

## Section

- I Invitation for Bids (IFB)/Tender Enquiry/Notice Inviting Tender (NIT)
- II Instructions to Bidders (ITB)
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- VI Schedule of Quantities (SOQ) / Bill of Quantities (BOQ)
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5.2 The Bidder is expected to examine all instructions, forms, terms, conditions and specifications in the Bidding Documents, before submission of his bid. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of such bid.

5.3 **Qualifying Requirements**, if applicable

The qualifying requirements for the tender are specified in the NIT/Tender enquiry.

5.4 **Documents in support of meeting Qualifying Requirements**

Bidders are required to submit documents to satisfactorily establish their meeting the Qualifying Requirements stipulated in the tender.

Bidders are required to furnish the details of the past experience like authentic Work Orders/Purchase Orders/Letter of Awards/Contract Agreements, client certificates, completion certificate, etc. in support of meeting the Qualifying Requirements based on which selection is to be made as per format at Attachment 3. ***These references shall only be considered to ascertain the bidder's compliance to Qualifying Requirement (QR).*** No claims without supporting documents shall be accepted in this regard. However, if any of the Work Orders/Purchase Orders/Letter of Awards/Contract Agreements pertains to the work executed by Bidder for NTPC in the past, then in respect of such Work Orders/Purchase Orders/Letter of Awards/Contract Agreements, Bidder shall not be required to enclose Client Certificate along with its Bid.

Bidders wishing to provide additional Work Orders/Purchase Orders/Letter of Awards/Contract Agreements are required to declare the same in similar format which shall be additionally attached and uploaded. However, ***bidders are not permitted to quote more than 3 (three) times the reference documents like Work Orders/Purchase Orders/Letter of Awards/Contract Agreement, client certificates etc. for each Qualifying Requirement criteria specified in the tender.***

Bidders shall certify their compliance on "Qualifying Requirements" by accepting the following General Technical Evaluation (GTE) condition:

"Do you certify full compliance on Qualifying Requirements?"

Acceptance of above attribute shall be considered as bidder's confirmation to the following conditions:

- (a) The number of reference Plants/Orders quoted by Bidder in Attachment- 3 of the bid, for establishing compliance to the specified Qualifying Requirement (QR), are in accordance with the provision specified above.

- (b) The reference Plants/ Orders/ declared, shall only be considered for evaluation/ establishing compliance to Qualifying Requirement (QR). Any reference Orders declared more than as specified in NIT/Tender Enquiry shall not be considered for evaluation/establishing compliance to Qualifying Requirements.
- (c) No change or substitution in respect of reference Plants/Orders for meeting the specified Qualifying Requirement (QR) shall be offered by the bidder.

#### 5.5 **Bid Drawings**

The Bidder is requested to refer the Technical Specifications for the provisions in this regard.

#### 6.0 **CLARIFICATION OF BIDDING DOCUMENTS**

A prospective Bidder requiring any clarification of the Bidding Document shall put the query under Clarification tab of the on-line bid at least three days prior to the clarification end date. EMPLOYER will respond to any request for clarification or modification of the bidding documents that it receives within the time line specified.

EMPLOYER will post the Clarifications under Clarification/Corrigendum tab at e-tender website. Bidders can view these clarifications.

Bidders are advised to regularly check under Clarification/Corrigendum tab regarding posting of clarification, if any.

Bidders must check the Clarifications issued before submission of Bid. Should the Employer deem it necessary to amend the Bidding Document as a result of a clarification, it shall do so and upload the amendments in the tender on the e-tender portal.

#### 7.0 **PRE-BID CONFERENCE** *(If specified in the NIT/Tender Enquiry)*

- 7.1 Employer at its discretion may organize a pre-bid conference with the prospective Bidders. The purpose of the conference will be to clarify the package related issues and to respond to the Bidder's queries, which may arise from the Bidding Documents, site visit etc. The Employer will give a notice of the pre-bid conference to the Bidders at least seven (7) days prior to the said pre-bid conference unless otherwise fixed or informed in the IFB/NIT.
- 7.2 The Bidders are required to submit their questions/ clarifications/queries etc. in writing including by way of email from the registered email Id so as to reach the Employer at least three days before the pre-bid conference. It may not be practicable at the conference to answer the questions which are received late.
- 7.3 Record notes of the pre-bid conference including the Employer's response to the queries raised by the Bidders in writing may be prepared and transmitted to all the prospective Bidders by the Employer. Further, any modification to the Bidding Documents which may become necessary as a result of the pre-bid conference shall be made by the Employer exclusively through an amendment to the Bidding Documents. The record notes of the pre-bid conference shall not be treated as amendment to the Bidding Documents.
- 7.4 Non-attendance of the pre-bid conference will not be a cause for disqualification of a Bidder or his bid.

## 8.0 **ADDENDA/ CORRIGENDA/ AMENDMENTS TO BIDDING DOCUMENTS**

At any time prior to the deadline for submission of bids, EMPLOYER may, for any reason, whether at its own initiative, or in response to a clarification requested by a prospective Bidder, amend the bidding documents.

The corrigendum/amendment will be posted in the tender on the e-tender portal for viewing by the Bidder. The amendments will be binding on Bidders and it will be assumed that the information contained therein will have been taken into account by the Bidder in its bid. Bidders are advised to regularly check the tender regarding posting of Amendments, if any.

To give prospective Bidders reasonable time to take the amendment into account in preparing their bid, EMPLOYER may, at its discretion, extend the deadline for the submission of bids..

## **PART C - PREPARATION OF BID**

### 9.0 **COST OF BIDDING**

9.1 The Bidder shall bear all costs associated with the preparation and submission of his bid and the Employer will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process.

### 10.0 **LANGUAGE OF BID AND UNITS OF MEASURE**

10.1 The bid and all correspondence and documents relating thereto exchanged by the Bidder and the Employer shall be written in English. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an appropriate translation of pertinent passages into English, in which case, for the purpose of interpretation of the bid such translations shall govern.

10.2 The units of measurement shall be metric system of measures, unless otherwise specified elsewhere.

### 11.0 **DOCUMENTS COMPRISING THE BID**

11.1 The bid submitted by the Bidder shall interalia comprise of the following documents:

- (a) Bid Form duly completed and digitally signed by the Bidder using Class II/III digital signatures, together with all Attachments identified in ITB Sub-Clause 11.2 below.
- (b) Online Schedules of Quantities duly completed.

11.2 Bidding procedure shall be as specified in the NIT/SCC.

11.3 Each Bidder shall submit with his bid the following attachments:

#### 11.3.1 **TECHNO-COMMERCIAL BID**

- (a) **Attachment 1: Earnest Money Deposit** *(If specified in the NIT/Tender Enquiry)*  
*(To be given offline in physical form and copy to be uploaded in Fee Cover/Envelope on the portal)*

Earnest Money Deposit shall be furnished in accordance with ITB Clause 14.0 in a separate sealed envelope in case paid in modes other than on-line payment. Bid not

accompanied by the requisite Earnest Money Deposit in a separate sealed envelope, or bid accompanied by Earnest Money Deposit of insufficient value, shall not be entertained and in such case, the bid shall not be opened and rejected pursuant to ITB Sub-Clause 14.4.

- (b) **Attachment 2: Authority to Sign the bid** *(To be given offline in physical form and copy to be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)*

The Bidder shall furnish the following to check that the person(s) signing the bid has/have the authority to sign the bid and thus establish that the bid is binding upon the Bidder during the full period of its validity in accordance with ITB Clause No.13.

- i) In case of Sole Proprietorship Concern/Partnership Firm, Specimen signature of the Proprietor/all the partners duly attested by a scheduled Bank or First Class Magistrate.
- ii) In case of Private Limited Companies, Copy of Power of Attorney issued by Competent Officer under the common seal of the Company, authorising the person to sign the bid/ execute contracts/agreements etc duly notarised
- iii) In case of Public Limited Companies and Statutory Corporations, Board resolution authorising the Executive to sign the bid/ contracts/agreements and affix common seal thereon in accordance with the provisions of Article of Association of the Company OR Power of Attorney issued by Competent Officer under the common seal of the Company authorising the person to sign the bid/ execute contracts/agreements etc.
- iv) In case of Joint Venture/Consortium, Satisfactory evidence of authority of the person signing on behalf of the Bidder shall be furnished with the bid.

- (c) **Attachment 3: Bidder's Qualifications** *(To be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)*

Documentary evidence establishing that the Bidder meets the Qualifying Requirements stipulated in the NIT/IFB including the following shall be furnished in Attachment-3 to the bid:

(A) **Legal Status of the Company**

1. In case of Sole Proprietorship Concern

- i) The full name of an individual proprietor, his/her parentage, documentary proof of his/her age, permanent address and present postal address/ contact details.
- ii) A deed of declaration by the Proprietor, that no other individual or company has any share in the concern.

2. In case of Partnership Firm

- i) Certified photocopy of the Partnership Deed, with upto date amendments (if any).
- ii) Registration certificate issued by the Registrar of Companies concerned, if any.
- iii) In case of change in the constitution of the firm due to retirement or death or addition of an incoming partner, photocopy of Deed of Dissolution, fresh registration Certificate and the fresh / extant Partnership Deed, as applicable.

