

Ref: Exim Bank/Infra/2024/2525

Date: February 16, 2024

**Request for Inputs / Feedback on the Model Procurement Document for the Procurement of goods**

1. Export-Import Bank of India (Exim Bank) extends Lines of Credit (LOCs) to select countries or their nominated agencies, multilaterals, on behalf of and with the support of the Government of India.
2. Exim Bank is the process of standardization of the Model Tender Documents which are proposed be used for all the procurement under LOC projects. The captioned tender document is attached for Inputs / Feedback from stakeholders, industry and members of the public.
3. Inputs / Feedback on the draft document should only be sent as per format at the Annexure by February 29, 2024, at the email address [locmis@eximbankindia.in](mailto:locmis@eximbankindia.in)
4. For any clarification, Mr. Sandeep Kumar may be contacted on Ph No.011-24607746 during office hours (10 AM – 6 PM).

\*\*\*\*\*

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## INPUTS ON MODEL TENDER DOCUMENT FOR THE PROCUREMENT OF GOODS

|  |  |
|--|--|
| Name of the Organization                   |  |
| Name and Designation of the Contact Person |  |
| Phone & Email for Clarifications           |  |

| S. No. | Section No. and Clause No. | Existing Provision | Proposed clause | Justification and reasons for the suggested change, Reference, if any |
|--------|----------------------------|--------------------|-----------------|---|
|        |                            |                    |                 |   |
|        |                            |                    |                 |   |
|        |                            |                    |                 |   |

# **MODEL TENDER DOCUMENT FOR THE PROCUREMENT OF GOODS**

**For Lines of Credit Projects under the Indian Development and  
Economic Assistance Scheme (IDEAS)**

**Export-Import Bank of India**



**Tender Document**

**Tender Reference Number: Tend No./ xxxx**

**For Procurement of**

**Goods**

# Preface

This Tender Document (“Tender Document”) has been prepared to be used for the procurement of Goods that are financed by Export-Import Bank of India (Exim Bank) under Government of India (GOI) supported Lines of Credit (LOCs). This Tender Document is consistent with the Indian Development and Economic Assistance Scheme (IDEAS) Guidelines issued by the GOI vide letter F.No.5/7/2019-IDEAS dated March 31, 2022, procurement rules for projects under GOI-supported LOCs i.e. Public Procurement Orders Nos. 1 & 2 dated July 23, 2020, Public Procurement Order No. 3 dated July 24, 2020 and Public Procurement Order No. 4 dated February 23, 2023 issued by the Public Procurement Division of the Department of Expenditure, Ministry of Finance, Government of India.

This Tender Document is to be used for Least-Cost Selection (“LCS”). Section II “Instructions to Bidders” and Section IV “General Conditions of Contract” are to be used without modifications.

The Tender Document assumes that prequalification has taken place before bidding.

To obtain further information on procurement under Exim Bank-assisted projects or for questions regarding the use of this Tender Document, contact:

The Chief General Manager / General Manager  
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## **Procuring Entity**



## **Country**

## **Tender Document**

**Tender Reference Number: Tend No./ xxxx**

**For Procurement of**

**Goods for** (insert name of the project)

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## Section I: Notice Inviting Tender (NIT)

Restricted to Prequalified Bidders only

**Tender Document No. ....**

[insert: Location and Date]

[insert: Name and Address of Bidder. In case of a Joint Venture (JV), a full name of the JV and the names of each member shall be used]

Dear Mr./Ms.:

Name of Project: \_\_\_\_

### 1. Notice Inviting Tender (NIT)

The Government of \_\_\_\_\_ [Insert name of Borrower] has received a Line of Credit from the Export-Import Bank of India (Exim Bank) towards financing the cost of \_\_\_\_\_, \_\_\_\_\_, [Insert name of project and country] and intends to apply part of the proceeds toward payments under the contract for \_\_\_\_\_, \_\_\_\_\_, [Insert name of project and country].

The \_\_\_\_\_ [Insert name of Procuring Entity], (\_\_\_\_\_) [Insert short name of Procuring Entity], invites bids exclusively from the prequalified eligible bidders for entering into a contract for the supply of Goods (hereinafter referred to as 'the Goods'). This Tender Document reference number, Tend No./ xxxx (hereinafter referred to as 'the Tender Document'), gives further details.

Selection will be restricted to the prequalified bidders but it will be conducted through the applicable laws and rules of the Government of \_\_\_\_\_ [Insert name of Borrower] and Procurement Guidelines of Exim Bank.

### 2. The Tender Document

#### 2.1 Bidders must read the complete 'Tender Document'.

This NIT is an integral part of the Tender Document and serves a limited purpose of invitation, and does not purport to contain all relevant details for submission of bids. 'Tender Information Summary'

(TIS) appended to this notice gives a salient summary of the tender information. Any generic reference to NIT shall also imply a reference to TIS as well. However, Bidders must go through the complete Tender Document for details before submission of their Bids.

## 2.2 Availability of the Tender Document

The Tender Document shall be published on the e-Procurement Portal for download after the date and time of the start of availability till the deadline for availability as mentioned in TIS / or will be made available by the Project Authority of the Government of (mention the name of the borrower). Unless otherwise stipulated in TIS, the Tender Document shall be free of cost. If the Procuring Entity happens to be closed on the deadline for submitting the bids as specified above, this deadline shall *not* be extended. Any query/ clarification regarding downloading Tender Documents and uploading Bids is to be addressed ..... (Name & Designation) ..... phone number..... email..... (please refer to TIS for details).

## 2.3 Clarifications

A Bidder requiring any clarification regarding the Tender Document may seek clarifications from Office/ Contact Person as mentioned in TIS, provided the questions are raised before the clarification end date mentioned in TIS (or if not mentioned, before 14 days of the deadline for the bid submission). This deadline shall not be extended in case of any intervening holidays. No other means of submission of queries shall be entertained.

## 3. Eligibility Criteria for Participation in this Tender

The prequalified bidders must continue to meet the 'Eligibility' and 'Qualification' Criteria prescribed in the preceding Prequalification document (based on which they were prequalified). Bidder should meet above referred eligibility criteria as also the eligibility criteria specified in ITB and AITB 3 as of the date of his bid submission and should continue to meet these till the award of the contract.

## 4. Applicable Procedures

This Tender Document is governed by the following guidelines: -

- 4.1 Indian Development and Economic Assistance Scheme (IDEAS) Guidelines issued by GOI vide letter F.No.5/7/2019-IDEAS dated March 31, 2022 requires inter alia, goods and services for minimum 75% value of the contracts covered under the Line of Credit, must be sourced from India (Indian Content).
- 4.2 As detailed in the Prequalification process and in the ITB-clause 3.3, Government of India policies restrict the participation of entities from i) Certain countries sharing land borders with India and ii) Countries that restrict the participation of Bidders from India. Bidders have already submitted declarations regarding these restrictions during the Prequalification process. They should ensure that they continue to comply with such declarations.
- 4.3 All the prequalified bidders or members of the JV shall certify that they are not blacklisted or debarred by any multilateral development bank (MDB), such as World Bank, Asian Development

Bank, or any authority of GOI or the Borrowing Government. The list of debarred firms and individuals by certain leading MDBs is available as specified in TIS.

4.4 Debarment policy of Exim Bank.

4.5 Procurement Guidelines of Export-Import Bank of India

4.6 Applicable laws of Host Country Instrumentalities/Borrower Government

## 5. Pre-bid Conference:

Bidders are requested to attend a Pre-bid conference for clarification on the Tenders' technical specifications and commercial conditions, on the time, date, and place mentioned therein. Participation in such a Pre-bid Conference is not mandatory. If a bidder does not participate or submit any query, then no subsequent representations from them regarding the Technical/ commercial specifications/ conditions shall be entertained.

## 6. Submission of Bids:

- 1) Bids must be uploaded / submitted till the deadline for submission mentioned in TIS. If the office happens to be closed on the deadline to submit the bids as specified above, this deadline shall *not* be extended.
- 2) Unless otherwise specified in TIS, originals (or self-attested copies of originals – as specified therein) of specified scanned uploaded documents must be physically submitted sealed in double cover and acknowledgement be obtained before the bid submission deadline at mentioned venue. Failure to do so is likely to result in the bid being rejected. If the office is closed on the deadline for physical submission of originals, it shall stand extended to the next working day at the same time and venue.
- 3) In case of eProcurement, Bidder must comply with the conditions including registration, compatible Digital Signature Certificate (DSC), etc. In the case of downloaded documents, Bidder must not make any changes to the contents of the documents while uploading, except for filling in the required information.
- 4) Bidders must furnish Bid Security as 'Form 7: Format for Bid Security' in their bid as per format given therein. The Bid Security shall be drawn in favour of the Procuring Entity stipulated in TIS. A self-attested scan of the original Bid Security should be uploaded along with bids. Bids not complying with these provisions shall be rejected.
- 5) **Integrity and Ethics:** All the stakeholders viz. Procuring authorities, Consultants, suppliers, contractors and consultants etc. shall observe the highest standard of integrity and not indulge in prohibited practices or other misdemeanours, either directly or indirectly, at any stage during the Procurement Process or the execution of resultant contracts.

## 7. Bid Opening

Bids received shall be opened at the specified date and time given in TIS. If the office is closed on the specified date of opening of the bids, the opening shall be done on the next working day at the same time.

## 8. Disclaimers and Rights of the Procuring Entity



The issue of the Tender Document does not imply that the Procuring Entity is bound to select bid(s), and it reserves the right without assigning any reason to

- (a) reject any or all of the Bids, or
- (b) cancel the tender process; or
- (c) abandon the procurement of the Goods; or
- (d) issue another tender for identical or similar Goods

*Note: Please refer to appended TIS and the complete Tender Document for further details.*

Digitally Signed by

Tender Inviting Authority

*[Insert Name, Designation and contact details of Tender Inviting Authority]*

Appendix: Tender Information Summary (TIS)

## Appendix to NIT: Tender Information Summary

Document No. Tender No./ xxxx; Tender Title: Goods

(Ref ITB-clause 1.4)

*{Some Text within square bracket in italics grey font is either:*

- 1) *suggestions/ directions [e.g., Fill in Tender ID below] – which must be replaced by applicable parameter; or*
- 2) *suggested default parameters [e.g., ‘Limited International Bidding’ in Tender Type below] - which may be retained (or be replaced if a different parameter is applicable).*

*Brackets should be removed, and the font changed to regular and black. Some sections/ rows may be added as per requirement.*

| Prequalified bidders from whom bids are exclusively Invited |                                    |  |
|---|------------------------------------|--|
| Preceding Prequalification Process                          |                                    | Conducted by Export-Import Bank of India |
| Sr No.  | Bidders                            | Address                                  |
| 1.  | <i>[Mention names and address]</i> |  |
| .....   |                                    |  |
| n.  |                                    |  |

| Tender Information Summary (TIS) |   |                  |                            |
|----------------------------------|---|------------------|----------------------------|
| <b>1.0 Basic Tender Details</b>  |   |                  |                            |
| Tender Title                     | PROCUREMENT OF GOODS [ Name of Specific Goods, if required]       |                  |                            |
| Tender Reference Number          | Tender No./ xxxx  | Tender ID        | <i>[Fill]</i>              |
| Tender Type                      | <i>[Limited Bidding in India among the prequalified entities]</i> | Form of Contract | <i>[Lumpsum/Item Rate]</i> |
| Tender Category                  | <i>[Goods]</i>  | No. of Covers    | <i>[Two Covers]</i>        |
| Bidding System                   | <i>[Single Stage]</i>   |                  |                            |
| The Procuring Entity:            | <i>[Mention name of the Procuring Entity]</i>                     | Address          | <i>[Fill]</i>              |

|   |   |   |   |
|---|---|---|---|
| Tender Inviting Authority (TIA)                                     | [Fill]  | Address   | [Fill]  |
| Appointing Authority for Arbitration                                | [Fill]  |   |   |
| <b>2.0 Requirement Details (ITB-clause 5.0)</b>                     |   |   |   |
| Evaluation Basis  | [Schedule-wise/ Combined Schedules]                                       | Part quotation allowed or not                                     | [The bidders may submit bids for package for which it has been prequalified. However, he must quote for the complete schedule that he quotes for, without exception.] |
| Inspection Type   | [Pre-dispatch inspection at Factory]                                      | Inspection Agency   | [Fill]  |
| Schedule  | [Add more rows if more than one schedule]                                 |   |   |
| Item Details:   | [Add more rows if more than one item in a schedule]                       | Qty and Units   | [Fill]  |
| Consignee/ Country / Address  | [Fill]  |   |   |
| Terms of Delivery   | [FOB/CIP/DAP]   | Completion date of Delivery:                                      | [Fill]  |
| <b>3.0 Critical Dates (ITB-clause 7.0; 8.0; 9.0, 10.0 and 11.0)</b> |   |   |   |
| Published Date  | [Fill]  | Bid Validity (Days from the date of Bid Opening) – ITB-clause 9.3 | [fill up both periods (default 90 days) in days and the calculated date]  |
| Document Download Start Date & Time                                 | [Normally start of business on the day after publishing if e-procurement] | Document Download End Date & Time                                 | [Normally up to a few hours/ one day before the time of Bid Opening if e-procurement]   |
| Clarification Start Date & Time                                     | [Normally start of business on the day after publishing]                  | Clarification End Date & Time                                     | [Normally not later than 14 days before the bid submission deadline, to give time to the Procuring Entity for a response]   |

|   |   |   |   |
|---|---|---|---|
| Bid Submission Start Date & Time                | <i>[Normally start of business on the day after publishing]</i>   | Bid Submission Closing Date & Time      | <i>[Normally up to a few hours/ one day before the time of Bid Opening]</i> |
| Bid Opening (Techno-commercial bid) Date & Time | <i>[Please allow enough time for bidders to prepare responsive bids, depending on the documents and details required to be submitted]</i> | Bid Opening (Financial bid) Date & Time | <i>[To be intimated later]</i>  |
| Last date for Physical Document Submission      | Same as Bid Submission Closing Date & Time  |   |   |

|   |   |   |
|---|---|---|
| <b>4.0 Eligibility to Participate (NIT-clause 3 and ITB-clause 3.2)</b>                 |   |   |
| Nature of Bidders eligible – OEMs/ Dealers authorised by OEMs                           |   | <i>[No Restriction]</i>   |
| Minimum Indian content for eligibility to participate ITB-clause 4.1 (IDEAS Guidelines) |   | As per IDEAS Guidelines, goods and services for minimum 75% value of the contracts covered under the Line of Credit, must be sourced from India (Indian Content).   |
| List of debarred firms (not exhaustive)   |   | <p>A list of debarred firms and individuals by:</p> <p>The World Bank is available on the website:<br/><a href="http://www.worldbank.org/debarr">http://www.worldbank.org/debarr</a></p> <p>The Asian Development Bank is available on the website:<br/><a href="http://lnadbg4.adb.org/oga0009p.nsf/sancALLPublic?OpenView&amp;count=999">http://lnadbg4.adb.org/oga0009p.nsf/sancALLPublic?OpenView&amp;count=999</a></p> <p>The African Development Bank is available on the website:<br/><a href="http://www.afdb.org/en/projects-and-operations/procurement/debarment-and-sanctions-procedures/">http://www.afdb.org/en/projects-and-operations/procurement/debarment-and-sanctions-procedures/</a></p> <p>The European Bank for Reconstruction and Development is available on the website:<br/><a href="http://www.ebrd.com/pages/about/integrity/list.shtml">http://www.ebrd.com/pages/about/integrity/list.shtml</a></p> <p>The Inter-American Development Bank is available on the website:<br/><a href="http://www.iadb.org/en/topics/transparency/integrity-at-the-idb-group/sanctioned-firms-and-individuals,1293.html">http://www.iadb.org/en/topics/transparency/integrity-at-the-idb-group/sanctioned-firms-and-individuals,1293.html</a></p> |
| <b>5.0 Eligibility to Participate</b>   |   |   |
| Eligibility Criteria  |   | Refer ITB and AITB 3  |
| <b>6.0 Obtaining the Tender Document and clarifications (ITB-clause 7.0)</b>            |   |   |
| eProcurement Portal and helpdesk for Document   | <a href="https://.....">https://.....</a>   | <i>[Link or web-Address]</i>  |
|   | <i>[Fill in your organisation's portal URL and helpdesk, if Tender Document download/ submission facility is also provided there]</i> |   |

|  |  |
|--|--|
| availability and submission  |  |
| Cost of Tender Document [USD]  | <i>[There is no Bid Processing Fee or USD.....]</i>  |
| Office/ Contact Person/ email for clarifications   | <i>[Same as TIA above]</i>   |
| <b>7.0 Pre-bid Conference (ITB-clause 8)</b>   |  |
| Pre-bid Conference applicable or not   | <i>[Yes/No]</i>  |
| Place, time, and date of the Pre-bid Conference  | <i>[Fill if it is 'Yes' above and delete the row if it is 'No' above]</i>  |
| Place, time and date before which Written queries for the Pre-bid conference must be received                                  | <i>[Fill if it is 'Yes' above and delete the row if it is 'No' above]</i>  |
| Place, time and date before which registration of participants for the Pre-bid conference must be received                     | <i>[Fill if it is 'Yes' above and delete the row if it is 'No' above]</i>  |
| <b>8.0 Preparation and Submission and Opening of Bids (ITB-clause 9.0, 10.0 and 11.0)</b>                                      |  |
| Bids to be Addressed to  | <i>Name and Designation of the Authorized Person.</i>  |
| Instructions for Online bid Submission   | <i>[Mention Link Address if e-procurement]</i>   |
| Bid Opening Place  | <i>[On e-procurement portal(s) in case of e-procurement] [ Address in case of physical Bids]</i>                                       |
| <b>9.0 Physical submission of Originals/ Self-attested copies of Originals of Scanned Documents uploaded (ITB-clause 10.3)</b> |  |
| Physical documents required/ permitted to be submitted   | <i>[Yes/No]</i>  |
| If Yes, List of Documents to be submitted physically   | <i>[Form 7: Format for Bid Security]</i>   |
| Deadline for physical submission of originals/ self-attested copies of Originals of uploaded scanned documents                 | <i>[fill up date and time, usually same as the deadline for the bid submission, to avoid bidders playing an anti-competitive game]</i> |
| Address of Physical Submission of Originals / self-  | <i>[Same as TIA above]</i>   |

|  |   |   |                |
|--|---|---|----------------|
| attested copies of Originals of uploaded scanned documents                             |   |   |                |
| <b>10.0 Bid Security (ITB-clause 9.4) and Performance Security (ITB-clause 13.2.4)</b> |   |   |                |
| Bid Security (EMD) Amount in USD:  | [Fill]  |   |                |
| Performance Security   | [Applicable @ 5-10% of Order value]   | Bid/ Advance Payment / Performance Security to whom to be addressed | [Fill]         |
| Form of Bid/ Advance Payment / Performance Security                                    | Bank Guarantee shall be an unconditional guarantee issued by a bank from the Procuring Entity's country or any other reputed commercial bank / financial institution from India or international banks enforceable in the Procuring Entity's Country. |   |                |
| <b>11.0 Additional Clauses</b>   |   |   |                |
| <b>Clause</b>  | <b>Description</b>  |   |                |
| Price Variation Clause ITB-clause 6.2.2  | [No]  |   |                |
| Quantity Splitting/ Parallel Orders ITB-clause 13.1.2                                  | No.   | If Yes, Ratio of Distribution among L-1 and others                  | Not applicable |

## **Section II: Instructions to Bidders (ITB)**

### **1. The Tender Document**

#### **1.1 Basic Tender Details**

The 'Tender Document' (hereinafter referred to as the 'the Tender Document') details the terms and conditions for entering into a contract for the supply of the Goods as detailed in Section VI: "Schedule of Requirements" (hereinafter referred to as 'the Goods'). Bidders must go through the Tender Document for further details. 'Tender Information Summary' (TIS) is appended to Section I: Notice Inviting Tender (NIT) for ready reference. The 'Goods' may include incidental Services/ Works if so indicated. In this Tender Document, any generic reference to 'Goods' shall be deemed to include such incidental Services and Works. Bids are invited exclusively from the prequalified bidders (hereinafter called 'the Bidders') in the preceding Prequalification process (please see TIS for reference).

#### **1.2 Interpretations, Definitions, Abbreviations and Document Conventions**

Section IV: General Conditions of Contract (GCC), detailed Tenets of interpretation (GCC-clause 1.1), Definitions (GCC-clause 1.2), Document conventions (GCC-clause 1.3) and Abbreviations (GCC-clause 1.4), which shall also apply to the rest of the Tender Document.

#### **1.3 Overview of Contents**

- 1) Unless otherwise stipulated in TIS/ AITB, the Sections, Forms and Formats comprising this Tender Document are described in ITB-clauses 1.4, 1.5 and 1.6 below. Any generic reference to Tender Document shall also imply a reference to any/ all the sections, Forms, Formats and other files that comprise this Tender Document.
- 2) Bidder must submit the bid in the Forms/ Formats mentioned in ITB-clauses 1.5 and 1.6 below. The sections mentioned in ITB-clause 1.4 below need not be signed or returned by the bidders; however, Bidder must declare in his Bid Form (Form 1) that he has read, understood, complied, and stands bound by all requirements of these sections:

#### **1.4 Sections of the Tender Document (need not be signed or uploaded)**

##### **1.4.1 Sections of the Tender Document**

Unless otherwise stipulated in TIS/ AITB, the Tender Document contains the following sections, which are described in subsequent sub-clauses:

- 1) Section I: Notice Inviting Tender (NIT) and its Appendix: Tender Information Summary (TIS)
- 2) Section II: Instructions to Bidders (ITB)
- 3) Section III: Appendix to Instructions to Bidders (AITB)
- 4) Section IV: General Conditions of Contract (GCC)
- 5) Section V: Special Conditions of Contract (SCC)
- 6) Section VI: Schedule of Requirements
- 7) Section VII: Technical Specifications and Quality Assurance



## 8) Section VIII: Qualification Criteria

### **1.4.2 Section I: Notice Inviting Tender (NIT) and its Appendix: Tender Information Summary (TIS)**

Section I – Notice Inviting Tender (NIT) and its Appendix – Tender Information Summary (TIS) provide a synopsis of information relevant for a Bidder to decide on participating in the Tender. Any generic reference to NIT shall also imply a reference to TIS as well. Bidders must fill up ‘Form 5: Terms and Conditions - Compliance’ regarding any deviations from this Schedule.

### **1.4.3 Section II: Instructions to Bidders (ITB) and Section III: Appendix to Instructions to Bidders (AITB)**

Section II: “Instructions to Bidders” - ITB along with Section III: “Appendix to Instructions to Bidders – AITB” provides the relevant information as well as instructions to assist the prospective Bidders in preparation and submission of Bids. It also includes the mode and procedure adopted for receipt/ opening, scrutiny/ evaluation of Bids, and contract award. In case of a conflict, provisions of AITB shall prevail over those in the ITB. Any generic reference to ITB shall also imply a reference to AITB as well. Bidders must fill up ‘Form 5: Terms and Conditions - Compliance’ regarding any deviations from this Schedule.

