and quantity will prevail and the total price will be corrected. If there is discrepancy between summation of subtotals and total price, the summation of subtotal price shall prevail, and the total price shall be corrected. If there is a discrepancy between words and figure, the amount in words will prevail. In case unit price or quantity or both are not filled in against any item, it will be treated as zero and will be assumed that the Bidder has absorbed the cost elsewhere in the Price Bid.
- 1.26.3 The total price so corrected shall be considered for the purpose of evaluation of bid. However for the purpose of award, the corrected price by the Purchaser or the bid price quoted by the bidder, whichever is lower, will be taken.
- 1.26.4 Bids will be corrected for the rates of taxes & duties in case of wrong rates taken by the bidder. For the purpose of bid comparison and evaluation, the rates of taxes & duties in force as on seven (7) days prior to the last date of submission of bids would be considered, only in respect to direct transactions between the Contractor and Purchaser.

1.27 TIME SCHEDULE

The basic consideration and the essence of the Contract shall be the strict adherence to the time schedule specified in the Bids and NIT after the Commencement Date of the Contract as incorporated in the Contract Agreement for completion of Works. Bidders are required to base their prices on the time schedule mention in Clause no.**GCC 3.21**. No credit will be given for earlier completion for the purpose of evaluation.

1.28 PROCEDURE OF EVALUATION OF BIDS

- 1.28.1 The Purchaser will carry out a detailed evaluation of the bids determined to be substantially responsive as per clause no.**ITB 1.25** in order to determine whether the technical aspects are in accordance with the requirements set forth in the bidding documents. **Bids submitted by bidders with any deviations shall be rejected.**
- 1.28.2 The Purchaser will determine to its satisfaction whether the bidder selected as having submitted the lowest evaluated responsive bid is qualified to satisfactorily perform the Contract in terms of the qualifying requirements stipulated in NIT.

- 1.28.3 The determination will take into account the bidder's financial, technical, production and execution capabilities, in particular its work in hand and future commitments. It will be based upon an examination of the documentary evidence of the bidder's qualifications submitted by the bidder to the bid, as well as such other information as the Purchaser deems necessary and appropriate.
- 1.28.4 An affirmative determination will be a prerequisite for award of the Contract to the bidder. A negative determination will result in rejection of the bidder's bid, in which event the Purchaser will proceed to the next lowest evaluated bid to make a similar determination of that bidder's capabilities to perform satisfactorily.

1.29 COMPARISON OF BIDS

- 1.29.1 The bids shall be compared on the basis of 10 MW Solar PV Plant installation and commissioning prices i.e. for ex-works price of supply portion including Tax and Duties, Insurance, transportation and ex-works prices for Materials, Services/Erection, Testing & Commissioning including Tax and Duties for the entire scope of the Works as defined in the bidding documents.
- 1.29.2 The bid prices shall be in Indian Rupees only and the minimum cost of 10 MW plant for Supply, Erection, Testing & Commissioning, Transportation, GST and other Tax and duties will be considered for selection of the lowest Bidder.

F. AWARD OF CONTRACT

1.30 AWARD CRITERIA

- 1.30.1 The Purchaser will award the Contract to the successful bidder(s) whose bid has been determined to be substantially responsive and has been determined as the lowest bid provided further that the bidder is determined to be qualified to perform the Contract satisfactorily. The Purchaser shall be the sole judge in this regard.
- 1.30.2 For the purpose of determining the capability and capacity of the bidder to perform the Contract, the Purchaser reserves the right to verify the authenticity of the documents submitted by the bidder for meeting the qualification requirements and may undertake verification of the facilities available with the bidder.

1.31 RIGHT TO REJECT BIDS

WBPDC 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 affected bidder or bidders or any obligation to inform the affected bidder or bidders the reason for WBPDC's action.

1.32 LETTER OF AWARD

- 1.32.1 After approval of bid evaluation by WBPDC, the successful bidder may be invited for pre-award discussions. After pre-award discussions and prior to the expiry of the period of bid validity, WBPDC will notify the successful bidder in writing by registered letter or E-mail, that his bid has been accepted. This letter ('Letter of Award' or **LOA or Material/Service Contract**) shall mention the sum which WBPDC will pay to the Contractor in consideration of the execution & completion of the Works by the Contractor as prescribed under the Contract.
- 1.32.2 Within ten (10) days of receipt of the LOA, the successful bidder shall sign and return one (1) photocopy of the same to WBPDC as acknowledgment of acceptance of the same.
- 1.32.3 The **LOA or Material/Service Contract** will constitute the formation of the Contract as per provisions of **GCC.3.4.5**

1.33 SIGNING OF CONTRACT AGREEMENT

- 1.33.1 WBPDC will send the successful bidder the Contract Agreement (non judicial stamp paper of appropriate value) as per **Annexure: 1 of Section VII** in three (3) copies incorporating all agreements between the parties duly signed by the authorized signatory of the Purchaser along with the LOA.
- 1.33.2 Within thirty (30) days from the date of acceptance of LOA, the successful bidder shall sign the Contract Agreement and return two (2) copies to the Purchaser and retain one (1) copy of the same.

1.34 CONTRACT PERFORMANCE GUARANTEE

- 1.34.1 Within fifteen (15) days of LOA from WBPDC, the successful bidder shall furnish to WBPDC a Contract Performance Guarantee (CPG), as in the form of an unconditional and irrevocable Bank Guarantee equal to ten percent (10%) of the Contract Price for all the Contracts and as per the **Annexure: 2**

of Section VII.

1.34.2 Failure of the successful bidder to submit performance security as stated herein shall constitute sufficient ground for annulment of the award and forfeiture of his bid security, in which event the Purchaser may make the award to the next lowest evaluated bidder or call for new bids.

1.34.3 Forfeiture of Contract Performance Guarantee

Contract Performance Guarantee shall be forfeited if,

- a. The successful bidder does not execute the work after placement of Letter of Award (LOA) and/or,
- b. The successful bidder will discontinue the work without prior permission of WBPDC and/or,
- c. The successful bidder fails to install/procure the total capacity of the plant as mentioned in the Bid Document and/or,
- d. The successful bidder fails to rectify/replace of the defective/damaged equipment(s)/work(s) within the Defect Liability Period.

1.34.4 Additional Contract Performance Guarantee (ACPG)

If L1 bidder's quoted bid is 80% or less of the estimated project cost mentioned in this tender then additional Contract Performance Guarantee (ACPG) as in the form of an unconditional and irrevocable Bank Guarantee (BG) equal to ten percent (10%) of the Contract Price including GST for all the Contracts and as per the **Annexure: 2 of Section VII** have to be submitted by the bidder in the form any scheduled bank before issuance of Work Order. If the bidder fails to submit the Additional Performance Security within schedule time, his EMD will be forfeited. The Additional Performance Security shall remain valid up to after the Defect Liability Period of sixty (60) calendar months and project execution period(12) months, with an additional claim period of ninety (90) days, failing which his bid security may be forfeited.

1.34.5 Forfeiture of Additional Contract Performance Guarantee (ACPG)

Additional Contract Performance Guarantee (ACPG) shall be forfeited if,

- a. The successful bidder does not execute the work after placement of Letter of Award (LOA) and/or,
- b. The successful bidder will discontinue the work without prior permission

of WBDCL and/or,

- c. The successful bidder fails to install/procure the total capacity of the plant as mentioned in the Bid Document and/or,
- d. The successful bidder fails to rectify/replace of the defective/damaged equipment(s)/work(s) within the Defect Liability Period.

1.35 MISREPRESENTATION BY THE BIDDER

If the bidder conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in the bid, in any manner whatsoever, in order to create circumstances for the acceptance of the bid, the purchaser reserves the right to reject such bid and/or cancel the LOA **or Material/Service Contract**, if issued.

1.36 CORRUPT OR FRAUDULENT PRACTICES

1.36.1 The Purchaser requires that the Bidders/Contractors observe the highest standard of ethics during the procurement and execution of the Contracts.

1.36.2 In pursuance of this policy, the Purchaser defines, for the purposes of this provision the terms set forth below as follows:

a. **“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.

b. **“Fraudulent practice”** means a misinterpretation of facts in order to influence the procurement process or the execution of a Contract to the detriment of the Purchaser, 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 Purchaser of the benefits of free and open competition

1.36.3 The Purchaser 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

1.36.4 The Purchaser may declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a Contract if it any time determines that the firm has engaged in corrupt or fraudulent practices in competing for or in executing a Contract of the Purchaser

1.36.5 The bidders shall make themselves aware of the provision contained in **GCC.3.47.2.**

SECTION-II

BID DATA SHEET

BID DATA SHEET (BDS)

The following bid specific data for the Equipment/ Materials / Works to be procured shall amend and/or supplement the clauses in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in the ITB.

Name of the Work:	Design & Engineering, Manufacture / Procurement, Supply, Erection, Testing and Commissioning of 10MW Phase-II Grid Connected Floating Solar Photovoltaic Power Plant on Raw Water Pond No.1, 2 & 4 in Sagardighi Thermal Power Project(SgTPP), Murshidabad, West Bengal including warrantee obligation with 05 (Five) years comprehensive Operation and Maintenance.
NIT No:	WBDCL/CORP/NIT/E1350/20-21 Dtd:-03/09/2020

ITB Clause Ref., if any	Data
	2.1 A. SCOPE & QUALIFICATION
ITB. 1.2	WBDCL intends to finance this Works through fund as to be received from GoWB and MNRE GoI if any.
	End user of the Project The West Bengal Power Development Corporation Limited
ITB.1.3	Brief Scope of Work
ITB 1.4	QUALIFYING REQUIREMENT FOR BIDDERS: Prescribed in NIT
ITB 1.4.1.4	Whether Joint Venture is permitted - YES
	Type of Bidding: National Competitive Bidding (NCB).
	2.2 B. THE BIDDING DOCUMENTS
ITB.1.9	Clarification or any proposed modification on bidding document may be submitted by the bidders through mail to the mail address Email: s.sengupta@wbpdcl.co.in as per format of Form 9 and Form 10 of Section VI
	Date & Time up to which request for clarifications will be received: As per NIT

	Clarifications on bidding documents may be obtained from <u>https://wbtenders.gov.in</u>
	NOTE: Late submission of queries will not be entertained.
ITB. 1.10	Pre-bid Meeting Venue : The West Bengal Power Development Corporation Ltd. Bidyut Unnayan Bhaban, Plot No. 3/C LA-Block, Sector-III, Bidhannagar,Kolkata-700 106 Date & Time : As per NIT
ITB.1.10.4	The proposed modifications to the bid documents shall be sent by the bidders within the time mentioned in NIT through mail to the mail address Email: s.sengupta@wbpdc.co.in as per format of Form 10 of Section VI
	2.3 C. PREPARATION OF BIDS
ITB.1.15.8	Price Adjustment is not applicable.
ITB.16.0	Period of validity of bids: As per NIT
ITB.1.18	Validity of Bid Security : As per NIT
	2.4 D. SUBMISSION OF BIDS
ITB.1.19.1	Bids should be submitted online through the portal
ITB.1.19.2	<u>https://wbtenders.gov.in</u>
ITB 1.20.4	Submission of B.G as Bid Security (EMD) an amount of Rs. 120 lakh. <u>Place of Submission</u> To The General Manager(M&C) , The West Bengal Power Development Corporation Ltd. Bidyut Unnayan Bhaban, Plot No. 3/C LA-Block, Sector-III, Bidhannagar,Kolkata-700 106 Telephone: 0091 – 033 2339 3621, Email: s.sengupta@wbpdc.co.in Date & Time : As per NIT
ITB. 1.27	Time to complete the Works from the Date of LOA:- As per NIT
	Detailed Master Network for different activities [To be submitted by successful vendor/contractor]
	The Master Network shall include the major activities listed below showing their inter-relationship and duration so as to meet the schedule dates mentioned above:

	<ol style="list-style-type: none"> 1. Kick off Meeting 2. Start of engineering 3. Completion of engineering 4. Start of manufacturing/fabrication 5. Completion of manufacturing/fabrication 6. Commencement of supplies 7. Supplies all items 8. Completion of site delivery of spares 9. Commencement & completion of civil works (wherever applicable) 10. Commencement and completion of erection of equipments/materials. 11. Readiness of the system 12. PG test completion 13. Completion of Works
	<p>The master schedule and the key milestone dates will be discussed with the successful bidder and agreed upon before the issue of LOA. Engineering Drawing and Data Submission Schedule shall also be discussed and finalised before the issue of LOA.</p>
	<p>After the LOA, the Contractor shall plan the sequence of work of manufacture, supply and erection to meet the above stated dates of successful completion of Works and shall ensure all work, manufacture, shop testing, inspection and shipment of the Equipment/Materials in accordance with the required erection sequence.</p>

SECTION-III

GENERAL CONDITION OF CONTRACT (GCC)

A. CONTRACT AND INTERPRETATION

3.1. DEFINITION OF TERMS

Unless the context otherwise requires, the following terms whenever used in this document have the respective meaning:

- i. **“Purchaser”** shall mean the **“The West Bengal Power development Corporation Limited(WBPDC)”**, having its Office at Bidyut Unnayan Bhaban, Plot No. 3/C LA-Block, Sector-III, Bidhannagar, Kolkata-700 106 and shall include its successors and assigns.
- ii. **“Contract”** means all the Contract Agreement(s) entered into between the Purchaser and the Contractor, together with the Contract Documents referred to therein; they shall constitute the Contract and the term Contract shall in all such documents be construed accordingly.
- iii. **“Contract Document”** means the documents listed in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments thereto)
- iv. **“Contract Price”** means the sum total of contract price stated in all the Letter of Award(s) as payable to the Contractor for supply, execution and commissioning of the entire Works under the scope of Contract subject to such addition & adjustments thereto or deductions there from as may be made pursuant to the Contract(s). In cases where separate identifiable Works can be completed and taken over by the Purchaser and for which separate completion schedule is provided in the Contract, in relation to such

Works, the Contract Price shall mean the price related to such Works completed and taken over by the Purchaser.

- v. **“Contractor”** means the successful bidder whose bid has been accepted by the Purchaser, named as such in the Contract Agreement and included its legal successors and permitted assigns.
- vi. **“Contractor's Equipment”** means all appliances or things of whatsoever nature required for the purposes of execution of work and which are to be provided by the Contractor but does not include any Equipment/ Materials intended to form part of Works.
- vii. **“Bid”** shall mean the Qualification Bid, Technical Bid and Financial Bid submitted by the Bidder, in response to Notice Invite for Tender (NIT).
- viii. **“Bidder”** shall mean Bidding Company or a Bidding Consortium (formed through a memorandum of understanding) or any other person submitting the Bid. Any reference to the Bidder includes Bidding Company / Bidding Consortium / Member of a Bidding Consortium includes its successors, executors and permitted assigns and Lead Member of the Bidding Consortium jointly and severally, as the context may be.
- ix. **“Bidding Consortium”** shall mean a maximum of two(2) Bidding Companies who have signed a memorandum of understanding collectively submitted the Bid in accordance with the provisions of this RFQ cum RFP.
- x. **“Project Manager”** means the person appointed by the Purchaser in the manner provided in **GCC.3.19.1** hereof and named as such in the SCC to perform the duties delegated by the Purchaser.
- xi. **“Letter of Award”** means notice of acceptance of the bid in writing to the successful bidder, indicating the sum WBPDC will pay for the Works as per ITB

- xii. **“Price Schedule”** means the schedules or any part or individual schedule thereof, submitted by the bidder with his bid and forming a part of the Contract Documents.
- xiii. The **‘Engineer-in-Charge’** shall mean the Director (Projects) of the Company.
- xiv. The **“Controlling Officer”** shall mean the General Manager/Project In-charge of the respective Power Plants.
- xv. **‘WBPDC’s representative’** shall mean any person or persons or consulting firm appointed/authorized by the Company to supervise, inspect, test and examine workmanship and materials of the work under this scope.
- xvi. The **‘Sub-Contractor’** shall mean any person/agency to whom any part of the contract has been sublet by the contractor with the consent in writing of the Company and will include the legal representatives, successors and permitted assigns of such persons / agency.
- xvii. **‘Equipment/materials’** shall mean and include all type of construction equipment & materials etc. required for true and satisfactory completion of the work under this contract.
- xviii. **‘Workmanship’** shall mean the method/manner in which the jobs of the different items, whether included in the schedule or not but are required for true & satisfactory completion of the work under this contract, are executed.
- xix. **‘General Conditions’** shall mean all the clauses of General conditions of the proposed contract stated hereinafter. The specification shall mean the specification annexed to or issued with the General Conditions and shall include the schedule and drawings attached thereto.

- xx. The term **‘Services’** shall mean all works to be undertaken by the contractor as laid down under the head “Scope of work” or elsewhere in the specification enclosed. When the words “approved”, “subject to Approval”. “As directed”, “Accepted”, “Permitted” etc. are used, the approval, judgment, direction etc. are understood to be a function of Company.
- xxi. **‘Day’** means a calendar day beginning and ending midnight.
- xxii. **‘Month’/‘Calendar month’** means not only the period from the first of a particular month, but also any period between a date in a particular month, and the date previous to the corresponding date in subsequent month unless specifically stated otherwise.
- xxiii. **‘Week’** means seven consecutive calendar days.
- xxiv. **‘Writing’** shall include any manuscript, type written, printed or other statement reproduced in any visible form.
- xxv. **“Site”** means the place or places, where Works are to be executed by the Contractor or to which Equipment machinery are to be delivered, together with so much of the area surrounding the same as the Contractor shall with the consent of the Purchaser, use in connection with the work other than merely for the purposes of access.
- xxvi. **‘Date of Contract’/‘Commencement Date’** shall mean the date on which Letter of Award will be issued.
- xxvii. **‘Zero Date’** will be started from the date of issuance of Letter of Award (LOA).
- xxviii. **“Program”** means the Program to be submitted by the Contractor in accordance with GCC and any approved revisions thereto.
- xxix. **“GCC”** means the General Conditions of Contract hereof.
- xxx. **“SCC”** means the Special Conditions of Contract.
- xxxi. **‘Specifications’** shall mean collectively all the terms and

stipulations contained in this document including the conditions of contract, technical provisions and attachments thereto and list of corrections and amendments. **Drawings' means** collectively all the accompanying general drawings as well as all detailed drawings, which may be used from time to time or desired by WBPDCCL.

- xxxii. **'Approval'** shall mean the written approval of WBPDCCL and/the statutory authorities, wherever such authorities are specified by any codes or otherwise.
- xxxiii. **'Manufacturer'** shall refer to the party proposing to design/engineering and construct in complete or in part a particular job/work at their works/premises.
- xxxiv. **'Labourer'** shall mean all categories of labour engaged by the Contractor, his sub- contractors and his piece workers for work in connection with the execution of the works covered by the specifications. All these labourers will be deemed to be employed primarily by the Contractor.
- xxxv. **'Plant'/'Equipment'/'Stores'** means and include plant and machineries to be provided under the contract.
- xxxvi. **'Delivery of Plant'/'Delivery of Equipment'** shall be deemed to take place on delivery of the plant/equipment in accordance with the terms of the contract complete in all respect after approval by WBPDCCL.
- xxxvii. **'Tests on Completion'** shall mean all such tests as are prescribed by the specification to be made by the Contractor to the satisfaction of WBPDCCL before the plant and equipment are taken over by WBPDCCL and this also includes those tests not specifically mentioned in the specification but required under various BIS codes and relevant Electricity Acts and Rules.
- xxviii. **'Commissioning'** shall mean the satisfactory, continuous and uninterrupted operation of the equipment/work as specified after all necessary initial tests, checks and adjustments required at site for a period of at least 15 (fifteen) days to the satisfaction of WBPDCCL.
- xxxix. **'Urgent Works'** shall mean any urgent measures, which in opinion of the Engineer-in- Charge, become necessary at

the time of execution and/or during the progress of work to obviate any risk of damage to the structure, or required to accelerate the progress of work or which become necessary for security or for any other / reason WBPDC may deem expedient.

- xl. **"MNRE"** shall mean Ministry of New and Renewable Energy, Government of India;
- xli. **"kWp"** shall mean Kilo-Watt Peak;

3.2. CONTRACT DOCUMENTS

3.2.1. CONSTRUCTION OF CONTRACT

The Contracts to be entered into between the Purchaser and the successful bidders shall be as under:

- a. **"FIRST CONTRACT"** is for ex-works supply of Equipment / Materials & Transport, transit insurance, unloading, storage, handling
- b. **"SECOND CONTRACT"** is for civil works as per Schedule of Works (Electrical & Civil), at Site, installation services (including rates and prices for all material/ labour, Contractor's Equipment, temporary works, consumables and all matters and things of whatsoever nature of such works), training of Purchaser's personnel etc and all other services specified in the Contract Documents.
- c. **"THIRD CONTRACT"** for Comprehensive Operation & maintenance for five (5) years which shall be conferred after successful completion of the project.

3.2.2. The award of these three Contracts shall not in any way dilute the responsibility of the Contractor for the successful completion of the Works as per Contract Documents.

3.2.3. If the successful bidder is a **Bidding Consortium** then the award of this three contract will be conferred on the **Lead Member**. But both the member of the consortium shall be severally and jointly liable and responsible for execution of the contract. In the event of failure on the part of the second member of the consortium to perform its obligation, then the Lead member of the consortium shall be solely responsible to fulfil the remaining obligations of its partner for the purpose of completion of contract

including statutory obligations(refer **Clasuse-3.49**).

- 3.2.4.** Subject to **Sl no.2** of the Contract Agreement, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.
- 3.2.5.** Subsequent to signing of the Contract Agreement, the Contractor at his own cost shall provide the Purchaser with at least **three (03) copies** of the Contract Documents within **thirty (30)** days after signing of the Contract Agreement.
- 3.2.6.** The Contractor shall provide free of cost to PURCHASER all the engineering data, drawings and descriptive materials submitted with the bid, complete set of his bid and bidding documents, copies of all the correspondence with PURCHASER, etc. in at least **four (4)** copies to form a part of the Contract Documents immediately after the Letter of Award (**LOA**).
- 3.2.7. Endorsement of Terms**
The failure of either party to endorse at any time any of the provisions of the Contract or any rights in respect thereto or to an option herein provided shall in no way be construed to be a waiver of such provisions, rights or option or in any way to effect the validity of the Contract. The exercise by either party of any of his rights herein shall not preclude or prejudice either party from exercising the same or any other right it may have hereunder.
- 3.2.8. Effect**
The Contract shall be considered to come into force on the date of LOA by PURCHASER to the Contractor which may be in the form of a fax, E-MAIL or a Letter of Award. The Time for Completion shall be reckoned from that date
- 3.2.9.** 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. If any of the Contract Documents, correspondence or communications are prepared in any language other than the governing language under this clause, the English translation of such documents, correspondence or communications shall prevail in matters of interpretation.

3.3. NOTICE

- 3.3.1.** Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract. 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, Registered post or e-mail followed by post confirmation to the address of the relevant party as mentioned in SCC
- 3.3.2.** Any notice sent by registered post or speed post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered **ten (10) days after dispatch**. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities for transmission by airmail or registered post.
- 3.3.3.** Any notice delivered personally or sent by registered post shall be deemed to have been delivered if the same is properly received by the other party.
- 3.3.4.** Either party may change its address at which notices are to be received by giving ten (10) days notice to other party in writing.

3.4. INTERPRETATION

- 3.4.1. Singular and Plural**
The singular shall include the plural and the plural the singular, except where the context otherwise requires.
- 3.4.2. 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.
- 3.4.3. Persons**
Words importing persons or parties shall include firms, corporations and government entities.
- 3.4.4. INCOTERMS**
Unless inconsistent with any clause of the Contract, the meaning of any trade term and the rights and obligations of parties there under shall be as prescribed by the 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.
- 3.4.5. Entire Agreement**
Subject to **GCC.3.17.3**, the Contract constitutes the entire

agreement between the Purchaser 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..

3.4.6. Independent Contractor

The Contractor shall be an independent Contractor (if JV/Consortium then Lead Member) performing the Contract.

The Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Sub-contractors 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 Purchaser, 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 Sub-contractors and the Purchaser.

3.4.7. Non-Waiver

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

Subject to above, 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.