3. In case of Private Limited Companies

- i) Certified to be true and upto date amended copy of Memorandum and Articles of Association of the Company.
  - ii) Certificate of incorporation of the Company.
4. In case of Public Limited Companies and Statutory Corporations.
- i) Certified to be true copy of Memorandum and Articles of Association of the Company and/or the relevant Statute/Act.
  - ii) Certificate of Incorporation of the company - In case of public limited Co. only.
  - iii) Certificate of Commencement of Business - In case of public limited Co. only.
5. In case of Consortium/ Joint Venture bid
- i) The information listed in Qualifying Requirements in NIT/IFB/Tender Enquiry shall be submitted for each Joint Venture or Consortium partner.
  - ii) The bid, shall be signed so as to be legally binding on all partners;
  - iii) One of the partners shall be nominated as being in charge and shall be designated as leader; this authorisation shall be evidenced by submitting with bid, a power of attorney signed by legally authorised signatories of all the partners;
  - iv) An authorisation authorising the leader to incur liabilities and receive instructions for and on behalf of any and all partners of the Joint Venture or Consortium and the entire execution of the Contract including payment to be done exclusively with the leader;
  - v) All partners of the Joint Venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorisation mentioned under (iii) above as well as in the Bid Form and in the Agreement (in the case of a successful bid);
  - vi) Joint Venture / Consortium Agreement entered into by the Joint Venture or Consortium partners shall be submitted with the bid. The Joint Venture or consortium Agreement shall clearly specify the work and responsibility of each partner or a notarised copy.
  - vii) A copy of the Partnership Deed/Memorandum & Articles of Association/Certificate of incorporation as the case may be of the prime bidder and all the Partners of Joint Venture / Consortium shall also be enclosed.

**(B) Financial Status**

In support of meeting the Financial criteria specified in the Qualifying Requirements stipulated in the NIT/IFB/Tender Enquiry, the following documents shall be furnished with the bid:

1. Audited financial results of preceding 3 financial years or Balance Sheet and Profit & Loss account statement of preceding 3 financial years duly certified by a Chartered Accountant.

2. Solvency Certificate from Bankers, issued not earlier than fifteen (15) days prior to the scheduled date of bid opening of the Package, if asked for in the NIT/Tender Enquiry.

**(C) Proof of Execution of Works**

In support of meeting the work execution requirements specified in the Qualifying Requirements stipulated in the NIT/IFB/Tender enquiry, the following documents shall be furnished with the bid

- i) Copies of the Letter of Award/Purchase orders/Contracts
- ii) Certificate(s) from the Client(s) for successful execution of the assignment with value and period of execution.

**(D) Other requirements specified in the Qualifying Requirements.**

In support of meeting the other requirements specified in the Qualifying Requirements stipulated in the NIT/IFB/Tender enquiry, the documents specified in the SCC shall be furnished with the bid.

The documentary evidence of the proposed sub-contractor's qualifications against the sub qualifying requirements if so specified in the bidding documents shall also be furnished in Attachment - 4. - See Sub-Clause (d) below.

Notwithstanding anything stated above, the Employer reserves the right to undertake a physical assessment of the capacity and capabilities including financial capacity and capability of the Bidder / his Collaborator(s) / Associate(s) / Subsidiary(ies) / Group Company(ies) to perform the Contract, should the circumstances warrant such assessment in the overall interest of the Employer.

The physical assessment shall include but not be limited to the assessment of the office/facilities/banker's/reference works by the Employer. A negative determination of such assessment of capacity and capabilities may result in the rejection of the Bid.

The above right to undertake the physical assessment shall be applicable for the qualifying requirements stipulated in the bidding documents.

- d) **Attachment 4: Subcontractors Proposed by the Bidder** *(To be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)*

The Bidder shall furnish the names of the agencies for each sub-contract(s) alongwith the broad scope of work for each of the sub-contracting works proposed for subcontracting.

- e) **Attachment 5: Equipment/ Machinery deployment Schedule** *( As applicable) (To be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)*

The Bidder shall indicate the quantum and schedule of the equipment/ machinery/ lab equipment etc. he proposes to deploy for the Work under this bid.

- f) **Attachment 6: General Declaration of Bidder** *(To be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)*

Declaration that the Bidder has carefully examined the Bidding Documents in totality and his authorised personnel have visited the site for assessment of all factors for the purposes of bidding.

- g) **Attachment 7: Electronic Fund Transfer (EFT) Authorisation Form** (To be given offline in physical form and copy to be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)

Authorisation Form for release of payments through Electronic Fund Transfer System.

- h) **Attachment 8: Details of PF, ESI, PAN and GSTIN Regn..** (To be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)

The details of registration for PF, ESI, PAN and GSTIN to be furnished.

In case GSTIN details are not provided, it shall be considered that the bidder is an unregistered dealer.

- (i) **Attachment 9: Declaration Regarding GST** (To be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)

The bidder shall necessarily quote the GST applicable in the Schedule of Quantities. Further, the services covered under RCM must be declared in Attachment 9 of Forms & Procedures (Section VII) and specify the GST applicable. However, levies, royalty, fees etc., if any, shall be included in the price.

- (j) **Attachment 10: Technical Compliance** (To be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)

The bidder shall essentially confirm compliance to the scope of work and other technical requirements specified in the Technical Specifications and Bid Drawings (Section V)

- (k) **Attachment 11: Declaration of Local Content (If applicable, to be uploaded along with price bid )**

The bidder shall essentially provide details under Declaration of local content for the bid as applicable specified under "Preference to Make in India and granting of purchase preference to local suppliers" in Special Conditions of Contract ( Section IV) to be submitted along with price bid.

- (l) **'NIL' Deviations Certificate** (To be accepted online under GTE)

**No deviation, whatsoever, is permitted by the Employer to any provisions of Bidding Documents.**

The acceptance of above is an attribute of the on line Bid Invitation and the Bidders are required to confirm acceptance of the same by accepting the following condition:

"Do you certify full compliance to all provisions of Bid Documents?"

Acceptance of above condition shall be considered as bidder's confirmation to the following:

- (a) The provisions of Bidding Documents read in Conjunction with Amendment(s)/ Clarification(s)/ Addenda/ Errata (if any) are acceptable and no deviation has been taken in this regard.
- (b) Any deviation to Bidding Documents and its subsequent Amendment(s)/ Clarifications(s)/ Addenda/ Errata/ Minutes of Clarification Meeting (if any) as mentioned at (a) above found anywhere in Price Bid Proposal, implicit or explicit, shall stand unconditionally withdrawn, without any cost implication whatsoever to Employer, failing which the Earnest Money Deposit shall be forfeited.

(m) **Declaration on Qualifying Requirements** *(To be accepted online under GTE)*

Declaration by the Bidder towards compliance on "Qualifying Requirements" by accepting the condition in the on-line Bid.

"Do you certify full compliance on Qualifying Requirements"

Acceptance of above condition shall be considered as bidder's confirmation to the following:

- (a) The number of reference Plants/Orders quoted by Bidder in Attachment- 3 of the bid, for establishing compliance to the specified Qualifying Requirement (QR), are in accordance with the provision specified above.
- (b) The reference Plants/ Orders/ declared, shall only be considered for evaluation/ establishing compliance to Qualifying Requirement (QR). Any reference Orders declared more than as specified above shall not be considered for evaluation/establishing compliance to Qualifying Requirements.
- (c) No change or substitution in respect of reference Plants/Orders for meeting the specified Qualifying Requirement (QR) shall be offered by the bidder.

(n) **Declaration on Banning Policy** *(To be accepted online under GTE)*

Declaration to the effect that the Bidder shall abide by Banning Policy of the Employer displayed on NTPC's website <http://www.ntpctender.com> indicating his compliance to the provisions of ITB Sub-Clause 32 to be furnished by accepting the following GTE condition:

"Do you accept Withholding and Banning of Business Dealing Policy of NTPC"

(o) **Declaration on Fraud Prevention Policy** *(To be accepted online under GTE)*

Declaration to the effect that the Bidder shall abide by Fraud Prevention Policy of the Employer displayed on NTPC's website <http://www.ntpctender.com> indicating his compliance to the provisions of ITB Sub-Clause 29 to be furnished by accepting the following GTE condition:

"Do you accept the Fraud Prevention Policy of NTPC".

**Note:**

- 1) Techno-Commercial Bid should not contain any price content entry. In case, the Techno-Commercial Bid is found to contain any price content, such bid shall be liable for rejection.***

11.3.2 **PRICE BID**

In the Bill of Quantity (BOQ) provided, the bidder shall quote the prices, taxes etc. as asked for in the BOQ. The filled Bill of Quantity (BOQ) is to be uploaded in the Finance Cover/Envelope on the portal.



11.4 Filling the information in the attachments with answers like “shall be given later” “or” “shall be mutually discussed and finalised” or “information already submitted at the time of enlistment” etc. shall not be accepted. Even if the information required in the attachments has been given in response to any other recent invitation for bids of the Employer or in some other reference, it is mandatory for the Bidder to give the information along with his bid as asked for. Non compliance with the above or leaving the attachment(s) blank may lead to the rejection of the bid. The information furnished by the Bidder should be consistent, correct and true. The Employer reserves the right to verify the information given and if found incorrect, the bid may be rejected.

11.5 **A conditional Price Bid shall run the risk of rejection.**

11.6 Price Bid should not contain any matter in respect of Technical and / or Commercial aspects other than the details specifically sought in the Price Bid.

## 12.0 **BID PRICES AND PRICE BASIS**

12.1 Unless otherwise specified in the Technical Specifications, Bidders shall quote for the entire facilities on a “single responsibility” basis such that the total bid price covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the bidding. Bidders shall give a breakdown of the prices in the manner and detail called for in the on-line Price Schedules.

12.2 The currency of the bid and currency of payment shall be in Indian Rupees until unless specified otherwise in the SCC.

12.3 The Bidder shall fill in unit rates/prices for all items of Works described in the Bill of Quantity (BOQ). The rates/prices quoted in the Bill of Quantity shall also be deemed to include any incidentals not shown or specified but reasonably implied or necessary for the proper completion and functioning of the specified Works in accordance with the Bidding Documents. Items of the work described in the Bill of Quantity (BOQ) for which no rate or price has been entered therein by the Bidder, shall also be considered as an abnormally quoted item and shall be governed by the relevant provisions of ITB Sub-Clause 23.4.

The successful bidder if awarded the contract shall take sufficient care in moving the plants equipments and materials from one place to another so that they do not cause any damage to any person or the property of employer or 3rd party including overhead and under ground cables/pipelines. In the event of such damage including eventual loss of operation and operation of the plant or services in any plant or establishment as estimated by the employer or adjusted by third party shall be borne by the Contractor.