### **1.4.4 Section IV: General Conditions of Contract (GCC) and Section V: Special Conditions of Contract (SCC)**

Section IV – General Conditions of Contract (GCC) and Section V – Special Conditions of Contract (SCC) describe the conditions that shall govern the resulting contract. In case of a conflict, provisions of SCC shall prevail over those in the GCC. Any generic reference to GCC shall also imply a reference to SCC as well. In case of any conflict, provisions of GCC/ SCC shall prevail over those in ITB/ AITB. Bidders must fill up ‘Form 5: Terms and Conditions - Compliance’ regarding any deviations from terms and conditions of this and other Schedules.

### **1.4.5 Section VI: Schedule of Requirements**

Section VI – Schedule of Requirements describes the Goods required; HSN codes; Quantities and Units; Delivery Requirements, Destination; transportation; terms of delivery ( FOB/CIP/DAP etc.); scope of supply (concomitant accessories; spare parts and incidental Works/ Services). The requirements may consist of more than one schedule. Each schedule may contain more than one item of Goods. Bidders must fill up ‘Form 2: ‘Schedule of Requirements - Compliance’ regarding this Schedule.

### **1.4.6 Section VII – Technical Specifications and Quality Assurance**

Section VII – Technical Specifications and Quality Assurance lays down the technical and quality assurance (including any energy-saving requirements, and Warranty Obligations) of the Goods required. It would also stipulate, if required, any compliance required by Borrower Country’s Pollution Control Entities, including transportation and handling of hazardous materials/ packaging. Bidders must fill up ‘Form 3: ‘Technical Specifications And Quality Assurance - Compliance’ regarding this Schedule. Bidder should provide the required details, information, confirmations, etc., accordingly, failing which its bid shall be liable to be rejected as nonresponsive.

### **1.4.7 Section VIII: Qualification Criteria:**

Section VIII: The Bidder should continue to meet the qualification criteria on the basis of which it has originally been prequalified. Qualification Criteria lay down the Qualifying Criteria for a bid/ Bidder to be considered a responsive bid/ bidder for further evaluation. Bids/ bidders not meeting these Qualification criteria shall be rejected as nonresponsive. Bidders must fill up 'Form 4: Confirmation/ Deviation from Qualification Criteria' and 'Form 4.1: Performance Statement' regarding this Schedule. Bidders shall attach statements and documents to confirm conformity to Qualification Criteria in this appendix.

### **1.5 Forms (To be filled, digitally signed, and uploaded by Bidders)**

Please refer to clause 1.4 above to relate the following forms to the corresponding Sections:

- 1) Form 1: Bid Form (To serve as a covering letter to both the Techno-commercial and Financial Bids)
  - (a) Form 1.1: Bidder Information
    - Form CON-1: Past Contract Non-Performance
    - Form CON-2: Pending Litigation
    - Form CON-3: Litigation History
    - Form FIN-1: Financial Status and Capacity
    - Form FIN-2: Annual Consultancy Turnover
  - (b) Form 1.2: Eligibility Declarations
  - (c) Form 1.3: OEM's Authorization
  - (d) Form 1.4: Format for Joint Bidding Agreement for Joint Venture
  - (e) Form 1.5: Format for Power of Attorney for signing of Bid
  - (f) Form 1.6: Format for Power of Attorney for Lead Member of Joint Venture
- 2) Form 2: Schedule of Requirements - Compliance
- 3) Form 3: Technical Specifications and Quality Assurance - Compliance
- 4) Form 4: Qualification Criteria - Compliance
  - (a) Form 4.1: Performance Statement
- 5) Form 5: Terms and Conditions - Compliance
- 6) Form 6: Checklist for the Bidders
- 7) Form 7: Format for Bid Security
- 8) Financial bid / Price Schedule

### **1.6 Other Formats**

- 1) Format 1: Contract Form (Not to be filled by Bidders)
  - (a) Format 1.1: Bank Guarantee Format for Performance Security
  - (b) Format 1.2: Bank Guarantee Format for Advance Payment
  - (c) Format 1.3: No Claim Certificate
  - (d) Format 1.4: Certification by Prospective Arbitrators

- 2) Format 2: Authorization for Attending Pre-bid Conference. (To be filled up, if required, by Bidder)
- 3) Format 3 : Format of Letter of Award

## **2. Procuring Entity - Rights and Disclaimers**

### **2.1 The Procuring Entity**

Bids are to be addressed to the Procuring Entity. The Tender Inviting Authority is the designated officer for providing / uploading and clarifying this Tender Document. The contract may designate, as required, Inspection Agency/ Officer and interim/ ultimate Consignee(s) who shall discharge designated function during contract execution.

### **2.2 Right to Intellectual Property and confidentiality:**

- 1) The Tender Document and associated correspondence shall always remain the property of the Procuring Entity and must not be shared with third parties or reproduced, whether in whole or part, without the Procuring Entity's prior written consent.
- 2) However, Bidder may share these to prepare and submit its bid with its employees, subcontractor(s), or holding Company. Bidder shall obtain from them an undertaking of confidentiality similar to that imposed on Bidder under this clause.
- 3) This condition shall also apply to bidders who do not submit a bid after downloading / obtaining the Tender Document or who are not awarded a contract in the process.
- 4) The obligation of the Bidders under sub-clauses above, however, shall not apply to information that:
  - (a) now or hereafter is in or enters the public domain through no fault of Bidder;
  - (b) is legally possessed by Bidder at the relevant time and was not previously obtained, directly or indirectly, from the Procuring Entity; or
  - (c) otherwise lawfully becomes available to Bidder from a third party that has no obligation of confidentiality.
- 5) The provisions of this clause shall survive completion or termination for whatever reason of the Tender Process or the contract.

### **2.3 Right to Reject any or all Bids**

The Procuring Entity reserves its right to accept or reject any or all Bids, abandon/ cancel the Tender process, and issue another tender for the same or similar Goods at any time before the award of the contract. It would have no liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for such action(s).

### **2.4 Disclaimers**

#### **2.4.1 Regarding Purpose of the Tender Document**

The Tender Document is neither an agreement nor an offer to prospective Bidder(s) or any other party hereunder. The purpose of the Tender Document is to provide the Bidder(s) with information to assist them in participation in this Tender Process.

#### **2.4.2 Regarding Documents/ guidelines**

The Tender Document, ensuing communications, and Contracts shall determine the legal and commercial relationship between the bidders/ contractors and the Procuring Entity. No other Government or Procuring Entity's document/ guidelines/ Manuals including its Procurement Manual (for internal and official use of its officers), notwithstanding any mention thereof in the Tender Document, shall have any locus-standi in such a relationship.

#### **2.4.3 Regarding Information Provided**

Information contained in the Tender Document or subsequently provided to the Bidder(s) is on the terms and conditions set out in the Tender Document or subject to which that was provided. Similar terms apply to information provided verbally or in documentary or any other form, directly or indirectly, by the Procuring Entity or any of its employees or associated agencies.

#### **2.4.4 Regarding Tender Document:**

- 1) The Tender Document does not purport to contain all the information Bidder(s) may require. It may not address the needs of all Bidders. They should conduct due diligence, investigation, and analysis, check the information's accuracy, reliability, and completeness, and obtain independent advice from appropriate sources. Information provided in the Tender Document to the Bidder(s) is on a wide range of matters, some of which may depend upon interpreting the law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Procuring Entity, its employees and other associated agencies accept no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.
- 2) The Procuring Entity, its employees and other associated agencies make no representation or warranty for the accuracy, adequacy, correctness, completeness or reliability, assessment, assumption, statement, or information in the Tender Document. They have no legal liability, whether resulting from negligence or otherwise, for any loss, damages, cost, or expense that may arise from/ incurred/ suffered howsoever caused to any person, including any Bidder, on such account.

### **3. Bidders - Eligibility**

#### **3.1 Bidders**

Subject to provisions in the following clauses in this section and provisions in Tender Document, this invitation for Bids is open to all bidders who fulfil the 'Eligibility Criteria' and 'Qualification Criteria' stipulated in the Tender Document. In the case of the Second Stage (of two Stage Bidding or PQB) or Special Limited Tenders, this invitation is open only to such bidders who have been previously prequalified and continue to meet the prequalification criteria at the time of tendering process.

#### **3.2 Eligibility Criteria for Participation in this Tender**

Section III: Annexure To Instructions To Bidders (AITB)

[15]

3.2.1 Subject to provisions in this Tender Document, participation in this Tender Process is open to all prequalified bidders who fulfil the 'Eligibility' and 'Qualification' criteria prescribed in the Prequalification Application Document. Bidder should meet (as on the date of his bid submission and should continue to meet till the award of the contract) the 'Eligibility Criteria' detailed in the Prequalification Application Document and AITB 3.2, which shall be considered to be part of this clause of ITB (even though it is not being reproduced here for the sake of brevity).

3.2.2 Bidder shall submit a declaration about the 'Eligibility Criteria' compliance in Form 1.2 – Eligibility Declarations. Other Criteria are stated in AITB.

### **3.3 Conflict of Interest.**

A bidder shall not have a conflict of interest (the "**Conflict of Interest**"), that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified as nonresponsive. A Bidder shall be required to declare the absence of such conflict of interest in Form 1.2 - Eligibility Declarations. A bidder in this Tender Process shall be considered to have a conflict of interest if the bidder:

- 1) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
- 2) receives or have received any direct or indirect subsidy/ financial stake from another bidder; or
- 3) has the same legal representative/ agent as another bidder for purposes of this bid. A Principal can authorize only one agent, and an agent also should not represent or quote on behalf of more than one Principal; or
- 4) has a relationship with another bidder, directly or through common third parties, that puts it in a position to have access to information about or influence the bid of another Bidder or influence the decisions of the Procuring Entity regarding this Tender process; or
- 5) participates in more than one bid in this tender process. Participation in any capacity by a Bidder (including the participation of a Bidder as sub-contractor in another bid or vice-versa) in more than one bid shall result in the disqualification of all bids in which he is a party. However, this does not limit the participation of a non-bidder firm as a sub-contractor in more than one bid; or
- 6) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services that it provided (or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm), for the procurement planning (inter-alia preparation of feasibility/ cost estimates/ Detailed Project Report (DPR), design/ technical specifications, terms of reference (ToR)/ Activity Schedule/ schedule of requirements or the Tender Document, etc.) of this Tender process; or
- 7) has a close business or family relationship with a staff of the Procuring Entity who: (i) are directly or indirectly involved in the preparation of the Tender document or specifications of the Tender Process, and/or the evaluation of bids; or (ii) would be involved in the implementation or supervision of resulting Contract unless the conflict stemming from such

relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Tender process and execution of the Contract.

#### **4. Applicable Procedures**

This Tender Document is governed by the following guidelines: -

- 4.1** Indian Development and Economic Assistance Scheme (IDEAS) Guidelines issued by GOI vide letter F.No.5/7/2019-IDEAS dated March 31, 2022 requires inter alia, goods and services for minimum 75% value of the contracts covered under the Line of Credit, must be sourced from India (Indian Content).
- 4.2** As detailed in the Prequalification process and in the ITB-clause 3.3, Government of India policies restrict the participation of entities from i) Certain countries sharing land borders with India and ii) Countries that restrict the participation of Bidders from India. Bidders have already submitted declarations regarding these restrictions during the Prequalification process. They should ensure that they continue to comply with such declarations.
- 4.3** All the prequalified bidders or members of the JV shall certify that they are not blacklisted or debarred by any multilateral development bank (MDB), such as World Bank, Asian Development Bank, or any authority of GOI or the Borrowing Government. The list of debarred firms and individuals by certain leading MDBs is available as specified in TIS.
- 4.4** Debarment policy of Exim Bank.
- 4.5** Procurement Guidelines of Export-Import Bank of India.
- 4.6** Applicable laws of Host Instrumentalities/Borrower Government.
- 4.7** Public Procurement Orders No. 1 & No. 2 dated July 23, 2020, Public Procurement Order No. 3 dated July 24, 2020 and Public Procurement Order No. 4 dated February 23, 2023 issued by the Public Procurement Division of the Department of Expenditure, Ministry of Finance, Government of India

#### **5. The Goods, Eligible Goods and Basis of Evaluation**

##### **5.1 Eligible Goods –Origin and Minimum Local Content**

Unless otherwise stipulated in the Tender Document, all ‘Goods’ and ‘incidental Works/ Service’ to be supplied under the contract must conform to i) restrictions on certain countries with land-borders with India (ITB-clause 3.3); ii) minimum Indian content (as per IDEAS Guidelines –ITB-clause 4.1)..

##### **5.2 Basis of Evaluation for Schedules/ packages**

Unless otherwise stipulated in the TIS/ AITB, if there is more than one schedule/ package in Section VI: Schedule of Requirements, evaluation of financial ranking of bids shall be done separately for each schedule / package, and Bidder has the option to submit its quotation for any one or more schedules/ packages and, also, to offer special discount for combined schedules. Bidder shall quote only for the package for which it has been prequalified.

Unless otherwise stipulated in the TIS/ AITB, if there is only a list of items without grouping into packages, evaluation of financial ranking of bids shall be done for each item separately, and Bidder

needs to submit its quotation for any one or more packages and, also, to offer special discount for combined packages, for which it has been prequalified. The bidder must submit bids for all packages, for which it has been prequalified. Unless otherwise stipulated in the TIS/ AITB, if there is only one item in the Goods with several packages, evaluation of financial ranking of bids shall be done separately for each package included in that item separately, and Bidder to submit its quotation for any one or more packages for which it has been prequalified and, also, to offer special discounts for all packages.

## 6. Bid Prices, Taxes and Duties

### 6.1 Prices

#### 6.1.1 Competitive and Independent Prices

- a) The prices should be arrived at independently, without restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to:
  - i) those prices; or
  - ii) the intention to submit an offer; or
  - iii) the methods or factors used to calculate the prices offered.
- b) The prices should neither be knowingly disclosed by the Bidder, directly or indirectly, to any other bidder or competitor before bid opening or contract award unless otherwise required by law.

#### 6.1.2 Price Components

- 1) Bidder shall indicate in the Price Schedule all the specified components of prices shown therein, including the unit prices and total bid prices.
- 2) **The break-up of Prices based on Origin of Goods:** The quoted prices for Goods offered from India and those offered from outside India should be indicated separately in the applicable Price Schedules. The prices in the corresponding price schedule shall be entered separately in the following manner:
  - (a) **Goods from India and Third Country:** For Goods offered from India and such required goods which are not available in India and offered from Third Country, the prices in the corresponding price schedules shall be entered separately in the following manner:
    - (i) The price of Goods quoted FOB port of shipment or CIP specified place of destination in Borrowing Country or DAP at place of destination in Borrowing Country as indicated in the Schedule of Requirements.
    - (ii) The charges for freight, inland transportation, insurance, and other costs incidental to the delivery of the Goods from the port of entry in the destination country to their final destination, as stipulated in the Schedule of Requirements.
    - (iii) The charges for incidental Works/ Services, as and if mentioned in the Schedule of Requirements, showing break-up as per their country of origin.

- (iv) Unless otherwise explicitly indicated in the contract, the terms FOB, CIP, DAP. etc. for imported Goods offered from abroad shall be governed by the rules & regulations prescribed in the current edition of INCOTERMS, published by the International Chamber of Commerce, Paris.
  - (v) The need for an indication of all such price components by the Bidders, as required in this clause (viz., ITB clause 6.1.2), is for comparison of the Bids by the Procuring Entity and shall in no way restrict the Procuring Entity's right to award the contract on the selected Bidder on any of the terms offered.
  - (vi) The bidder must meet the Indian Content as required in the Project and import of goods from third country shall be in compliance with the provisions contained in Public Procurement Orders No. 1 & No. 2 dated July 23, 2020, Public Procurement Order No. 3 dated July 24, 2020 and Public Procurement Order No. 4 dated February 23, 2023 issued by the Public Procurement Division of the Department of Expenditure, Ministry of Finance, Government of India as applicable to the tendering process both for the Prime contractor and subcontractors. Accordingly, Bidders are advised to adhere to the requirements under these Orders. These requirements are applicable to each Prime contractor/consultant and Subcontractor(s)/ Subconsultant(s).
- (b) **Goods from within the Host Country:** For Goods offered from within the Host Country shall be guided by the clause 10.2, the prices in the corresponding price schedule shall be entered separately in the following manner:
- (i) The price of the Goods quoted ex-factory, ex-showroom, ex-warehouse or off-the-shelf, as applicable, shall be assumed to include all taxes and duties like GST, customs duty, etc. already paid or payable on the components and raw material used in the manufacture or assembly of the Goods or on the previously imported Goods of foreign origin.
  - (ii) Above goods shall be free from all kinds of taxes and duties of any nature whatsoever levied in the Borrowing Country including corporate/ personal/ value added taxes, Import/Custom Duties, Special levies and social security contributions for temporary employees deputed by Indian entity in relation to the contract execution in the borrowing country, including tax exemptions if applicable for eligible services to be rendered locally.
  - (iii) Charges towards inland transportation, insurance, and other local costs incidental to the delivery of the Goods to their final destination as stipulated in Section VI: Schedule of Requirements; and
  - (iv) The price of incidental Works/ Services, as and if mentioned in Section VI: Schedule of Requirements.

### 3) **Price Components in case of Capital Goods/ Machinery and Plant**

If TIS/ AITB declares it to be the procurement of Capital Goods/ Machinery & Plant following price components shall be provided in Form 2: Schedule of Requirements – Compliance and Form 3: Technical Specifications and Quality Assurance – Compliance:



**(a) Compulsory Spares for Two Year's Maintenance**

If so stipulated in TIS/ AITB, the Bidders shall also quote in their financial bids the prices of spares and their quantities estimated to be required for maintenance of equipment two years beyond the warranty period. The total cost of such spares shall be added to the cost of equipment and incidental works/ services to evaluate financial bids. These spares shall be supplied along with the main equipment.

**(b) Annual Maintenance Contract (AMC)**

If so stipulated in TIS/ AITB, the Bidders shall quote post-warranty Annual Maintenance Contract (AMC) for the period stated in TIA/AITB after the expiry of the warranty period. They should mention the maintenance schedule under the AMC, giving the charges for the AMC maintenance schedule and other details of spares to be used in such preventive maintenance. The terms & conditions of AMC must specify the maximum down time and maximum response time. The total of AMC charges for the stipulated period and the cost of spares used in AMC during these five years would be included in the FOB/CIP/DAP price quoted for the equipment for comparative evaluation of offer. However, Procuring entity shall retain his right to enter or not enter into such an AMC contract with the successful bidder/ contractor.

**(c) Insurance**

If so stipulated in TIS/ AITB, the Bidders shall also quote in their financial bids the cost of Insurance of the consignment of the equipment and spares upto the ultimate consignee. If not explicitly quoted, it shall be assumed to be included in the process quoted for the equipment.

**(d) Prices of Other Spares usually needed for Maintenance**

If so stipulated in TIS/ AITB, the Bidders shall also quote in their financial bids the indicative prices of crucial spares and their quantities estimated to be required for maintenance of equipment beyond the above mentioned two years period. This information is for future spares ordering, and the prices would not be added to the bid amount. The successful bidder/ contractor shall endeavour to maintain such prices over a reasonable period. The Bidders, who are OEM, must give undertaking for supply of spare parts for a period of the expected life of the machine/equipment. Other tenderers must submit undertakings from their OEM to supply spare parts for a period of the expected life of the machine/equipment. In this connection, GCC-6.6 (Spare Parts in Supply of Capital Goods/Machinery and Plant) shall also be applicable.

**(e) Incidental Works/ Services**

If so stipulated in TIS/ AITB, the Bidders shall provide the specified incidental works/ services (e.g., Installation, Commissioning, Training of Operator, etc.). The Bidders may quote separate prices for these. Otherwise, it shall be assumed to be included in the prices of the main equipment price.

- 4) The indication of such price components is to compare the Bids and shall not restrict the Procuring Entity's right to award the contract on any terms offered.

### **6.1.3 Price Schedule**

- 1) Bidders must fill in the relevant fields without any alteration/ deletion/ modification of other portions of the price schedule. Delivery Schedule and Terms of delivery are also to be quoted. All the columns shown in the price schedule should be filled up as required. If any column does not apply to a Bidder, he should clarify the same.
- 2) The quoted price shall be considered to include all relevant financial implications, including inter-alia the scope of the Goods to be supplied, location of the bidder, location of the consignee(s), terms of delivery, extant rules and regulations relating to transportation, environment, labour of the Host country and in India.

### **6.1.4 Taxes**

As per the Guidelines issued by the Government of India vide letter F.No. 5/7/2019-IDEAS dated March 31, 2022, the goods and services provided under this contract to be funded under an LOC from Exim Bank shall be free from all kinds of taxes and duties of any nature whatsoever levied in the Borrowing Country including corporate/ personal/ value added taxes, Import/Custom Duties, Special levies and social security contributions for temporary employees deputed by Indian entity in relation to the contract execution in the borrowing country, including tax exemptions if applicable for eligible services to be rendered locally. If the domestic laws/rules of the Borrowing Country prohibit exemption of any taxes to bilateral partner/multilateral institution extending development assistance to it, the same have to be paid by the Indian entity from its own resources and should be reimbursed by the Purchaser to the Indian entity. No tax is liable to be paid from the LOC proceeds.

### **6.1.5 Currencies of Bid and Payment**

Unless otherwise stipulated in the Tender Document, the currency of bid and payment shall be quoted by Bidder entirely in US Dollars. All payments shall be made in US Dollars or in equivalent Indian Rupees only.

### **6.1.6 Non-compliance**

Tenders, where prices are quoted in any other way, shall be rejected as nonresponsive.

## **6.2 Firm/ Variable Price**

### **6.2.1 Firm Price**

Unless otherwise stipulated in the AITB, prices quoted by Bidder shall remain firm and fixed during the currency of the contract and not subject to variation on any account.

### **6.2.2 Price Variation Clause:**

Unless otherwise stipulated in the AITB, price variation is not applicable.

## **6.3 Goods and Services Tax (GST)**

### **6.3.1 GST Registration Status:**

Bidders should ensure that they are GST compliant. Bidder should be registered under GST and furnish GSTIN number and GST Registration Certificate in their offer unless they are specifically exempted from registration under specific notification/ circular/ section/ rule issued by statutory authorities.

### **6.3.2 Host Country Taxes and Duties:**

The goods and services provided under this Supply Project shall be free from all kinds of taxes and duties of any nature in the Country. The Procuring Entity will coordinate and ensure that consent over Tax Exemption has been obtained from the Host Country authorities.

## **6.4 Payments**

### **6.4.1 General**

As per GOI Guidelines, payments will be linked to milestones and payment terms laid down in clause GCC 10.3 shall be applicable.

### **6.4.2 No Advance Payments**

Unless otherwise stipulated, no advance payment of any type (Mobilization, secured advances etc.), shall be made by the Procuring Entity to the contractor. If so, provided the conditions for such advances shall be as per conditions stipulated therefor.