3.4.8. Severability

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

3.5. GOVERNING LAW

The Contract shall be governed by and interpreted in accordance with laws in force in India including any such Laws passed or made

or coming into force during the period of the Contract. The Courts of Kolkata under the superintendence of High Court of Calcutta shall have exclusive jurisdiction in all matters arising under the Contract.

3.6. DISPUTE RESOLUTION

3.6.1 If any dispute(s) or difference(s) of any kind whatsoever arise between the parties hereto in connection with or arising out of any contract, the parties hereto shall negotiate with a view to its amicable resolution and settlement. In the event no amicable resolution or settlement is reached within a period of 30 (thirty) days from the date on which the dispute(s) or difference(s) arose, either party shall give a notice to the other party, of such intention to invoke Arbitration within 14 (fourteen) days from the expiry of the aforesaid period of 30 (thirty) days within which amicable resolution could not be reached.

Such dispute(s) or difference(s) shall be referred to and settled by an Arbitral panel comprising of 3 (three) arbitrators. Both the parties shall appoint one arbitrator each. The third Arbitrator shall be appointed by both the Arbitrators who shall act as the Presiding Arbitrator.

3.6.2 If the appointed Arbitrators fail to agree upon the Presiding Arbitrator within 30 (thirty) days from the date of their appointment, the appointment of Presiding Arbitrator shall be made upon request of either party by, the Hon'ble High Court, Kolkata, West Bengal.

3.6.3 The Arbitration clause can be invoked at any time during the currency of the contract or after the expiry/ termination or closure of the contract.

3.6.4 The arbitration proceedings shall be in accordance with the prevailing Arbitration laws of India as amended or enacted time to time

3.6.5 The existence of any dispute(s) or difference(s) or the initiation or continuance of the Arbitration proceedings shall not permit the parties to postpone or delay the performance by the parties of their respective obligations pursuant to the Contract.

3.6.6 The seat of arbitration shall be Kolkata, West Bengal, India.

3.7. COMPLIANCE WITH LAWS

3.7.1 Compliance with Laws, statutes, regulations

The Contractor shall, in all matters arising in the performance of the Contract, comply with in all respects, give all notices and pay all fees required by the provisions of any national or state statute, ordinance or other law or any regulation or bye-law of any duly constituted authority.

3.7.2 Statutory Obligations

The Contractor shall adhere to the statutory provisions under Payment of Minimum Wages Act, Contract Labour (Regulation & Abolition) Act-1972, Employee's Provident Fund & Miscellaneous Provisions Act-1952, Employers' Compensation Act-1923, ESI Act and other available relevant statutes. At any point of time non-compliance of the statutory provisions in respect of contract labour engaged in the job by the contractor/sub-contractors may attract penal action against Contractor from the law enforcing authorities. All liabilities arising out of the non-compliance of the Law of the land will have to be borne by the Contractor and PURCHASER will not be responsible in any manner whatsoever for the same.

3.7.3 The Contractor shall indemnify and hold harmless the Purchaser 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 Sub-contractors and their personnel, but without prejudice to **GCC 3.10.1** hereof.

B. SUBJECT MATTER OF CONTRACT

3.8. SCOPE OF WORKS

3.8.1 Unless otherwise expressly provided in the Technical Specifications, the Contractor's obligations cover the provision of all Equipment/Materials including spares and the performance of all services required for the design, the manufacture (including quality assurance, construction, installation, associated civil, structural and other construction works and delivery) of the Equipment/Materials and the installation, commissioning, completion of the Works and carrying out completion tests for the

Works 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 3.8.3**) 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), insurance and storage, except for those supplies, works and services that will be provided or performed by the Purchaser.

3.8.2 The Contractor shall, at no extra cost to the Purchaser, unless specifically excluded in the Contract, perform all such Works 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 successful completion of the Works as if such Works and Materials were expressly mentioned in the Contract.

3.8.3 The Contractor agrees to supply spare parts required for the operation and maintenance of the Works as per provision of subsequent sub clauses of **GCC 3.8.3**.

3.8.3.1. All the spares for the Equipment/material under the Contract will strictly conform to the Specification and other relevant documents and will be identical to the corresponding main Equipment/Materials supplied under the Contract and shall be fully interchangeable.

3.8.3.2. All the spares covered under the Contract shall be manufactured along with the main Equipment/ Materials as a continuous operation and the delivery of the spares will be effected along with the main Equipment/ Materials in a phased manner and the delivery would be completed by the respective dates for the various categories of Equipment/ Materials as per the agreed Program.

3.8.3.3. The Contractor will provide the Purchaser with the manufacturing drawings, catalogues, assembly drawings and any other document required by the Purchaser so as to enable the Purchaser to identify the spares. Such details will be furnished to the Purchaser during design and drawing approval.

3.8.3.4. In addition to the spares covered in the Scope of Work, if the

Purchaser 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 Purchaser and placement of order for additional spares, if the Purchaser so desires.

- 3.8.3.5. The quality plan and the inspection requirement finalized for the main Equipment/ Materials will also be applicable to the corresponding spares.
- 3.8.3.6. The Contractor will provide the Purchaser with all the addresses and particulars of his Sub-contractors while placing the order for Equipment/ Materials covered under the Contract and will further ensure with his vendors that the Purchaser, 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.
- 3.8.3.7. The Contractor shall guarantee the long-term availability of spares to the Purchaser for the full life of the Equipment/ Materials covered under the Contract. The Contractor shall guarantee that before going out of production of spare parts of the Equipment/ Materials, he shall give the Purchaser at least twelve (12) months advance notice so that the latter may order his bulk requirement of spares, if he so desires. The same provision will also be applicable to Sub-Contractor of any spares by the Contractor or his Sub-Contractors. Further, in case of discontinuance of manufacture of any spares by the Contractor or his Sub-Contractors, the Contractor will provide the Purchaser, two (2) years in advance, full manufacturing drawings, material specifications and technical information required by the Purchaser for the purpose of manufacture of such items..
- 3.8.3.8. In case the Contractor fails to supply the spares in the terms stipulated above, the Purchaser 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 Purchaser, if any, over the rates worked on the above basis. In the event of such risk purchase by the Purchaser, the purchases will be as per the Policy and Procedures of the Purchaser prevalent at the time of such purchases and the Purchaser at his option may include a representative from the Contractor in finalizing the purchases.

3.8.3.9. It is expressly understood that the final settlement between the parties, in terms of relevant clauses of the Contract Documents shall not relieve the Contractor of any of his obligations under the provision of long term availability of spares unless otherwise discharged expressly in writing by the Purchaser.

3.8.3.10. 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

3.8.4 COMPREHENSIVE OPERATION AND MAINTENANCE

Maintenance contract shall be commence after final commissioning of the plant. 05 (five) years comprehensive operation & maintenance of the plant shall also be the scope of work. The contractor needs to submit 03 (three) sets of comprehensive user's manual and 02 (two) sets of Operation and Maintenance manual book after commissioning of the plant.

The scope of maintenance shall include supply of spare parts, replacement of all damaged equipment and accessories with new one within the price of yearly maintenance charge.

Time for repair/ replacement of equipment or any works in case of any major failure will be granted by the Controlling Officer considering the type of failure and receiving written prayer from the contractor for the same. But in general the downtime will be 72 hours.

The period of unavailability of Grid & Force Majeure Conditions will not be considered as downtime.

Arrangement of security (Minimum 3 nos. of security personnel in each of the three shifts) shall be a scope of the operation and maintenance.

The contractor shall arrange sufficient transportation arrangement (24X7) for the operation and maintenance purpose. The maintenance includes Routine and preventive, Breakdown and Capital Maintenance which shall be but not limited to the following.

3.8.4.1. Routine and preventive maintenance:

This shall include:

- i. Regular cleaning of PV modules.
- ii. Checking & tightening of all electrical connections and

mechanical fittings.

- iii. Checking and restoring of earthing system.
- iv. Cleaning of Inverter and other electrical equipments.
- v. Routine maintenance as recommended by the original equipment manufacturer.

The contractor shall be responsible to carry out routine and preventive maintenance and replacement of each and every damaged/faulty component/ equipment of the power plant and he shall provide all labour, material, consumables etc for routine and preventive maintenance at his own cost.

3.8.4.2. Breakdown maintenance:

Breakdown maintenance shall mean the maintenance activity including repairs and replacement of any component or equipment of the power plant which is not covered by routine and preventive maintenance and which is required to be carried out as a result of sudden failure/breakdown of that particular component or equipment while the plant is running. The supplier shall be responsible to carry out breakdown maintenance of each and every component of the power plant and he shall provide the required manpower, materials, consumables, components or equipment etc. for breakdown maintenance at his own cost irrespective of the reasons of the breakdown/failure.

3.8.4.3. Capital maintenance:

Capital Maintenance shall mean the major overhaul of any component or equipment of the power plant which is not covered by routine, preventive and breakdown maintenance which may become necessary on account of excessive wear & tear, aging, which needs repair/replacement. The capital maintenance of power plant and all civil structures shall normally be planned to be carried out on an annual basis. For this purpose a joint inspection by the supplier and WBPDCCL shall be carried out of all the major components of the power plant, about two months in advance of the annual maintenance period, in order to ascertain as to which components of the power plant require capital maintenance. In this regard the decision of WBPDCCL will be final and binding.

However, if the condition of any plant component wants its capital maintenance at any other time, a joint inspection of WBPDCCL and supplier shall be carried out immediately on occurrence of such

situation and capital maintenance shall be carried out by arranging the shutdown of the plant/part of the plant, if required, in consultation with concerned authorities. The decision of WBPDC shall be final and binding to the contractor.

The capital maintenance also includes painting of mechanical & civil structures etc.

The contractor shall undertake necessary maintenance /troubleshooting work of the Solar PV Power Systems. Down time shall not be more than 72 hours from time of occurrence of such faults. Adequate measures should be taken for prevention of wear and tear of the machines. Solar PV Power System is to be designed to operate with a minimum of maintenance.

The scope of support service provides preventive maintenance as & when necessary within the contract period and break down maintenance in the event of malfunctions, which prevent the operation of the power system or part of it within the stipulated time period & free replacement of spares required for maintenance.

The contractor will provide Spare parts & measuring instruments.

The contractor shall submit the detailed schedule for routine and preventive maintenance before final commissioning of the plant. The contractor shall also submit Detailed Report to WBPDC for any capital or breakdown maintenance mentioning the cause of breakdown, actions taken to resolve that issue and preventive measures taken to avoid failure/damage/loss of generation due to similar incidents/accidents in future etc. within 07 (seven) days from the date of recovery.

3.8.4.4. **Maintenance Report:** Maintenance register / log book must be maintained at site. However, quarterly maintenance and monthly generation report of each location as per format duly approved by WBPDC must be submitted by the contractor to WBPDC with certification of Beneficiary in original by the contractor within 30 day of the following month. Failing of which maintenance service will be deemed to be not attended.

3.8.4.5. **Deployment of Competent Manpower:**

As the vendor is to satisfy the NMGG of the plant as per clause 3.33 so deployment of man power to be as per the site requirement.

3.8.4.6. **Cost & Payment Terms for O&M Contracts:**

O&M contract value: 10% of the Basic Project Cost (excluding Tax and Duties) for 5(five) years.

Payment Terms:

The payment shall be made on monthly basis and the Eligible amount will be due for payment after the certification by the Controlling Officer within 45 (forty five) days from the end of each month subject to satisfactory performance and submission of maintenance report in regular basis as mentioned in Clause no. 3.8.4 of GCC. The total yearly amount payable shall be subject to following table and as per certification of the Controlling Officer.

O&M Operation Year end	Amount of Payment
1 st Year	1.5% of the contract value
2 nd Year	2% of the contract value
3 rd Year	2% of the contract value
4 th Year	2% of the contract value
5 th Year	2.5% of the contract value

Tax and Duties will be paid extra

3.9. VARIATION, ADDITIONS AND OMISSIONS

The Contractor shall not modify the scope of work except under direction in writing by the WBPDC. The quantities provided in the schedule of works are fixed.