12.4 The rates/amount quoted in the Bill of Quantity (BOQ) shall be exclusive of all GST and all other taxes & duties as per GCC clause 22.0 However, levies, royalty, fees etc., if any, shall be included in the price as per GCC clause 22.0

In the Bill of Quantity (BOQ) provided, the bidder shall quote the prices, taxes etc. as asked for in the BOQ.

12.5 The Contractor shall be responsible for payment of any tax levied *on the* 'Works Contract' in accordance with the applicable GST Law or Notification(s) by the State or Central Government or other authorities and rules made thereunder including amendments, if any.

The Contract Price shall be exclusive of GST and all other taxes, duties applicable as per the rates prevailing as on seven (7) days prior to the date of bid opening.

However, the Contract Price shall be inclusive of any Seigniorage Fee or Royalties or cess or other charges payable on the quarried or mined metal, minerals or minor minerals, as the case may be, at the rate(s) prevailing within seven (7) days prior to the date of bid opening.

**The rate of GST and all other taxes & duties applicable shall be quoted in the bid in the Bill of Quantities and in case RCM is applicable on any service same shall be specified in Attachment 9 of Forms & Procedures (Section VII).**

- 12.6 The bidder shall necessarily declare, as part of his bid, the GST applicable in the Bill of Quantities. The estimated value of Owner Issue Materials, if any, to be considered for working out GST liability, if applicable, as indicated in SCC.

Provisions of GST law in respect of Related Persons/Parties may appropriately be taken into consideration by Bidders while submitting the bid.

In case of any variation between the pre-determined value and actual value of Owner Issue Material during the execution of the contract, an equitable adjustment shall be made to the applicable GST amount.

In case GST is applicable on free issue material, the Bidder must indicate the same in Attachment 9 of Forms & Procedures (Section VII). In case the same has not been specified by the Bidder in Attachment 9 of Forms & Procedures (Section VII), GST paid by Employer shall be to Bidder's account.

GST component will be deposited with the concerned authorities by the Employer

13.0 **BID VALIDITY**

- 13.1 The Bidder shall keep his bid valid for a period of 180 days from the date of opening of the techno-commercial bid, unless otherwise specified in the SCC, during which period the Bidder agrees not to vary, alter or revoke his bid either in whole or in part.

- 13.2 In exceptional circumstances, prior to the expiry of the original bid validity period, the Employer may request the Bidders to extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing. A Bidder agreeing to the request will not be permitted to modify his bid, but will be required to extend the validity of his Earnest Money Deposit for the period of the extension.

14.0 **BID SECURITY / GUARANTEE / EARNEST MONEY**

- 14.1 The Bidder shall furnish, as part of his bid, a Earnest Money Deposit in the amount as stipulated in NIT/IFB/Tender Enquiry, in a separate envelope (in case paid in modes other than on-line payment) superscribed on the top as under:

***“ORIGINAL EARNEST MONEY DEPOSIT FOR ..... (NAME OF PACKAGE) SPECIFICATION NO. .... DUE ON ..... (DATE OF BID OPENING) FROM ..... (NAME OF THE BIDDER).”***

- 14.2 The Earnest Money Deposit (EMD) shall, at Bidders option, be in the form of

- 1) Demand draft drawn in favour of NTPC Ltd. Payable at the Station inviting tender as specified in SCC to this bidding document

OR

- 2) Banker's cheque drawn in favour of NTPC Ltd. Payable at the Station inviting tender as specified in SCC to this bidding document

OR

- 3) a Bank Guarantee from any of the banks specified in the bidding documents provided the required EMD amount is more than ₹50,000/- (Rupees Fifty thousand only)

OR

- 4) E-Payment by Credit Card/Debit card/Net Banking on the NTPC e-tender portal

The format of Bid Guarantee (BG) towards EMD shall be in accordance with the form of EMD included in the bidding documents. The BG towards EMD shall remain valid for a period of forty-five (45) days beyond the original Bid validity period or beyond any extension in the period of Bid validity subsequently requested. The Bank Guarantee Verification Checklist duly filled in as per format given in the Bidding Documents is also to be submitted. Bidder shall ensure that all the points of check list are replied in "Yes".

In case of E-Payment , upon successful E-payment on the portal, a e-receipt shall be issued to the bidder by the system, a copy of which is to be submitted by the bidder with the bid as document towards e-payment of EMD.

- 14.3 Wherever Bids under Joint Venture route are permitted as per Qualifying Requirement in the Bidding Documents, the Earnest Money Deposit of the Joint Venture must be on behalf of all the partners of the Joint Venture.
- 14.4 **Any bid not accompanied by an acceptable Earnest Money Deposit in accordance with the aforesaid provisions shall be rejected by the Employer as being non-responsive and shall be rejected without being opened.**
- 14.5 In case of Single Stage Single Envelope bidding process, the EMD of all the bidders except recommended/evaluated L-1 bidder shall be returned immediately after finalization of evaluation report/recommendations by Tender Committee (TC) whether the recommendation of TC is for award/negotiation/annulment.
- In case of Single Stage Two Envelope and Two Stage bidding process, the EMD of the Bidders whose Technical Bid has not been found acceptable, shall be returned along with letter communicating rejection of Technical Bid. The EMD of all the Bidders except recommended/evaluated L-1 bidder, whose price bids are opened, shall be returned immediately after finalization of evaluation report/recommendations by the Tender Committee (TC) whether the recommendation of TC is for award/ negotiation/annulment.
- An intimation in this regard shall also be sent to all such bidders, after return of their EMD, through e-tendering system/e-mail by the concerned executive.
- 14.6 The Earnest Money Deposit of the successful Bidder to whom the Contract is awarded will be returned when the said Bidder has signed the Contract Agreement pursuant to ITB clause 27.0 and has furnished the required Security Deposit pursuant to GCC Clause 19.0.
- 14.7 The Earnest Money Deposit shall be forfeited in any of the following circumstances without any notice or proof of damage to the Employer:
- a) If the Bidder withdraws or varies its bid during the period of Bid validity.
  - b) If the Bidder does not accept the correction of its Bid Price pursuant to ITB Sub-Clause 23.2.

- c) If the Bidder refuses to withdraw, without any cost to the Employer, any deviation, variation, additional condition or any other mention anywhere in the bid, contrary to the provisions of bidding documents;
  - d) In the case of a successful Bidder, if the Bidder fails, within the time limit,
    - (i) to sign the Contract Agreement in accordance with ITB clause 27.0 and/or
    - (ii) to furnish the required Security Deposit in accordance with GCC clause 19.0.
  - e) If the bidder / his representatives commit any fraud while competing for this contract pursuant to Fraud Prevention Policy of NTPC.
  - f) In case the bidder / contractor is disqualified from the bidding process in terms of section 3 & 4 of Integrity pact.
- 14.8 No interest will be payable by the Employer on the said amount covered under Earnest Money Deposit.

**15.0 WORK SCHEDULE**

The entire Work covered under the contract of this bid shall be completed within the time specified in the SCC and further elaborated in the Technical Specifications. The Work shall be performed in time and to achieve the targets, the Contractor shall have to plan adequate mobilisation of all resources.

**PART D - SUBMISSION OF BID**

**16.0 SEALING AND MARKING OF BID**

Bid shall be submitted through e-tender mode in the manner specified elsewhere in bidding document. No Manual/ Hard Copy of the Bid shall be acceptable.

- 16.1 Documents to be submitted in physical form (as brought out at ITB clause 11.3.1) shall be sealed and marked in the following manner:
- (i) The Earnest Money Deposit (in case paid in modes other than on-line payment) furnished in accordance with ITB Clause 14 shall be sealed in a separate envelope duly marking the envelope as "ATTACHMENT-1 : EARNEST MONEY DEPOSIT".
  - (ii) The power of attorney furnished in accordance with ITB Clause 11.3.1(b) shall be sealed in a separate envelope duly marking the envelope as "ATTACHMENT-2 : POWER OF ATTORNEY".
  - (iii) The deed of joint undertaking (if applicable) as per relevant attachment shall be sealed in a separate envelope duly marking the envelope as "DEED OF JOINT UNDERTAKING".
  - (iv) The joint venture/consortium agreement (if applicable) as per relevant attachment shall be sealed in a separate envelope duly marking the envelope as "JOINT VENTURE/CONSORTIUM AGREEMENT".
  - (v) The 'Integrity Pact' (if applicable) as per ATTACHMENT-11 duly signed by the signatory authorized to sign the bid, shall be sealed in a separate envelope entitled "ATTACHMENT-11 : INTEGRITY PACT".

The envelopes shall then be sealed in an outer envelope.

- 16.2 The inner and outer envelopes shall:
- (a) be addressed to the Employer at the address given in the NIT/Tender Enquiry/SCC, and
  - (b) bear the Package name indicated in the NIT/Tender Enquiry, the Invitation for Bids number indicated in the NIT/Tender Enquiry, and the statement "DO NOT OPEN BEFORE [date]," to be completed with the time and date specified in the NIT/Tender Enquiry, pursuant to ITB clause 16.

16.3 The inner envelopes shall also indicate the name and address of the Bidder.

16.4 If the outer envelope is not sealed and marked as required by ITB Sub-Clause 16.2 above, the Employer will assume no responsibility for its misplacement.

17.0 **BID SUBMISSION**

Bidders are requested to submit offer / proposal as under:

**(A) TECHNO-COMMERCIAL BID**

**(I) OFF-LINE BID (PHYSICAL BID)**

**Envelope-1... marked as 'EMD/Bid Security'**

- a) Bid Form 1: EMD form
- b) Attachment 1 : Earnest Money Deposit, in case paid in modes other than on-line payment
- c) Attachment 2 : Authority to Sign the bid
- d) Attachment 7 : Electronic Fund Transfer (EFT) Form

Any other document asked for in the SCC.