## **7. Obtaining the Tender Document; Corrigenda and Clarifications**

### **7.1 Obtaining the Tender Document**

The Tender Document shall be published and be available for download as mentioned in TIS or will be shared by the TIA. The Bidders can obtain the Tender Document after the date and time of the start of availability till the deadline for availability. If the office happens to be closed on the deadline for the availability of the Tender Document, the deadline shall not be extended.

### **7.2 Corrigenda/ Addenda to Tender Document**

Before the deadline for submitting bids, the Procuring Entity may update, amend, modify, or supplement the information, assessment or assumptions contained in the Tender Document by issuing a corrigenda and addenda. The corrigenda and addenda shall be published in the same manner as the original Tender Document. Without any liability or obligation, the Portal may send intimation of such corrigenda/ addenda to bidders who have downloaded the document under their login. However, the bidders' responsibility is to check the website(s) for any corrigenda/ addenda. Any corrigendum or addendum thus issued shall be considered a part of the Tender Document. To give reasonable time to the prospective bidders to take such corrigendum/ addendum into account in preparing their bids, the Procuring Entity may suitably extend the deadline for the bid submission, as necessary. After the Procuring Entity makes such modifications, any Bidder who has submitted his bid in response to the original invitation shall have the opportunity to either withdraw his bid or re-submit his bid superseding the original bid within the extended time of submission as per ITB-clause 10.4.1 below.

### **7.3 Clarification on the Tender Document**

A Bidder may seek clarification of the Tender Document from Office/ Contact Person/ e-procurement Help Desk as mentioned in TIS, as may be applicable, provided the clarifications are raised before the clarification end date mentioned in TIS (or if not mentioned, within 14 days before the deadline for the

bid submission). The Procuring Entity shall respond within 5 working days of receipt of such a request for clarification. The query and clarification shall be shared on the portal with all the prospective bidders. Any modification of the Tender Document that may become necessary due to the clarification shall be made by the Procuring Entity through an Addendum/ Corrigendum issue under the sub-clause above.

## **8. Pre-bid Conference**

- 1) If a Pre-bid conference is stipulated in the TIS, prospective bidders interested in participating in this tender may attend a Pre-bid conference to clarify techno-commercial conditions of the Tenders at the venue, date and time specified therein. Participation in the Pre-bid conference is restricted to the prequalified bidders who have downloaded / obtained the Tender Document.
- 2) Participation is not mandatory. However, if a bidder chooses not to (or fails to) participate in the Pre-bid conference or does not submit a written query, it shall be assumed that they have no issues regarding the techno/ commercial conditions.
- 3) The date and time by which the written queries for the Pre-bid conference must reach the authority and the last date for registration for participation in the Pre-bid conference are also mentioned in the TIS. If the dates are not mentioned, such date and time shall be 14 days before the date and time of the Pre-bid conference.
- 4) Delegates participating in the Pre-bid conference must provide a photo identity and an authorization letter as per the format in Format 2: "Authorization for attending a Pre-bid Conference" from their Company/ principals; else, they shall not be allowed to participate. The Pre-bid conference may also be held online at the discretion of the Procuring Entity.
- 5) After the Pre-bid conference, Minutes of the Pre-bid conference shall be published on the Procuring Entity's portal or issued to the prequalified bidders within seven days from the Pre-bid conference. If required, a clarification letter and corrigendum to Tender Document shall be issued, containing amendments of various provisions of the Tender Document, which shall form part of the Tender Document. As per ITB-clause 7.2 above, to give reasonable time to the prospective bidders to take such clarifications into account in preparing their bids, the Procuring Entity may suitably extend, as necessary, the deadline for the bid submission.

## **9. Preparation of Bids**

### **9.1 The bid**

#### **9.1.1 Language of the bid**

Unless otherwise stipulated in the AITB, the bid submitted by Bidder and all subsequent correspondence and documents relating to the bid exchanged between Bidder and the Procuring Entity shall be written in English. However, the language of any printed literature furnished by Bidder in connection with its bid may be written in any other language provided a translation accompanies the same in the bid language. For purposes of interpretation of the bid, translation in the language of the bid shall prevail.

#### **9.1.2 Acquaintance with Local Conditions and Factors**

The Bidder, at his own cost, responsibility, and risk, is encouraged to visit, examine, and familiarise himself with all the site/ local conditions and factors. The Bidder acknowledges that before the submission of the bid, he has, after a complete and careful examination, made an independent evaluation of the Site/ local conditions, the legal, environmental, infrastructure, logistics, communications and any other conditions or factors of which would have any effect on the price to be quoted by him or affecting performance/ completion of the contract. Bidders shall themselves be responsible for compliance with Rules, Regulations, Laws and Acts in force from time to time at relevant places. On such matters, the Procuring Entity shall have no responsibility and shall not entertain any request from the bidders in these regards.

### **9.1.3 Cost of Bidding**

The Bidder(s) shall bear all direct or consequential costs, losses and expenditure associated with or relating to the preparation, submission, and subsequent processing of their Bids, including but not limited to preparation, copying, postage, delivery fees, expenses associated with any submission of samples, demonstrations, or presentations which the Procuring Entity may require, or any other costs incurred in connection with or relating to their Bids. All such costs, losses and expenses shall remain with the Bidder(s), and the Procuring Entity shall not be liable in any manner whatsoever for the same or any other costs, losses and expenses incurred by a Bidder(s) for participation in the Tender Process, regardless of the conduct or outcome of the Tender Process.

### **9.1.4 Interpretation of Provisions of the Tender Document**

The provisions in the Tender Document must be interpreted in the context in which these appear. Any interpretation of these provisions far removed from such context or other contrived or in between-the-lines interpretation is unacceptable.

### **9.1.5 Quote Quantities/ Prices in both Numerals and Words**

Although the software on the Portal may convert quantities/ rates/ amounts in numerical digits in Bids to words, the bidders are advised to ensure that there is no ambiguity in this regard.

### **9.1.6 Alternative Bids not Allowed**

Unless otherwise stipulated in the TIS/ AITB, conditional offers, alternative offers, multiple bids by a bidder shall not be considered.

## **9.2 Documents comprising the bid:**

### **9.2.1 Techno-commercial bid/ Cover**

"Technical Bid" shall include inter-alia the original or scanned copies of duly signed or digitally signed copies of the following documents in PDF format. PDF documents should not be password protected. If so, stipulated in TIS/ AITB, specified originals or self-certified copies of originals shall also be required to be physically submitted as per instruction contained therein. *No price details should be given or hinted at in the Technical bid:*

- 1) Form 7: Format for Bid Security: A Bid Security in the format provided therein shall be uploaded as per ITB clause 9.4.
- 2) Form 1: Bid Form (to serve as covering letter and declarations applicable for both the Technical bid and Financial bid);

- (a) Form 1.1: Bidder Information;
    - Form CON-1: Past Contract Non-Performance
    - Form CON-2: Pending Litigation
    - Form CON-3: Litigation History
    - Form FIN-1: Financial Status and Capacity
    - Form FIN-2: Annual Consultancy Turnover
  - (b) Form 1.2: Eligibility Declarations;
  - (c) If applicable, Form 1.3: OEM's Authorization (Ref ITB-Clause 1.5 also): Unless specifically barred in TIS/ AITB, in case Bidder offers to supply Goods, which some other firm (OEM) manufactures, Bidder must have been duly authorized by the OEM to quote for and supply the Goods to the Procuring Entity in this particular tender specifically. Bidder shall submit OEM's authorization letter to this effect as per this.
  - (d) If applicable, Form 1.4: Format for Joint Bidding Agreement for Joint Venture
  - (e) If applicable, Form 1.5: Format for Power of Attorney for signing of Bid
  - (f) If applicable, Format for Power of Attorney for Lead Member of Joint Venture
- 3) Form 4: 'Qualification Criteria - Compliance': Documentary evidence needed to establish the Bidder's qualifications as stipulated in Section VIII: Qualification Criteria as follows. Besides the stipulated documents, other supporting documents, literature, pamphlets may also be attached:
- (a) Bidder shall also submit Form 4.1: Performance Statement to prove his technical, production and financial capabilities and eligibility, commensurate with requirements of this Tender.
- 4) Form 2: Schedule of Requirements - Compliance: Bidders should fill this form to detail the Schedules of Goods offered by them, maintaining the same numbering and structure. They may add additional details not covered elsewhere in their bid. They should highlight here any deviations/ exceptions/ reservations regarding Section VI: 'Schedule of Requirements', in a chart form, without any ambiguity or conditionality along with justification and supporting documents. Even in case of no deviation, please fill in confirmations and nil deviation statements. If mentioned elsewhere in the bid, such deviations shall not be recognised and shall be null and void.
- 5) Form 3 - Technical Specifications and Quality Assurance - Compliance: Bidder shall upload the required and relevant documents like technical data, literature, drawings, test Reports/ Certificates and or/ or Type Test Certificates (if applicable/ necessary) from NABL/ ILAC/ Government lab with supporting documents, to establish that the goods and incidental Works/ Services offered in the bid fully conform to the goods and Works/ Services specified by the Procuring Entity in the Tender Document. Bidder is also required to provide clause by clause compliance/ deviation Statement in a chart form (without ambiguity or conditionality along with justification) relating to all parameters of Technical Specifications, Quality Assurance. Even in case of no deviation, please fill in confirmations and nil deviation statements. If mentioned elsewhere in the bid, such deviations shall not be recognised and shall be null and void.

- 6) Form 5 - Terms and Conditions - Compliance: Bidder must comply with the entire commercial and other clauses of this Tender Document. Any deviations should be listed in a chart form without ambiguity or conditionality, along with justification and supporting documents. All such Statements and Documents shall be uploaded / submitted, as applicable, as Form 5. Even in case of no deviation, please fill in confirmations and nil deviation statements. If mentioned elsewhere in the bid, such deviations shall not be recognised and shall be null and void.
- 7) Form 6- Checklist for the Bidders. Bidder must also upload the Checklist given in the Tender Document as Form 6 to confirm that he has complied with all the instructions in the Tender Document, and nothing is inadvertently left out. This checklist is only for general guidance and is not comprehensive, and does not absolve Bidder from complying with all the requirements stipulated elsewhere in the Tender Document.
- 8) Any other format/ form if stipulated in AITB or if considered relevant by the bidder.

### **9.2.2 Financial bid/ Cover**

"Financial bid" shall comprise the Price Schedule considering all financially relevant details, including Taxes and Duties as per ITB-clause 6.3. No additional technical details, which have not been brought out in the Technical bid shall be brought out in the Financial bid. The financial bid will be opened only after completion of the evaluation of the technical bid.

### **9.3 Bid Validity**

- 1) Unless specified to the contrary in the TIS/ AITB, Bids shall remain valid for a period not less than 90 days from the deadline for the bid submission stipulated in TIS. A bid valid for a shorter period shall be rejected as nonresponsive.
- 2) In case the day upto which the bids are to remain valid falls on/ subsequently declared a holiday or closed day for the Procuring Entity, the bid validity shall automatically be deemed to be extended upto the next working day.
- 3) In exceptional circumstances, before the expiry of the original time limit, the Procuring Entity may request the bidders to extend the validity period for a specified additional period. The request and the bidders' responses shall be made in writing or electronically. A bidder may agree to or reject the request. A bidder who has agreed to the Procuring Entity's request for extension of bid validity, in no case, he shall be permitted to modify his bid.

### **9.4 Bid Security - Related Documents**

#### **9.4.1 EMD**

- 1) EMD as Bid Security: The bidder shall provide Bid Security in Form 7 as Earnest Money Deposit (EMD) for the amount shown in the TIS.
- 2) Modalities of EMD: Unless otherwise provided in TIS, the earnest money shall be denominated in US Dollars. Wherever relevant, it shall be in favour of the Account specified in TIS and shall be furnished in one of the following modalities valid for forty-five days beyond the validity of the Bid:
  - a) Bank Guarantee from any of the all India financial institutions or commercial banks or international banks enforceable in the Borrower's country as acceptable to the Procuring Entity, in the format specified in Form 7, or

- b) Payment online in an acceptable form
- 3) Forfeiture of EMD: EMD shall be forfeited if the bidder breaches any of the following obligation(s) under the Tender Document :
- (a) withdraws or amends his Proposal or impairs or derogates from the Proposal in any respect within the period of validity of its Proposal; or
  - (b) after having been notified within the period of Proposal validity of the acceptance of his Proposal by the Procuring Entity:
    - i) refuses to or fails to submit the original documents for scrutiny or the required Performance Security within the stipulated time as per the Tender document's conditions; or
    - ii) fails or refuses to sign the contract; or
    - iii) fails to accept arithmetical corrections of its Bid.
- 4) Return of EMD : Unsuccessful bidders' EMD shall be returned to them without any interest not later than thirty days after the conclusion of the resultant contract. Successful bidder's EMD shall be returned without any interest after receipt of performance security from them.

#### **9.5 Non-compliance with these provisions**

Bids are liable to be rejected as nonresponsive if a Bidder:

- 1) fails to provide and/ or comply with the required information, instructions, etc., incorporated in the Tender Document or gives evasive information/ reply against any such stipulations.
- 2) furnishes wrong and/ or misleading data, statement(s), etc. In such a situation, besides rejection of the bid as nonresponsive, it is liable to attract other punitive actions under relevant provisions of the Tender Document for violation of the Code of Integrity.

## **10. Submission of Bids**

### **10.1 Relationship between Bidder and eProcurement Portal**

In case the Bidding Process is through e-Procurement Portal of the Borrower Country, Bidders must acquaint and train themselves with the rules, regulations, procedures and implied conditions/ agreements of the Portal. Bidders intending to participate in the bid shall be required to register in the Portal. Bidders shall settle clarifications and disputes, if any, regarding the Portal directly with them. In case of conflict between provisions of the Portal with the Tender Document, provisions of the Portal shall prevail. Bidders may study the resources provided by the Portal for Bidders. The Bidder may seek help / clarification from TIA.

### **10.2 Signing of bid**

The individual signing/ digitally signing the bid or any other connected documents should submit an authenticated copy of the document(s), which authorizes the signatory to commit and submit bids on behalf of the bidder in Form 1.1: Bidder Information.

### **10.3 Submission/ uploading of Bids.**



### 10.3.1 Submission/ Uploading to the Portal

- 1) Sealing and Marking of Bids : The Bidder shall deliver the Bid in two separate, sealed **envelopes** (the Technical Part and the Financial Part). These two envelopes shall be enclosed in a sealed outer envelope marked "ORIGINAL BID".
- 2) In addition, the Bidder shall submit copies of the Bid in the number specified **in the AITB**. Copies of the Technical Part shall be placed in a separate sealed envelope marked "COPIES: TECHNICAL PART". Copies of the Financial Part shall be placed in a separate sealed envelope marked "COPIES: FINANCIAL PART". The Bidder shall place both of these envelopes in a separate, sealed outer envelope marked "BID COPIES". In the event of any discrepancy between the original and the copies, the original shall prevail. If alternative Bids are permitted in accordance with ITB 9.1.6, the alternative Bids shall be submitted as follows: the original of the alternative Bid Technical Part shall be placed in a sealed envelope marked "ALTERNATIVE BID – TECHNICAL PART" and the Financial Part shall be placed in a sealed envelope marked "ALTERNATIVE BID – FINANCIAL PART" and these two separate sealed envelopes then enclosed within a sealed outer envelope marked "ALTERNATIVE BID – ORIGINAL", the copies of the alternative Bid will be placed in separate sealed envelopes marked "ALTERNATIVE BID – COPIES OF TECHNICAL PART", and "ALTERNATIVE BID – COPIES OF FINANCIAL PART" and enclosed in a separate sealed outer envelope marked "ALTERNATIVE BID - COPIES".
- 3) The envelopes marked "ORIGINAL BID" and "BID COPIES" (and, if appropriate, a third envelope marked "ALTERNATIVE BID") shall be enclosed in a separate sealed outer envelope for submission to the Procuring Entity.
- 4) All inner and outer envelopes, shall:
  - (a) bear the name and address of the Bidder;
  - (b) be addressed to the Procuring Entity in accordance with ITB 10.3(6);
  - (c) bear the specific identification of this Bidding process indicated in TIS; and
  - (d) bear a warning not to open before the time and date for Bid opening.
- 5) If all envelopes are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the Bid.
- 6) Deadline for Submission of Bids : Bids must be received by the Procuring Entity at the address and no later than the date and time specified **in the TIS and AITB**. When so specified **in the AITB**, Bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the electronic Bid submission procedures specified **in the AITB**.
- 7) The Procuring Entity may, at its discretion, extend the deadline for the submission of Bids by amending the bidding document in accordance with ITB 7.2, in which case all rights and obligations of the Procuring Entity and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

### 10.3.2 Implied acceptance of procedures by Bidders

Submission of bid in response to the Tender Document is deemed to be acceptance of the e-Procurement and tender procedures and conditions of the Tender Document.

### **10.3.3 Late Bids**

The bidder shall not be able to submit his bid after the expiry of the deadline for the bid submission (as per server time). Therefore, in eProcurement, a situation of Late Tender does not arise.

## **10.4 Modification, Resubmission and Withdrawal of Bids**

### **10.4.1 Modification & Resubmission**

Once submitted in e-Procurement, Bidder may not view or modify his bid since it is locked. However, resubmission of the bid by the bidders for any number of times superseding earlier bid(s) before the date and time of submission is allowed. Resubmission of a bid shall require uploading of all documents, including financial bid afresh. The system shall consider only the last bid submitted as the valid bid. The Bidders are requested to refer to the e-procurement guidelines of the TIA.

### **10.4.2 Withdrawal**

- 1) The bidder may withdraw his bid before the bid submission deadline, and it shall be marked as withdrawn and shall not get opened during the Bid opening.
- 2) No bid should be withdrawn after the deadline for the bid submission and before the expiry of the bid validity period. If a Bidder withdraws the bid during this period, the Procuring Entity shall be within its right to enforce Bid Security, in addition to other punitive actions provided in the Tender Document for such misdemeanour.

## **11. Bid Opening**

The date & time of the opening of bids is as stipulated in TIS. Bids cannot be opened before the specified date & time, even by the Tender Inviting Officer, the Procurement Officer, or the Publisher. If the specified date of Bid Opening falls on or is subsequently declared a holiday or closed day for the Procuring Entity, the Bids shall be opened at the appointed time on the next working day. The Financial Bid will be opened after declaration of the result of technical bid. The Bidders are requested to refer to the e-procurement guidelines of the TIA.

## **12. Evaluation of Bids and Award of Contract**

### **12.1 General norms**

#### **12.1.1 Evaluation based only on declared criteria.**

The evaluation shall be based upon scrutiny and examination of all relevant data and details submitted by Bidder in its/ his bid and other allied information deemed appropriate by Procuring Entity. Evaluation of bids shall be based only on the criteria/ conditions included in the Tender Document.

#### **12.1.2 Deviations/ Reservations / Omissions – Substantive or Minor**

- 1) During the evaluation of Bids, the following definitions apply:
  - (a) "Deviation" is a departure from the requirements specified in the Tender Document;

- (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document; and
  - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Tender Document.
- 2) A deviation/ reservation/ omission from the requirements of the Tender Document shall be considered as a substantive deviation as per the following norm, and the rest shall be considered as Minor deviation:
    - (d) which affects in any substantive way the scope, quality or performance of the product;
    - (e) which limits in any substantive way, inconsistent with the Tender Document, the Procuring Entity's rights or the Bidder's obligations under the contract; or
    - (f) Whose rectification would unfairly affect the competitive position of other Bidders presenting substantively responsive Bids.
  - 3) The decision of the Procuring Entity shall be final in this regard. Bids with substantive deviations shall be rejected as nonresponsive.
  - 4) Variations and deviations and other offered benefits (techno-commercial or financial) above the scope/ quantum of the Goods specified in the Tender Document shall not influence evaluation of Bids. If the bid is otherwise successful, such benefits shall be availed by the Procuring Entity, and these would become part of the contract.
  - 5) The Procuring Entity reserves the right to accept or reject bids with any minor deviations. Wherever necessary; the Procuring Entity shall convey its observation as per ITB-clause 12.1.3 below, on such 'minor' issues to Bidder. asking the Bidder to respond by a specified date. If Bidder does not reply by the specified date or gives an evasive reply without clarifying the point at issue in clear terms, that bid shall be liable to be rejected as nonresponsive.

### **12.1.3 Clarification of Bids and shortfall documents**

- 1) During the evaluation of Techno commercial or Financial Bids, the Procuring Entity may, at its discretion, but without any obligation to do so, ask Bidder to clarify its bid by a specified date. Bidder should answer the clarification within that specified date (or, if not specified, 7 days from the date of receipt of such request). The request for clarification shall be submitted in writing or electronically, and no change in prices or substance of the bid shall be sought, offered, or permitted that may grant any undue advantage to such bidder. Any clarification submitted by a Bidder regarding its Bid that is not in response to a request by the purchasing Entity shall not be considered.
- 2) If discrepancies exist between the uploaded scanned copies and the Originals submitted by the bidder, the original copy's text, etc., shall prevail. Any substantive discrepancy shall be construed as a violation of the Code of Integrity, and the bid shall be liable to be rejected as nonresponsive in addition to other punitive actions under the Tender Document for violation of the Code of Conduct.
- 3) The Procuring Entity reserves its right to, but without any obligation to do so, to seek any shortfall information/ documents only in case of historical documents which pre-existed at the time of the Bid Opening, and which have not undergone change since then and does not grant any undue advantage to any bidder.

#### **12.1.4 Contacting Procuring Entity during the evaluation**

From the time of bid submission to awarding the contract, no Bidder shall contact the Procuring Entity on any matter relating to the submitted bid. If a Bidder needs to contact the Procuring Entity for any reason relating to this tender and/ or its bid, it should do so only in writing or electronically. Any effort by a Bidder to influence the Procuring Entity during the processing of bids, evaluation, bid comparison or award decisions shall be construed as a violation of the Code of Integrity, and bid shall be liable to be rejected as nonresponsive in addition to other punitive actions for violation of Code of Integrity as per the Tender Document.

#### **12.2 Evaluation of Bids**

##### **12.2.1 Preliminary Examination of Bids – Determining Responsiveness**

A substantively responsive bid is complete and conforms to the Tender Document's essential terms, conditions, and requirements, without substantive deviation, reservation, or omission. Only substantively responsive bids shall be considered for further evaluation. Unless otherwise stipulated in the AITB, the following are some of the crucial aspects for which a bid shall be liable to be rejected as nonresponsive:

- 1) The bid is not in the prescribed format or is not submitted as per the stipulations in the Tender Document.
- 2) Required Bid Security (EMD) (or Required Bid Security Declaration) (Form 7) has not been provided.
- 3) Bidder is not eligible to participate in the bid as per laid down eligibility criteria.
- 4) The Goods offered are not eligible as per the provision of this tender.
- 5) Bidder has quoted Goods manufactured by a different firm without the required authority letter from the proposed manufacturer.
- 6) Bidder has quoted conditional bids or more than one bid or alternative bids unless permitted explicitly in the TIS/ AITB.
- 7) The bid validity is shorter than the required period.
- 8) The bid departs from the essential requirements stipulated in the bidding document;
- 9) Against a schedule in Section VI: Schedule of Requirements, Bidder has not quoted the entire Goods as stipulated in that schedule.
- 10) Non-submission or submission of illegible scanned copies of stipulated documents/ declarations.