3.10. OBLIGATIONS OF THE CONTRACTOR

- 3.10.1 The Contractor shall, in accordance with the Contract, with due care and diligence, carry out the Works as necessary for successful completion of all the obligations, within the time for completion.
- 3.10.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the conditions and circumstances at the Site affecting the Contract Price, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site including existing roads and bridges and other means of access to the Site, presence of obstructions on the Site. 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 Works
- 3.10.3 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/ state where the Site is located that are necessary for the performance of the Contract.

3.10.4 The Contractor shall arrange/ construct at his own cost any storage/access, structures, bridges and approach to the work sites from public roads as may be required for execution of Works.

3.10.5 Contractor shall be responsible for all necessary statutory compliance in respect of the employees deployed by them or by the sub contractor(s) to execute the contract. However, Form no. V for obtaining labour license under the contract labour (R&A) act , 1970 and rules framed there under shall only be issued to the Contractor.

3.11. OBLIGATIONS OF THE PURCHASER

3.11.1 The Purchaser shall ensure the accuracy of all information and/or data to be supplied by the Purchaser as described in to the Contract Agreement, except when otherwise expressly stated in the Contract.

3.11.2 The Purchaser shall be responsible for providing legal and physical possession of the Site and access thereto except where providing access is included in the scope of work of the Contractor. The Purchaser shall give full possession of an accord all rights of access thereto on or after the date(s) of issuance of LoA.

3.11.3 The Purchaser shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings where the Site is located, which such authorities or undertakings require the Purchaser to obtain in the Purchaser's name for the execution of the Contract (they include those required for the performance by both the Contractor and the Purchaser of their respective obligations under the Contract).

3.11.4 Without prejudice to the obligations of the Contractor under the Contract Agreement, if requested by the Contractor, the Purchaser 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 Sub-contractors or the personnel of the Contractor or Sub-contractors, as the case may be, to obtain.

3.11.5 The Purchaser shall provide sufficient, properly qualified operating and maintenance personnel; shall supply, other materials and

facilities and shall perform work and services of whatsoever nature to enable the Contractor to properly carry out Commissioning and Guarantee Tests at or before the time specified in the Program furnished by the Contractor under **GCC 3.23.2** hereof and in the manner thereupon specified or as otherwise agreed upon by them and make available all raw materials, utilities, lubricants, chemicals, catalysts Purchaser and the Contractor.

- 3.11.6 The Purchaser shall be responsible for facilitating the Test(s) on completion of the Works, in accordance with **GCC 3.28**

C. PAYMENT

3.12. CONTRACT PRICE

- 3.12.1 The Contract Price shall be as specified in **Article 4** of the Contract Agreement.
- 3.12.2 Subject to **GCC 3.11.1** 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.

3.13. TERMS AND PROCEDURE FOR PAYMENT

The payments to the Contractor for the performance of the Contract will be made by the Purchaser as per terms and conditions specified in **Clause 4.3.4.6**. No payment made by the Purchaser herein shall be deemed to constitute acceptance by the Purchaser of the Works or any part thereof. The currency of payment shall be Indian rupees.

3.14. SECURITIES

3.14.1 Mobilisation Advance Payment

10 % of the Contract Price (Supply & Erection contract) will be paid as Mobilization advance with interest to the contractor against submission of BG (**Annexure-3**) equivalent to 110 % of the Mobilization Advance. The payment of Mobilisation advance shall be subject to deduction of tax at source as per law.

This Bank Guarantee shall be returned to the Contractor after full recovery of advance with interest and against request by the Contractor. The validity of Bank Guarantee would require to be extended by the Contractor, if so required by the Purchaser. The details terms and Condition of the Mobilisation Advance specified in **Clause no. 4.3.4.2**.

3.14.2 Contract Performance Bank Guarantee(PBG)

- 3.14.2.1. The Contractor shall furnish an unconditional and irrevocable Bank

Guarantee in favour of the Purchaser as per **Annexure-2** of **Section VII**, towards Performance guarantee for faithful and due fulfilment of all obligations under the Contract after placement of LOA. Bank Guarantee shall be furnished for an amount equal to ten percent (10%) of the Contract Price of all the Contracts, from a Scheduled Bank in India. The Bank Guarantee shall be valid for Seventy Two (72) months including Defect Liability Period (Five year) with further claim period for ninety (90) days thereafter. The value of the Bank Guarantee is not to be construed as limiting the damages under Defects Liability Period. The Purchaser reserves the right to verify the authenticity of the Bank Guarantee from the issuing bank.

- 3.14.2.2. The Contract Performance Bank Guarantee is liable to be invoked on demand of PURCHASER, for any breach under the Contract irrespective of any dispute or difference between PURCHASER and the Contractor, pending before any court, tribunal or any other authority,
- 3.14.2.3. The Performance Bank Guarantee shall be returned to the Contractor within ninety (90) days after receipt of application for release of Performance Bank Guarantee along with certification regarding completion of Defects Liability Period and O&M period. No claim shall be made against the Performance Guarantee after the issue of Defects Liability Certificate. However, no costs shall be paid for the Bank Guarantee by the Purchaser, irrespective of date of release.

3.15. TAXES, DUTIES, LABOUR CESS AND OTHER LEVIES

- 3.15.1** Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all the applicable taxes and duties (**GST, Custom related Duties, BOCW Labour welfare cess as per laws** and other Govt. Tax or Levies) and charges assessed on the Contractor, its Sub-contractors in connection with this Works. All applicable taxes, duties and levies, (GST and Customs related Duties) where applicable and payable on Equipment/Materials, components, sub-assemblies, raw materials and any other item required for manufacture of finished Equipment/Material or completion of Works shall be deemed to have been included in price.
- 3.15.2** The Contractor shall be solely responsible for the taxes that may be levied on the Contractor's persons or on earnings of any of his employees and shall hold the Purchaser indemnified and harmless against any claims that may be made against the Purchaser. The

Purchaser does not take any responsibility whatsoever regarding taxes under Indian Income Tax Act, for the Contractor or his personnel. If it is obligatory under the provisions under the Indian Income Tax Act, deduction of Income Tax at source shall be made by the Purchaser.

3.15.3 For the purpose of the Contract, it is agreed that the Contract Price specified in the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date seven (7) days prior to the last date of bid submission (hereinafter called "Tax" in this paragraph).

3.15.4 For this EPC Contracts the total project cost/ contract cost (inclusive of Taxes & Duties) will remain fixed throughout the contract. Therefore in case of any increase in rates of existing Taxes & Duties during the currency of the contract the bidder has to adjust the base price to keep the landed price fixed vis-a-vis in case of any decrease in rates of existing Taxes & Duties during the currency of the contract the same shall be at the cost of WBPDC.

3.15.5 GST will be paid at actual by the PURCHASER up to the ceiling quoted in the price bid towards GST. TAX amount during LOA shall remain firm for the entire project period.

3.15.6 Customs related Duty (if Applicable)

3.15.5.1. The Contractor is requested to identify the value of imported components, if any and its price and accordingly the custom duty of its and should mention the value of the custom duty in the price bid.

3.15.5.2. Customs duty will be paid at actual (based on the bill of entry) by the PURCHASER up to the ceiling quoted in the price bid towards customs duty.

3.15.5.3. Any Customs duty variation due to exchange rate also will be paid at actual (based on Bill of entry) within the contractual delivery period. However if the project is delayed beyond the schedule date due to reasons attributable to the Contractor then the additional cost liability, if any shall have to be borne by the Contractor.

3.15.5.4. All taxes and duties payable outside India shall be borne and paid by the contractor. No claim will be entertained by the PURCHASER whatsoever on this account.

3.15.7 Advance Payment

The GST payable if any in respect of advance payment may be paid to

the contractor by the PURCHASER in addition to the amount of advance, subject to providing appropriate documentary evidence that GST on advance has been paid by the contractor.

3.15.8 Tax Deduction at Source (TDS) towards Income Tax/Other Taxes

Deduction of Tax at source at prevailing rate shall be effected by the PURCHASER before payment as a statutory obligation wherever applicable. Income tax and all other taxes as applicable as per statutory obligation/s enactments shall be progressively deducted from the payments released to Contractor, by the PURCHASER, for depositing with the Income tax/other Tax authorities as per Income Tax Act.

TDS on Works Contract shall be deducted at source by the PURCHASER as per statutory provisions. However, if "No Deduction at Source Certificate" is furnished from the Tax Authorities by the Contractor, deduction of TDS on Works Contract shall not be effected.

3.15.9 Personal Income Tax & Cess

Income Tax and cess, if any payable by the Contractor's Sub-contractor's employees shall be paid by the said employees directly, and the PURCHASER shall not be liable to pay the income tax & cess payable by the employee of the contractor/sub contractor and the purchaser is not responsible for filing the tax returns of contracts employees/experts.

3.15.10 Reverse Charge Mechanism

In case the liability to discharge GST is on the employer under reverse charge mechanism, then the said fact should be clearly mentioned on the face of the invoice. Further, GST should not be charged by the vendor in such cases.

3.15.11 It shall be responsibility of the Contractor to comply with all the requirements prescribed in the GST Act and Rules as may be applicable in respect of the activities/supply made by them under the contract to enable the PURCHASER to avail entire input tax credit on timely basis. It is the responsibility of the vendor to comply with the following key compliance requirements, failing which the Contractor shall be responsible of any loss of tax credit or any other cost including interest, penalty, etc that may levied or recovered from the

employer.

- i. The contractor shall issue a proper tax invoice containing all the particulars as prescribed in the GST Invoice.
- ii. The Contractor shall deposit the GST amount due to the Government on a timely basis.
- iii. The Contractor shall file the periodic statements/returns as per the provisions of GST Law on a timely basis and include therein details of all the invoices raised during the relevant month under the present contract.
- iv. The Contractor shall support WBPDC on a best effort and timely basis to sort out the discrepancies communicated by GSTIN, if any.

3.15.12 Under GST regulation, taxes are levied on deductions under Liquidated Damage (LD). Such taxes will be charged extra by WBPDC. The rate of such tax on LD would be as per laws applicable at the time of imposition of LD when a Debit Note/Invoice is raised by WBPDC. This is because LD is a post delivery/performance event & is not part of initial price bid.

D. INTELLECTUAL PROPERTY

3.16. PATENT RIGHTS & ROYALTIES

3.16.1 Royalties and fees for patents covering Equipment/Materials, articles, apparatus, devices or processes used in the Works shall be deemed to have been included in the Contract Price. The Contractor shall satisfy all demands that may be made at any time for such royalties or fees and he alone shall be liable for any damages or claims for patent infringements and shall keep the Purchaser indemnified in that regard.

3.16.2 The Contractor shall, subject to the Purchaser's compliance with GCC.16.3, indemnify and hold harmless the Purchaser, his successors or assignees, 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 Purchaser 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 Works by the Contractor or the use of the Works in the country where the Site is located; and (b) the sale of the products produced by the Works in any country. Such indemnity shall not cover any use of the Works 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 Works or any part thereof, or any products produced thereby in association or combination with any other Equipment/ Materials not supplied by the Contractor, pursuant to the Contract Agreement.

3.16.3 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in **GCC 3.16.2**, the Purchaser shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Purchaser'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 Purchaser within thirty (30) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Purchaser within the thirty (30) day period, the Purchaser shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

3.16.4 The Purchaser 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.

3.16.5 All design and drawings submitted by the Contractor will be the property of Purchaser. The Purchaser reserves the right to use the same in its future project without any further reference and additional charges to the Contractor for such use.

3.16.6 The Purchaser's Drawings, Specification and other information submitted by the Purchaser to the Contractor shall remain the property of the Purchaser. They shall not, without the consent of the Purchaser, be used, copied or communicated to a third party by the Contractor unless necessary for the purposes of the Contract. Any error in any such drawing/Specification etc. shall not absolve the

Contractor of his responsibility.

3.17. CONFIDENTIAL INFORMATION

3.17.1 The Purchaser 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 Sub-Contractor(s) such documents, data and other information it receives from the Purchaser to the extent required for the Sub-contractor(s) to perform its Works under the Contract, in which event the Contractor shall obtain from such Sub-contractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause GCC 3.17.