**(II) ON-LINE BID**

**(i) Acceptance of conditions of GTE**

Following conditions specified in the GTE:

- a) Compliance to All Provisions of Bidding Documents (NIL Deviation Certificate)
- b) Compliance On Qualifying Requirement
- c) Acceptance of NTPC Safety Rules
- d) Acceptance of NTPC Fraud Prevention Policy
- e) Declaration On Banning Policy

**Bidders may note that in case they do not accept the GTE conditions, their bids shall be not evaluated and shall be rejected.**

Any other condition, if mentioned in GTE, requiring any confirmation/information are to ticked/filled up suitably.

**(ii) Upload the following in FEE Cover/Envelope**

- a) Attachment 1: Earnest Money Deposit (scanned copy)
- b) Cost of Bidding/Tender Documents

**(iii) Upload the following in Pre-Qual/Technical Cover/Envelope**

- a) Attachment 2: Authority to sign the bid (scanned copy)
- b) Attachment 3: Bidders Qualification Documents
- c) Attachment 4: Sub-contractor proposed by Bidder
- d) Attachment 5: Equipment/Machinery Deployment Schedule
- e) Attachment 6: General Declaration
- f) Attachment 7: Electronic Fund Transfer (EFT) Form
- g) Attachment 8: Details along with Copy of PF and ESI registration, PAN and GSTIN. In case GSTIN is not specified, it shall be considered that the bidder is an unregistered dealer.
- h) Attachment 9: Declaration Regarding GST
- i) Attachment 10: Technical details & data sheets, drawings, compliance to scope of work etc.
- j) Attachment 11 : Declaration of Local Content ,if applicable

Any other document asked for in the SCC/Technical specifications also to be uploaded in Pre-Qual/Technical Cover/Envelope.

**(B) PRICE BID**

In the Bill of Quantity (BOQ) provided, the bidder shall quote the prices; taxes etc. as asked for. The filled Bill of Quantity (BOQ) is to be uploaded in the Finance Cover/Envelope on the portal..

As per ITB clause 32.0, If applicable as mentioned in SCC, "Declaration of local content" as mentioned in Attachment 11 of standard forms shall also be uploaded

The on-line bid is to be digitally signed using a valid Class II/III digital certificate as per Indian IT Act from the licensed Certifying Authorities (CA) operating under the Root Certifying Authority of India (RCAI) namely Controller of Certifying Authorities (CCA) of India, failing which the bid shall be rejected.

**18.0 DEADLINE FOR SUBMISSION OF BID**

18.1 Bid must be received by the Employer at the address referred in the NIT/Tender Enquiry/SCC, no later than the time and date stated in the NIT/Tender Enquiry.

18.2 The Employer may, in exceptional circumstances and at his discretion, extend the deadline for submission of bids by issuing an amendment in accordance with ITB Clause 8.0 above, in which case all rights and obligations of the Employer and the Bidders previously subject to the original deadline shall thereafter be subject to the deadline as extended.

**19.0 LATE EARNEST MONEY DEPOSIT AND INTEGRITY PACT**

Any Earnest Money Deposit (or extension thereof) and/or Integrity Pact bid received by the Employer after the bid submission deadline prescribed by the Employer, pursuant to ITB Clause 18, will be rejected and returned unopened to the Bidder.

**20.0 MODIFICATION, SUBSTITUTION AND WITHDRAWAL OF BID**

- 20.1 Bidders are requested to submit the bids on-line on NTPC e-tender Portal.
- 20.2 Bids shall be hosted / uploaded and submitted on the NTPC e-tender portal by the date & time specified in the NIT/Basic data of the Tender in the e-tender portal.
- 20.3 Bid Modification and withdrawal: The Bidder may modify or withdraw its bid after submission prior to the deadline prescribed for bid submission. In case of withdrawal a letter giving the reason for withdrawal is to be uploaded. Once a bid is withdrawn, the bid cannot be re-submitted.

No bid may be withdrawn / modified in the interval between the bid submission deadline and the expiration of the bid validity period. Withdrawal/Modification of a bid during this interval may result in the Bidder's forfeiture of its Earnest Money Deposit , pursuant to ITB Clause 14.7(a) above.

- 20.4 No bid may be withdrawn in the interval between the bid submission deadline and the expiration of the bid validity period specified in clause 13.0 of ITB.

Withdrawal of a bid during this interval may result in the Bidder's forfeiture of its Earnest Money Deposit, pursuant to ITB Sub-Clause 14.7(a).

## **PART E - BID OPENING AND EVALUATION**

### **21.0 BID OPENING**

The bids will be opened at the time, date and location notified in the NIT/IFB/Tender Enquiry in the presence of the Bidder's authorised representatives (not exceeding two per Bidder) who choose to attend. All important information's and any such other detail, as may be considered appropriate by the Employer will be read out during the bid opening.

### **22.0 CLARIFICATION OF BIDS**

Bidder's attention is drawn that during the period, the bids are under consideration, the Bidder is advised to refrain from contacting by any means, the Employer and/or his employees/representatives on matters related to the bids under consideration and that if necessary, the Employer will obtain clarifications from the Bidder in writing. Any effort by a Bidder to influence the Employer's processing of bids or award decisions will result in the rejection of the Bidder's bid.

During the bid evaluation the Employer may, at its discretion, ask the Bidder for a clarification of its bid including documentary evidence pertaining to only the Work Orders/Purchase Orders/Letter of Awards/Contract Agreements declared in the bid for the purpose of meeting Qualifying Requirement specified in NIT/Bidding Documents. The request for clarification and the response shall be in writing and no change in the price or substance of the bid including substitution of reference Work Orders/Purchase Orders/Letter of Awards/Contract Agreements in the bid by new/additional Work Orders/Purchase Orders/Letter of Awards/Contract Agreements for conforming to Qualifying Requirement shall be sought, offered or permitted.

### **23.0 EVALUATION AND COMPARISON OF BIDS**

#### **23.1 BID EVALUATION**

- 23.1.1 The Employer will initially determine whether each bid is of acceptable quality, is generally complete and is substantially responsive to the Bidding Documents. For purposes of this determination, a substantially responsive bid is one that conforms to all the terms, conditions

and specifications of the Bidding Documents without material deviations, objections, conditionalities or reservations. A material deviation, objection, conditionality or reservation is one (i) that affects in any substantial way the scope, quality or performance of the contract; or (ii) that limits in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other Bidders who are presenting substantially responsive bids.

23.1.2 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence. If a bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by the Bidder by correction of the nonconformity.

23.1.3 Further, for order preference, MSE guidelines mentioned in ITB Clause 31.0 read in conjunction with ITB Clause 32.0 "Preference to Make in India and granting of purchase preference to local suppliers" mentioned in Annexure-I to ITB, shall be applicable as mentioned in Special Conditions of Contracts (SCC)

## 23.2 **Arithmetical Correction**

Arithmetical errors in the bid will be rectified on the following basis:

If on check there are found to be differences between the rates/prices given by the Bidder in words and figures or in the amount worked out by him in the Schedule of Quantities and General Summary, the same shall be adjusted in accordance with the following rules:

- (a) In the event of a discrepancy between description in words and figures in respect of item rates quoted by a Bidder, the description in words shall prevail.
- (b) In the event of an error occurring in the amount column of Schedule of Quantities as a result of wrong extension of the quantity and the unit rate, the units shall be regarded as firm and extension shall be amended on the basis of the unit rate.
- (c) All errors in totalling in the amount column and in carrying forward totals shall be corrected.
- (d) The totals of various sections of Schedule of Quantities amended shall be carried over to the General Summary and the bid sum amended accordingly. The bid sum so altered shall, for the purpose of bid, be substituted for the sum originally bid and considered for evaluation and comparison of the bids and also for acceptance of the bid, instead of the original sum quoted by the Bidder.

23.3 The evaluation shall be based on the evaluated cost of fulfilling the contract in compliance with all commercial, contractual and technical obligations under this Bidding Document.

## 23.4 **Abnormally High or Low Rated Items**

If the rates/prices quoted by the successful bidder for certain items of the schedule of Quantities are found to be having a variation of +/-25% or above in relation to Employer's estimate of the cost of work to be performed under the contract, then such items of works shall be identified as abnormally high rate (AHR) or abnormally low rate (ALR).

After evaluation of the rates/prices analysis which includes early cash flow analysis, Employer/NTPC may require that amount of Performance Security be increased at the expense of the recommended bidder by 25% of the value of variation in respect of ALR item, to protect Employer against financial loss in the event of default by the contractor under the



contract, to carry out such low rated items of works if award is placed on recommended bidder. Further, the Employer/NTPC may require the contractor to provide a suitable undertaking to execute the items of works to complete the entire work under the contract.

The items for which performance security is enhanced shall be identified separately in the contract. Upon execution of such identified items, the enhanced value of Performance security will be reduced every three months on a pro –rata basis.

## 23.5 Post-Qualification

- 23.5.1 The Employer will determine to its satisfaction whether the Bidder is qualified to satisfactorily perform the contract, in terms of the Qualifying Requirements (QR) stipulated in NIT/IFB/Tender Enquiry and other criteria detailed elsewhere in the bidding documents.
- 23.5.2 The determination will take into account the Bidder's capabilities, based upon examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder in the Attachments – 3 and 4 as well as such other information as the Employer deems necessary and appropriate. The Employer reserves the right to assess the capabilities and capacity of the Bidder to perform the contract, should the circumstances warrant such assessment in the overall interest of the Employer.
- 23.5.3 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.
- 23.5.4 The capabilities of the vendors and subcontractors, proposed in Attachment - 4, to be used by the lowest evaluated Bidder, will also be evaluated for acceptability. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a vendor or subcontractor be determined to be unacceptable, the bid will not be rejected, but the Bidder will be required to substitute an acceptable vendor or subcontractor without any change in the bid price, prior to award.