##### **12.2.2 The evaluation process in Single/ multiple Cover(s) and PQB Tenders**

- 1) Unless otherwise stated, this Tender Process is for multiple (two or more) covers Bids. Initially, only the techno-commercial bids shall be opened on the stipulated date of opening of bids. Financial bids shall not be opened with techno-commercial bids and shall be kept unopened at the Custody of the Authorised official of the Procuring Entity. After that, the techno-commercial evaluation shall be done whether these bids meet the eligibility & qualification

criteria and techno-commercial aspects. Subsequent opening of financial bids and financial evaluation shall be done only of bids declared successful in techno-commercial evaluation.

- 2) If it is stipulated that this is the second stage of the two-stage tender Process or pre-qualified bidding (PQB) after shortlisting qualified bidders in the EOI / PQB stage, evaluation of responses from the shortlisted qualified bidders shall follow the same procedure as described above for multiple covers Tender Process.
- 3) If the TIS/ AITB stipulate this to be a single cover Tender process, the single cover bids shall be opened on the stipulated date of opening of bids. After that, evaluation of eligibility/ qualification of bidders, the techno-commercial, and the financial aspects shall be done simultaneously. There shall be no interim/ separate declaration of results of the techno-commercial evaluation.

### **12.3 Techno-commercial Evaluation**

Only substantively responsive bids shall be evaluated for techno-commercial evaluation. In evaluating the techno-commercial bid, conformity to the eligibility/ qualification criteria, technical specifications, and Quality Assurance; and commercial conditions of the offered Goods to those in the Tender Document is ascertained. Additional factors incorporated in the Tender Document shall also be considered in the manner indicated therein. Bids with substantive techno-commercial deviations shall be rejected as nonresponsive. Procuring entity reserves its right to consider and allow minor deviations in technical and Commercial Conditions as per ITB-clause 12.1.2.

#### **12.3.1 Evaluation of eligibility**

Procuring Entity shall determine, to its satisfaction, whether the Bidders are eligible as per ITB-clause 3.2 and NIT-clause 3 above to participate in the Tender Process as per submission in Form 1.2: Eligibility Declarations in Form 1: Bid Form. Tenders that do not meet the required eligibility criteria prescribed shall be rejected as nonresponsive.

#### **12.3.2 Evaluation of Qualification Criteria**

Procuring Entity shall determine, to its satisfaction, whether the Bidders are qualified and capable in all respects to perform the contract satisfactorily as per submission in Form 4 and its Form 4.1. This determination shall, inter-alia, consider the Bidder's financial, technical and production or other prescribed capabilities for satisfying requirements incorporated in the Tender Document. The determination shall not consider the qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the bidding document), or any other firm(s) different from the Bidder.

#### **12.3.3 Evaluation of Conformity to Schedule of Requirements and Technical Specifications/ Quality Assurance**

Procuring Entity shall evaluate schedule-wise conformity of the description, scope of supply, quantity, delivery schedules, terms of delivery, transportation of the offered goods to Section VI- Schedule of Requirements as per submissions in Form 2: 'Schedule of Requirements - Compliance'. Technical specifications, drawings, quality assurance and other technical terms and conditions of the Bids shall be examined, as per Form 3: 'Technical Specifications and Quality Assurance - Compliance'. Unless otherwise stated in the TIS/ AITB, alternative offers/ makes/ models shall *not* be considered.

### **12.3.4 Evaluation of Conformity to Commercial and Other Clauses**

Bidder must comply with all the Commercial and other clauses of the Tender Document as per submissions in Form 5. The Procuring Entity shall also evaluate the commercial conditions quoted by Bidder to confirm that all terms and conditions stipulated in the Tender Document have been accepted without substantive omissions/ reservations/ exception/ deviation by the Bidder. Deviations from or objections or reservations to critical provisions such as those concerning Governing laws and Jurisdiction (GCC Clause 3), Contractor's Obligations and Restrictions on its Rights (GCC Clause 5), Performance Bond/ Security (GCC Clause 5.8), Warranty/ Guarantee (GCC Clause 6.7), Force Majeure & Termination (GCC Clause 9.13), Taxes & Duties (GCC Clause 10.2) and Code of Integrity (GCC Clause 13) will be deemed to be a material deviation.

### **12.3.5 Declaration of Techno-commercially Suitable Bidders and Opening of Financial Bids**

Bids that succeed in the above techno-commercial evaluation shall be considered techno-commercially suitable, and financial evaluation shall be done only of such Bids. The list of such techno-commercially suitable bidders and a date/time and venue for the opening of their financial bids shall be declared on the Portal and individually to all participant bidders in accordance with ITB-clause 12.2.2 as per the type of Tender Processes.

## **12.4 Evaluation of Financial Bids and Ranking of Bids**

### **12.4.1 Ranking of Financial Bids**

- 1) Unless otherwise stipulated, evaluation of the financial bids shall be on the price criteria only. Financial Bids of all Techno-commercially suitable bids are evaluated and ranked to determine the lowest priced bidder.
- 2) Unless otherwise stipulated, the comparison of the responsive Bids shall be on total outgo from the Procuring Entity's pocket, to be paid to the contractor or any third party, including all elements of costs as per the terms of the proposed contract, on CIP/FOB/DAP destination basis, duly delivered, commissioned, etc. as the case may be, including any taxes, duties, levies (outside the Borrower's country), etc., freight, transit Insurance, loading/ unloading/ stacking, insurance, etc.
- 3) Unless otherwise stipulated, if the Schedule of Requirements contains more than one schedule, the financial ranking of bids shall be done based on all schedules put together. The bid for a schedule shall not be considered if the complete requirements prescribed in that schedule are not included in the bid;
- 4) If any bidder offers conditional discounts/ rebates in his bid or suo motu discounts and rebates after the Bid Opening (techno-commercial or financial), such rebates/ discounts shall not be considered for ranking the offer. But if such a bidder does become L-1 without discounts/ rebates, such discounts/ rebates shall be availed and incorporated in the contracts;
- 5) Unless announced beforehand, the quoted price shall not be loaded based on deviations in the techno-commercial conditions. If it is so declared, such loading of the financial bid shall be done as per the relevant provisions;
- 6) Evaluation of Bids shall exclude any taxes/ duties.

**12.4.2 Ambiguous Financial bid: If the financial bid is ambiguous and leads to two equally valid total price amounts, it shall be rejected as nonresponsive.**

**12.4.3 Cartel Formation/ Pool Rates**

Cartel Formation / Pool Rates are not permitted in the procurement process. However, if more than one bidder quote the same total evaluated price, then the Procuring Entity reserves its right to distribute unequal quantities among the bidders – excluding one or more bidders, based on considerations like performance/ financial capabilities, production capacities, any extra features/ benefits offered etc., subject to the quoted price falls within the estimated price of the Procuring Entity.

**12.4.4 Reasonableness of Rates Received**

Procuring Entity shall evaluate whether the rates received in the Bids in the zone of consideration are reasonable. If the rates received are considered abnormally low or unreasonably high, it reserves its right to take action as per the following sub-clauses, or as per ITB-clause 2.3, reject any or all Bids; abandon/ cancel the Tender process and issue another tender for the identical or similar Goods.

**12.4.5 Consideration of Abnormally Low Bids**

An Abnormally Low bid is one in which the bid price, in combination with other elements of the bid, appears so low that it raises substantive concerns as to the Bidder's capability to perform the contract at the offered price. Procuring Entity shall in such cases seek written clarifications from the Bidder, including detailed price analyses of its bid price concerning scope, schedule, allocation of risks and responsibilities, and any other requirements of the Tender Document. If, after evaluating the price analyses, Procuring Entity determines that Bidder has substantively failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity shall reject the bid/ proposal, and evaluation shall proceed with the next ranked bidder.

**12.4.6 For LOCs in Indian Rupees**

In case currency of the LOC is in Indian Rupees.

1) Evaluation of Offers

For financial evaluation, all bids shall be converted to Indian Rupees based on the “Bill for Collection (BC) selling” exchange rate on the last deadline for the Bid submission (Techno-commercial offer) from a source as specified (Financial Benchmarks India Pvt Ltd. (FBIL)), if not so specified) in the tender document. The offers would be compared based on the principle of the total outgo from Procuring Entity’s pockets, including all applicable taxes and duties outside Procuring Entity’s country (Customs duty, GST, and GST Cess).

The terms FOB, CIF, CIP, DAP etc., shall be governed by the rules & regulations prescribed in the current edition of INCOTERMS, published by the International Chamber of Commerce, Paris.

### **12.4.7 Price Negotiation**

Usually, there shall be no price negotiations. However, the Procuring Entity reserves its right to negotiate with the lowest acceptable bidder (L-1), who is techno-commercially suitable for supplying quantity and on whom the contract would have been placed but for the decision to negotiate.

## **13. Award of Contract**

### **13.1 The Procuring Entity's Rights**

#### **13.1.1 Right to Vary Quantities at the Time of Award**

At the time of contract award, the Procuring Entity reserves the right to increase or decrease, without any change in the unit prices or other terms and conditions of the bid and the Tender Document, the quantity of Goods originally stipulated in Section VI: Schedule of Requirements, provided this increase/decrease does not exceed 25 (twenty-five) percent of tendered quantity (or any other percentage indicated in the Tender Document). In case of any increase in the Schedule of Requirements, the payment to the contractor shall be directly attributable to Procuring Entity.

#### **13.1.2 Parallel Contracts or Splitting of Award**

The Procuring Entity reserves its right to split the quantities and conclude Parallel contracts with more than one bidder (for the same tender) in the following circumstances:

- 1) Unless otherwise stipulated in TIS/ AITB, there shall be no parallel orders or splitting quantities among more than one Bidders.
- 2) After due processing, if it is discovered that the quantity to be ordered is far more than what L-1 alone is capable of supplying and there was no prior stipulation in the Tender Document for parallel contracts, then it reserves its rights to distribute the quantity being finally ordered, among the other bidders by counter offering the L-1 rate to willing L-2, in a transparent manner. The decision of Procuring Entity shall be final.

### **13.2 Letter of Award (Acceptance - LoA) and Signing of Contract**

#### **13.2.1 Selection of Successful Bidder(s)**

The Procuring Entity shall award the contract to the Bidder(s) whose bid(s) is Techno-commercially suitable and bid price(s) is lowest and reasonable, as per evaluation criteria detailed in the Tender Document.

#### **13.2.2 Verification of Original Documents**

Before issuing a Letter of Award (LoA) to the successful Bidder(s), the Procuring Entity may, at its discretion, ask Bidder to submit online for verification the originals of all such documents whose scanned copies were submitted online along with the Technical bid. If so decided, the photocopies of such self-certified documents shall be verified and signed by the competent officer and kept in the records as part of the contract agreement. If the Bidder fails to provide such originals or in case of substantive discrepancies in such documents, it shall be construed as a violation of the Code of Integrity. Such bid shall be liable to be rejected as nonresponsive in addition to other punitive actions in the Tender Document. The evaluation of Bids shall proceed with the subsequent ranked offers.



### 13.2.3 Letter of Award (LoA)

- 1) The Bidder, whose bid has been accepted and documents verified (at the discretion of Procuring Entity), shall be notified of the award by the Procuring Entity before the expiration of the Bid-Validity period by written or electronic means. This notification (hereinafter and in the Conditions of Contract called the "Letter of Award - LoA") shall state the sum (hereinafter and in the contract called the "Contract Price") that the Procuring Entity shall pay the contractor in consideration of the supply of the Goods. The Letter of Award (LoA) shall constitute the legal formation of the contract, subject only to the furnishing of performance security as per the provisions of the sub-clause below. Format of LOA is at Format 3.
- 2) The Procuring Entity shall have a unique Contract ID / Number. Before the placement of LoA or the contract, this ID shall be incorporated in the contract.
- 3) *Exim Bank and the Procuring Entity may, at their discretion, publish the result of the award of contract on their respective websites.*

### 13.2.4 Performance Security

- 1) Within 14 days (or any other period stipulated in AITB) of receipt of the Letter of Award), performance Security as per details in GCC Clause 5.8 shall be submitted by the contractor to the Procuring Entity.
- 2) If the contractor, having been called upon by the Procuring Entity to furnish Performance Security, fails to do so within the specified period, it shall be lawful for the Procuring Entity at its discretion to annul the award and enforce Bid Security besides taking any other administrative punitive action etc .
- 3) If the bidder, whose bid is the lowest evaluated bid, withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the Procuring Entity shall cancel the procurement process. If the Procuring Entity is satisfied that it is not a case of cartelization and that the integrity of the procurement process has been maintained may offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder.

### 13.2.5 Signing of Contract

- 1) Within seven working days of receiving performance security, the Procuring Entity shall send the contract form (as per Format 1: Contract Form along with sub-formats) duly completed and signed, in duplicate, by registered/ speed post or by suitable digital means to the successful Bidder.
- 2) If so asked by the Procuring Entity, the successful Bidder shall return the original copy of the contract, duly signed and dated, within seven days from the date of receipt of the contract, to the Procuring Entity by registered/ speed post or by a suitable digital means.

- 3) Otherwise, the contract shall be taken to be legally effective from the date of its signing. The Contractor may point out to the Procuring Entity, in writing/ electronically, any anomalies noticed in the contract within seven days of its receipt.

### **13.2.6 Expiry of Bid Security**

Upon the furnishing by the successful Bidder of the Performance Security, the Procuring Entity shall promptly notify the other Bidders that their Bids have been unsuccessful. The Bid Security of unsuccessful bidders shall expire on receipt of this notification by them, in terms of ITB-clause 9.4 above. The Bid Security of the successful bidder shall expire when Bidder has furnished the required Performance Security and signed the Agreement.

### **13.2.7 Publication of Tender Result**

The name and address of the successful Bidder(s) receiving the contract(s) shall be published in the Portal and notice board/ bulletin/website of the Procuring Entity as also on the website of Exim Bank.

## **14. Grievance Redressal/ Complaint Procedure**

- 1) Bidder has the right to submit a complaint or seek de-briefing regarding the rejection of his bid, in writing or electronically, within 10 days of declaration of techno-commercial or financial evaluation results. The complaint shall be addressed to the Procuring Entity.
- 2) Within 5 working days of receipt of the complaint, the Tender Inviting Officer shall acknowledge the receipt in writing to the complainant indicating that it has been received, and the response shall be sent in due course after a detailed examination.
- 3) The Tender Inviting Officer shall convey the final decision to the complainant within 15 days of receiving the complaint. No response shall be given regarding the confidential process of evaluating bids and awarding the contract before the award is notified, although the complaint shall be kept in view during such a process. However, no response shall be given regarding the following topics explicitly excluded from such complaint process:
  - (a) Only a bidder who has participated in the concerned Tender Process, i.e., pre-qualification, can make such representation.
  - (b) Only a directly affected bidder can represent in this regard.
    - (i) In case of pre-qualification bid has been evaluated before the bidding of Technical/ financial bids, an application for review concerning the technical/ financial bid may be filed only by a bidder who has qualified in pre-qualification;
    - (ii) In case a technical bid has been evaluated before the opening of the financial bid, an application for review concerning the financial bid may be filed only by a bidder whose technical bid is found to be acceptable.
  - (c) Following decisions of the Procuring Entity shall not be subject to review:
    - (i) Determination of the need for procurement;
    - (ii) Complaints against specifications except under the premise that they are either vague or too specific to limit competition;
    - (iii) Selection of the mode of procurement or bidding system;

- (iv) Choice of the selection procedure;
- (v) Provisions limiting the participation of Consultants in the Procurement Process, in terms of policies of the Government;
- (vi) The decision to enter into negotiations with the L-1 bidder; and
- (vii) Cancellation of the Tender Process except where it is intended to subsequently re-tender the same Goods.

### **15. Code of Integrity in Public Procurement, Misdemeanours and Penalties:**

Procuring authorities, bidders, suppliers, contractors and consultants should observe the highest standard of integrity and not indulge in prohibited practices or other misdemeanours, either directly or indirectly, at any stage during the Tender Process or during the execution of resultant contracts. GCC-clause 13 (including the penalties prescribed therein) shall be considered to be part of this clause of ITB (even though it is not being reproduced here for the sake of brevity) and shall apply mutatis mutandis during the pre-award tender process.

## Section III: Appendix to Instructions to Bidders (AITB)

Document No. Tender No./ xxxx; Tender Title: Goods

(Ref ITB-clause 1.4)

*{Note for Procuring Entity: Text in grey italics font within square bracket [e.g., Mention ...] are just suggestions/ directions and must be replaced by applicable text – remove brackets and convert the font to regular and black. Delete the rows not required. Clauses other than those mentioned below may also be mentioned, if these need to be changed}*

*Note for Bidders: Following clauses (in column 1), wherever these appear in ITB shall be taken to be negated or additional provision be added to, or existing provisions be altered as per column 2. Whenever there is any conflict between the provision in the ITB and that in the AITB, the provision contained in the AITB shall prevail.*

| Column 1<br>ITB clauses | Column 2<br>To be read as  |
|-------------------------|--|
| <b>ITB 3, 4</b>         | <b>Bidders – Eligibility and Applicable Procedures</b>   |
| ITB 3.2                 | <p>Eligibility is limited to Indian entities registered in India and/or incorporated/ established under any law in force in India.</p> <p>Only prequalified Entities shall be eligible for Bidding.</p> <p><i>To insert the Bidder’s Eligibility from the Prequalification Document here.</i></p> <p>Standard clauses are described below: -</p> <p>The bidder shall not be blacklisted/ debarred by any multilateral development bank (MDB), such as World Bank, Asian Development Bank, or any authority of GOI or the Borrowing Government.</p> <p>In case a prequalified Entity is or is under the process of being blacklisted/ debarred/sanctioned subsequent to the prequalification process (i.e. including, during selection process and Project implementation phase), such Entity shall immediately inform the Procuring Entity and Exim Bank of such ongoing process or blacklisting/ debarment/sanction and reasons thereof. This may lead to cancellation of Proposal submitted by such Entity and/or cancellation of the contract, if awarded.</p> <p>In case, subsequent to the prequalification process (i.e. including, during selection process and Project implementation phase), if the account of a prequalified Entity is classified as Non-Performing Asset (NPA) with any Bank/FI or the prequalified Entity’s companies/ promoters/ directors appear in Reserve Bank of India (RBI) Caution List, RBI Wilful Defaulter List (Suit filed as well as non-suit filed), Credit Information Bureau India Ltd. (CIBIL) Defaulter List or any other negative list of central and state government agencies, updated from time to time, such prequalified Entity shall immediately inform the Procuring Entity and</p> |

|         |  |
|---------|--|
|         | <p>Exim Bank of the same along with reasons thereof. This may lead to cancellation of the Proposal submitted by such Entity and/or cancellation of the Contract, if awarded.</p> <p>In the event of award of final contract to any JV, all the payments to the JV shall be made to the account of the JV and not to the account of individual member(s).</p> <p>As per the GOI guidelines, goods and services for minimum 75% value of the contracts covered under the Line of Credit, must be sourced from India (Indian Content). Bidders are advised to refer to the GOI guidelines mentioned above for details available at:</p> <p><a href="https://www.eximbankindia.in/assets/pdf/loc/IDEAS_2022_07042022.pdf">https://www.eximbankindia.in/assets/pdf/loc/IDEAS_2022_07042022.pdf</a></p> <p>The provisions contained in Public Procurement Orders No. 1 &amp; No. 2 dated July 23, 2020, Public Procurement Order No. 3 dated July 24, 2020 and Public Procurement Order No.4 dated February 23, 2023 issued by the Public Procurement Division of the Department of Expenditure, Ministry of Finance, Government of India are also applicable to the tendering process both for the Prime contractor/consultant and subcontractors/subconsultants. Accordingly, Bidders are advised to adhere to the requirements under these Orders. These requirements are applicable to each Prime contractor/consultant and Subcontractor(s)/Subconsultant(s).</p> <p>Applicants are also advised to refer to the Exim Bank's Debarment and Contract Non-Performance Policies which are available at Exim Bank's website at :</p> <p>_____</p> |
| ITB 3.2 | <p>In case Joint Venture is allowed, the following shall apply:</p> <p>a. The Bidder may be a single entity or any combination of them with a formal intent to enter into a Joint Venture agreement or under an existing agreement to form a Joint Venture (the "<b>Unincorporated Joint Venture</b>" or "<b>JV</b>"), provided however, if the Bidder is a group of entities, the same shall only be in the form of Unincorporated Joint Venture. Unincorporated Joint Venture shall mean an Association of Persons (AOP). The Procuring Entity may also require the Bidder to issue or procure performance and/or financial guarantees securing the performance of obligations and/or liabilities of the entity that is executing the contract in the Project Country. However, no Bidder or its Associates applying individually or as a member of an Unincorporated Joint Venture, as the case may be, can be a member of another Bidder. The term Bidder used herein would apply to both a single entity and an Unincorporated Joint Venture. A Joint Venture shall be eligible for consideration subject to the conditions set out below.</p> <p>For avoidance of doubt, an entity shall be construed as a reference to any firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality).</p>   |