3.17.2 The obligation of a party under GCC 3.17.1 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

3.17.3 The above provisions of this Clause GCC 3.17 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 Works or any part thereof

3.17.4 The provisions of this Clause GCC 3.17 shall survive termination, for whatever reason, of the Contract.

3.18. ADVERTISING

Any advertising stating the subject of this Contract by the Contractor in India or in foreign countries shall be subject to approval of the Purchaser prior to the publication. Publication of approved articles, photographs and other similar materials shall carry acknowledgment to the Purchaser.

E. WORK EXECUTION

3.19. PURCHASER'S REPRESENTATIVE

- 3.19.1** The PURCHASER shall appoint an experienced engineer designated as the **Project Manager** who shall carry out the functions and obligations of the Purchaser under the Contract.
- 3.19.2** The PURCHASER may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. The PURCHASER 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 Works. The Project manager shall represent and act for the Purchaser at all times during the currency of the Contract.
- 3.19.3** Any decision, instruction or approval given by the Project Manager to the Contractor shall have the same effect as though it had been given by the Purchaser.
- 3.19.4** 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 Purchaser under the Contract shall be given to the Project Manager, except as herein otherwise provided.
- 3.19.5** The Project Manager may authorize his representative as site-in-charge for the Works. The Project Manager will also be the consignee officer for the Works.

3.20. CONTRACTOR'S REPRESENTATIVE

- 3.20.1** If the Contractor's representative is not named in the Contract, then the Contractor shall appoint the Contractor's representative and shall request the Purchaser in writing to approve the person so appointed. If the Purchaser makes no objection to the appointment, the Contractor's representative shall be deemed to have been approved. If the Purchaser objects to the appointment within fifteen (15) days giving the reason thereof, then the Contractor shall appoint a replacement of such objection, and the foregoing provisions of this Sub-Clause GCC 3.20.1 shall apply thereto.

- 3.20.2** 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.
- 3.20.3** Any instruction or notice which the Purchaser gives to the Contractor's representative(s) shall be deemed to have been given to the Contractor. An instruction book shall be kept at Site to record instruction of the Purchaser or his representative at the time of Site visit.
- 3.20.4** The Contractor shall not revoke the appointment of the Contractor's representative without the Purchaser's prior written consent, which shall not be unreasonably withheld. If the Purchaser consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC 3.20.1
- 3.20.5** The Contractor's representative may, subject to the approval of the Purchaser (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 Purchaser 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 Sub-Clause GCC 3.20.5 shall be deemed to be an act or exercise by the Contractor's representative.
- 3.20.6** The Contractor shall in addition to a Contractor's representative, employ one or more competent representative(s) to superintend the carrying out of the Works at Site. Such representative shall be fluent to communicate in local language for day to day work. Their names and contact addresses shall be communicated in writing to the Purchaser before commencement of Works.
- 3.20.7** The Purchaser 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 Purchaser, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under

GCC.3.26.6. The Purchaser shall provide evidence of the same, whereupon the Contractor shall remove such person from the Site.

3.20.8

If any representative employed by the Contractor is removed in accordance with GCC 3.20.7 the Contractor shall, where required, promptly appoint a replacement

3.21. MILESTONE OF PROJECT

The whole work must be completed within **365 (Three Hundred Sixty Five)** days from the date of issuance of 'Letter of Award'. The duration of milestone will be calculated from the date of Letter of Award'.

Sl. No.	Description	Completion Time
1.	Approval of Detailed Design Report	65 Days
2.	Finalizations of Plant layout (including Modules, cable routes, inverter Control Room)	3 Months
3.	Completion of Supply of Floaters & Modules	9 Months
4.	Completion of construction of Inverter Control Room	10 Months
5.	Completion of Modules & Electrical Equipment Erection	11Month
6.	Completion of charging	12 Moths

Detailed time schedule for the site work has to be prepared based on the aforesaid milestones. Bidder has to submit the Detailed Design Report with complete time schedule within the milestones aforesaid. At the time of execution if delay occurs time extension may be allowed on the basis from request from Bidder. However all such time extension order shall be without prejudice to the terms and condition of the contract.

Company shall have the right, without prejudice to any other clauses, to terminate contract forthwith and to take possession of the balance work/materials and have the same allotted to any other agency and the contractor shall be liable to compensate the loss that may be occasioned to the Company on that account. Any letter in writing by the Controlling Officer shall be treated as conclusive on behalf of the

Company.

3.22. SUBMISSION OF DETAILED DESIGN REPORT

The contractor shall submit 03 (three) sets of the Draft Detailed Design Report along with editable soft copy in a compact disk for approval.

Draft Detailed design report shall contain all requisite documents as mentioned in the 'Scope of Work'. The contractor should submit the same within 30 (Thirty) days from the date of issuance of 'Letter of Award' for approval.

The contractor shall submit 05 (five) sets of the approved Detailed Design Report along with editable soft copy in a compact disk to the Director(Project), WBPDC within 60 (Sixty) days from the date of issuance of 'Letter of Award' to carry out further course of action.

3.23. PROGRAMME

3.23.1 The Contractor shall supply to the Purchaser and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out the Works. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed after placement of LOA. The Contractor shall promptly inform the Purchaser and the Project Manager in writing of any revision or alteration of such an organization chart.

3.23.2 The Contractor shall submit to the Purchaser for his approval the Program schedule in the form of **MS Project Network**, within fifteen(15) days of placement of LoA, with respect to Contract ,where such programme schedule is required, which shall, interalia, contain the following:

- a. the order in which the Contractor proposes to carry out the Works (including but not limited to design, engineering, manufacture, supply, finalization of Sub-contractors , Quality plans, transport, delivery to Site, assemble, erection, testing and commissioning),
- b. the date(s) by which the Contractor reasonably requires that the Purchaser 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 conductance of guarantee test of the Works in accordance with the Contract

c. the times of submission and approval of the Contractor's Drawings

- 3.23.2.1. The Program so submitted by the Contractor shall be in accordance with the Time Schedule mentioned above 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 Time for Completion of the milestone and any extension granted in accordance with GCC 3.46 and shall submit all such revisions to the Project Manager.
- 3.23.2.2. This Program shall show clearly all activities and its duration along with earliest and latest dates and the first and last dates of submission of the drawings and each date of shop inspection by the Purchaser and critical path for the Works. The Program approved by the Purchaser shall form part of the Contract.
- 3.23.2.3. The approval by the Purchaser of the Program shall not relieve the Contractor from any obligation under the Contract towards timely completion of Works.
- 3.23.2.4. Once the programme schedule has been finalized, no revision shall normally be permitted as long as the scope of work remains unchanged. However, in cases of increase in quantities, while executing the work as per original scope; suitable adjustments may be made without affecting the time for completion. The revision in programme schedule, for aforesaid reasons, shall be done with the approval the Purchaser.
- 3.23.2.5. If the scope of work undergoes changes during execution stage resulting into additional scope over that originally provided, for which the Contractor insists extension in time for completion, such extension shall be granted while ordering additional scope of work. Contractor shall submit revised programme schedule for approval of the Purchaser.
- 3.23.2.6. In case the scope of work does not change but the time for completion is extended because of delayed commencement of the work on account of non fulfilment of obligations by Purchaser or because of any other reasons not attributable to Contractor, programme schedule shall be suitably revised as per the extended time for completion. Once the time for completion has been extended with the approval of Purchaser, Contractor shall submit revised programme schedule for the approval of Purchaser.

3.23.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the Program referred to in **GCC 3.23.2**, and supply a progress report to the Project Manager every month, with a copy to officials as mentioned in the SCC. Guarantee

- 2.23.3.1. 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.

3.23.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the Program referred to in GCC 3.23.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Purchaser 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 Works within the Time for Completion as stated in SCC, or within such extended time to which the Contractor shall be entitled under GCC 3.46.2

3.24. DESIGN AND ENGINEERING

- 3.24.1** The Contractor shall submit to the Purchaser for approval:

Within the time given in the Contract or in the Program such documents including drawings, samples, models or information as may be called for therein, and in the numbers therein required, in a sequential order of execution and during the progress of the Works, such documents of the general arrangement and details of the Works as specified in the Contract. The Purchaser shall signify his approval or disapproval as detailed in the schedule and procedure of documents approval indicated below.

- 3.24.2** The Contractor shall prepare (or cause its Sub-contractors to prepare) and furnish to the Project Manager the documents, including Manufacturing Quality Plan and Field Quality Plan wherever required or review as specified and as in accordance with the requirements of GCC 3.23.2.

- 3.24.3** Any part of the Works covered by or related to the documents to be approved by the Purchaser's Representative shall be executed only

after the Project Manager's approval thereof

- 3.24.4** The Contractor shall supply additional copies of approved documents in the format and numbers stated in the Contract.
- 3.24.5** The Schedule and Procedure of Documents Approval shall be finalised at the **Kick off** meeting and also Contract Coordinate Procedure (**CCP**) shall be prepared.
- 3.24.6** If any dispute or difference occurs between the Purchaser 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 settled in accordance with **GCC 3.6.1** thereof.
- 3.24.7** The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.
- 3.24.8** Approval of any documents by the Purchaser shall not relieve the Contractor of his responsibility for the accuracy thereof or modification required during actual execution or for any deviation in scheme from Technical Specification with accepted deviations if there be any
- 3.24.9** **Approval of Design and Drawing:**
The contractor shall have to prepare and submit the designs and drawings associated with civil, mechanical, electrical and other work which includes design of foundation, structure cable sizing, fabrication work, layout design, wiring diagram etc. and obtain approval prior to the execution of work and for this purpose the contractor shall submit Detailed Design Report for obtaining approval from WBPDC. The contents of the Detailed Design Report shall be as mentioned in the scope of work (Clause no.GCC 3.24.10).
Materials: Contractor shall obtain prior approval for the materials deliverable under the project from WBPDC as mentioned in the technical specification.

3.24.10 Detailed Design Report (DDR)

Contractor shall prepare and submit the Detailed Design Report to WBPDC which must contain site meteorological data considered with necessary supporting documents, calculations for annual energy generation, schedule of site works(L1 & L2 network), Design of modules layout with Floaters and associated calculations for selection of different major equipments for the plant based on the site location and relevant code of practice.

The Detailed Design Report shall contain detailed Billing Breakup (BBU) for supply as well as Erection of Plant.

3.25. PROCUREMENT

3.25.1 The Contractor shall manufacture or procure and transport all the Equipment/Materials in an expeditious and orderly manner to the Site.

3.25.2 Defective Material

If in the opinion of the Engineer, any of the machineries/ equipment/ materials etc. brought to the site for use are not of the quality or kind specified in the contract and/or are unfit for the work, he shall be at liberty to order the removal of the said items and the contractor shall remove the same within twenty four (24) hours after notice has been given to him and if he fails to remove them within the time the engineer may cause them to be removed anywhere at the risk of the Contractor and any cost incurred in so doing shall be deducted from the dues to the contractor under the contract. In such case, items as prescribed by the Controlling Officer or his representative are to be substituted immediately.

3.25.3 Transportation.

3.25.3.1. The Contractor shall at its own risk and expense transport all the Equipment/Materials and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances

3.25.3.2. 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 Equipment/Materials and the Contractor's Equipment.

3.25.3.3. Upon dispatch of each shipment of the Equipment/ and the Contractor's Equipment, the Contractor shall notify the Purchaser by courier, email, post or by fax followed by post confirmation of the

description of the Equipment/Materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival at the Site. The Contractor shall furnish the Purchaser with relevant shipping documents to be agreed upon between the parties

3.25.3.4. The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Equipment/Materials and the Contractor's Equipment to the Site. The Purchaser shall use its best endeavours 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 Purchaser from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the Equipment/ Materials and the Contractor's Equipment to the Site.

3.25.3.5. **Transit Damages:** In the event of receipt of goods in damaged condition or having found them so upon opening of packages at site, Contractor shall make good of all such damages within a reasonable time from such intimation by WBPDC.

3.26. CONTRACTOR'S CONSTRUCTION MANAGEMENT:

3.26.1 Setting Out

The Contractor shall be responsible for the true and proper setting-out of the Works in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Purchaser.

The Contractor shall set out the Works in relation to original points, lines and levels of reference given by the Purchaser in writing and provide all necessary instruments, appliances and labour for such purposes. If at any time during the execution of Works, any error appears in the positions, levels, dimensions or alignment of the Works, the Contractor shall rectify the error at his cost. The checking of any setting-out by the Purchaser shall not relieve the Contractor of his responsibility for the accuracy thereof.