## PART F - AWARD OF CONTRACT

### 24.0 AWARD CRITERIA

Subject to ITB Clause 26.0, the Employer will award the Contract to the Bidder whose bid has been determined to be substantially responsive to the Bidding Documents and whose bid has been adjudged as the lowest evaluated bid , provided that such Bidder has been determined to be qualified to perform the contract satisfactorily as per methodology read in conjunction with ITB Clause 32.0 "Preference to Make in India and granting of purchase preference to local suppliers" mentioned in Annexure-I to ITB,

### 25.0 EMPLOYER'S RIGHT TO ACCEPT OR REJECT ANY OR ALL BIDS

Notwithstanding ITB Clause 24.0, the Employer reserves the right to accept, (whole or in part) and the Bidder shall be bound to perform the same at his quoted rate, or reject any bid for any reasons including national defence and security consideration and to annul the bidding process and to reject all bids at any time prior to award of contract without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer's action. Decision of Employer shall be final and binding in this regard.

### 26.0 LETTER OF AWARD

26.1 Prior to the expiration of the bid validity prescribed by the Employer, the Employer will issue a Letter of Award(LOA)/Service Purchase Order to the successful Bidder containing reference of the documents which form the Contract, Scope of Work, Contract Price, period of completion of the Works, terms of payment, price adjustment, and other important aspects in consideration of the execution and completion of the Works and the remedying of any defects therein by the Contractor as prescribed by the Contract.

26.2 This Letter of Award/Purchase Order will constitute the formation of the Contract.

26.3 Prior to the expiration of the bid validity prescribed by the Employer, the Employer can issue a Brief Letter of Award (LOA) to the successful Bidder containing reference of the tender, offer and Contract Price. This brief letter of award shall constitute the formation of the Contract.

## 27.0 **SIGNING OF CONTRACT AGREEMENT**

27.1 The Successful Bidder/ Contractor shall enter into a Contract Agreement with the Employer within thirty (30) days from the date of Letter of Award or within such other time, as may be desired by the Employer. The Contract Agreement shall be executed on a non-judicial Stamp Paper of appropriate value.

### 27.2 **Manner of Execution of Contract Agreement**

- i) Unless and until a formal contract is prepared and executed, the Letter of Award/Purchase Order read in conjunction with the Bidding Documents will constitute a binding contract.
- ii) The Contract Agreement shall be prepared by the Employer and signed at the office of the Employer. The Contract Agreement will be signed in three originals and the Contractor shall be provided with one signed original and the other two originals will be retained by the Employer.
- iii) The Contractor shall provide free of cost to the Employer all the engineering data, drawings and descriptive materials submitted as a part of his bid, in at least three (3) copies to form an integral part of the Contract Agreement within twenty-eight (28) days after issuing of Letter of Award/Purchase Order. The Contractor shall further provide for signing of the Contract Agreement as per prescribed proforma enclosed in the Bidding Documents, appropriate Power of Attorney and the requisite stamp papers. All the other documents required for the preparation of the Contract Agreement shall be provided by the Employer.
- iv) Unless and until the Contract Agreement is signed as above, no payments under the Contract as per GCC Clauses entitled 'Payment On Account/Progressive Interim Payments' and 'Time Limit for Submission & Payment of Final Bill' shall be released to the Contractor by the Employer nor any materials shall be issued to the Contractor as stipulated in the Special Conditions of Contract or otherwise agreed to be issued by the Employer.
- v) Subsequent to signing of the Contract Agreement, the Contractor at his own cost shall provide to the Employer with at least three(3) true copies of Contract Agreement within twenty-eight (28) days of its signing. The Contractor will also provide one (1) electronic version of the Contract Agreement to the Employer within thirty (30) days of its signing.

## 28.0 **INELIGIBILITY FOR FUTURE TENDERS**

Notwithstanding the provisions regarding forfeiture of Earnest Money Deposit specified in ITB Sub-Clause 14.7, if a Bidder after having been issued the Letter of Award/ Purchase Order,

either does not accept the same or does not sign the Contract Agreement or does not submit an acceptable Initial Security Deposit/Entire Security in line with the provisions of the Contract and which results in tender being annulled then such bidder shall be treated ineligible for participation in re-tendering of this particular package.

#### 29.0 **ADHERENCE TO FRAUD PREVENTION POLICY**

The Bidder/Contractor along with its associate / collaborators / sub-contractors / sub-vendors / consultants / service providers shall strictly adhere to the Fraud Prevention Policy of Employer displayed on its website <http://www.ntpctender.com> The Bidder/Contractor shall immediately apprise the Employer about any fraud or suspected fraud as soon as it comes to their notice.

A certificate to this effect shall be furnished by the bidder along with his bid by accepting the GTE condition "Acceptance of Fraud Prevention Policy of NTPC".

If in terms of above policy it is established that the bidder/his representatives have committed any fraud while competing for this contract then the Employer shall be entitled to disqualify the Bidder(s)/ Contractor(s) from the bidding process and forfeit the Earnest Money Deposit. In addition to the above, if the Bidder has committed a fraud such as to put his reliability or credibility into question, the Employer shall be entitled to exclude including blacklist and put the Bidder on holiday for any future tenders/contracts award process.

#### 30.0 **DECLARATION ON BANNING POLICY**

The employer has in place a policy for withholding and banning of business Dealings as displayed on its website <http://www.ntpctender.com>. Business dealings may be withheld or banned with the Bidder/Contractor on account of any default by the contractor under GCC clause 47.3.1 or any of the grounds detailed in the said Banning Policy.

Declaration on Policy for withholding and banning of Business dealings is to be given by accepting the GTE condition "Do you accept Withholding & Banning of Business Dealing Policy".

#### 31.0 **BENEFITS TO MSEs**

Micro and Small Enterprises (MSEs) registered with District Industries Centres or Khadi and Village Industries Commission or Khadi and Village Industries Board or Coir Board or National Small Industries Corporation or Directorate of Handicrafts and Handloom or any other body specified by Ministry of Micro, Small and Medium Enterprises as per MSMED Act 2006, for goods produced and services rendered, shall be issued the bid documents free of cost and shall be exempted from paying Earnest Money Deposit.

Further, in case of tenders where splitting of quantity is possible, participating MSEs quoting price within price band of L1 + 15 percent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a Micro and Small Enterprise and such Micro and Small Enterprise shall be allowed to supply up to 25 percent of total tendered value. In case of more than one such MSE, the supply will be shared proportionately (to tendered quantity).

However, in case of tenders where splitting of quantity is not possible, participating MSEs quoting price within price band of L1 + 15 percent shall be allowed to execute the package by bringing down their price to L1 price in a situation where L1 price is from someone other than a Micro and Small Enterprise. The award shall be made as follows:

- a) Award shall be given to L1 bidder if L1 bidder is a MSE.
- b) In case L1 bidder is not a MSE, then all the MSE vendor(s) who have quoted within the range of L1 + 15%, shall be given the opportunity in order of their ranking (starting with the

lowest quoted MSE bidder and so on) to bring down its price to match with L1 bidder. Award shall be placed on the MSE vendor who matches the price quoted by L1 bidder.

- c) If no MSE vendor who has quoted within range of L1 + 15% accepts the price of L1 bidder then the award shall be made to the L1 bidder.

The benefit as above to MSEs shall be available only for Goods/Services produced & provided by MSEs.

MSEs seeking exemption and benefits should enclose a attested/self-certified copy of registration certificate as a part of his bid, giving details such as stores/services, validity (if applicable) etc. failing which they run the risk of their bid being passed over as ineligible for the benefits applicable to MSEs.

**Note:** Generally, in tenders having Itemwise evaluation, splitting is allowed unless otherwise specified in the Special Conditions of Contract (SCC). Further, in tenders having Packerwise evaluation generally splitting is not allowed. **Please refer Special Conditions of Contract for specific tender provisions.**

### 32.0 Preference to Make in India and granting of purchase preference to local suppliers

Purchase preference shall be given to local suppliers as per general methodology specified in Annexure-I to ITB appended at the end of this document)

For order preference, MSE guidelines mentioned above in 31.0 read in conjunction with "Preference to Make in India and granting of purchase preference to local suppliers" mentioned in Annexure-I to ITB, shall be applicable

The bidders may apprise themselves of the relevant provisions of bidding documents in this regard before submission of their bids.

**"Attachment 11"** : Declaration on Local Content

Declaration regarding local content as per the Employer's format, for granting of purchase preference.

In case a bidder does not submit the aforesaid declaration or no value is indicated by the bidder or statement/any declaration like 'later', 'to be furnished later', 'NA' etc. are indicated by the bidder **against value/percentage of local content**, then the bidder shall not be considered as a local supplier and "shall not be eligible for any purchase preference"/ **\*\*\*"its bid shall be considered non-responsive and shall be outrightly rejected"**.

Further, Bidder shall be required to submit a certificate from the statutory auditor or cost auditor (in the case the bidder is a company) or from a practicing cost accountant or practicing chartered accountant (in respect of bidders other than companies) giving the percentage of local content during execution prior to submission of last bill for payment.###

In case aforesaid Certificate furnished by Contractor/Vendor is not in line with the declaration in respect of Local content in their bid, same shall be treated as false declaration and will be dealt in line with the Fraud Prevention Policy of NTPC.

**\*\*This shall be applicable only in those procurement cases wherein bids not meeting Minimum Local Content criteria are to be outrightly rejected.**

**### This shall be applicable only in Procurement and Contract cases with estimated value (excluding taxes & duties) in excess of INR 10 Crore.**

**Note :** Please refer Special Conditions of Contract of the bidding document for tender specific provisions as applicable and defined for Preference to Make In India and granting of purchase preference to local suppliers.

## Annexure – I to ITB

### Preference to Make In India and granting of purchase preference to local suppliers- regarding

It is the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of Goods and Services in India with a view to enhancing income and employment. In this regard, the following guidelines, concerning the procedure to be adopted for granting purchase preference to local suppliers, are hereby issued:

#### **1.0 Definitions:**

- a) **'Local content'** means the amount of value added in India which shall be the total value of the goods and services procured (excluding net domestic indirect taxes) minus the value of imported content in the goods and services (including all customs duties) as a proportion of the total value, in percent.
- b) **'Local supplier'** means a supplier or service provider whose product or service offered for procurement meets the minimum local content as prescribed.
- c) **'L1'** means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.
- d) **'Margin of purchase preference'** means the maximum extent to which the evaluated bid price of a local supplier may be above the L1 for the purpose of purchase preference.
- e) **'Nodal Ministry'** means the Ministry or Department identified in respect of a particular item of goods or services or works
- f) **Fraud Prevention Policy** – shall mean the policy related to prevention of fraud displayed on NTPC tender website <http://www.ntpctender.com>.