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|  | <p>b. In case of an Unincorporated Joint Venture, the JV shall nominate one member as the lead member (the <b>“Lead Member”</b>) subject to the relevant provisions of this document. Provided that, in case of a single entity being a Bidder, and in case of a JV being a Bidder, such all members of JV shall be entities incorporated under the laws of India.</p> <p>c. Bidder shall be ineligible to be awarded a contract if:</p> <ul style="list-style-type: none"> <li>i) it is currently under default on any loan to any Bank/ Financial Institution (FI) and its account has been classified as Non-Performing Asset (NPA) as per Central Repository of Information on Large Credits (CRILC) database;</li> <li>ii) its promoters/directors (excluding nominee directors and independent directors) appear in RBI Negative List or Credit Information Bureau India Ltd. (CIBIL) Defaulter List; and / or</li> <li>iii) It has in its employment any near relations (defined as first blood relations, and their spouses, of the Bidder or the Bidder’s spouse) of persons involved in decision making in the Project at the Procuring Entity.</li> </ul> <p>On any of the above conditions becoming true post submission of the bid (i.e. including during bidding process and/or contract implementation phase), the Bidder shall immediately inform the Procuring Entity on the inclusion and reasons for inclusion thereof. This may lead to rejection of Bidder’s bid / cancellation of contract, if already awarded, at any later stage.</p> <p>d. Subject to provisions in this Tender Document, participation in this Tender Process is open to only Indian Bidders. For the purpose of this clause, a Bidder shall be required to be and deemed to be Indian if the Bidder is registered in India and/or incorporated/established under any law in force in India, as evidenced by its articles of incorporation and its registration documents, as the case may be.</p> <p>e. In case the Bidder is an Unincorporated Joint Venture, it shall comply with the requirements as mentioned below:</p> <ul style="list-style-type: none"> <li>a) The maximum number of members including the lead member shall not exceed { To Fill **}.</li> <li>b) The Lead Member shall itself undertake and execute at least 30% of the project (without sub-contracting).</li> <li>c) The sub-contractors can be appointed by the JV/bidder. However, the Procuring Entity may stipulate specific portions of the contract [(examples may be critical activities or activities exceeding a certain percentage of the total volume of Project)**] for which the sub-contractors to be appointed must be identified in the Bid against Tender Document. No change in such subcontractors shall be permissible after submission of the Bid. The Procuring Entity may specify the list of acceptable subcontractors for such portions and the Bidder may choose one of them. However, the Bidder shall be allowed to specify subcontractors outside the list of acceptable subcontractors provided they possess the requisite experience and subject</li> </ul> |
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|         | <p>to acceptance by the Procuring Entity. No change in such subcontractors shall be permissible thereafter.</p> <p>d) The Project shall not be assignable by the selected bidder in whole or in part.</p> <p>e) members of the Unincorporated Joint Venture shall have entered into a binding Joint Bidding Agreement substantially in the form specified at Form 1.5 (the “<b>Joint Bidding Agreement</b>”), for the purpose of making the Bid. The Joint Bidding Agreement, to be submitted along with the Bid, shall, <i>inter alia</i>:</p> <ol style="list-style-type: none"> <li>i. convey the commitment(s) of all the members that the overall project management and coordination shall be carried out exclusively by the Lead Member.</li> <li>ii. convey the commitment(s) of the Lead Member in accordance with this Tender Document, in case the contract to undertake the Project is awarded to the Joint Venture;</li> <li>iii. clearly outline the proposed roles and responsibilities, if any, of each member of the JV;</li> <li>iv. include a statement to the effect that all members of the Joint Venture shall be liable jointly and severally for all obligations of the Contractor in relation to the Project until the completion of the Project (the “Maintenance Period”) is achieved in accordance with the Contract;</li> <li>v. shall include an undertaking to the effect that the members of the JV shall be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the Tender Document and the Agreement, till such time as the final completion of the Project is achieved in accordance with the Agreement.</li> </ol> <p>f) there shall not be any amendment to the Jt. Bidding Agreement after the Bid is submitted.</p> <p>3.2.8 Change in the composition of an Unincorporated Joint Venture will not be permitted by the Procuring Entity at any stage. Any such JV shall sustain for the entire execution of the Project. However, only under exceptional and unavoidable circumstances the Procuring Entity may, at its sole discretion, permit such change.</p> |
| ITB 3.3 | <p>The provisions contained in Public Procurement Orders No. 1 &amp; No. 2 dated July 23, 2020, Public Procurement Order No. 3 dated July 24, 2020 and Public Procurement Order No.4 dated February 23, 2023, or any further Order/s in this respect, issued by the Public Procurement Division of the Department of Expenditure, Ministry of Finance, Government of India are also applicable to the tendering process both for the Prime contractor/consultant and subcontractors/subconsultants. Accordingly, Bidders are advised to adhere to the requirements under these Orders. These requirements are applicable to each Prime contractor/consultant and Subcontractor(s)/Subconsultant(s).</p>   |
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| <b>ITB 5 to 6</b>                                      | <b>Schedule of Requirements, Bid Prices, Taxes and Duties</b>   |
| ITB 5.2  | <i>[Any changes regarding the basis of evaluation, please specify it here]</i>  |
| ITB 6.1.3  | <i>[Customise here if it is the procurement of capital Goods/ Machinery &amp; plant. Otherwise, Mention any additional price component requirement]</i>   |
| <b>ITB 9 to 10</b>                                     | <b>Preparation and Submission of Bids</b>   |
| ITB 9.1.1  | <i>[Language in which bids are to be submitted other than Official language stipulated in NIT and English, please specify it here]</i>  |
| ITB 9.1.6  | <i>[Mention if Alternate Bids are permissible]</i>  |
| ITB 10.3.1(2)  | <i>[Mention copies of the Bid to be submitted.]</i>   |
| ITB 10.3.1(6)  | <i>[Mention deadline date and time for submission of the Bid.]</i>  |
| ITB 10.3.1(6)  | <i>[Mention whether bidders have option of submitting their bids electronically and if yes, mention detailed process and steps involved for preparation and uploading / submission of bids on e-Procurement Portal.]</i>  |
| <b>ITB 12 Evaluation of Bids and Award of Contract</b> |   |
| ITB 12.2.1   | <i>[Mention if additional criteria for responsive bids are proposed]</i>  |
| ITB 12.2.2   | <i>[Customise here by indicating here whether this is a Single cover or two covers the tender process. Or is it the second stage of the two-stage tender Process or Pre-Qualification Bidding (PQB) after shortlisting of qualified bidders in the PQB stage]</i>   |
| ITB 12.3.1, 12.3.2                                     | <i>[Mention any additional eligibility/ qualification criteria]</i>   |
| ITB 12.4.1-1)  | <i>[Mention any additional financial evaluation criteria in addition to price criteria]</i>   |
| ITB 12.4.1-2)  | <i>[If the basis of financial evaluation is different from that total out of pocket cost to the Procuring Entity, mention it here]</i>  |
| ITB 13.1.1   | <i>[Mention if a %age different from 25%, is intended as quantity variation at the time of Award of Contract]</i>   |
| ITB 13.1.2   | <i>[If it is decided to conclude parallel contracts on more than one bidder, please specify the number of parallel contracts and ratios (in %, say 70:30 or 50:30:20 etc.) for such distribution. Please also ensure matching entry in TIS under Make in India]</i> |
| ITB 13.2.4   | <i>[Mention if a %age different from 5-10%, is intended as Performance Guarantee, or if acceptable instruments are different. Refer GCC-clause 5.8 also]</i>  |



## **Section IV: General Conditions of Contract (GCC)**

### **1. General**

#### **1.1 Tenets of Interpretation**

Unless where the context requires otherwise, throughout the contract:

- 1) The heading of these conditions shall not affect the interpretation or construction thereof.
- 2) Writing or written includes matter either whole or in part, in digital communications, manuscript, typewritten, lithographed, cyclostyled, photographed, or printed under or over signature or seal or digitally acceptable authentication, as the case may be.
- 3) Words in the singular include the plural and vice-versa.
- 4) Words importing the masculine gender shall be taken to include other genders, and words importing persons shall include any company or association or body of individuals, whether incorporated or not.
- 5) Terms and expression not herein defined shall have the meanings assigned to them in the applicable contract law of the Purchaser's Country, unless otherwise specified in the SCC or of INCOTERMS, (current edition published by the International Chamber of Commerce, Paris) as the case may be.
- 6) Any reference to 'Goods' shall be deemed to include the incidental Works/ Services also.
- 7) Any generic reference to GCC shall also imply a reference to SCC as well.
- 8) In case of conflict, provisions of SCC shall prevail over those in GCC.
- 9) Any reference to 'Contract' shall be deemed to include all other documents (inter-alia GCC, SCC) as described in GCC-clause 2.5.
- 10) Any reference to any legal Act, Government Policies or orders shall be deemed to include all amendments to such instruments, from time to time, till date.

#### **1.2 Definitions**

In the contract, unless the context otherwise requires:

- 1) "Agent" is a person employed to do any act for another or represent another in dealings with a third person. In the context of public procurement, an Agent is a representative participating in the Tender Process or Execution of a Contract for and on behalf of its principals.
- 2) "Allied Firm" are all business entities that are within the 'controlling ownership interest' (ownership of or entitlement to more than twenty-five percent of the company's shares or capital or profits) or 'control' (including the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholder agreements or voting agreements) of the principal firm acting alone or together or through one or more juridical persons. All successor firms or assigns of the principal firm shall be considered allied firms.
- 3) "Applicable Guidelines" means (i) Procurement Guidelines of Exim Bank governing the selection and Contract award process as set forth in this Tender Document, (ii) the Guidelines

issued by the Government of India vide letter F.No.5/7/2019-IDEAS dated March 31, 2022, (iii) Public Procurement Orders Nos. 1 & 2 dated July 23, 2020, Public Procurement Order No. 3 dated July 24, 2020 and Public Procurement Order No.4 dated February 23, 2023 issued by the Public Procurement Division of the Department of Expenditure, Ministry of Finance, Government of India and Procurement Guidelines of Exim Bank.

- 4) "Applicable Law" means the laws and any other instruments having the force of law in the Procuring Entity's country, as they may be issued and in force from time to time.
- 5) "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in specific contexts) means an offer to supply goods, services or execution of works made as per the terms and conditions set out in a document inviting such offers.
- 6) "Bidder" (including the term 'Bidder', 'consultant' or 'service provider' in specific contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a Tender Process.
- 7) "Commercial Bank" in India means a bank in India, defined as a scheduled bank under section 21 of the Reserve Bank of India Act, 1934.
- 8) "Consignee" means the person to whom the goods are required to be delivered as stipulated in the contract. A contract may provide the goods to be delivered to an interim consignee for further despatch to the ultimate consignee.
- 9) "Contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Services', or 'framework contract' or 'Letter of Award – LoA' (letter or memorandum communicating to the contractor the acceptance of his bid) or 'Agreement' or a 'repeat order' accepted/ acted upon by the contractor or a 'formal agreement', under specific contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Procuring Entity and the contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country;
- 10) "Contractor" (including the terms 'Supplier' or 'Service Provider' or 'Consultant' or 'Firm' or 'Vendor' or 'Manufacturer' or 'Successful Bidder' under specific contexts) means the person, firm, company, or a Joint Venture with whom the contract is entered into and shall be deemed to include the contractor's successors (approved by the Procuring Entity), agents, subcontractor, representatives, heirs, executors, and administrators as the case may be unless excluded by the terms of the contract.;
- 11) "Day", "Month", "Year" shall mean calendar day/ month or year (unless reference to financial year is clear from the context).
- 12) "Drawing" means the drawing or drawings stipulated in or annexed to the Specifications or the Tender Document/ Contract;
- 13) "Exim Bank" or "India Exim Bank" means the Export-Import Bank of India.
- 14) "General Conditions" means the General Conditions of Contract, also referred to as GC".

- 15) "Goods" (including the terms 'Stores', 'Material(s)' in specific contexts) includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library under specific context), procured or otherwise acquired by a Procuring Entity. Any reference to Goods shall be deemed to include specific small work or some services that are incidental or consequential to the supply of such goods;
- 16) "Government" or "Borrower Government" means the Government of \_\_\_\_\_ [*insert name of the country*] Government of the country which has received a Line of Credit (hereinafter called "LOC") from the Export-Import Bank of India (hereinafter called "the Exim Bank") ;
- 17) "Host Country" means the foreign government which is the beneficiary of the Project or the country wherein the Project is being executed.
- 18) "Inspection" means activities such as measuring, examining, testing, analysing, gauging one or more characteristics of the goods or services or works, and comparing the same with the specified requirement to determine conformity.
- 19) "Inspecting Officer" means the person or organisation stipulated in the contract for inspection under the contract and includes his/ their authorised representative;
- 20) "Intellectual Property Rights" (IPR) means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semiconductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world.
- 21) "Parties": The parties to the contract are the "Contractor" and the Procuring Entity, as defined in this clause;
- 22) "Performance Security" (includes the terms 'Security Deposit' or 'Performance Bond' or 'Performance Bank Guarantee' or other specified financial instruments in specific contexts) means a monetary guarantee to be furnished by the successful Bidder or Contractor in the form prescribed for the due performance of the contract;
- 23) "Place of Delivery" the delivery of the Goods shall be deemed to take place on delivery of the Goods, after approval by the Inspecting Officer (If provided in the contract) at following places as per the terms and conditions of the contract -
- (a) The consignee at his premises; or
  - (b) Where so provided, the interim consignee at his premises; or
  - (c) A carrier or other person named in the contract for transmission to the consignee: or
  - (d) The consignee at the destination station in case of a contract stipulating for delivery of Goods at the destination station.

- 24) "Procurement" or "public procurement" (or 'Purchase', or 'Government Procurement/ Purchase' including an award of Public-Private Partnership projects, in specific contexts) means the acquisition of Goods/ Services/ works by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment, etc.) of goods, works or services or any combination thereof, by a Procuring Entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition without consideration. The term "procure"/ "procured" or "purchase"/ "purchased" shall be construed accordingly;
- 25) "The Procuring Entity" means the entity procuring Goods or Works or Services;
- 26) "Service(s)" (including the term 'Non-consultancy services' or 'Outsourcing of Services' in specific contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Services (Non-consultancy) involve routine, repetitive physical, procedural, and non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis but does not include the appointment of an individual made under any law, rules, regulations, or order issued in this behalf. Any reference to Services shall be deemed to include the supply of goods or performance of consultancy service or small works, which are incidental or consequential to such services;
- 27) "Special Conditions" means Special Conditions of Contract, which override the General Conditions, also referred to as SCC.
- 28) "Specification" or "Technical Specification" means the drawing/ document/ standard or any other details governing the construction, manufacture or supply of goods or performance of services that prescribes the requirement to which goods or services have to conform as per the contract.
- 29) "Signed" means ink signed or digitally signed. It also includes stamped as applicable, except in the case of Letter of Award or amendment thereof.;
- 30) "Tender"; "Tender Document"; "Tender Enquiry" or "Tender Process": 'Tender Process' is the whole process from the publishing of the Tender Document till the resultant award of the contract. 'Tender Document' means the document (including all its sections, appendices, forms, formats, etc.) published by the Procuring Entity to invite bids in a Tender Process. The Tender Document and Tender Process may be generically referred to as "Tender" or "Tender Enquiry", which would be clear from context without ambiguity.
- 31) "Test" means such test as is prescribed by the particulars governing the construction, manufacture or supply of Goods as may be prescribed by the contract or considered necessary by the Inspecting Officer whether performed or made by the Inspecting Officer or any agency acting under the direction of the Inspecting Officer;
- 32) "Works" refer to any activity involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment.

### 1.3 Document Conventions

All words and phrases defined in GCC-clause 1.2 are written as ‘Capitalised word’ and shall have the defined meaning. The rest of the words shall be as per grammar, inter-alia, ‘Goods’ shall indicate definition as given in the GCC while ‘goods’ shall have usual dictionary meaning.

#### 1.4 Abbreviations:

| Abbreviation | Definition  |
|--------------|---|
| AITB         | Appendix to Instructions To Bidders                                       |
| CFR          | Cost and Freight (port of destination)                                    |
| CGST         | Central Goods and Services Tax  |
| CIF          | Cost, Insurance & Freight (port of destination)                           |
| CIP          | Carriage and Insurance Paid To (place of destination)                     |
| DAP          | Delivered at Place (Place of Destination)                                 |
| DoE          | Department of Expenditure   |
| DP           | Delivery Period   |
| DPIIT        | Department for Promotion of Industry and Internal Trade                   |
| DSC          | Digital Signature Certificate   |
| EMD          | Earnest Monetary guarantee to be furnished by a bidder along with its bid |
| FDI          | Foreign Direct investment   |
| FOB          | Free on Board (port of loading)   |
| GCC          | General Conditions of Contract  |
| GRIR         | Goods Receipt and Inspection Report                                       |
| GST          | Goods and Services Tax  |
| HSN          | Harmonized System of Nomenclature   |
| INR          | Indian Rupee  |
| IPR          | Intellectual Property Rights  |
| ITB          | Instructions To Bidders   |
| ITC (HS)     | Indian Tariff Classification (Harmonised System)                          |
| LoA          | Letter of Award (Acceptance)  |
| NIT          | Notice Inviting Tender  |
| OEM          | Original Equipment Manufacturer   |

| Abbreviation | Definition                     |
|--------------|--------------------------------|
| PVC          | Price Variation Clause         |
| PAN          | Permanent Account Number       |
| PQB          | Pre-Qualification Bidding      |
| SCC          | Special Conditions of Contract |
| TIA          | Tender Inviting Authority      |
| TIS          | Tender Information Summary     |
| USD          | United States Dollars          |

## 2. The Contract

### 2.1 Language of Contract

Unless otherwise stipulated in SCC, the contract shall be written in English. All correspondence and other contract documents, which the parties exchange, shall also be written/ translated accordingly in that language. For purposes of interpretation of the contract, the English documents/ translation shall prevail.

### 2.2 The Entire Agreement

This Contract and its documents (referred to in GCC-clause 2.5 below) constitutes the entire agreement between the Procuring Entity and the contractor and supersedes all other communications, negotiations and agreements (whether written or oral) of the Parties made before the date of this Contract. No agent or representative of either Party has the authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not outlined in this Contract.

### 2.3 Severability

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

### 2.4 Parties

The parties to the contract are the contractor and the Procuring Entity, as defined in GCC-clause 1.2 above and nominated in the contract.

### 2.5 Contract Documents and their Precedence

The following conditions and documents in indicated order of precedence (higher to lower) shall be considered an integral part of the contract, irrespective of whether these are not appended/ referred to in it. Any generic reference to 'Contract' shall imply reference to all these documents as well:

- 1) Valid and authorized Amendments issued to the contract.

- 2) the Agreement consisting of the initial paragraphs, recitals and other clauses set forth immediately before the GCC and including the formats annexed to it and signatures of Procuring Entity;
- 3) the Letter of Award (LoA)
- 4) Final written submissions made by the contractor during negotiations, if any;
- 5) the SCC
- 6) the GCC
- 7) the contractor's bid;
- 8) any other document listed in the SCC as forming part of this Contract.

## **2.6 Modifications/ Amendments, Waivers and Forbearances**

### **2.6.1 Modifications/ Amendments of Contract**

- 1) If any of the contract provisions must be modified after the contract documents have been signed, the modifications shall be made in writing and signed by the Procuring Entity, and no modified provisions shall be applicable unless such modifications have been done. No variation in or modification of the contract terms shall be made except by a written amendment signed by the Procuring Entity. Requests for changes and modifications may be submitted in writing by the contractor to the Procuring Entity. At any time during the currency of the contract, the Procuring Entity may suo-moto or, on request from the contractor, by written order, amend the contract by making alterations and modifications within the general scope of the Contract.
- 2) If the contractor does not agree to the suo-moto modifications/ amendments made by the Procuring Entity, he shall convey his views within 14 days from the date of amendment/ modification. Otherwise, it shall be assumed that the contractor has consented to the amendment.
- 3) Any verbal or written arrangement abandoning, modifying, extending, reducing, or supplementing the contract or any of the terms thereof shall be deemed conditional and shall not be binding on the Procuring Entity unless and until the same is incorporated in a formal instrument and signed by the Procuring Entity, and till then the Procuring Entity shall have the right to repudiate such arrangements.

### **2.6.2 Waivers and Forbearances**

The following shall apply concerning any waivers, forbearance, or similar action taken under this Contract:

- 1) Any waiver of a Procuring Entity's rights, powers, or remedies under this Contract must be in writing, dated, and signed by an authorized representative of the Procuring Entity granting such waiver and must specify the terms under which the waiver is being granted.
- 2) No relaxation, forbearance, delay, or indulgence by Procuring Entity in enforcing any of the terms and conditions of this Contract or granting of an extension of time by Procuring Entity to the contractor shall, in any way whatsoever, prejudice, affect, or restrict the rights of

Procuring Entity under this Contract, neither shall any waiver by Procuring Entity of any breach of Contract operate as a waiver of any subsequent or continuing breach of Contract.

### **3. Governing Laws and Jurisdiction**

#### **3.1 Governing Laws and Jurisdiction**

- 1) This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Laws of the Borrower Country for the time being in force.
- 2) Irrespective of the place of delivery, or the place of performance or the place of payments under the contract, the contract shall be deemed to have been made at the place from which the Letter of Award (LoA, or the contract Agreement, in the absence of LoA) has been issued. The courts of such a place shall alone have jurisdiction to decide any dispute arising out or in respect of the contract.

#### **3.2 Changes in Laws and Regulations**

Unless otherwise stipulated in the contract, if after the last deadline for the bid submission (Techno-commercial), any law, regulation, ordinance, order or bye-law having the force of law is enacted, promulgated, abrogated, or changed in the Borrower Country (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/ or the contract Price, then such Delivery Date and/ or Contract Price shall be correspondingly increased or decreased, to the extent that the contractor has thereby been affected in the performance of any of its obligations under the contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable.

### **4. Communications**

#### **4.1 Communications**

- 1) All communications under the contract shall be served by the parties on each other in writing, in the contract's language, and served in a manner customary and acceptable in business and commercial transactions.
- 2) The effective date of such communications shall be either the date when delivered to the recipient or the effective date mentioned explicitly in the communication, whichever is later.
- 3) No communication shall amount to an amendment of the terms and conditions of the contract, except a formal letter of amendment of the contract, so designated.
- 4) Such communications would be an instruction or a notification or an acceptance or a certificate from the Procuring Entity, or it would be a submission or a notification from the contractor. A notification or certificate which the contract requires must be communicated separately from other communications.

#### **4.2 The person signing the Communications**



For all purposes of the contract, including arbitration, thereunder all communications to the other party shall be signed by:

- 1) The person who has signed the contract on behalf of the contractor shall sign all correspondences. A person signing communication in respect of the contract or purported to be on behalf of the contractor, without disclosing his authority to do so, shall be deemed to warrant that he has authority to bind the contractor. If it is discovered at any time that the person, so signing has no authority to do so, the Procuring Entity reserves its right to, without prejudice to any other right or remedy, to terminate the contract for default in terms of the contract and avail any or all the remedies thereunder and hold such person personally and/ or the contractor liable to the Procuring Entity for all costs and damages arising from such remedies.
- 2) Unless otherwise stipulated in the contract, the Procurement Officer signing the contract shall administer the contract and sign communications on behalf of the Procuring Entity. Interim or ultimate consignees; Inspecting Agency/ officers and the paying authorities mentioned in the contract shall also administer respective functions during Contract Execution.

#### **4.3 Address of the parties for sending communications by the other party.**

- 1) For all purposes of the contract, including arbitration, thereunder the address of parties to which the other party shall address all communications and notices shall be:
  - (a) The address of the contractor as mentioned in the contract unless the contractor has notified the change of address by a separate communication containing no other topic to the Procuring Entity. The Contractor shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid;
  - (b) The address of the Procuring Entity shall be the address mentioned in the contract. The contractor shall also send additional copies to officers of the Procuring Entity presently dealing with the contract; and
  - (c) In case of the communications from the contractor, copies of communications shall be marked to the Procurement Officer signing the contract, and as relevant also to Inspecting Agency/ Officer; interim/ ultimate consignee and paying authorities mentioned in the contract. Unless already stipulated in the contract before the contract's start, the Procuring Entity and the contractor shall notify each other if additional copies of communications are to be addressed to additional addresses.

## **5. Contractor's Obligations and Restrictions on its Rights**

### **5.1 Changes in Constitution/ financial stakes/ responsibilities of a Contract's Business**

The Contractor must proactively keep the Procuring Entity informed of any changes in its constitution/ financial stakes/ responsibilities during the execution of the contract. Where the contractor is a partnership firm, the following restrictions shall apply to changes in the constitution during the execution of the contract:

- 1) a new partner shall not be introduced in the firm except with the prior permission of the Procuring Entity,

- 2) On the death or retirement of any partner of the contractor firm before the complete performance of the contract, the Procuring Entity may, at his option, terminate the contract for default as per the Contract and avail any or all remedies thereunder.
- 3) If the contract is not terminated as provided in Sub-clause (2) above notwithstanding the retirement of a partner from the firm, that partner shall continue to be liable under the contract for acts of the firm until a copy of the notice given by him to the Procuring Entity in writing or electronically.
- 4) The contractor shall ensure that the value of services sourced from India (“Indian Content”) under this contract shall constitute at least the percentage of the total Contract Price as specified in the SCC.