3.26.2 Contractor's Supervision

The Contractor shall give or provide all necessary superintendence during the installation of the Works, and the Contractor's representative(s) 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 Works

3.26.3 Labour

- 3.26.3.1 The Contractor shall provide and employ on the Site in the installation of the Works such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labour that has the necessary skills
- 3.26.3.2 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.
- 3.26.3.3 The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s), if required, from the appropriate authorities for the entry of all labour and personnel to be employed on the Site.
- 3.26.3.4 The Contractor shall at its own expense provide the means of repatriation to all of its and its Sub-contractor'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.
- 3.26.3.5 The Contractor shall at all times during the progress of the Contract use its best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst its employees and the labour of its Sub-contractors.
- 3.26.3.6 The Contractor shall, in all dealings with its labour and the labour of its Sub-contractors 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.

3.26.4 Contractor's Equipment

- 3.26.4.1 The Contractor shall provide all erection Equipment haulage & power if necessary to complete the Works as per Time for completion, including transport at his own cost. The Contractor shall provide additional manpower as well as haulage and other erection equipment as necessary for maintaining the Time schedule of completion.
- 3.26.4.2 Contractor's all equipment shall, when brought to the Site, be deemed to be exclusively intended for the execution of Contract. The Purchaser

shall have lien on all such Equipment brought to Site for the purpose of erection, testing and commissioning of the Equipment/Materials.

- 3.26.4.3 The Contractor shall not remove from the Site any such Equipment, except when it is no longer required for the completion of the Works, or when the Purchaser has given his consent.

3.26.5 Purchaser's Equipment

The Contractor shall pay hire charges as may reasonably be levied for the Purchaser's equipment, if used, and also provide the transport, haulage, power etc. thereof at his own cost.

3.26.6 Site Regulations and Safety

The Purchaser 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 Purchaser, with a copy to the Project Manager, proposed Site regulations for the Purchaser's approval, for 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 Works, gate control, sanitation, medical care, and fire prevention. Details are mentioned in **SCC clause no.4.8**.

3.26.7 Environment & Social Policy and Procedures (ESPP) of Purchaser

The Contractor shall make himself aware of the ESPP of the Purchaser and shall execute the scope of work under the Contract in compliance with the said provisions.

3.26.8 Watching and Lighting

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

3.26.9 Clearance of Site

The Contractor shall, from time to time during the progress of the Works clear away and remove all surplus/ rejected materials and debris from Site. On completion of the Works, the Contractor shall remove all Contractors' Equipment and leave the whole of the Site clean and in a workmanlike condition to the satisfaction of the Purchaser.

3.26.10 Communication

The Contractor may require the Purchaser to confirm in writing any decision or instruction of the Purchaser which is not in writing. The Contractor shall promptly notify the Purchaser of such requirement.

3.26.11 Authority of Access

No persons other than the employees of the Contractor or his authorised representative shall be allowed at the Site. Purchaser or his representative shall have access to the work sites at any time.

3.26.12 Emergency work

3.26.12.1 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 Works, the Contractor shall immediately carry out such work.

3.26.12.2 If the Contractor is unable or unwilling to do such work immediately, the Purchaser may do or cause such work to be done, as the Purchaser may determine it necessary in order to prevent damage to the Works. In such event the Purchaser 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 thereof. If the work done or caused to be done by the Purchaser is such that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Purchaser in connection therewith shall be paid by the Contractor to the Purchaser.

3.27. INSPECTION & TESTING

3.27.1 Inspecting Agency

The Purchaser may delegate inspection and testing to an outside agency in place of personnel of PURCHASER with due notice, not less than fifteen (15) days, to the Contractor. Any such outside agency shall be considered as a **Project Manager**

3.27.2 Inspection and Testing During Manufacture

3.27.2.1 The Purchaser or his designated representative shall be entitled during manufacture to inspect, examine and test the materials and workmanship and check the progress of manufacture of all Equipment to be supplied under the Contract. This shall take place on the Contractor's premises during working hours.

3.27.2.2 No such inspection, examination or testing shall relieve the Contractor of his obligation under the Contract regarding quality of material and soundness of manufacture.

- 3.27.2.3 No inspection call will be valid before drawings are approved under approval category without comments.

3.27.3 Dates for Inspection and Testing

After getting the related drawings approved under approval category, the Contractor shall give the Purchaser notice of inspection along with factory test results in writing of the date and the place at which any Equipment/Materials will be ready for testing as provided in the Contract. The Purchaser shall attend at the place so named within fifteen (15) days of the date which the Contractor has stated in his notice. The Purchaser shall give the Contractor notice, in writing, of his intention to attend the tests. The above notices shall be given at first by the quickest possible means and confirmed later in writing. The Contractor shall render all possible assistance in carrying out inspection in time

3.27.4 Facilities for Testing

- 3.27.4.1 Where the Contract provides for tests on the premises of the Contractor or Sub-contractor, the Contractor shall provide such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as may be necessary to carry out the tests efficiently without any extra charges. If the facilities are inadequate to carry out tests as per standard, the Contractor shall have to arrange suitable testing place having all such required facilities and the cost towards this will be on Contractor's account.
- 3.27.4.2 The Contractor shall also bear all charges towards travelling expenses for India or abroad (if any supply from outside of India) for Inspecting Team of the Purchaser or the authorized representatives of the Outside Inspecting Agency consisting of **maximum two (2) persons** for to and fro journey by Air from Purchaser's Head quarters, including boarding and lodging at the place of inspection and transit, if any, for the purpose of Inspection and testing.
- 3.27.4.3 The Contractor shall be responsible for proper execution of the quality plans. The Works beyond Purchaser's hold points will progress only with Purchaser's prior written consent. The Purchaser may also undertake quality surveillance and quality audit of the systems and procedures and quality control activities. Any change in the Quality Plans shall be made only with Purchaser's prior written approval.
- 3.27.4.4 The Contractor shall provide the Purchaser with the necessary facilities for carrying out quality audit and quality surveillance of the

Contractor's and its Sub-Contractors' Quality Assurance System and manufacturing activities

3.27.5 Routine and Acceptance Tests

All routine tests and acceptance tests shall be carried out at manufacturer's works or test site of the Contractor/Sub-contractor/test laboratory as per stipulation of relevant Indian Standard and relevant IEC in presence of Project Manager. All tests shall be carried out on every lot offered for inspection as per relevant I.S. and IEC.

3.27.6 Type Test

3.27.6.1 The successful bidder shall submit complete test reports of all tests (including type tests) as stipulated in the relevant I.S. and IEC and carried out in a Govt. recognized Test House or laboratory/NABL accredited laboratory on Equipment/ Materials of identical design conforming to our Technical Specification, along with submission of drawing during detailed engineering stage

3.27.6.2 PURCHASER may also undertake Proto checking and quality approval of structural items (wherever applicable) before erection. Each type test report shall provide the following information with test results:
Complete identification, date and Serial No.
Method of application where applied, duration and interpretation of each test.

3.27.7 Repetition of Tests

If any of the type tests, routine or acceptance tests fails to pass, the Contractor shall arrange for repetition of the tests, after rectification or replacement, at his own cost and expenses. If, however, the tests fail for the 2nd time, the related Sub-contractor shall be rejected immediately and the Contractor will be required to furnish the name of another Sub-contractor immediately either from the already approved list of Sub-contractor for that particular Equipment/Materials, or any new Sub-contractor along with submission of all relevant documents in support, towards approval of the new Sub-contractor as stated in this tender document.

3.27.8 Reports of Inspection and Tests

After the factory tests have been completed at the Contractor's or Sub-contractor's works, the Contractor shall submit **three (3) copies** of Test Reports for approval of Purchaser. The Purchaser in turn will approve the same. The Contractor shall provide the Purchaser with

four (04) copies of Approved Reports of all inspection and tests.

3.27.9 If the Purchaser or his 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 Purchaser may advise the Contractor in writing to proceed with the test and/or inspection in the absence of such persons. The Contractor should provide the Purchaser with a certified report of the results thereof.

3.27.10 Covering Up

3.27.10.1 The Contractor shall give the Purchaser full opportunity to examine, measure and test any work on Site which is about to be covered up or put out of view.

3.27.10.2 The Contractor shall give due notice to the Purchaser whenever such work is ready for examination, measurement or testing.

3.27.10.3 The Purchaser shall then notify the Contractor within **fifteen (15) days** that the Purchaser shall carry out the examination, measurement or testing. Unless it is notified specifically the Contractor may proceed with the work as per Programme submitted.

3.27.11 Uncovering Works

If so instructed by the Purchaser, the Contractor shall expose any parts of the Works. The Contractor shall reinstate and make good such parts to the Purchaser's satisfaction at the risk, cost and responsibility of the Contractor

3.28. TESTS ON COMPLETION.

3.28.1 Notice for Tests on Completion

The Contractor shall give to the Purchaser twenty one (21) days notice of the date after which he will be ready to conduct the Tests on Completion. Unless otherwise agreed upon, the Tests shall be carried out as per agreed schedule.

3.28.2 Delayed Tests

If the tests are being unduly delayed by the Contractor, the Purchaser may, by notice, require the Contractor to make the tests within twenty one (21) days after the receipt of such notice. If the Contractor fails to make the tests within twenty one (21) days of such notice, the Purchaser may himself proceed with the tests. All tests so made by the Purchaser shall be at the risk and cost of the Contractor and cost thereof shall be deducted from the Contract Price. The tests shall also be deemed to have been made in the presence of the Contractor and

shall be accepted as accurate and no claim whatsoever in this respect of the Contractor shall be entertained.

3.28.3 Facilities for Tests on Completion

The Contractor, except where otherwise specified, shall arrange such labour, material, fuel, water, stores and testing apparatus as may be reasonably required to carry out such tests efficiently, without any extra charge

3.28.4 Re-testing

If the work or any portion thereof fails to pass the Tests, the Purchaser or the Contractor may require such tests to be repeated on the same terms and conditions. All costs of such retesting will be borne by the Contractor.

3.28.5 Consequences of Failure to Pass Tests on Completion

If the Works or any portion thereof fails to pass the tests or the repetition thereof under GCC.28, the Purchaser, after due consultation with the Contractor, shall be entitled to

Order one further repetition of the Tests under the conditions of GCC 3.26, or

Reject the Works or portion thereof in which event the Purchaser shall have the same remedies against the Contractor as are provided under GCC 3.27 or

Issue a Taking-Over Certificate, if the Purchaser so wishes, notwithstanding that the Works are not complete. The Contract Price shall then be reduced by such amount as may be agreed by the Purchaser and the Contractor or, failing agreement, as may be determined under GCC 3.6. As soon as the work or any portion thereof has passed the tests, the Purchaser shall issue a Completion certificate to the Contractor to that effect.

3.29. REJECTION

Purchaser may not accord approval to test results if those results are not in conformity with Guaranteed Technical Particulars with given tolerable limits as per relevant standard or the results and procedure followed are found not in line with standard. The results may be rejected even if the Project Manager had witnessed the test. On approval of Test results only, Material Inspection Clearance Certificate will be issued by the Purchaser. Approval of Test results will not relieve the Contractor of its obligation as regards quality, standard and suitability of the Equipment/ Materials.

3.30. PERMISSION TO DELIVER

3.30.1 The Contractor shall apply in writing to the Purchaser for permission to deliver any Equipment / Materials to the Site. No Equipment/ Materials shall be delivered to the Site without the Purchaser's written permission

3.30.2 The Contractor shall make arrangement for receipt of all Equipment/ Materials delivered to Site under the scope of Contract besides all other Equipment/Materials required for the purpose of execution. Upon arrival at Site, the Contractor shall give a notice to the Purchaser when and where materials has arrived and been stored.

3.31. COMPLETION OF WORKS

3.31.1 As soon as execution of the Works or any part for which a separate completion schedule is provided in the Contract has, in the opinion of the Contractor, been completed operationally and structurally and put in tight and clean condition as specified in the Technical Specifications, excluding minor items not materially affecting the operation or safety of the Works, the Contractor shall so notify the Purchaser in writing within **seven (7) days** of the date of completion.