#### **2.0 Minimum local content**

2.1 The minimum local content shall be .....\*.....

**\* For Minimum Local Content Value as applicable Refer Special Purchase Conditions/Special Contracts Conditions clause “Preference to Make in India and granting of purchase preference to local suppliers for this tender**

#### **3.0 Margin of Purchase Preference**

3.1 The margin of purchase preference shall be 20%.

#### **4.0 Requirement of Purchase Preference:**

4.1 Purchase preference shall be given to local suppliers as specified hereunder:

**\*\*a) In cases of Procurement of goods (Supply Contracts / Purchase Contracts), procurement of services (Service Contracts), Procurement of goods and services (composite tenders i.e. Supply cum Installation / Supply-cum-Installation-cum-Civil / Civil Works Contracts), where preference to MSE is not being given:**

The following procedure shall be followed:

- i) Among all qualified and substantially responsive bids, the lowest evaluated bid will be termed as L1. If L1 bid is from a local supplier, the contract will be awarded to L1.
- ii) If L1 bid is not from a local supplier, the lowest evaluated bidder among the local suppliers, will be invited to match the lowest evaluated bid (L1) price subject to local supplier's evaluated bid price falling within the margin of purchase preference and the contract shall be awarded to such local supplier subject to matching the lowest evaluated bid (L1) price.
- iii) In case such lowest eligible local supplier fails to match the lowest evaluated bid (L1) price, the local supplier with the next higher evaluated bid within the margin of purchase preference shall be invited to match the lowest evaluated bid (L1) price and so on and contract shall be awarded accordingly. In case none of the local suppliers within the margin of purchase preference matches the lowest evaluated bid (L1) price, then the contract may be awarded to the L1 bidder.
- iv) For the purpose of matching of lowest evaluated bid (L1) price, the local supplier would have to necessarily reduce all components of the quoted price on pro-rata basis. The reduction should not apply on the evaluation loading on account of functional guarantees and other loadings (if any, which are not dependent on quoted price). The summation of the revised / reduced quoted price and the evaluation loading on account of functional guarantees and other loadings (if any) shall be equal to the lowest evaluated bid (L1) price.

**Note:** \*\*1) In case of item-wise tenders, where evaluation is done for each item and each item is awarded to L1 bidder for that item, the aforesaid procedure shall be followed item-wise.

\*\*2) In case of Reverse Auction (RA), the Purchase Preference for Local Suppliers (i.e. 20%) shall be applicable on the lowest evaluated bid price after RA. The order in which the Local Suppliers shall be given an opportunity to match lowest evaluated bid (L1) price after RA will be in the order of their rank determined based on the evaluated bid price after RA.

**OR**

**\*\*b) In cases of Procurement of goods / services (where preference to MSE is not being given), where the tendered quantity is to be divided / split among more than one bidder and condition pertaining to splitting of quantity is specified in tender documents:**

The following procedure shall be followed:

- i) Among all qualified and substantially responsive bids, the lowest evaluated bid will be termed as L1. If L1 bid is from a local supplier, the contract for full quantity will be awarded to L1.
- ii) If L1 bid is not from a local supplier, 50% of the order quantity shall be awarded to L1. Thereafter, the lowest evaluated bidder among the local suppliers will be invited to match the lowest evaluated bid (L1) price for the remaining 50% quantity subject to the local supplier's evaluated bid price falling within the margin of purchase preference and contract for that quantity shall be awarded to such local supplier subject to matching the lowest evaluated bid (L1) price. In case such lowest eligible local supplier fails to match the lowest evaluated bid (L1) price or accepts less than the offered quantity, the next higher local supplier within the margin of purchase preference shall be invited to match the lowest evaluated bid (L1) price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on local suppliers, then such balance quantity may also be ordered on the L1 bidder.
- iii) For the purpose of matching of lowest evaluated bid (L1) price, the local supplier would have to necessarily reduce all components of the quoted price on pro-rata basis. The reduction should not apply on the evaluation loading on account of functional guarantees and other loadings (if any, which are not dependent on quoted price). The summation of the revised / reduced quoted price and the evaluation loading on account of functional guarantees and other loadings (if any) shall be equal to the lowest evaluated bid (L1) price.

**Note:** \*\*1) In case of item-wise tenders, where evaluation is done for each item and each item is awarded to L1 bidder for that item, the aforesaid procedure shall be followed item-wise.

\*\*2) In case of Reverse Auction (RA), the Purchase Preference for Local Suppliers (i.e. 20%) shall be applicable on the lowest evaluated bid price after RA. The order in which the Local Suppliers shall be given an opportunity to match lowest evaluated bid (L1) price after RA will be in the order of their rank determined based on the evaluated bid price after RA.

**OR**

**\*\*c) In case of tenders / contracts, where preference to MSE is being given and where splitting of quantity is not possible:**

The following procedure shall be followed:

- i) Among all qualified and substantially responsive bids, the lowest evaluated bid will be termed as L1.
- ii) If L1 bid is from an MSE, the contract will be awarded to L1.
- iii) If L1 Bid is not from an MSE, the lowest evaluated bidder among the MSEs, will be invited to match the lowest evaluated bid (L1) price subject to MSE's evaluated bid price falling within the fifteen (15%) of the lowest evaluated bid (L1) price and the contract shall be awarded to such MSE subject to matching the lowest evaluated bid (L1) price. In case such lowest eligible MSE fails to match the lowest evaluated bid (L1) price, the MSE with the next higher evaluated bid within fifteen (15%) of the lowest evaluated bid (L1) price shall be invited to match the lowest evaluated bid (L1) price and so on and contract shall be awarded accordingly.
- iv) In case none of the MSEs within the fifteen (15%) of the lowest evaluated bid (L1) price matches the lowest evaluated bid (L1) price, then the contract may be awarded to the L1 bidder, if L1 bid is from a local supplier.
- v) If L1 is not from a local supplier, the lowest evaluated bidder among the local suppliers, will be invited to match the lowest evaluated bid (L1) price subject to local supplier's evaluated bid price falling within the margin of purchase preference (i.e. 20%) and the contract shall be awarded to such local supplier subject to matching the lowest evaluated bid (L1) price. In case such lowest eligible local supplier fails to match the lowest evaluated bid (L1) price, the local supplier with the next higher evaluated bid within the margin of purchase preference shall be invited to match the lowest evaluated bid (L1) price and so on and contract shall be awarded accordingly. In case none of the local



suppliers within the margin of purchase preference (i.e. 20%) matches the lowest evaluated bid (L1) price, then the contract may be awarded to the L1 bidder.

- vi) For the purpose of matching of lowest evaluated bid (L1) price, the MSE / local supplier would have to necessarily reduce all components of the quoted price on pro-rata basis. The reduction should not apply on the evaluation loading on account of functional guarantees and other loadings (if any, which are not dependent on quoted price). The summation of the revised / reduced quoted price and the evaluation loading on account of functional guarantees and other loadings (if any) shall be equal to the lowest evaluated bid (L1) price.

**Note:** \*\*1) In case of item-wise tenders, where evaluation is done for each item and each item is awarded to L1 bidder for that item, the aforesaid procedure shall be followed item-wise.

\*\*2) In case of Reverse Auction (RA), the Purchase Preference for MSEs (i.e. 15%) / Local Suppliers (i.e. 20%) shall be applicable on the lowest evaluated bid price after RA. The order in which the MSE / Local Suppliers shall be given an opportunity to match lowest evaluated bid (L1) price after RA will be in the order of their rank determined based on the evaluated bid price after RA.

**OR**

**\*\*d) In case of tenders / contracts, where preference to MSE is being given and where splitting of quantity is possible & condition pertaining to splitting of quantity is specified in tender documents:**

- i) Among all qualified and substantially responsive bids, the lowest evaluated bid will be termed as L1.
- ii) If L1 bid is from an MSE who is also a local supplier, the contract will be awarded to L1.
- iii) If L1 bid is from an MSE who is not a local supplier,
- 50% of the order quantity shall be awarded to L1.
  - Thereafter, the lowest evaluated bidder among the local suppliers including MSEs (who are also local suppliers) will be invited to match the lowest evaluated bid (L1) price for the remaining 50% quantity subject to the local supplier's evaluated bid price falling within the margin of purchase preference and contract for that quantity shall be awarded to such local supplier subject to matching the lowest evaluated bid (L1) price.

- In case such lowest eligible local supplier fails to match the lowest evaluated bid (L1) price or accepts less than the offered quantity, the next higher local supplier within the margin of purchase preference shall be invited to match the lowest evaluated bid (L1) price for remaining quantity and so on, and contract shall be awarded accordingly.
- In case some quantity is still left uncovered on local suppliers, then such balance quantity may also be ordered on the L1 bidder.

iv) If L1 bid is from a Local supplier who is not an MSE,

- 75% of the order quantity shall be awarded to L1.
- Thereafter, all qualified MSE bidder(s), whose Evaluated Bid Price is within the range of +15% of the lowest evaluated (L1) price shall be eligible for an opportunity to match the lowest evaluated (L1) price. If more than one MSE bidders agree to match the lowest evaluated (L1) price, they will be considered for award of up to 25% (collectively) of the order value and, for the purpose of award of contract, the same shall be equally divided amongst the MSE bidders who have agreed to match the lowest evaluated (L1) price.
- In case some quantity is still left uncovered, then such balance quantity may also be ordered on the L1 bidder.

v) If L1 bid is from a bidder who is not a Local supplier and not an MSE,

- 50% of the order quantity shall be awarded to L1.
- Thereafter, all qualified MSE bidder(s), whose Evaluated Bid Price is within the range of +15% of the lowest evaluated (L1) price shall be eligible for an opportunity to match the lowest evaluated (L1) price. If more than one MSE bidders agree to match the lowest evaluated (L1) price, they will be considered for award of up to 25% (collectively) of the order value and, for the purpose of award of contract, the same shall be equally divided amongst the MSE bidders who have agreed to match the lowest evaluated (L1) price.
- Thereafter, the lowest evaluated bidder among the local suppliers including MSEs (who are also local suppliers) will be invited to match the lowest evaluated bid (L1) price for the remaining quantity [50% of the ordered quantity – quantity awarded on MSEs] subject to the local supplier's evaluated bid price falling within the margin of purchase preference and

contract for that quantity shall be awarded to such local supplier subject to matching the lowest evaluated bid (L1) price.