## **5.2 Obligation to Maintain Eligibility and Qualifications**

- 1) The contract has been awarded to the contractor based on specific eligibility and qualification criteria stipulated in the procurement process after he was prequalified in the preceding Prequalification process based on eligibility and qualifications criteria stipulated therein. The Contractor is contractually bound to maintain such eligibility and qualifications during the execution of the contract. Any change which would vitiate the basis on which the contractor was prequalified or the contract was awarded to the contractor should be pro-actively brought to the notice of the Procuring Entity within 7 days of it coming to the Contractor’s knowledge. These changes include but are not restricted to:

(a) Change regarding declarations made by it in its bid in Form 1.2: Eligibility Declaration

## **5.3 Change in its qualification criteria submitted in its bid in Form 4: Qualification Criteria - Compliance and its sub-form(s). Restriction on Potential Conflict of Interests**

Neither the contractor nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- 1) during the term of this Contract, any business or professional activities in the Borrower Country that would conflict with the activities assigned to them under this Contract.
- 2) after the termination of this Contract, such other activities as may be stipulated in the contract.

## **5.4 Consequences of a breach of Obligations**

Should the contractor or any of its partners or its Subcontractors or the Personnel commit a default or breach of GCC-clause 5.1 to 5.7, the Contractor shall remedy such breaches within 21 days, keeping the Procuring Entity informed. However, at its discretion, the Procuring Entity shall be entitled, and it shall be lawful on his part, to treat it as a breach of contract and avail any or all remedies thereunder. The decision of the Procuring Entity as to any matter or thing concerning or arising out of GCC-clause 5.1 to 5.7 or on any question whether the contractor or any partner of the contractor firm has committed a default or breach of any of the conditions shall be final and binding on the contractor.

## **5.5 Assignment and Sub-contracting**

- 1) The contractor shall not, save with the previous consent in writing of the Procuring Entity under prior intimation to Exim Bank , sublet, transfer, or assign the contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatever.
- 2) The contractor shall notify the Procuring Entity in writing all subcontracts awarded under the contract if not already stipulated in the contract. In its original bid or later, such notification shall not relieve the contractor from any of its liability or obligation under the terms and conditions of the contract. Subcontract shall be only for bought out items and incidental Works/ Services. Subcontracts must comply with and should not circumvent Contractor's compliance with its obligations under GCC-clause 5.1 to 5.7, based on which the contract was awarded to him.
- 3) If the Contractor sublets or assigns this contract or any part thereof without such permission, the Procuring Entity shall be entitled, and it shall be lawful on his part, to treat it as a breach of contract and avail any or all remedies thereunder.

#### **5.6 Indemnities for breach of IPR Rights**

- 1) The contractor shall indemnify and hold harmless, free of costs, the Procuring Entity and its employees and officers from and against all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of any nature, including attorney's fees and expenses, which may arise in respect of the Goods provided by the contractor under this Contract, as a result of any infringement or alleged infringement of any patent, utility model, registered design, copyright, or other Intellectual Proprietary Rights (IPR) or trademarks, registered or otherwise existing on the date of the contract arising out of or in connection with:
  - (a) any design, data, drawing, specification, or other documents or Goods provided or designed by the contractor for or on behalf of the Procuring Entity.
  - (b) The sale by the Procuring Entity in any country of the products produced by the Goods supplied by the contractor, and
  - (c) The installation of the Goods by the contractor or the use of the Goods at the Procuring Entity's Site.
- 2) Such indemnity shall not cover any use of the Goods or any part thereof or any products produced thereby:
  - (a) other than for the purpose indicated by or to be reasonably inferred from the contract
  - (b) in association or combination with any other equipment, plant, or materials not supplied by the contractor.
- 3) If any proceedings are brought, or any claim is made against the Procuring Entity arising out of the matters referred above, the Procuring Entity shall promptly give the contractor a notice thereof. At its own expense and in the Procuring Entity's name, the contractor may conduct such proceedings and negotiations to settle any such proceedings or claim, keeping the Procuring Entity informed.
- 4) If the contractor fails to notify the Procuring Entity within twenty-eight (28) days after receiving such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its behalf at the risk and cost to the contractor.

- 5) At the contractor's request, the Procuring Entity shall afford all available assistance to the contractor in conducting such proceedings or claim and shall be reimbursed by the contractor for all reasonable expenses incurred in so doing.

## **5.7 Confidentiality, Secrecy and IPR Rights**

### **5.7.1 IPR Rights**

All deliverables, outputs, plans, drawings, specifications, designs, reports and other documents and software submitted by the contractor under this Contract shall become and remain the property of the Procuring Entity and subject to laws of copyright and must not be shared with third parties or reproduced, whether in whole or part, without the Procuring Entity's prior written consent. The contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The contractor may retain a copy of such documents and software but shall not use it for any commercial purpose.

### **5.7.2 Confidentiality**

All documents, drawings, samples, data, associated correspondence or other information furnished by or on behalf of the Procuring Entity to the contractor, in connection with the contract, whether such information has been furnished before, during or following completion or termination of the contract, are confidential and shall remain the property of the Procuring Entity and shall not, without the prior written consent of Procuring Entity neither be divulged by the contractor to any third party, nor be used by him for any purpose other than the design, procurement, or other services and work required for the performance of this Contract. If advised by the Procuring Entity, all copies of all such information in original shall be returned on completion of the contractor's performance and obligations under this contract.

### **5.7.3 Secrecy**

If the Contract declares the subject matter of this Contract as "Secret", the contractor shall take all reasonable steps necessary to ensure that all persons employed in any connection with the contract, have acknowledged their responsibilities.

### **5.7.4 Obligations of the contractor**

- 1) Without the Procuring Entity's prior written consent, the contractor shall not use the information mentioned above except for the sole purpose of performing this contract.
- 2) The contractor shall treat and mark all information as confidential and shall not, without the written consent of the Procuring Entity, divulge to any person other than the person(s) employed by the contractor in the performance of the contract. Further, any such disclosure to any such employed person shall be made in confidence and only so far as necessary for such performance for this contract.
- 3) Notwithstanding the above, the contractor may furnish to its holding company or its Subcontractor(s) such documents, data, and other information it receives from the Procuring Entity to the extent required for performing the contract. In this event, the contractor shall obtain from such holding company/ Subcontractor(s) an undertaking of confidentiality (or

secrecy – as the case may be) similar to that imposed on the contractor under the above clauses.

- 4) The obligation of the contractor under sub-clauses above, however, shall not apply to information that:
  - (a) the contractor needs to share with the institution(s) participating in the financing of the contract;
  - (b) now or hereafter is or enters the public domain through no fault of Contractor;
  - (c) can be proven to have been possessed by the contractor at the time of disclosure and which was not previously obtained, directly or indirectly, from the Procuring Entity; or
  - (d) otherwise lawfully becomes available to the contractor from a third party that has no obligation of confidentiality.
- 5) The above provisions shall not in any way modify any undertaking of confidentiality given by the contractor before the date of the contract in respect of the contract/ the Tender Document or any part thereof.
- 6) The provisions of this clause shall survive completion or termination for whatever reason of the contract.

#### **5.8 Performance Bond/ Security**

- 1) Within fourteen days (or any other period mentioned in Tender Document or Contract) after the issue of Letter of Award (LoA or the contract, if LoA is skipped) by the Procuring Entity, the contractor shall furnish to the Procuring Entity, performance security, valid up to sixty days (or any other period mentioned in Tender Document or Contract) after the date of completion of all contractual obligations by the contractor, including the warranty obligations.
- 2) The amount of Performance security shall be as stipulated in Tender Document or Contract (or if not specified @ 10% of the contract Price) denominated in US Dollars and shall be in the form of:
  - (a) 'Bank Guarantee issued by a scheduled commercial bank or all India Financial Institution in India or reputed international bank enforceable in the Borrower's country as acceptable to the Procuring Entity, in the prescribed form provided in Format 1.1.
- 3) If the contractor, having been called upon by the Procuring Entity to furnish Performance Security, fails to do so within the specified period, it shall be lawful for the Procuring Entity at its discretion to annul the award and encash Bid Security.
- 4) If the contractor during the currency of the Contract fails to maintain the requisite Performance Security, it shall be lawful for the Procuring Entity at its discretion
  - (a) to terminate the Contract for Default besides availing any or all contractual remedies provided for breaches/ default, or
  - (b) without terminating the Contract:
    1. recover from the contractor the amount of such security deposit by deducting the amount from the pending bills of the contractor under the contract or any other

- contract with the Procuring Entity or the Government or any person contracting through the Procuring Entity or otherwise howsoever as per GCC-clause 10.4, or
2. treat it as a breach of contract and avail any or all availing any or all contractual remedies provided for breaches/ default.
- 5) In the event of any amendment issued to the contract, the contractor shall furnish suitably amended value and validity of the Performance Security in terms of the amended contract within fourteen days of issue of the amendment.
  - 6) The Procuring Entity shall be entitled, and it shall be lawful on his part,
    - (a) to deduct from the performance securities or to forfeit the said security in whole or in part in the event of:
      - (i) any default, or failure or neglect on the part of the contractor in the fulfilment or performance in all respect of the contract under reference or any other contract with the Procuring Entity or any part thereof
      - (ii) for any loss or damage recoverable from the contractor which the Procuring Entity may suffer or be put to for reasons of or due to above defaults/ failures/ neglect
    - (b) and in either of the events aforesaid to call upon the contractor to maintain the said performance security at its original limit by making further deposits, provided further that the Procuring Entity shall be entitled, and it shall be lawful on his part, to recover any such claim from any sum then due or which at any time after that may become due to the contractor for similar reasons.
  - 7) Subject to the sub-clause above, the Procuring Entity shall release the performance security without any interest to the contractor on completing all contractual obligations, including the warranty obligations, if any. Alternatively, for the duration of Warranty obligations, upon the contractor submitting a suitable separate Warranty Security, the original Performance Guarantee Security shall be released mutatis mutandis.

### **5.9 Permits, Approvals and Licenses**

Whenever the supply of Goods and incidental Works/ Services requires that the contractor obtain permits, approvals, and licenses from local public authorities, it 'hall be the contractor's sole responsibility to obtain these and keep these current and valid. Such requirements may include but not be restricted to export licence or environmental clearance if required. If requested by the contractor, the Procuring Entity shall make its best effort to assist the contractor in complying with such requirements in a timely and expeditious manner, without any dilution of the Contractor's responsibility in this regard.

### **5.10 Accounting, Inspection and Auditing**

- 1) The Contractor shall keep and make all reasonable efforts to cause its Sub-Contractors to keep accurate and systematic accounts and records in respect of the Goods and in such form and detail as shall identify relevant time changes and costs and as per accounting principles prescribed in India.
- 2) The Contractor shall permit and shall cause its Sub-Contractor to permit, the Borrower, Government of India and Exim Bank and/or persons appointed by the Exim Bank to inspect the

Site and/or all accounts and records relating to the performance of the Contract and the submission of the Bid to provide the Goods, and to have such accounts and records audited by auditors appointed by the Exim Bank if requested by the Exim Bank. The Contractor's attention is drawn to Clause GCC 13.1(6) which provides, inter alia, that acts intended to materially impede the exercise of the Exim Bank's inspection and audit rights provided for under this Clause GCC 5.10 constitute a prohibited practice subject to contract termination.

#### **5.11 Custody and Return of the Procuring Entity's Materials/ Equipment/ Documents loaned to Contractor.**

- 1) Unless stipulated in the contract, no asset/ property/ drawings/ material/ samples/ equipment/ utility shall be provided or loaned to the contractor for the performance of the contract. Whenever such assets are required to be issued to the contractor (inter-alia in fabrication or design or development) as per the contract, these would be issued only as per terms and conditions and against appropriate safeguards (including Insurances, Bank Guarantee, Indemnity Bonds, Retention Money, etc.) specified therein. The Contractor shall use such property for the execution of the contract and no other purpose whatsoever.
- 2) The contractors shall sign receipts for all tools, plants and materials or other assets/ properties made over to him by the Procuring Entity. All such assets shall be deemed to be in good condition when received by the contractor unless he has within twenty-four hours of the receipt thereof notified the Procuring Entity to the contrary. Otherwise, he shall be deemed to have lost the right to do so at any subsequent stage.
- 3) These assets shall remain the property of the Procuring Entity, and the contractor shall take all reasonable care of all such assets. The contractor shall be responsible for all damage or loss from whatever cause caused while such assets are possessed or controlled by the contractor, staff, workmen or agents.
- 4) Where the contractor insures such assets against loss or fire at the request of the Procuring Entity, such insurance shall be deemed to be by way of additional precaution and shall not prejudice the liability of the contractor as aforesaid.
- 5) The Contractor shall return all such assets in good order or repair, fair wear and tear excepted, before the completion/ closure/ termination of the contract and shall be responsible for any failure to account for the same or any damage done to that as assessed by the Procuring Entity, whose decision shall be final and binding.

#### **5.12 Labour Codes and Related Obligations**

*This clause shall be applicable only if it is specifically indicated to be applicable in SCC.*

##### **5.12.1 Independent Contractor**

The contractor's status shall be that of an independent contractor and Primary Employer of staff deployed during the contract by him or his sub-contractors or other associates. The Contractor, its employees, agents, and subcontractors performing under this Contract are not employees or agents of the Procuring Entity, simply by Services delivered under this Contract.

**5.12.2 Obligations of the contractor under Labour Codes and Rules**

- 1) In cases where Contract or part(s) thereof is to be performed by the contractor at the premises of the Procuring Entity or Consignee, the contractor shall comply with the provisions of the applicable local Laws / codes, as modified from time-to-time.
- 2) The Contractor shall obtain a valid licence under the aforesaid Laws / Codes as modified from time-to-time before the commencement of the contract and continue to have a valid licence until the completion of the contract.
- 3) In respect of all labour directly or indirectly employed in the contract for the performance of the contractor's part of the contract, the contractor shall comply with or cause to comply with the provisions of the aforesaid Laws / Codes wherever applicable. The contractor shall be solely responsible for submitting all the necessary returns under these codes and the rules. Nevertheless, the contractor shall submit returns to the Procuring Entity, as applicable, to confirm compliance with such codes and rules. Failure to do so shall entitle Procuring Entity to take any measure to ensure compliance to such codes and rules by the contractor and his associates, including, but not limited to, withholding contractor's bills.
- 4) The Contractor shall pay the wages not below the rate of minimum wages, as notified by the Borrowing Government, through the bank transfer. Notwithstanding the contract's provisions to the contrary, the Contractor shall cause to be paid the wages to labour directly or indirectly engaged on the contract, including any engaged by his Sub-Contractors in connection with the said contract as if he had immediately employed the labour. The Procuring Entity shall, without any commitments or being obliged to do, may at its discretion, monitor that such payments are being made. The Contractor shall be required to submit, every month, documentary evidence in the form of a Bank Statement of having transferred the gross minimum wages to each of the workers. Failure to do so shall entail Procuring Entity taking up any measure to ensure the payment of wages including, but not limited to, withholding contractor's on-account bills.

**5.12.3 The obligation of Contractor to ensure awareness of Labour Codes**

- 1) The Contractor has to mandatorily provide a comprehensive training carried out by a certified Third-Party agency for the awareness of local Labour codes and the Rules, grievance redressal mechanism and other provisions applicable to his and his Sub-contractor's staff, workers, labour employed by him directly or indirectly in delivery of service to the Procuring Entity. The Contractor must submit relevant documentary proof to Procuring Entity of having conducted such training to all workers.
- 2) The Contractor must provide a comprehensive booklet (Procuring Entity approves that) containing all the relevant updated labour codes, rules, and other applicable provisions, to every worker at the outset of the contract in the local vernacular language.
- 3) Procuring Entity, without any commitments or being obliged to do, may its discretion, provide following facilities for Contractor's Contract Labour working on this Contract:
  - a) Helpline for complaints from labour regarding payment of wages, worksite facilities, sexual harassment, etc.
  - b) Provision for recording complaints from workers, citizens, etc., regarding violation of Labour codes and the Rules by Contractor.



**5.13** Additional obligations are stated in the Special Conditions of the Contract.

## **6. Scope of Supply and Technical Specifications**

### **6.1 The Scope of Supply**

- 1) This contract is for the supply of the Goods of the description, specifications, and drawings, and in the quantities outlined in the contract on the dates specified therein.
- 2) **Incidental Works/ Services:** If so stipulated, the contractor shall be required to perform specified incidental Works/ Services (e.g., Installation, Commissioning, Operator's Training etc. in case of Supply of Capital Goods/ Machinery & Plant) as an integral part of the Goods in the contract.

### **6.2 Technical Specifications and Standards**

The Goods & incidental Works/ Services to be provided by the contractor under this contract shall conform to the technical specifications and quality control parameters mentioned in 'Technical Specification and Quality Assurance' under Section VII of the Tender Document or as stipulated in the contract. Wherever references are made in the Contract to codes and standards by which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Contract. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Procuring Entity. For standards and requirements where no applicable specifications/ Quality Assurance are mentioned, appropriate latest authoritative standards and quality assurance issued by the concerned institution shall be applicable. The Goods supplied shall be.

- 1) Entirely brand new, unused, and incorporate all recent improvements in design and materials unless prescribed otherwise by the Procuring Entity in the contract.
- 2) conform to materials, manufacture and workmanship as stipulated in the contract, free of all defects and faults using specified/ appropriate materials, manufacture, and workmanship throughout and consistent with the established and generally accepted standards for Goods of the type ordered and in full conformity with the contract specification, drawing or sample, if any.

### **6.3 Quantity Tolerance**

Unless otherwise stipulated in the contract, the obligation for completing supplies shall be considered complete if the Goods have been supplied to the tolerance of plus or minus 5% of the quantity or of the total value of goods ordered in the contract. Only the supplied quantity shall be paid for as per the terms of the contract.

### **6.4 Eligible Goods - Country of Origin and Minimum Indian Content**

Unless otherwise stipulated in SCC or Contract, the country of origin of 'Goods' and 'incidental Works/ Service' to be supplied under the contract shall have their origin in India or other countries and must conform to the declaration made by the contractor in its bid regarding but not limited to i) restrictions on certain countries with land-borders with India; ii) minimum Indian content. The term "origin" used in this clause means where the goods (including subcontracted components) are mined, grown,

produced, or manufactured or from where the incidental Works/ Services are arranged and supplied. For purposes of this Clause, the term 'Goods' shall have the meaning as defined in GCC-clause 1.2.

#### **6.5 Option Quantity Clause:**

If invoked explicitly in the contract, the Procuring Entity shall reserve the right, but without any obligation to do so, to increase or decrease the ordered quantity upto a percentage specified therein (or 25% if not specified) at any time, till the final delivery date of the contract, by giving reasonable notice and commensurate delivery period, even though the quantity ordered initially has been supplied in full before the last date of Delivery Period.

#### **6.6 Spare parts in Supply of Capital Goods/ Machinery and Plant**

- 1) If SCC/ Contract declares it to be the procurement of Capital Goods/ Machinery & Plant, the contractor shall supply/ provide any or all of the following materials, information, etc. about spare parts manufactured and/ or supplied by them:
  - (a) The spare parts as selected by the Procuring Entity to be purchased from the contractor, subject to the condition that such purchase of the spare parts shall not relieve the contractor of any contractual obligation including warranty obligations; and
  - (b) In case the production of the spare parts is discontinued within the service life of the equipment supplied hereunder (or a period stipulated in the contract):
    - (i) sufficient advance notice to the Procuring Entity before such discontinuation to provide adequate time for it to purchase the required spare parts etc., and
    - (ii) immediately following such discontinuation, as and if requested by the Procuring Entity, provide free of cost the designs, drawings, layouts, specifications, and alternative sources of supply of such spare parts.
- 2) the contractor shall carry sufficient inventories to assure ex-stock supply of consumable spares for the Goods so that the same is supplied to the Procuring Entity promptly on receipt of the order from the Procuring Entity.

#### **6.7 Warranty/ Guarantee**

If so stipulated in the SCC/ Contract, the following warranty/ Guarantee clause shall apply:

- 1) the contractor hereby covenants that it is a condition of the contract that all Goods supplied to the Procuring Entity under this contract shall be free of all defects and faults arising from design, materials (except when the design adopted and/ or the material used are as per the Procuring Entity's specifications) or workmanship or from any act or omission of the contractor, that may develop under regular use of the supplied Goods under the local conditions of the host country.
- 2) Unless otherwise indicated in the contract, the contractor also guarantees that the said Goods would continue to conform to the description and quality as aforesaid, for the period stipulated in the SCC.
- 3) Obligations of the contractor under the warranty clause shall survive even though:
  - (a) The Goods may have been inspected, accepted, installed/ commissioned and paid for by the Procuring Entity.

- (b) The contract is terminated for any reason whatsoever.
- 4) The Procuring Entity shall promptly notify in writing to the contractor, If during the period above, the said goods/ stores/ articles are discovered not to conform to the description and quality or have deteriorated, otherwise than by fair wear and tear (the decision of the Procuring Entity in that behalf being final and conclusive).
  - 5) Upon receipt of such notice, the contractor shall, within 14 days (or within any other period, if stipulated in the contract), expeditiously repair or replace the defective Goods or parts thereof, free of cost, at the ultimate destination. The Contractor shall take over the replaced parts/ Goods after providing their replacements, and no claim shall lie on the Procuring Entity for such replaced parts/ Goods after that.
  - 6) A penalty of 0.5% (half per cent) of the contract value for the delay in response time beyond specified time as detailed above shall be recoverable from the Performance/ Warrantee Guarantee or as per GCC-clause 10.4 below. The maximum penalty for warranty failure will be 5% (Five percent) of the contract value during the whole warranty period. If there is further such delay after reaching this limit, Procuring Entity shall be entitled to encashment of whole of Performance/ Warrantee Guarantee Bonds. In such an event, action similar to GCC-clause 9.10 for inordinate delays would also be taken.
  - 7) In case of any rectification of a defect or replacement of any defective Goods during the warranty period, the warranty for the rectified/ replaced Goods shall remain till the original warranty period.
  - 8) If the contractor, having been notified, fails to rectify/ replace the defect(s) within 21 days (or within any other period, if stipulated in the contract), it shall amount to breach of Contract for default under GCC-clause 12.1, and the Procuring Entity shall avail any or all remedial action(s) thereunder.