3.31.2 If, for reasons not attributable to the Contractor, the Works cannot be completed in next six (6) months, the Purchaser at, its discretion, may take up the inspection of the portion of the Works already completed, the balance payment due to the Contractor can be released against Bank Guarantee of equivalent amount. The Bank Guarantee validity shall be initially for a period of twelve (12) months or until three (3) months after expected date of commissioning, whichever is earlier. If the completion and thereafter commissioning does not take place within the validity period of the Bank Guarantee, the validity shall be extended from time to time up to a period not exceeding three(3) years from the date from which the concerned work was held up on aforesaid account. The Contractor shall also be required to extend the validity of the Contract Performance Guarantee.

3.31.3 For 'Works' not involving Commissioning

3.31.3.1 Within **fifteen (15) days** of intimation from the Contractor regarding completion of Works, the Project Manager shall cause to inspect the Works to verify the completion status, in presence of the Contractor's representative.

3.31.3.2 If the Works are found to be completed and acceptable in all respects (except for minor defects and deficiencies, if any), Completion Certificate (**Annexure-6**) / Taking over Certificate (TOC) shall be

issued by the Purchaser after the Contractor's intimation. The Completion certificate shall generally contain the following details: (a) Date of completion; (b) Defects to be rectified; (c) Items not conforming to Specification but can be accepted at a reduced rate; (d) items not acceptable at all and need to be re-done

3.31.3.3 If, on inspection, Works are not found to be completed or rectification of major nature is required, the Purchaser shall, within twenty-one (21) days of Contractor's intimation, inform the incomplete works/ defects & deficiencies to the Contractor in writing advising him to take necessary action and to inform PURCHASER after completion/ rectification. The Purchaser shall give reasonable time to the Contractor for remedying the defects/ deficiencies. However, if the Contract specifies separate completion period for different parts of works for the purpose of taking over also, Completion certificate/ TOC shall be issued in respect of portion of works that are completed and are acceptable.

3.31.3.4 The provisions contained in GCC 3.31.3.1 to GCC 3.31.3.3 shall also be applicable in relation to a part of the Works for which separate schedule of completion has been provided in the Contract and such part of Works can be taken over independently

3.32. TAKING OVER

3.32.1 The Works shall be taken over by the Purchaser after completion, either in full or in part (where for part completion, separate completion schedule has been provided in the Contract), upon successful erection, testing and commissioning of Works at Site by the Contractor in accordance with provisions of Contract.

3.32.2 On successful completion of Works or any part thereof as provided in GCC 3.32.1 and upon request of the Contractor for taking over the Works and issuance of TOC, the Purchaser shall, within forty-five (45) days after the receipt of the Contractor's application, or within fifteen (15) days from the date of actual handing over of relevant Works, either issue the TOC or reject the application giving his reasons and specifying the work required to be done by the Contractor to enable the TOC to be issued

- 3.32.3** TOC is issued to the Contractor on stating the date on which the Works or any part thereof were complete and ready for taking over, after ascertaining the following:
- a.** The Works under the Contract have been satisfactorily completed by the Contractor as per the provisions of Contract.
 - b.** Submission of required number of reproducible of approved as-built drawings (hard copies & soft copy in CDs), design documents duly authenticated by Purchaser, O&M manuals, data sheets, test reports, pamphlets and manuals of spares, maintenance and testing equipment by the Contractor.
 - c.** The Contractor has cleared the Site of all the surplus materials, removed all scaffoldings, shuttering materials, labour huts/sheds, cleaned the dirt from part of building, sanitary arrangement, water supply connection and all electrical gadgets/equipments/ switches, wiring, any wood work or any such item, to the satisfaction of the Project Manager, except those required for carrying out rectification works.
 - d.** All the defects have been rectified to the complete satisfaction of the Project Manager
- 3.32.4** Issuance of such certificates shall not relieve the Contractor of any of his obligations which otherwise comes under the terms and conditions of the Contract.
- 3.32.5** Notwithstanding the above mentioned provisions, the issuance of TOC shall not be held up for delay in completion/ rectification of works of minor nature that do not affect the performance/ use of the building/installation/ equipment/sub-system/system at rated voltage. In such a case the Contractor shall however be required to give an undertaking that in case he fails to complete/rectify within a mutually agreed period, the Purchaser shall be at liberty to carry out the work at his risk and cost, and deduct an amount as may be considered appropriate by the Purchaser.
- 3.32.6** Issuance of TOC for any part of the Works is only for the purpose of facilitating the Contractor to receive the payment for part of the Works completed and for determination of liquidated damages in respect thereof and shall not relieve the Contractor of his responsibilities under the Contract towards other parts of the Works.

F. GUARANTEES AND LIABILITIES

3.33. NET MINIMUM GUARANTEED GENERATION (NMGG)

Contractor shall have to ensure Net Minimum Guaranteed Generation @ 1.52 MU/MW for the first year after final commissioning and at a reduced rate of 1% per year for subsequent years. Initially, the above Guarantee shall be required for the 5 years i.e. in the O&M period. The same guarantee shall continue for extended O & M period, if agreed on mutual terms & conditions. The Contractor shall design their plant to achieve the Net Minimum Guaranteed Generation.

The Generated energy will be measured at the new 33 kV Incoming feeders (inside 33 kV Switchgear of Main Control room) of the Solar PV Power Plants of Pond no 1, 2 & 4 deducting the auxiliary LT load for the three solar plant under scope i.e. the Net Minimum Guaranteed Generation will be calculated without considering the Auxiliary Load.

The bidder shall submit a declaration for the Net Minimum Guaranteed Generation with their bid (Form-13). Non-submission of the document will entail for disqualification of the bidder.

3.34. LIQUIDATED DAMAGES (LD)

3.34.1 LD for Time Delay:

Compensation of loss on account of late delivery/completion (notionally/actually) where loss is pre-estimated and mutually agreed to is termed as LD. Law allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply/execution of work. Time schedule of delivery/completion shall be essence of the order. If the contractor fails to execute the order in full or part thereof within the fixed period or any time repudiate the contract before the expiry of such period, the Corporation may, without prejudice to any other right or remedy available, recover damages for breach of contract and to safe-guard its interest.

'In the event of any delay in the supplies of ordered materials/execution of works beyond the stipulated delivery/completion schedule including any extension permitted in writing, the Corporation reserves the right to recover from the contractor a sum equivalent to 0.5% of the value of delayed supply/work for each week of delay and part thereof subject to a maximum of 10% of the total value of order.'

3.34.2 LD for Milestone Delay

Delay in attaining the milestones by the contractor shall lead to imposition of intermediary Liquidated damages @0.25% per week of delay upto the maximum extent of 5(Five) Percent of the Contract price.

Intermediary Liquidated damages shall be calculated based on the following Milestones.

Sl. No.	Description	Completion Time	% of LD
1.	Approval of Detailed Design Report	65 Days	0.5
2.	Finalizations of Plant layout (including Modules, cable routes, inverter Control Room)	3 Months	1
3.	Completion of Supply of Floaters & Modules	9 Months	1.5
4.	Completion of construction of Inverter Control Room	10 Months	1
5.	Completion of Modules & Electrical Equipment Erection	11Month	0.5
6.	Completion of charging	12 Moths	0.5

3.34.3 The total/aggregate LD (LD for Time Delay + LD for Milestone Delay) leviable for this contract shall not exceed 15(Fifteen) Percent of the Contract price.

However no LD for milestone delay will be charged if the project is completed within the stipulated time provided such milestone delay does not hamper scheduled execution of any other related projects/activities thereby causing loss or damage to the Purchaser

3.35. DEFECTS LIABILITY

3.35.1 The Contractor warrants that the Works or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Equipment/Materials supplied and of the work executed.

- 3.35.2** The Defect Liability Period shall be as specified in the SCC. Where any part of the Works is taken over separately, the Defects Liability Period for that part shall commence on the date it was taken over.
- 3.35.3** If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Equipment/Materials supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Purchaser 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 Works caused by such defect.
- 3.35.4** The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Works arising out of or resulting from any of the following causes:
- a. improper operation or maintenance of the Works by the Purchaser
 - b. operation of the Works outside Specifications provided in the Contract
 - c. normal wear and tear
- 3.35.5** Contractor's obligations under this Clause GCC 3.35.1 shall not apply to:
- a. any materials that 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 Purchaser 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 Purchaser, except for the work executed by the Purchaser under GCC 3.35.9
- 3.35.6** The Purchaser 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 Purchaser shall afford all reasonable opportunity for the Contractor to inspect any such defect.
- 3.35.7** The Purchaser shall afford the Contractor all necessary access to the Works and the Site to enable the Contractor to perform its obligations under this Clause GCC 3.35. The Contractor may, with the consent of the Purchaser, remove from the Site any Equipment/Materials or any

part of the Works that are defective, if the nature of the defect and/or any damage to the Works caused by the defect is such that repairs cannot be expeditiously carried out at the Site

3.35.8 If the repair, replacement or making good is of such a nature that it may affect the efficiency of the Works or any part thereof, the Purchaser may give to the Contractor a notice requiring that tests of the defective part of the Works 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 Works passes such tests. The tests, in character, shall in any case be not inferior to what has already been agreed upon by the Purchaser and the Contractor for the original part of the Works.

3.35.9 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Works caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Purchaser may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Purchaser in connection therewith shall be paid to the Purchaser by the Contractor or may be deducted by the Purchaser from any money due to the Contractor or claimed under the Performance Securities.

3.35.10 If the Works 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 Works or such part, as the case may be, shall be extended by a period equal to the period during which the Works or such part cannot be used by the Purchaser because of any of the aforesaid reasons.

At the end of the Defect Liability Period, the Contractor's liability ceases except for latent defects. The Contractor's liability for latent defects warranty for the Equipment/Materials, including spares, shall be limited to a period of five (5) years from the end of Defect Liability Period of the respective Equipment/Materials, including spares. For the purpose of 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 as defined in this Clause GCC 3.35 but later.

3.35.11 Except as provided in Clauses GCC 3.35 and GCC 3.40, 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 Works or any part thereof, the Equipment/Materials, design or engineering or work executed that appear after Completion of the Works or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or wilful action of the Contractor

3.35.12 In addition, the Contractor shall also provide an extended warranty for any such component of the Works and for the period of time as may be specified in the SCC. Such obligation shall be in addition to the defect liability specified under GCC 3.35.2

3.35.13 Defects Liability Certificate and No-Claim Certificate

When the Defects Liability Period for the Works or any part thereof has expired and the Contractor has fulfilled all his obligations under the Contract for defects in the Works or the part, the Purchaser shall issue to the Contractor a Defects Liability Certificate to that effect within next twenty-eight (28) days. A No-Claim Certificate should be furnished by the Contractor for contract closure before the issuance of the final Defects Liability Certificate by the Purchaser. Such No-claim certificate shall be furnished by the Contractor as per Annexure of Section VIII. The Contractor is expected to complete all formalities for closure of Contract including their final claims relating to the Contract. All claims will be deemed to be settled and no further claims of the Contractor will be entertained after the furnishing of the No-Claim Certificate by the Contractor.

3.36. LIMITATIONS OF LIABILITY

3.36.1 Liability after Expiry of Defects Liability Period

The Contractor shall have no liability to the Purchaser for any loss of or damage to the Purchaser's physical property which occurs after the expiry of the Defects Liability Period unless caused by Gross Misconduct of the Contractor provided that this exclusion shall not apply to any obligation of the Contractor to pay Liquidated Damage to the Purchaser.

The aggregated liability of the Contractor to the Purchaser under the Contract shall not exceed the Contract Price provided that this limitation shall not apply to any obligation of the Contractor to the cost of repairing or replacing the defective Equipment/ Materials or to indemnify the Purchaser with respect to patent infringement

3.36.2 Mitigation of Loss or Damage

In all cases the party claiming a breach of Contract or a right to be indemnified in accordance with the Contract shall be obliged to take all reasonable measures to mitigate the loss or damage which has occurred or may occur

G. RISK DISTRIBUTION

3.37. TRANSFER OF PURCHASERSHIP

3.37.1 Purchasership of the Equipment/Materials (including spare parts) procured from within/outside the country shall be transferred to the Purchaser when the Equipment/Materials (including spare parts) are loaded on to the mode of transport to be used to convey the Equipment/Materials (including spare parts) from the works to the Site and upon endorsement of the dispatch documents in favour of the Purchaser.