- In case such lowest eligible local supplier fails to match the lowest evaluated bid (L1) price or accepts less than the offered quantity, the next higher local supplier within the margin of purchase preference shall be invited to match the lowest evaluated bid (L1) price for remaining quantity and so on, and contract shall be awarded accordingly.
- In case some quantity is still left uncovered on local suppliers, then such balance quantity may also be ordered on the L1 bidder.

vi) For the purpose of matching of lowest evaluated bid (L1) price, the local supplier / MSEs would have to necessarily reduce all components of the quoted price on pro-rata basis. The reduction should not apply on the evaluation loading on account of functional guarantees and other loadings (if any, which are not dependent on quoted price). The summation of the revised / reduced quoted price and the evaluation loading on account of functional guarantees and other loadings (if any) shall be equal to the lowest evaluated bid (L1) price.

**Note:** \*\*1) In case of item-wise tenders, where evaluation is done for each item and each item is awarded to L1 bidder for that item, the aforesaid procedure shall be followed item-wise.

\*\*2) In case of Reverse Auction (RA), the Purchase Preference for MSEs (i.e. 15%) / Local Suppliers (i.e. 20%) shall be applicable on the lowest evaluated bid price after RA. The order in which the MSE / Local Suppliers shall be given an opportunity to match lowest evaluated bid (L1) price after RA will be in the order of their rank determined based on the evaluated bid price after RA.

**\*\* Bidders please Refer *Special Purchase Conditions* clause “ Preference to Make In India and granting of purchase preference to local suppliers “ *for the conditions to this tender***

## **5.0 Verification of Local Content:**

5.1 The local supplier shall be required to provide, in the relevant Attachment of Price Bid, self-certification / declaration that the Item offered meets the minimum local content and shall give details of the location(s) at which the local value addition is made as per relevant Attachment of Price Bid.

5.2 In cases the total bid price of the supplier / bidder is in excess of INR 10 crore, the local supplier shall be required to provide a certificate from the statutory auditor or cost

auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.

- 5.3 False declarations will be dealt in line with the Fraud Prevention Policy of NTPC.
- 5.4 A supplier who has been debarred / banned by any other procuring entity for violation of 'Public Procurement (Preference to Make In India), Order 2017' (PPP-MII Order) dated 15.06.2017 and its subsequent revisions / amendments issued by Department of Industrial Policy and Promotion (DIPP) shall not be eligible for preference under the aforesaid procedures for duration of the debarment. The local supplier shall be required to furnish a confirmation in this regard in the relevant Attachment of Price Bid.

## **6.0 Local Sourcing**

The Bidder / Contractor are requested to encourage and promote domestic manufacturing and production of goods and services by sourcing goods and services applicable under the contract / package from domestic suppliers / service providers. In this regard, Bidder shall also follow guidelines / advisory issued by Government of India from time to time, to the extent applicable to them, regarding promotion of local sourcing of goods including Bought out Items and services.

**(Declaration on Local Content)**

Dear Sirs,

We have read the provisions of “Preference to Make in India and granting of purchase preference to local suppliers” enclosed with the Bid Data Sheets. In terms of the requirement of the aforesaid provisions, we hereby declare the following:

**1.0 (A) \*For tenders having package evaluation:**

In order to avail **evaluation eligibility\*\*/ purchase preference\*\***, we confirm that we are a Local Supplier, and the local content included in the package is .....% of our total bid price for complete scope of work for “.....#.....” as per details given below:

| Sl. No. | Description of Goods & Services | Quantity/ Weight | Local Content (as % of Total bid Price) | Details of the location(s) at which the local value addition is made |
|---------|---------------------------------|------------------|---|--|
|         |                                 |                  |   |  |
|         |                                 |                  |   |  |
|         |                                 |                  |   |  |
|         |                                 |                  |   |  |
|         |                                 |                  |   |  |
|         |                                 |                  |   |  |
|         |                                 |                  |   |  |
|         |                                 |                  |   |  |

**1.0 (B) \*For tenders having item wise evaluation:**

In order to avail **evaluation eligibility\*\*/ purchase preference\*\***, we confirm that we are a Local Supplier, and the local content included in the Item(s) for complete scope of work for “.....#.....” is as per details given below:

| Sl. No. of BOQ | Description of Goods & Services | Local Content (as % of Item wise bid Price) | Details of the location(s) at which the local value addition is made |
|----------------|---------------------------------|---|--|
|                |                                 |   |  |
|                |                                 |   |  |
|                |                                 |   |  |
|                |                                 |   |  |
|                |                                 |   |  |
|                |                                 |   |  |
|                |                                 |   |  |
|                |                                 |   |  |

\* Package / Contract coordinator to delete whichever is not applicable.

\*\*Package / Contract coordinator to specify for “tenders with estimated value less than INR 50 lakh”/ “other cases”, as applicable.

**# Package / Contract coordinator to indicate name of the package / tender.**

**1.1 We undertake that a certificate from the statutory auditor or cost auditor (in the case the bidder is a company) or from a practicing cost accountant or practicing chartered accountant (in respect of bidders other than companies) certifying the percentage of local content shall be submitted by us prior to submission of our last bill for payment.##**

**## This para is applicable in packages with estimated value (excluding taxes & duties) exceeding INR 10 Crores.**

**2.0 Further, we hereby confirm the following:**

|   |                   |
|---|-------------------|
| Whether the bidder is presently debarred / banned by any other procuring entity for violation of 'Public Procurement (Preference to Make In India), Order 2017' (PPP-MII Order) dated 15.06.2017 issued by Department of Industrial Policy and Promotion (DIPP) | <b>Yes* / No*</b> |
|---|-------------------|

**\* Strike off, whichever is not applicable**

**3.0 We agree to furnish any information as a proof of the above to your satisfaction as and when required.**

**Note : 1)** Continuation sheets of like size and format, may be used as per Bidder's requirement and shall be annexed to this Attachment.

***NTPC LIMITED***  
*(A Government of India Enterprise)*



***SECTION – III***

***GENERAL CONDITIONS OF CONTRACT  
(GCC)  
FOR O&M WORKS***

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## GENERAL CONDITIONS OF CONTRACT

### A. Contract and Interpretation

#### 1. Definitions

- (a) "Employer" / "Owner" / "Corporation" means the NTPC Limited, New Delhi, having its registered office at NTPC Bhawan, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi and shall include their legal representatives, successors and permitted assigns.
- (b) "Contract" means the Contract Agreement entered into between the Employer and Contractor, together with contract documents referred therein. The term "Contract" shall in all such documents be construed accordingly and includes special conditions, specifications, designs, drawings, "Schedule of Quantities/Bill of Quantities" with rates and amount. These documents taken together shall be deemed to form the Contract and shall be complimentary to one another.
- (c) "Contract Documents" mean the following documents that constitute the Contract between the Employer and the Contractor:
  - (i) The Contract Agreement alongwith its appendices
  - (ii) Letter of Award/Service Purchase Order alongwith its appendices including agreed variations annexed.
  - (iii) Amendment to Tender/Bidding Documents
  - (iv) Special Conditions of Contract
  - (v) Technical Specifications & Bid drawings & Field Quality Assurance plan
  - (vi) General Conditions of Contract
  - (vii) The Bid and Bill of Quantities submitted by the Contractor
  - (viii) Instructions to Bidders
- (d) "GCC" means the General Conditions of Contract
- (e) "SCC" means the Special Conditions of Contract.
- (f) "Day" means calendar day of the Gregorian Calendar.
- (g) "Week" means a continuous period of seven (7) calendar days.
- (h) "Month" means calendar month of the Gregorian Calendar.
- (i) The "Contractor" means the individual or firm or company whether incorporated or not, undertaking the Works and shall include its legal representatives, successors, and permitted assigns.
- (j) "Sub-Contractor" shall mean a person or a Corporate body approved by Engineer-in-Charge who has entered into a contract with the Contractor to complete a part of the Works.
- (k) The "Contract Sum" / "Contract Price" means:

- (i) In the case of Lump Sum Contracts the sum for which the bid is accepted.
- (ii) In the case of item Rate Contracts the cost of the Works arrived at after extension of the quantities shown in Bill of Quantity (BOQ) by the item rates for the various items and summing them to arrive at the total price.
- (iii) In case of percentage rate contracts, the estimated value of the contracts as mentioned in the tender adjusted by the contractor's percentage.
- (l) "Engineer-in-Charge/Officer-in-Charge" shall mean the person nominated by the Employer or his duly authorized representative who shall direct, supervise and be in charge of the Works for purposes of the Contract.
- (m) "Market rate" means the rate for an item of Work, determined on the basis of the cost of labour and material brought to Site by Contractor and incorporated in the Works and for use of plant and equipment for the Work executed.
- (n) "Bill Of Quantity" shall mean the priced and completed Bill of Quantity (BOQ) forming the part of the bid or such Bill of Quantity (BOQ) forming the part of the Contract, as the case may be, with amendments, if any, thereto.
- (o) The "Site" means the working Project/Station/Region or any other place where the Works is to be executed under the Contract.
- (p) "Temporary/ Enabling Works" means all temporary works of every kind required in or about the execution, completion or maintenance of the Works.
- (q) "Urgent Works" shall mean any urgent measures which, in the opinion of the Engineer-in-Charge, become necessary during the progress of the Works to obviate any risk of accident or failure or which become necessary for reasons of security and safety.
- (r) "The Works" shall mean the Works to be executed in accordance with the Contract or part(s) thereof as the case may be and shall include all extra or additional, altered or substituted works or temporary/ enabling Works and urgent works as required for performance of the Contract.
- (s) "Cost" shall mean all expenditure reasonably incurred or to be incurred by the Contractor or Employer, as the case may be, whether on or off the Site, including overhead and other charges, but excluding profit.
- (t) Throughout these Bidding Documents, the term "Bid" and "Tender" and their derivatives (Bidder/Tenderer, Bidding/Tendering, Bidding Document/Tender Document, etc.); Bill of Quantity / Schedule of Quantity / Schedule of Quantities/ Bill of Quantities; Employer / NTPC; Bid Security / Earnest Money Deposit; Security Deposit / Performance Security/ Performance Guarantee; Engineer-in-Charge / Engineer, appearing any where in the Bidding Documents shall have the same meaning and are synonymous to each other.