## **7. Inspection and Quality Assurance**

### **7.1 Tests and Inspections**

- 1) The 'Technical Specification and Quality Assurance' (Section VII) shall specify inspections and tests (including raw materials and/ or stage inspections, if so specified) to be carried out and where and how they are to be conducted. If such inspections and tests are conducted in the premises of the contractor or its subcontractor(s), all reasonable facilities and assistance, including access to relevant drawings, design details and production data, shall be furnished by the contractor to the Procuring Entity's inspector at no charge to the Procuring Entity.
- 2) The Procuring Entity and/ or its nominated representative(s) shall, without any extra cost to the Procuring Entity, inspect and/ or test the ordered Goods and the incidental Works/ Services to confirm their conformity to the contract specifications and other quality assurance details incorporated in the contract. As soon as a consignment is getting ready, the contractor shall submit a request for inspection to the Inspecting Officer and the Procuring Entity. The Inspecting Officer shall inform the contractor in writing of its programme for such inspection and the officials' identity to be deputed for this purpose.

- 3) If so stipulated in the contract, the contractor shall, before proceeding with bulk manufacture or delivery of the Goods, submit to the Inspecting Officer for inspection samples of the specified raw-material used in the manufacture and/ or the Goods as stipulated in the contract or by the Inspecting Officer. However, the Contractor shall not be entitled to be shown any consideration or give any extension of time or claim to be exonerated from completing the delivery within the stipulated period only on the ground of delay in the approval of any such sample.
- 4) Unless otherwise provided for in the contract, if the test proves satisfactory and the stores or any instalment thereof is accepted, the quantity of the stores or materials expended in the test shall be deemed to have been taken delivery of by the Procuring Entity and be paid for as such.
- 5) Unless otherwise stipulated, in the contract, all costs of tests and inspections (including any special or third-party tests), whether at the contractor's premises, shall be borne by the contractor. However, in case of stipulation for type testing/ proto-type testing of machinery and plant involving special tests, the contract shall indicate the apportionment of test and expended material costs among the parties.
- 6) Under no circumstances does the Inspecting officer have the authority to modify the governing specifications, approved drawings, or samples during inspection without the Procuring Entity's approval.
- 7) Pre-Dispatch Inspection at Contractor's/Manufacturer's premises: If stipulated, before dispatch, the goods will be inspected by the Inspection Agency nominated by the Procuring Entity (independently or jointly with the Procuring Entity as decided by the Procuring Entity) at Contractor's/manufacturer's premises for their compliance to the contract specifications. Fee/Charges taken by inspection Agency shall be borne by the Contractor. For in-house testing, the Contractor will provide necessary facilities free of cost. The Contractor shall notify the Procuring Entity through e-mail about readiness of goods for pre-dispatch inspection and the Procuring Entity will notify the Contractor about the Authorized Representative/ Nominated External Inspection Agency and the date for testing. The goods would be dispatched to the Procuring Entity only after clearance in pre-dispatch inspection'. The Procuring Entity's right of rejection in respect of the goods finally received at his location shall in no way be limited or waived by reason of the goods having previously been inspected, tested and passed by the Procuring Entity or its Nominated Inspection Agency prior to the goods shipment. While bidding, the Contractor should take into account 7 days for inspection from the date of email offering the goods for inspection. Any delay in inspection beyond 7 days shall be on the part of the Procuring Entity and shall be regularized without Liquidated Damages. Cost of inspection / testing shall be factored in by the supplier in the cost of the product itself while submitting bid. The inspection agency will conduct the inspection and submit the certificate to the Contractor as well as the Procuring Entity. The Contractor will be solely responsible for pre-inspected material for Quality Assurance including pre-dispatch inspection/ testing at manufacturers site.

## 7.2 Consequence of Rejection

Upon the Goods being rejected by the Inspecting Officer or Interim Consignee or Consignee at a place other than the premises of the contractor, the Procuring Entity shall be at liberty to:

- 1) Demand that such stores shall be removed by the contractor at his cost subject as hereinafter stipulated, within 21 days of the date of intimation of such rejection. Provided that the Inspecting Officer may call upon the contractor to remove dangerous, or infected, stores within 48 hours of the receipt of such communication and the decision of the Inspecting Officer in this regard shall be final in all respects. Provided further that where the price or part thereof has been paid, the consignee is entitled without prejudice to his other rights to retain the rejected stores till the price paid for such stores is refunded by the contractor or dispose off such rejected Goods as per clause below save that such retention shall not in any circumstances be deemed to be acceptance of the stores or waiver of rejection thereon. The Contractor shall bear all cost of such replacement, freight and related cost without being entitled to any extra payment on that or any other account.
- 2) All rejected Goods shall, in any event, and circumstances remain and always be at the contractor's risk immediately on such rejection. If the contractor does not remove such Goods within the periods aforementioned, the Procuring entity /inspecting officer, as the case may be as per the place of rejection, may remove the rejected Goods. The Procuring Entity or Inspecting Officer may either return the same to the contractor at his risk and cost by such mode of transport as it may decide or dispose off such goods at the contractor's risk and on his account and retain such portion of the proceeds from such disposal, as may be necessary to recover any expense incurred in connection with such disposals (or any price refundable as a consequence of such rejection). The Procuring Entity shall, in addition, be entitled to recover from the contractor ground rent/ demurrage charges on the rejected Goods after the expiry of the time-limit mentioned above.
- 3) Disposal of rejected goods in an aforesaid manner shall not exonerate contractor but still hold him liable to pay to the Procuring Entity, the dues as may arise as per the terms of contract besides the cost of goods if already paid to the contractor and any inspection charges. The Procuring Entity can take action as per contract terms if the contractor fails to pay the amount due to him.
- 4) where under the contract the price payable is fixed FOB port of shipment in India and CIP or DAP named place of destination, the contractor shall, if the Goods are rejected at destination by the consignee, be liable, in addition to his other liabilities, including a refund of price recoverable in respect of the Goods so rejected, to reimburse to the Procuring Entity the freight and all other expenses, if any, incurred by it in this regard. The Contractor shall be allowed to take back rejected Goods only after such refunds are received by the Procuring Entity.

### **7.3 Inspections at the last moment**

- 1) If the contract stipulates pre-despatch inspection of the ordered Goods at Contractors premises, he shall put up the Goods for inspection well ahead of the delivery period to complete the inspection within that period.
- 2) In cases where only a portion of the Goods ordered is tendered for inspection at the last moments of the delivery period and also in cases where inspection is not completed in respect

of the portion of the Goods tendered for inspection during the delivery period, the inspector shall carry out the inspection and complete the formality beyond the contractual delivery period at the specific written request by and at the risk and expense of the contractor. The fact that the Goods have been inspected after the contractual delivery period shall not amount to keeping the contract alive, and this shall be without any prejudice to the legal rights and remedies available to the Procuring Entity under the terms & conditions of the contract.

- 3) If the Goods tendered for inspection during or at the last moments of the delivery period are not found acceptable after carrying out the inspection, the Procuring Entity is entitled to cancel the contract in respect of the same at the risk and expense of the contractor. If the Goods tendered for inspection are found acceptable, the Procuring Entity may grant an extension of the delivery period subject to conditions mentioned in GCC-clause 9.11 below.

#### **7.4 Consignee's right of Rejection of Inspected Goods**

- 1) Goods accepted by the Procuring Entity and/ or its inspector at the initial inspection and final inspection in terms of the contract shall in no way dilute the Procuring Entity's right to reject the same later if found deficient concerning 'Technical Specifications and Quality Assurance'.
- 2) Notwithstanding any approval which the Inspecting Officer may have given in respect of the Goods or any materials or other particulars or the work or workmanship involved in the performance of the contract (whether with or without any test carried out by the contractor or the Inspecting Officer or under the direction of the Inspecting Officer) and notwithstanding delivery of the Goods where so provided to the interim consignee, it shall be lawful for the consignee, on behalf of the Procuring Entity, to inspect, test and, if necessary, reject the Goods or any part, portion or consignment thereof, after the Goods' arrival at the final destination within a reasonable time after actual delivery thereof to him at the place of destination stipulated in the contract, if such Goods or part, portion or consignment thereof is not in all respects in conformity with the terms and conditions of the contract whether on account of any loss, deterioration or damage before despatch or delivery or during transit or otherwise howsoever.

*Note: Regarding materials pr'-inspected at the firm's premises during manufacture or before delivery or dispatch, the consignee shall issue rejection advice within 90 days from the date of receipt.*

## **8. Packing, Transportation, Insurance and Receipt**

### **8.1 Packing Specifications and Quality**

- 1) The marking of the Goods must comply with the laws relating to merchandise marks for the time being in force in the Purchaser's country.
- 2) The packing for the Goods to be provided by the contractor should be strong and durable enough to withstand, without limitation, the entire journey during transit, including transshipment (if any), rough handling, open storage, etc., without any damage, deterioration etc. If necessary, the size, weights, and volumes of the packing cases, the 'remoteness of the goods' final destination, and availability or otherwise of transport and handling facilities at all points during transit upto the final destination shall also be considered.

- 3) The quality of packing, the manner of marking within & outside the packages, and accompanying documentation shall strictly comply with the 'Technical Specification and Quality Assurance' and in the contract. If the packing requirements are amended due to any amendment to the contract, the contractor shall comply accordingly.
- 4) Unless otherwise provided in the contract, all containers (including packing cases, boxes, tins, drums, and wrappings) in which the contractor supplies the Goods shall be considered non-returnable and their cost included in the contract price.
- 5) If the contract provides that the containers shall be returnable, they must be marked 'returnable'. Unless otherwise specified, the cost of reverse transportation shall be borne by the contractor.
- 6) If the contract provides that returnable containers shall be separately charged, they shall be invoiced by the contractor at a price stipulated in the contract. In such cases, the contractor shall give full credit for the invoiced amount if the containers are returned to the contractor. Return of containers shall be made within a reasonable time, and in the event of any dispute or difference arising as to whether the containers were so returned, the decision of the Procuring Entity thereon shall be final and binding. In his discretion, the Procuring Entity may award such compensations as may, in his opinion, be proper for any undue delay in returning the containers.

## **8.2 Packing instructions**

Unless otherwise mentioned in the 'Technical Specification and Quality Assurance' under Sections VII and SCC under Section V, the contractor shall make separate packages for each consignee (in case there is more than one consignee mentioned in the contract) and mark each package on three sides with the following with indelible paint of proper quality:

- 1) An iconic graphical mark to visually identify a particular consignment.
- 2) Name of the Procuring Entity; contract number and date
- 3) brief description of Goods including quantity.
- 4) the gross weight of the package
- 5) Serial number of this package and the total number of packages in the consignment
- 6) packing list reference number
- 7) country of origin of goods
- 8) consignee's name and full address and
- 9) Contractor's name and address

## **8.3 Transfer of Title of Goods**

- 1) Unless otherwise stated in the contract, notwithstanding any inspection and approval by the Inspecting Officer on the contractor's premises, or any payments made to the contractor, property in the Goods (and resultant rights and liabilities) shall not pass on to the Procuring Section IV: General Conditions of Contract (GCC) [66]

Entity until the Goods have been received, inspected, and accepted by the consignee. The Goods and every constituent part thereof, whether in the possession or control of the contractor, his agents or servants or a carrier, or the joint possession of the contractor, his agents or servants and the Procuring Entity, his agents, or servants, shall remain in every respect at the risk of the contractor, until their actual delivery to a person stipulated in the contract as the interim consignee for despatch to the consignee. The Contractor shall be responsible for all loss, destruction, damage, or deterioration of or to the Goods from any cause whatsoever while the Goods after approval by the Inspecting Officer are awaiting despatch or delivery or are in the course of transit from the contractor to the consignee or, as the case may be, interim consignee. The Contractor shall alone be entitled and responsible for making claims against any carrier in respect of non-delivery, short delivery, mis-delivery, loss, destruction, damage, or deterioration of the Goods entrusted to such carrier by the contractor for transmission to the consignee or the interim consignee as the case may be.

- 2) Provided that where, under the terms of the contract, the Goods are required to be delivered to an interim consignee for despatch to the consignee, the Goods shall be 't the Procuring Entity's risk after their delivery to the interim consignee.

## **8.4 Transportation**

### **8.4.1 Instructions for transportation of domestic Goods**

If no instruction is provided in the contract, the contractor shall arrange transportation of the ordered Goods as per its procedure.

### **8.4.2 Shipping Arrangement for Foreign Contracts:**

In the case of FOB contracts, shipping arrangements shall be made by the Procuring Entity. The Contractor shall give adequate notice to the Procuring Entity and its Forwarding Agents/ Nominees about the readiness of the cargo from time to time and at least six weeks' notice in advance of the required date of dispatch for finalising the shipping arrangements. In the case of CFR/ CIP/ CIF contracts, the contractor shall arrange the shipment, insurance (as applicable) as per the instructions from the Procuring Entity.

### **8.4.3 Airlifting**

Should the Procuring Entity intend to airlift all or some of the Goods, the contractor shall pack the Goods accordingly upon receiving intimation to that effect. Such deliveries shall be agreed upon well in advance and paid for as may be mutually agreed.

### **8.4.4 Distribution of Despatch Documents for Clearance/ Receipt of Goods**

- 1) the contractor shall send all the relevant despatch documents well in time to the Procuring Entity to enable it to clear or receive (as the case may be) the Goods in terms of the contract. Unless otherwise stipulated in the contract, the usual documents involved and the drill to be followed in general for this purpose are as follows:
- 2) For Local Goods within 24 hours of despatch, the contractor shall notify the Procuring Entity, consignee, and others concerned, if mentioned in the contract, the complete details of



despatch and also supply the following documents (as relevant) to them by registered post/ speed post/ courier besides advance intimation by digital means (or as instructed in the contract or SCC):

- (a) the contractor's Invoice indicating, inter alia description and specification of the Goods, quantity, unit price, total value;
  - (b) Packing list;
  - (c) Insurance certificate;
  - (d) Railway receipt/ Road Consignment note;
  - (e) Manufacturer's guarantee certificate and in-house inspection certificate;
  - (f) Inspection certificate issued by the Procuring Entity's inspector
  - (g) Expected date of arrival of goods at destination and
  - (h) Any other document(s), as and if mentioned explicitly in the contract.
- 3) For Imported Goods, within 3 days of despatch, the contractor shall notify the Procuring Entity, consignee and other concerned, if mentioned in the contract, the complete details of despatch and also supply the following documents to them by Courier (or as instructed in the contract), besides advance intimation by digital means:
- (a) Clean on-Board Airway Bill/ Bill of Lading (B/ L)
  - (b) Original Invoice
  - (c) Packing List
  - (d) Certificate of Origin from Seller's Chamber of Commerce
  - (e) Certificate of pre-despatch inspection by the Procuring Entity's representative/ nominee
  - (f) Certificate of Quality and current manufacture from OEM
  - (g) Dangerous Cargo Certificate, if any.
  - (h) Insurance Policy of 110% if CIP contract.
  - (i) Performance Bond/ Warranty Bond
  - (j) Certificate of origin

### **8.5 Freight**

The Goods shall be despatched at standard routes identified by the contractor. Where alternative routes exist, the Procuring Entity shall, if called upon to do so, indicate the most economical route available or name the authority whose advice in the matter shall be taken and acted upon. If any advice of any such authority is sought, his decision or advice in the matter shall be final and binding on the contractor,

### **8.6 Insurance**

Unless otherwise instructed in the contract, the contractor shall arrange for insuring the Goods against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the following manner:

- 1) In case of domestic goods supply on CIP destination basis, the contractor shall be responsible until the entire Goods contracted arrive in good condition at destination. The contractor shall cover the transit risk in this respect by getting the Goods duly insured at its own cost. The contractor shall obtain the insurance cover in its name and not in the name of the Procuring Entity or its Consignee.

- 2) In FOB and CFR offers for the import of Goods, the insurance shall be arranged by the Procuring Entity. However, the contractor must give sufficient notice to the Procuring Entity before the date of shipment so that the Insurance Cover for the shipment can be activated. The Contractor must co-ordinate to ensure that the Shipment sails only with Insurance cover in place.

## **8.7 Receipt of Consignment**

### **8.7.1 Preliminary Acknowledgement**

At the time of the delivery at the destination, the consignee shall receive the Goods on a "subject to inspection and acceptance in terms of contract" basis and shall issue the preliminary receipt to acknowledge having received the claimed quantity (not the quality) of consignment.

### **8.7.2 Goods Receipt and Inspection Report**

If the received consignment successfully passes the quantity and quality checks, procuring Entity shall issue a Goods Receipt or a similar voucher by any other name. The contractor may claim payment based on this document inter-alia other specified documents.

### **8.7.3 Rejection of Consignment by the Consignee**

If the received consignment or part thereof fails to pass quantity and quality checks, the Procuring Entity shall issue a Rejection Note, noting the reasons for rejection. The Paying Authority shall recover any part payment or freight charges paid for the rejected consignment. The Contractor shall take back the rejected consignment as per GCC-clause 7.2 above within 21 days unless otherwise stipulated in the contract.

### **8.7.4 Short Receipt Certificate**

If the quantity received is less than claimed/ invoiced, Receipt /Rejection Note shall be issued only for the received quantity. In such cases, a short receipt certificate shall also be issued by the consignee.

## **9. Terms of Delivery and delays**

### **9.1 Effective Date of Contract**

The effective date of the contract shall be the date on which it has been signed by the Procuring Entity or the effective date mentioned in the contract, whichever is later. If the procurement entity receives no communication from the contractor within 14 days of the date signed by the procuring entity or the date of sending it to the contractor, whichever is later, then the date of signing shall be the effective date of the contract. The dates of deliveries shall be counted from such date. No notice to commence the contract shall be issued separately.

### **9.2 Time is the Essence of the contract**

The time for and the date for delivering the Goods stipulated in the contract or as extended shall be deemed to be of the essence of the contract. Delivery must be completed not later than the date(s) so specified or extended.

### **9.3 Destination Places**

The destination(s) where the Goods are to be delivered shall be as stipulated in the contract or Section VI – Schedule of Requirements.

#### **9.4 Terms of Delivery**

- 1) Terms of delivery (e.g., F.O.R. destination/ CIP/ DAP/FOB, etc.) shall determine the point at which the responsibilities and property in goods passes over from the contractor to the Procuring Entity. These terms also determine the time of delivery.
- 2) the contractor shall either deliver free or CIP/ DAP/ FOB at the place/ places or otherwise as detailed in the contract, the quantities of the Goods detailed therein, and the Goods shall be delivered or despatched not later than the dates stipulated in the contract. The delivery shall not be complete unless the Goods are inspected and accepted by the Consignee as provided in the contract. No Goods shall be deliverable to the consignee on Sundays and public holidays or outside designated working hours without the written permission of the consignee.
- 3) the contractor shall not despatch the Goods after the expiry of the delivery period. The Contractor must apply to the Procuring Entity to extend the delivery period and obtain the same before despatch. If the contractor despatches the Goods without obtaining an extension, it would be doing so at its own risk, and no claim for payment for such supply and/ or any other expense related to such supply shall lie against the Procuring Entity.

#### **9.5 Part Supplies**

The Contractor shall not arrange part-shipments and/ or transshipment if not stipulated in the contract without the express/ prior written consent of the Procuring Entity.

#### **9.6 Progressing of Deliveries**

The Contractor shall allow reasonable facilities and free access to his Works/ records to the Inspecting Officer or such other Officer as may be nominated by the Procuring Entity to ascertain the progress of the deliveries under the contract. The Contractor shall, from time-to-time, render such reports concerning the progress of the contract and/ or supply of the Goods in such form as may be required by the Procuring Entity. The submission, receipt and acceptance of such reports shall not prejudice the rights of the Procuring Entity under the contract, nor shall operate as an estoppel against the Procuring Entity merely because he has not taken notice of/ or subjected to test any information contained in such report.

#### **9.7 Notification of Delivery.**

Notification of delivery or despatch regarding every instalment shall be made to the consignee and to the Procuring Entity immediately on despatch or delivery. The Contractor shall further supply to the consignee, or the interim consignee, as the case may be, packing list of the consignment and the contract references. All packages, containers, bundles, and loose materials part of every instalment shall be fully described in the packing list, and complete details of the contents of the packages and quantity of materials shall be given to enable the consignee to check the Goods on arrival at destination. The Railway Receipt/ Consignment Note or Bill of Lading shall be forwarded to the consignee by registered post/ Courier/ by hand immediately on the despatch of Goods. The Contractor shall bear and reimburse the Procuring Entity demurrage/ wharfage or other charges, if any, paid

because of delay on the contractor's part in forwarding the Railway Receipt, Consignment Note or Bill of Lading.

#### **9.8 Dispatches at the last moment or after the expiry of the delivery**

- 1) If the contractor locally supplies a consignment after the expiry of the contracted delivery date, the Consignee may either refuse to receive it or receive it without prejudice to the rights of the Procuring Entity under the terms and conditions of the contract. Such consignments shall lie at the risk and responsibility of the contractor. Such a receipt by the consignee shall not acquiesce or condone the late delivery and shall not intend or amount to an extension of the delivery period or keeping the contract alive. The Contractor must obtain an extension of the delivery date/period from the Procuring Entity.
- 2) If the contractor dispatches the Goods after the expiry of the delivery period, it shall be at his own risk and responsibility, and that the consignee is not liable for any demurrage, wharfage, and deterioration of Goods at the destination station and, in his interest, the contractor shall get an extension of the delivery period from the contracting Entities.
- 3) In the case of imports, the contractor must not dispatch the consignment after the expiry of the delivery period without taking a prior extension of the delivery period. Otherwise, payment against the LC shall be denied. If dispatched, it shall be at the risk and responsibility of the contractor and Procuring Entity shall not take any responsibility for such consignments.

#### **9.9 Delay in the contractor's performance**

If the contractor fails to deliver the Goods or any instalment thereof or delays incidental Work/ Services (e.g. installation, commissioning, operator training etc.) within the period fixed for such delivery in the contract or as extended or at any time repudiates the contract before the expiry of such period, the Procuring Entity may without prejudice to his other rights:

- 1) recover from the contractor liquidated damages as per clause 9.12 below, or
- 2) treat the delay as a breach of contract as per clause 12.1 below and avail all the remedies therein.

#### **9.10 Inordinate Delays**

Delays of more than one-fourth (25%) of the total completion period shall be treated as inordinate delays. Such inordinate delays shall be noted as poor performance and be held against the contractor in future tenders. A show-cause notice shall be issued to the contractor before declaring it a poor performance. Such delays may be considered as a breach of the contract at the option of the Procuring Entity.

#### **9.11 Extension of Delivery Period:**

- 1) If at any time during the currency of the contract, the contractor encounters conditions hindering timely delivery of the Goods and performance of incidental Works/ Services, he shall promptly inform the Procuring Entity in writing about the same and its likely duration. He must make a request to the Procuring Entity for an extension of the delivery schedule. On receiving the contractor's communication, the Procuring Entity shall examine the situation and, at its

discretion, may agree to extend the delivery schedule, with or without liquidated damages and with and without denial clause by issuing an amendment to the contract.

- 2) **Conditions for Extension of Delivery Period:** When the period of delivery is extended due to delay by the contractor, the amendment extending the delivery period shall, inter alia, be subject to the following conditions:
  - (a) **Liquidated Damages:** The Procuring Entity shall recover from the contractor, under the provisions of this clause, liquidated damages on the Goods and incidental Works/ Services, which the contractor has failed to deliver within the delivery period stipulated in the contract.