3.37.2 Purchasership of the Contractor's Equipment used by the Contractor and its Sub-Contractors in connection with the Contract shall remain with the Contractor or its Sub-contractors.

3.37.3 Notwithstanding the transfer of Purchasership of the Equipment/Materials, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC 3.39 hereof until Completion of the Works or the part thereof in which such Equipment/Materials are incorporated.

3.37.4 Indemnity by Contractors: As this is a turnkey project and the contractor is fully responsible for handling, erection and commissioning of the equipments and materials so for executing the work, the Contractor shall execute an Indemnity Bond in favour of the Purchaser for keeping the equipment in safe custody and to utilize the same exclusively for the purpose of the said Contract. The Indemnity Bond shall be furnished as per proforma in **Annexure-5** of Section VII. The Purchaser shall also issue a separate Authorization Letter to the Contractor to enable him to take physical delivery of Equipment/Materials from the Purchaser as per proforma enclosed in **Annexure-11** of Section VII.

3.37.5 After material reached at site contractor shall apply for gate pass to enter the material as per the **Annexure-10B** in the Purchaser's site. The Materials reached at site will be in the custody of the

Contractor.

- 3.37.6** The Purchaser will issue a Materials Receipt Certificate (MRC) as per **Annexure-12** after receiving the materials and equipments at site.

3.38. RISK AND RESPONSIBILITY

3.38.1 Allocation of Risk and Responsibility

The Risks of loss of damage to physical property and of death and personal injury which arise in consequence of the performance of the Contract shall be allocated between the Purchaser and the Contractor as follows

- a. the Purchaser: the Purchaser's Risks as specified in GCC 3.38.2
- b. the Contractor's Risks as specified in GCC 3.38.3

3.38.2 Purchaser's Risks

- a. War and hostilities (whether war be declared or not), invasion, act of foreign enemies,
- b. revolution, insurrection, military or usurped power or civil war,
- c. use or occupation of the Works or any part thereof by the Purchaser,
- d. the use or occupation of the Site or any part thereof, for the purposes of the Contract, or interference, whether temporary or permanent with any right-of-way, any easement, way leave or right of a similar nature which is inevitable result of the construction of the Works in accordance with the Contract.
- e. the right of the Purchaser to construct the Works or any part thereof on, over, under, in or through any land,
- f. damage (other than that resulting from the Contractor's method of construction) which is the inevitable result of the construction of the Works in accordance with the Contract,
- g. the act, neglect or commission or breach of Contract or of statutory duty of the Purchaser

3.38.3 Contractor's Risks

The Contractor's Risks are all risks other than those identified as the Purchaser's Risks.

3.39. CARE OF WORKS

3.39.1 Contractor's Responsibility for the care of Works, man and Materials/Equipments

The Contractor shall be responsible for the care of Works, man and materials/equipments from the Commencement Date until the Risk

Transfer Date applicable thereto under GCC 3.39.2

3.39.2 Risk Transfer Date

The Risk Transfer Date in relation to the Works is the date of occurrence of any of the following

- a. the date of issue of the TOC, or
- b. the date of expiry of the notice of termination when the Contract is terminated by the Purchaser or the Contractor in accordance with these Conditions

The risk of loss or damage to the Works shall pass from the Contractor to the Purchaser on the Risk Transfer date applicable thereto.

3.39.3 Making Good the Damage

3.39.3.1 After risk transfer date

To making good forthwith loss or damage caused by the Contractor prior to the completion of the Defects Liability period

3.39.4 Till such time the system is not commissioned or taken over by PURCHASER, its custody and watch and ward shall remain with Contractor who shall accordingly be required to maintain a skeleton establishment at Site. Charges towards insurance cover for Contractor supplied Equipment /Material shall be paid by the Contractor till completion of the defect liability period.

3.40. ACCIDENT OF INJURY

Damage to property and injury to persons, accident or injury to workers

3.40.1 Contractor's liability

Except as provided under GCC 3.43 the Contractor shall be liable for and shall indemnify the Purchaser against all losses, expenses and claims in respect of any loss of or damage to physical property (other than Works), death or personal injury to the extent caused by :

- a. defective design, material or workmanship of the Contractor, or
- b. negligence or breach of statutory duty of the Contractor, his Sub-contractors or their respective employees and agents

3.40.2 Accidents

The Contractor shall be liable for and shall indemnify the Purchaser against all losses, expenses or claim arising in connection with the

death of or injury to any person employed by the Contractor or his Sub-contractors for the purposes of the Works.

The Contractor/Sub-contractor shall obtain necessary insurance coverage under the Employees compensation Act-1923 to cover the risk of payment of compensation in case of injury/death arising in course and out of employment to any employee.

3.41. INSURANCE

3.41.1 The Contractor at his own cost shall arrange, secure and maintain all insurances as may be pertinent to the Works and obligatory in terms of law to protect his interest and interests of the Purchaser against all perils detailed herein in the type and up to the limit of such insurance as defined herein together with the underwriter in each case shall be acceptable to the Purchaser. The identity of insurers and the form of policies shall be subject to the approval of Purchaser which shall not be unreasonably withheld. However, irrespective of such acceptance, the responsibility to maintain adequate insurance coverage at all times during the period of Contract including the extended period of Contract shall be of Contractor alone.

3.41.2 Any loss or damage to the Equipment/ Materials during transportation, handling, storage, erection, putting into satisfactory operation and all activities to be performed till the successful completion of commissioning of the Equipment and handed over to the Purchaser shall be to the account of the Contractor. The Contractor shall be responsible for preference of all claims and make good the damages or loss by way of repairs and/or replacement of the Equipment/ Materials, damaged or lost. The transfer of title shall not in any way relieve the Contractor of the above responsibilities during the period of Contract. The Contractor shall provide the Purchaser with copy of all insurance policies and documents taken out by him in pursuance of the Contract. Such copies of documents shall be submitted to the Purchaser immediately after such insurance coverage. The Contractor shall also inform the Purchaser in writing at least sixty (60) days in advance regarding the expiry/cancellation and/or change in any of such documents and ensure revitalization, renewal etc. as may be necessary well in time at his cost, risk and responsibility.

3.41.3 The perils required to be covered under the insurance shall include, but not be limited to fire and allied risks, miscellaneous accidents (erection risks), workman compensation risks, loss or damage in transit, theft, pilferage, riot and strikes and malicious damages, civil commotion, weather conditions, accidents of all kinds, terrorist attacks, war risks etc. The scope of such insurance shall be adequate to cover the replacement/ reinstatement cost of the Equipment/Materials for all risks up to and including delivery of goods on ex-works basis and shall also cover transportation and other costs till the Equipment/ Materials are delivered, erected and installed. Notwithstanding the extent of insurance cover and the amount of claim available from the underwriters, the Contractor shall be liable to make good the full replacement/ rectification value of all Equipment/Materials and to ensure their availability as per project requirements at its cost.

3.41.4 The Contractor shall ensure that for all activities to be performed under the Contract viz. transportation, storage, erection, testing, commissioning etc. till the Works are handed over to the Purchaser; the insurance cover shall only be taken from Indian Insurance Companies.

3.42. CHANGE IN LAWS AND REGULATIONS

If, after the date seven (7) days prior to the last date of bid submission, in the country where the Site is located, any law, regulation, ordinance, order or bye-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 Purchaser and the Contractor and shall also not be applicable on the bought out items despatched directly by Sub-contractor(s) to Site. 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.

3.43. FORCE MAJEURE

- 3.43.1** “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.
- 3.43.2** In the event of either party being rendered unable by Force Majeure to perform any obligation required to be performed by them under this contract, relative obligation of the party affected by such Force Majeure shall be treated suspended during which the Force Majeure clause last.
- 3.43.3** The term “Force Majeure” shall herein mean riots (other than among the contractor’s employee), Civil commotion, War (whether declared or not), invasion, act of foreign enemies hostilities, civil war, rebellion, revolution, insurrection, military coup, damage from aircraft, embargoes, quarantines, acts of god such as earthquake, floods, fires not caused by Contractor’s negligence and other causes which the Contractor has no control. Normal climatic conditions such as rainy season, monsoons, storms, etc. are not to be considered as Force Majeure.
- 3.43.4** Upon occurrence of such causes, the party claiming that it has been rendered unable as aforesaid, thereby, shall notify the other party in writing by registered notice within 10 (ten) days of the beginning of the event, thereof giving full particulars and satisfactory evidence in support of its claim.
- 3.43.5** The burden of proof as to occurrence of the event of Force Majeure and its effect shall be upon the party claiming the Force Majeure event and such claim shall be supported by documentary evidence in the form of a Certificate issued by a recognised chamber of Commerce or any other local, state or national authority.
- 3.43.6** Time for Performance of the relative obligation suspended by the event of force majeure shall stand extended by the period for which such clause lasts.
- 3.43.7** If works are suspended by Force Majeure conditions lasting for more than two months leading to prolonged force majeure, the parties shall hold consultation to find solution / resolve the problem satisfactorily.

Provided, the Employer shall reserve the right to cancel the Order / contract, wholly or partly, in order to meet the overall project schedule and make alternative arrangement for completion of delivery and other schedules.

- 3.43.8** The Contractor shall not claim any compensation for Force Majeure conditions and shall take appropriate steps to insure men and materials utilized by it under the Contract well in advance.

3.44. WAR RISKS

- 3.44.1** War risks shall mean any of the following events occurring or existing in or near India:

- 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

- 3.44.2** Notwithstanding anything contained in the Contract, each party to the Contract shall bear its own costs for any loss or damages as may be incurred on accounts of war risks with respect to:

- a. destruction of or damage to Works or any part thereof to the extent not taken over by the Purchaser shall be the Contractor's risk and for those taken over by the Purchaser, it shall be the Purchaser's risk.
- b. injury or loss of life of its personnel

H. CHANGE IN CONTRACT ELEMENTS

3.45. VARIATIONS

3.45.1 Changes originating from Purchaser

The Purchaser may, by variation order to the Contractor, at any time before the Works are taken over, instruct the Contractor to alter, amend, omit, add to or otherwise vary any part of the Works. The Contractor shall not vary or alter any of the Works, except in accordance with a variation order from the Purchaser. The Contractor may, however, at any time propose variations of the Works to the Purchaser.

The Contractor shall not request for extension of time for completion in case of variation of quantity during execution for an increase as

specified in SCC.

3.45.2 Variation order procedure

Prior to any variation order under **GCC. 3.44.1** the Purchaser shall notify the Contractor of the nature and form of such variation. As soon as possible after having received such notice, the Contractor shall submit to the Purchaser:

- a. A description of Works, if any, to be performed, its anticipated quantity, the proposed rate in case of a new item and total adjustment to the Contract Price. In case of items for which the rates are available in the Contract the extra quantities shall be executed by the Contractor at the same rates upto the variation limit provided in the Contract.
- b. The Contractor's proposals for any necessary modifications to the Program according to **GCC 3.23** or to any of the Contractor's obligations under the Contract.

3.45.3 Following the receipt of the Contractor's submission, the Purchaser shall, after due consultation with the Contractor, decide whether or not the variation shall be carried out.

3.45.3.1 If the Purchaser decides that the variation shall be carried out, he shall issue a variation order clearly identified as such in accordance with the Contractor's submission or as modified by mutual agreement.

3.45.3.2 Pending issue of variation order, the Purchaser may require the Contractor to proceed ahead with the Works to avoid delay in the progress of Works. In such situations, subject to physical verification, payment shall be made up to sixty percent (60%) of rates as provided in the Contract, for items for which separate rates are available beyond prescribed limit of quantity variation as per the Contract.

3.45.3.3 In case of new items/ substituted items, up to forty (40%) of amount estimated by the Purchaser shall be paid to the Contractor subject to reasonableness of the claim. If the Purchaser and the Contractor are unable to agree to the adjustment of the Contract Price, the provisions of **GCC 3.45.4** shall apply.

3.45.4 Disagreement on adjustment of the Contract Price

3.45.4.1 If the Contractor and the Purchaser are unable to agree on the adjustment of the Contract price, the adjustment shall be determined in accordance with the rates specified in the approved