## **2. Heading and Marginal Notes to Conditions**

Heading and marginal notes to these General Conditions of Contract shall not be deemed to form part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract.

### **3. Singular & Plural**

Where the context so requires, words importing the singular only will also include the plural and vice versa.

### **4. Order of the precedence of the Documents**

4.1 Subject to order of precedence listed below, 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.

4.2 The order of precedence of documents shall be as under:

- I. The Contract Agreement alongwith its appendices
- II. Letter of Award alongwith its appendices
- III. Special Conditions of Contract
- IV. Technical Specifications & Bid drawings & Field Quality Assurance plan
- V. General Conditions of Contract
- VI. The Bid and Schedule of Quantities/ Bill of Quantities submitted by the Contractor
- VII. Instructions to bidders

An amendment issued after execution of contract agreement shall take precedent over the formal contract and all other contract documents.

4.2 Any error in description, quantity or rate in Bill of Quantity (BOQ) or any omission therefrom shall not vitiate the Contract or release the Contractor from the execution of the whole or any part of the Works comprised therein according to drawings and specifications or from any of his obligations under the Contract.

### **5. Instructions and Notices under the Contract:**

5.1 Subject as otherwise provided in the Contract, all notices to be given on behalf of the Employer and all other actions to be taken on its behalf may be given or taken by the Engineer-in-Charge or any officer for the time being entrusted with the functions, duties and powers of the Engineer-in-Charge by the Employer. All instructions, notices and communications, etc., under the Contract shall be given in writing.

5.2 The Contractor or his authorised representative shall be in attendance at the Site(s) during all working hours and shall superintend the execution of the Works with such additional assistance in each trade as the Engineer-in-Charge may consider necessary. Orders given to the Contractor's representative shall be considered to have the same force as if they had been given to the Contractor himself.

5.3 The Engineer-in-Charge shall communicate or confirm the instructions to the Contractor in respect of the execution of Work in a 'Works Site Order Book' maintained in the office of the Engineer-in-Charge and the Contractor or his authorised representative shall confirm receipt of such instructions by signing the relevant entries in this Book. If required by the Contractor he shall be furnished a certified true copy of such instruction(s).

### **6. Contractors Representative**

(i) Within seven(7) days of the issuance of Service Purchase Order/Letter of Award the Contractor shall nominate the Contractor's Representative and shall request the Employer in writing to approve the person so nominated. If the Employer makes no objection to the appointment within fourteen (14) days, the

Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment giving the reason therefor, then the Contractor shall appoint a replacement within seven (7) days of such objection.

- (ii) 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 Engineer-in-charge all the Contractor's notices, instructions, information and all other communications under the Contract.
- (iii) All notices, instructions, information and all other communications given by the Employer or the Engineer-on-charge to the Contractor under the Contract shall be given to the Contractor's Representative or, in his absence, its deputy, except as herein otherwise provided.
- (iv) The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Sub-Clause 6 (i).
- (v) The Contractor's Representative may, subject to the approval of the Employer (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Engineer-in-Charge.
- (vi) Any act or exercise by any person of powers, functions and authorities so delegated to him or her shall be deemed to be an act or exercise by the Contractor's Representative.

## **7. Laws governing the Contract**

This Contract shall be governed by the Indian laws for the time being in force. The Courts at Delhi shall have jurisdiction, in all matters unless otherwise stated in the SCC.

## **8. Settlement of Disputes**

### **8.1 Settlement of Disputes**

#### **8.1 Mutual Consultation**

If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities, whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute may be settled through Expert Settlement Council / Arbitration / other remedies available under the applicable laws.

#### **8.2 Resolution of Dispute through Expert Settlement Council**

If the parties fail to resolve such a dispute or difference by mutual consultation, the dispute if the parties agree, may be referred to Conciliation in cases involving

disputed amount up to Rs 250 crores, which is to be arrived at considering the claim and counter claim of the parties to the dispute.

#### 8.2.1 Invitation for Conciliation:

8.2.1.1 A party shall notify the other party in writing about such a dispute it wishes to refer for Conciliation within a period of 30 days from the date of raising of the dispute in case of failure to resolve the same through mutual consultation. Such Invitation for Conciliation shall contain sufficient information as to the dispute to enable the other party to be fully informed as to the nature of the dispute, amount of the monetary claim, if any, and apparent cause of action.

8.2.1.2 Upon acceptance of the invitation to conciliate, the other party shall submit its counter claim, if any, within a period of 30 days from the date of the invitation to conciliate. If the other party rejects the invitation or disputed amount exceeds Rs 250 crores, there will be no Conciliation proceedings. There shall be no Conciliation where claim amount is only up to Rs 5 lakhs.

8.2.1.3 If the party initiating Conciliation does not receive a reply within thirty days from the date on which it sends the invitation, or within such other period of time as specified in the invitation, it shall treat this as a rejection of the invitation to conciliate from the other party.

#### 8.2.2 Conciliation:

8.2.2.1 Where Invitation for Conciliation has been furnished under GCC sub clause 8.2.1, the parties shall attempt to settle such dispute through Expert Settlement Council (ESC) which shall be constituted by CMD, NTPC.

8.2.2.2 ESC will be formed from experts comprising of three members from the panel of conciliators maintained by NTPC. However, there will be single member ESC for disputes involving claim and counter claim (if any) up to Rs. 1 crore. CMD will have authority to reconstitute an ESC to fill any vacancy.

8.2.2.3 The eligible persons for consideration for empanelment in the panel of conciliators shall be amongst Retired Civil Servants of Govt. of India not below the rank of Joint Secretary, Retired Judges, Retired Executive directors/Directors/ Chairman of any Maharatna / Navratna company in India other than NTPC Ltd, Retired Independent Directors who have served on the Board of any Maharatna / Navratna company in India other than NTPC Ltd and Independent experts in their respective fields preferably registered with the Indian Council of Arbitration or Delhi International Arbitration Centre or Federation of Indian Chambers of Commerce and Industry or SCOPE Arbitration Forum.

#### 8.2.3 Proceedings before ESC:

8.2.3.1 The claimant shall submit its statement of claims along with relevant documents to ESC members, and to the party(s) indicated in the appointment letter within 30 days of the issue of the appointment letter. The respondent shall file its reply and counter claim (if any) within 30 days of the receipt of the statement of claims. Parties may file their rejoinder/additional documents, if any in support of their claim/counterclaim within next 15 days. No documents shall be allowed thereafter, except with the permission of ESC.

8.2.3.2 The parties shall file their claim and counterclaim in the following format

- a. Chronology of the dispute
- b. Brief of the contract

- c. Brief history of the dispute
- d. Issues

| Sl. No. | Description of Claims/ Counter | Amount (in foreign currency/INR) | Relevant Contract Clause |
|---------|--------------------------------|----------------------------------|--------------------------|
|         |                                |                                  |                          |
|         |                                |                                  |                          |
|         |                                |                                  |                          |

- e. Details of Claim(s)/Counter Claim(s)
- f. Basis/Ground of claim(s)/counter claim(s) (along with relevant clause of contract)

Note: Statement of claims shall be restricted to maximum limit of 20 pages.

- 8.2.3.3 In case of 3 members ESC, 2 members will constitute a valid quorum and the meeting can take place to proceed in the matter after seeking consent from the member who is not available. However, ESC recommendations will be signed by all the members.
- 8.2.3.4 The parties shall be represented by their in house employees. No party shall be allowed to bring any advocate or outside consultant/advisor/agent to contest on their behalf. Ex-officers of NTPC who have handled the subject matter in any capacity shall not be allowed to attend and present the case before ESC on behalf of contractor. However, ex-employees of parties may represent their respective organizations. Parties shall not claim any interest on claims/counter-claims from the date of notice invoking Conciliation till execution of settlement agreement, if so arrived. In case, parties are unable to reach a settlement, no interest shall be claimed by either party for the period from the date of notice invoking Conciliation till the date of ESC recommendations and 30 days thereafter in any further proceeding.
- 8.2.3.5 ESC will conclude its proceedings in maximum 10 meetings, and give its recommendations within 90 days of its first meeting. ESC will give its recommendations to both the parties recommending possible terms of settlement. CMD, NTPC may extend the time/number of meetings, in exceptional cases, if ESC requests for the same with sufficient reasons.
- 8.2.3.6 Depending upon the location of ESC members and the parties, the venue of the ESC meeting shall be either Delhi/Mumbai/Kolkata/Chennai or any other city whichever is most economical from the point of view of travel and stay etc. All the expenditure incurred in ESC proceedings shall be shared by the parties in equal proportion.
- 8.2.4 Fees & Facilities to the Members of the ESC

The cost of Conciliation proceedings including but not limited to fees for Conciliator, Airfare, Local transport, Accommodation, cost towards conference facility etc shall be as provided herein below:

| S. No. | Fees/ Facility | Entitlement  |
|--------|----------------|--|
| 1      | Fees           | As paid to NTPC Independent Directors [Presently Rs. 20,000 per meeting]. In addition each conciliator to be paid Rs. 10,000 for attending meeting to authenticate the settlement agreement - max. of Rs. 2,10,000 per case per Conciliator. |