### 9.12 Liquidated damages

- 1) Subject to GCC clause 9.11, if the contractor fails to deliver any or all of the Goods or fails to perform the incidental Works/ Services (e.g. installation, commissioning or operator training) within the time frame(s) incorporated in the contract, the Procuring Entity shall, without prejudice to other rights and remedies available to the Procuring Entity under the contract, deduct from the contract price, as agreed liquidated damages, but not as a penalty, a sum equivalent to the ½% percent (or any other percentage if prescribed in the contract) of the delivered price (including elements of freight) of the delayed Goods and/ or incidental Works/ Services for each week of delay or part thereof until actual delivery or performance, subject to a maximum deduction of the 5% (or any other percentage if prescribed in the contract) of the delayed Goods' or incidental Works/ Services' contract price(s).
- 2) Any failure or delay by any sub-contractor, though their employment may have been sanctioned under GCC-clause 5.5 above, shall not be admitted as a ground for any extension of time or for exempting the contractor from liability for any such loss or damage as aforesaid.

### 9.13 Force Majeure & Termination

- 1) As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India or in the Host Country of any or all of Non-Political Event, Indirect Political and Political Event, as defined in Clauses 9.13(2), 9.13(3) and 9.13(4) respectively, if it has a Materially Adverse Effect on the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event

(a) is beyond the reasonable control of the Affected Party, and

(b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice.

- 2) Non-Political Event and Indirect Political Event

A Non-Political Event shall mean one or more of the following acts or events:

(a) act of God, epidemic, unprecedented extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, tsunami, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site). However, it shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Contractor;

(b) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(c) strikes or boycotts (other than those involving the Contractor, Sub-contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 10 (ten) days in an Accounting Year and not being an Indirect Political Event;

(d) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;

(e) any judgment or order of any court of competent jurisdiction or statutory authority made against the Contractor in any proceedings restraining the performance of the contract for reasons other than

(i) failure of the Contractor to comply with any Applicable Law, Applicable Laws of Host Country, Applicable Permits of Host Country or Applicable Permit, or

(ii) on account of breach of any Applicable Law, Applicable Laws of Host Country, Applicable Permits of Host Country or Applicable Permit or of any contract, or

(iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Procuring Entity; or (v) breach of its obligations by the Contractor under its sub-contracts;

(f) the discovery of geological conditions, toxic contamination, explosives or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection;

(g) any event or circumstances of a nature analogous to any of the foregoing.

3) An Indirect Political Event shall mean one or more of the following acts or events:

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage

(b) any civil commotion, boycott or political agitation which prevents construction of the Project by the Contractor for an aggregate period exceeding 10 (ten) days in an Accounting Year; or

(c) industry-wide or Host Country-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 10 (ten) days in an Accounting Year;

(d) any failure or delay of a Subcontractor to the extent caused by any Indirect Political Event;

(e) failure of the Procuring Entity / Host Country Instrumentality to permit the Contractor to continue with Operation and Maintenance of the Project, with or without modifications, in the event of stoppage of such work after discovery of any geological or archaeological find;

- (f) any Indirect Political Event that causes a Non-Political Event; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

4) Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality or Host Country Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 12.2.2(1);
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Contractor or of the Sub-contractors;
- (c) any failure or delay of a Sub-contractor but only to the extent caused by another Political Event; or
- (d) any event or circumstances of a nature analogous to any of the foregoing;

5) Duty to report Force Majeure Event

Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Clause with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 10 (ten) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 9.13(5), and such other information as the other Party may reasonably request the Affected Party to provide.

6) Effect of Force Majeure Event on the Agreement

- 1. Upon the occurrence of any Force Majeure

(a) prior to the date of commencement of the Contract, both Parties shall bear their respective Force Majeure costs.

(b) after the date of commencement of the Contract, the costs incurred and attributable to such event and directly relating to this Agreement (the "Force Majeure costs") shall be allocated and paid as follows:

(i) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;

(ii) upon occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Contractor, and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Procuring Entity to the Contractor for the Force Majeure events;

and

(iii) upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the Procuring Entity to the Contractor.

For the avoidance of doubt, Force Majeure costs may include costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, if any, of the Contractor.

2. Save and except as expressly provided in this Clause 9.13, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

3. Upon the occurrence of any Force Majeure Event during the Contract Period, the Contract Period for and in respect of the affected parts shall be extended on a day for day basis for such period as performance of the Contractor's obligations is affected on account of the Force Majeure Event or its subsisting effects, as may be determined by the Independent Engineer.

4. Force Majeure costs for any event which results in any offsetting compensation being payable to the Contractor by or on behalf of its Sub-contractors shall be reduced by such amounts that are payable to the Contractor by its Sub-contractors.

7) Termination Notice for Force Majeure Event

If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

8) Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or



existence of such Force Majeure Event shall be upon the Party claiming relief and/ or excuse on account of such Force Majeure Event.

9) Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

## **10. Prices and Payments**

### **10.1 Prices**

#### **10.1.1 Charged Prices**

Prices to be charged by the contractor for the supply of Goods and provision of incidental Works/ Services in terms of the contract shall not vary from the corresponding prices quoted by the contractor in its bid or during negotiations, if any, and incorporated in the contract except for any price adjustment authorized in the contract.

#### **10.1.2 Controlled Prices**

The price charged by the contractor shall not be higher than the Maximum Retail Price (MRP) at which the same or similar Goods are available in the market. The contractor may charge additional cost relating to transportation, insurance and other incidental charges or factors etc. as attributable to the cross-country supply at the destination.

#### **10.1.3 Price Components and Incidental Works/ Services**

Unless otherwise stated in the contract, the Procuring Entity shall not pay for consignment of incomplete components unless the full useable Scope of Goods (as per the contract/ Schedule of Requirement) has been received. Deficiencies in incidental Works/ Services shall also amount to incomplete delivery. Spares would not be paid for unless the primary Goods are received.

#### **10.1.4 Firm Prices**

Unless otherwise stipulated in the contract, Prices shall be fixed and firm.

#### **10.1.5 Price Variation**

- (a) In case the contract provides for a Price Variation Clause or variation on any other account, the price shall be subject to adjustment as per such clauses, only during the original Delivery Period, subject to the following:
- (b) Any increase due to such variations during the extended delivery period, beyond the original delivery period, shall not be paid by the Procuring Entity.
- (c) Taxes and duties, if any as applicable, chargeable and payable on the Goods shall be charged on the net price after variations.
- (d) While claiming payments where such variations are applicable, the contractor must submit its calculations for each invoice, even if the payment on account of these variations is nil. Prices reduction due to such variations must be passed on to the Procuring Entity.
- (e) **No Other Claim due to Variations:** With the payment of such variations, no additional individual claim shall be admissible on account of fluctuations in market rates, increase in taxes/any other levies/tolls etc.

#### 1) Price Variation Clause

- (a) If the Price Variation clause is applicable as per the contract, the price shall be subject to adjustment to take care of the changes in the cost of labour, material, and fuel/ power components as per the price variation formula specified therein. The amount payable on account of Price variation shall be settled every quarter.
- (b) **Base Month and Quarter:** Unless otherwise stipulated in the contract, the Base Month for 'Price Variation Clause' shall be taken as the month before the month of the last date of bid submission, if any, unless otherwise stated elsewhere. The Base Quarter for applicability of PVC shall end on the Base Month. Unless The Contract has stipulated a different time lag for reckoning Price Variation, the month of reckoning the varied price shall be the month before the month in which delivery has been made. The Quarter of reckoning for applicability of PVC shall end on the Month of reckoning. The Price Variation shall be based on the relevant Indices in the Base Quarter and Quarter of reckoning.
- (c) **Applicability:** If Contract provides for some inputs to be supplied by Procuring Entity free or at a fixed rate, cost of such inputs shall be excluded from the value of the Goods supplied in the relevant quarter for payment/recovery Of price variation.

### 10.2 Taxes and Duties

- 1) The contractor shall be entirely responsible for all taxes, duties, fees, levies etc. payable outside the borrower's country, incurred until delivery of the Goods to the Procuring Entity. Further instruction, if any, shall be as provided in the contract. No tax or duty is applicable in the borrower's country. If the Procuring Entity asks Contractor to pay the local taxes, customs duty etc. and is unable to allow waiver of such taxes, the same shall be reimbursed to the Contractor by the Procuring Entity.

- 2) **Duties/ Taxes on Raw Materials**

The Procuring Entity is not liable for any claim from the contractor on account of fresh imposition and/ or increase (including statutory increase) of GST, customs duty, or other duties on raw materials and/ or components used directly in the manufacture of the contracted

Goods taking place during the pendency of the contract unless such liability is expressly agreed to in terms of the contract.

**3) Customs Duty**

Bidder and the Procuring Entity shall be guided by the clause 4 below.

**4) Taxes and Duties levied in the Borrowing Country:**

As per the Guidelines for Lines of Credit issued by the Government of India vide letter F.No.5/7/2019-IDEAS dated March 31, 2022, the goods and services provided under this LOC from Exim Bank shall be free from all kinds of taxes and duties of any nature whatsoever levied in the Borrowing Country including corporate/ personal/ value added taxes, Import/Custom Duties, Special levies and social security contributions for temporary employees deputed by Indian entity in relation to the contract execution in the borrowing country, including tax exemptions if applicable for eligible services to be rendered locally. If the domestic laws/rules of the Borrowing Country prohibit exemption of any taxes to bilateral partner/multilateral institution extending development assistance to it, the same have to be paid by the Indian entity from its own resources and should be reimbursed by the Procuring Entity to the Indian entity. No tax is liable to be paid from the LOC proceeds.

**10.3 Terms and Mode of Payment**

**Unless otherwise stipulated, the usual payment term is based on the milestones** and as stated in the SCC.

**10.3.1 General Payment condition for payment**

1. While claiming payment, the contractor is also to certify in the bill that the payment being claimed is strictly in terms of the contract and all the obligations on the part of the contractor for claiming that payment has been fulfilled as required under the contract.
2. Unless otherwise specified documents which the contractor is to furnish while claiming payment are:
  - (a) Original Invoice
  - (b) Certificate of pre-despatch inspection by the Procuring Entity's representative/ nominee, if applicable
  - (c) Manufacturer's test certificate, if applicable
  - (d) Performance/ Warrantee Bond, if applicable
  - (e) Certificate of Insurance,
  - (f) Clean on Bill of lading/ Airway bill/ Rail receipt or any other despatch document, in case of payment against dispatch documents, if so provided
  - (g) Consignee's Certificate confirming receipt and acceptance of Goods, in case of payment after receipt and acceptance
  - (h) Certificate of Origin
  - (i) Any other document specified.

- 5) Every payment request shall be accompanied by a Payment Authorisation in the format as prescribed in the LOC Agreement between Government of the Borrower and Exim Bank.
- 6) The Procuring Entity may instruct its bank to issue an irrevocable confirmed documentary credit made available to the Supplier in a bank in the country of the Supplier. In case of the amount covered under the LOC, the negotiating and paying bank, based on payment authorization, shall be the Exim Bank.
- 7) The Eligible Goods and Services shall be inspected before shipment on behalf of the Procuring Entity and the documents to be furnished by the Supplier to the Negotiating Bank viz. the Exim Bank under the letter of credit arrangement herein and shall include an inspection certificate.
- 8) All letters of credit shall be opened by the Issuing Bank in favour of the Supplier within such period prior to the relevant Terminal Disbursement Date as may be agreed by Exim Bank after the relevant contract is approved by Exim Bank. The letters of credit shall be advised and negotiated through the Negotiating Bank i.e. Exim Bank. The letters of credit shall be subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) published by the International Chamber of Commerce, (Publication No.600), and shall be irrevocable. The letter of credit shall provide for payment to be made to the Supplier against presentation of documents as specified in the letter of credit, an inspection certificate and Payment Authorisation.
- 9) The Borrower shall on receiving:
  - (a) an invoice from the Supplier duly certified by the Procuring Entity representing the amount for supplies made / services rendered by the Supplier as per the milestone under an Eligible Contract in the Borrower's Country, or,
  - (b) a request from the Procuring Entity to release advance payment to the Supplier,

Send payment authorisation favouring the Supplier to Exim Bank for the amount of the Eligible Value apportionable to the relevant invoice/request.
- 10) Upon presentation of documents by the Supplier to the Negotiating Bank, the Negotiating Bank shall pay to the Supplier, an amount being not more than one hundred per cent (100%) of contract value apportionable to the relative milestone as reduced by the amount of advance payment in equivalent amount, provided the documents presented are in order and are compliant with the relevant letter of credit.
- 11) Bank charges, expenses, commission or stamp duty payable outside the Borrower's Country shall be to the account of the Supplier and those payable in the Borrower's Country shall be to the account of the relevant Procuring Entity.

### **10.3.2 Advance/ mobilization Payment:**

Payments for supplies made or incidental works/ services rendered shall be released after supplies have been made and only after such incidental works/ services have also been rendered. If expressly provided for in the contract, partial payments against dispatch documents shall not be considered an advance payment for this clause.

#### **10.4 Withholding and lien in respect of sums claimed:**

- 1) Whenever any claim or claims for payment of a sum of money arises against the contractor, out of or under the contract, the Procuring Entity shall be entitled, and it shall be lawful on his part, to withhold and also have a lien to retain such sum or sums, in whole or in part pending finalisation or adjudication of any such claim from-
  - (a) any security or retention money, if any, deposited by the contractor.
  - (b) any sum(s) payable till now or hereafter to the contractor under the same Contract or any other contract with the Procuring Entity if the security is insufficient or if no security has been taken from the contractor.
- 2) It is an agreed term of the contract that the sum(s) of money so withheld or retained under the lien referred above shall be kept withheld or retained till the claim arising out of or under the contract is determined under clause GCC 11 and/ or 12. The contractor shall have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to supra and duly notified as such to the contractor.

#### **10.5 Payment Against Time-Barred Claims**

All claims against the Procuring Entity shall be legally time-barred after three years calculated from the date when the payment falls due unless the payment claim has been under correspondence. The Procuring Entity may reject such claims.

#### **10.6 Commissions and Fees**

No Commissions and Fees are applicable for reimbursement under the LOC.

### **11. Resolution of disputes**

- 1) The Procuring Entity and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 2) If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the SCC.**
- 3) Notwithstanding any reference to arbitration herein,
  - (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

- (b) the Procuring Entity shall pay the Supplier any monies due to the Supplier

## 12. Defaults, Breaches, Termination, and closure of Contract

### 12.1 Termination due to Breach, Default, and Insolvency

#### 12.1.1 Defaults and Breach of Contract

In case the contractor undergoes insolvency or receivership; neglects or defaults, or expresses inability or disinclination to honour his obligations relating to the performance of the contract or ethical standards or any other obligation that substantively affects the Procuring Entity's rights and benefits under the contract, it shall be treated as a breach of Contract. Such defaults could include inter-alia:

- 1) **Default in Performance and Obligations:** if the contractor fails to deliver any or all of the Goods or fails to perform any other contractual obligations (including Code of Integrity or obligation to maintain eligibility and Qualifications based on which contract was awarded) within the period stipulated in the contract or within any extension thereof granted by the Procuring Entity.
- 2) **Insolvency:** If the contractor being an individual or if a firm, any partner thereof, shall at any time, be adjudged insolvent or shall have a receiving order or order for the administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, or
- 3) **Liquidation:** if the contractor is a company being wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the Debenture-holders is appointed, or circumstances shall have arisen which entitle the Court or Debenture-holders to appoint a Receiver, Liquidator or Manager

#### 12.1.2 Notice for Default:

As soon as a breach of contract is noticed, a show-cause 'Notice of Default' shall be issued to the contractor, giving two weeks' notice, reserving the right to invoke contractual remedies. After such a show-cause notice, all payments to the contractor would be temporarily withheld to safeguard needed recoveries that may become due on invoking contractual remedies.

#### 12.1.3 Terminations for Default

- 1) **Notice for Termination for Default:** In the event of unsatisfactory resolution of 'Notice of Default' within two weeks of its issue as per sub-clause above, the Procuring Entity, if so decided, shall by written Notice of Termination for Default sent to the contractor, terminate the contract in whole or in part, without compensation to the contractor.
- 2) Such termination shall not prejudice or affect the rights and remedies, including under sub-clause below, which have accrued and/ or shall accrue to the Procuring Entity after that.

- 3) Unless otherwise instructed by the Procuring Entity, the contractor shall continue to perform the contract to the extent not terminated.
- 4) All warranty obligations, if any, shall continue to survive despite the termination.

#### **12.1.4 Contractual Remedies for Breaches/Defaults or Termination for Default**

If there is an unsatisfactory resolution within this period, the Procuring Entity shall take one or more of the following contractual remedies.

- 1) Temporary withhold payments due to the contractor till recoveries due to invocation of other contractual remedies are complete.
- 2) Recover liquidated damages and invoke denial clause for delays.
- 3) Encash and/ or Forfeit performance or other contractual securities.
- 4) Prefer claims against insurances, if any.
- 5) Terminate contract for default, fully or partially.
- 6) Initiate proceedings in a court of law for the transgression of the law, tort, and loss, not addressable by the above means.

#### **12.1.5 Limitation of Liability**

Except in cases of criminal negligence or wilful misconduct, the aggregate liability of the contractor to the Procuring Entity, whether under the contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the contractor to indemnify the Procuring Entity concerning IPR infringement.

### **12.2 Termination for Default/ Convenience of Procuring Entity and Frustration**

#### **12.2.1 Notice for Determination of Contract**

- 1) The Procuring Entity reserves the right to terminate the contract, in whole or in part for its (the Procuring Entity's) convenience or frustration of contract as per sub-clause below, by serving written 'Notice for Determination of Contract' on the contractor at any time during the currency of the contract. The notice shall specify that the termination is for the convenience of the Procuring Entity or the frustration of the contract. The notice shall also indicate inter-alia, the extent to which the contractor's performance under the contract is terminated, and the date with effect from which such termination shall become effective.
- 2) Such termination shall not prejudice or affect the rights and remedies accrued and/ or shall accrue after that to the Parties.
- 3) Unless otherwise instructed by the Procuring Entity, the contractor shall continue to perform the contract to the extent not terminated.
- 4) All warranty obligations, if any, shall continue to survive despite the termination.
- 5) The Goods and incidental Works/ Services that are complete and ready in terms of the contract for delivery and performance within thirty days after the contractor's receipt of the notice of

termination shall be accepted by the Procuring Entity as per the contract terms. For the remaining Goods and incidental Works/ Services, the Procuring Entity may decide:

- (a) To get any portion of the balance completed and delivered at the contract terms, conditions, and prices; and/ or
- (b) To cancel the remaining portion of the Goods and incidental Works/ Services and compensate the contractor by paying an agreed amount for the cost incurred by the contractor, if any, towards the remaining portion of the Goods and incidental Works/ Services.

### **12.2.2 Frustration of Contract**

- 1) **Notice of Frustration Event:** Upon a supervening cause occurring after the effective date of the contract, including a change in law, beyond the control of either party whether as a result of the Force Majeure clause or local applicable Contract Act, that makes it impossible to perform the contract within a reasonable timeframe, the affected party shall give a 'Notice of Frustration Event' to the other party giving justification. The parties shall use reasonable efforts to agree to amend the contract, as may be necessary to complete its performance. However, if the parties cannot reach a mutual agreement within 60 days of the initial notice, the Procuring Entity shall issue a 'Notice for Determining the contract' and terminate the contract due to its frustration as in the sub-clause above.
- 2) However, the following shall not be considered as such a supervening cause.
  - (a) Lack of commercial feasibility or viability or profitability or availability of funds
  - (b) if caused by either party's breach of its obligations under this Contract or failure to act in good faith or use commercially reasonable due diligence to prevent such an event.

### **12.3 Closure of Contract**

#### **12.3.1 No Claim Certificate and Release of Contract Securities**

After mutual reconciliations of outstanding payments and assets on either side, the contractor shall submit a 'No-claim certificate' to the Procuring Entity requesting the release of its contractual securities, if any. The Procuring Entity shall release the contractual securities without any interest if no outstanding obligation, asset, or payments are due from the contractor. The contractor shall not be entitled to make any claim whatsoever against the Procuring Entity under or arising out of this Contract, nor shall the Procuring Entity entertain or consider any such claim, if made by the contractor, after he shall have signed a "No Claim" Certificate in favour of the Procuring Entity. The Contractor shall be debarred from disputing the correctness of the items covered by the "No Claim" Certificate or demanding a clearance to arbitration in respect thereof.

#### **12.3.2 Closure of Contract**

The contract shall stand closed upon

- 1) successful performance of all obligations by both parties, including completion of warranty obligations and final payment.
- 2) termination and settlements after that, if any, as per GCC-clause 12.1 or 12.2 above.



## 13. Code of Integrity in Public Procurement; Misdemeanours and Penalties

### 13.1 Code of Integrity

Procuring Entities as well as bidders, suppliers, contractors, and consultants - should observe highest standards of ethics in regard to corrupt and fraudulent/ prohibited practices as set forth in Public Procurement Act or applicable regulatory framework of the Procuring Entity's country and the Guidelines issued by the Government of India vide letter F.No.5/7/2019-IDEAS dated March 31, 2022 and should not indulge in following prohibited practices, either directly or indirectly, at any stage during the Tender Process or during the execution of resultant contracts:

- 1) **"Corrupt practice"** - making offer, solicitation or acceptance of a bribe, reward or gift or any material benefit, in exchange for an unfair advantage in the Tender Process or to otherwise influence the Tender Process;
- 2) **"Fraudulent practice"** - any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. Such practices include a false declaration or false information for participation in a tender process or to secure a contract or in the execution of the contract;
- 3) **"Anti-competitive practice"** - any collusion, bid-rigging or anti-competitive arrangement, or any other practice, between two or more bidders, with or without the knowledge of the Procuring Entity, that may impair the transparency, fairness, and the progress of the Tender Process or to establish bid prices at artificial, non-competitive levels;
- 4) **"Coercive practice"** - harming or threatening to harm persons or their property to influence their participation in the Tender Process or affect the execution of a contract;
- 5) **"Conflict of interest"** –participation by a bidding firm or any of its affiliates who are either involved in the Consultancy Contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if their personnel have a relationship or financial or business transactions with any official of procuring entity who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the Procuring Entity with an intent to gain unfair advantage in the Tender Process or for personal gain;
- 6) **"Obstructive practice"** - materially impede Exim Bank's investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/ or by coercive practices mentioned above, to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Exim Bank's rights of inspection and audit or access to information;

### 13.2 Obligations for Proactive Disclosures:

- 1) Procuring authorities, bidders, suppliers, contractors, and consultants are obliged under this Code of Integrity to *suo-moto* proactively declare any conflict of interest (coming under the definition mentioned above - pre-existing or as and as soon as these arise at any stage) in any

Tender Process or execution of the contract. Failure to do so shall amount to a violation of this code of integrity.

- 2) Any bidder must declare, whether asked or not in a bid-document, any previous transgressions of such code of integrity during the last three years or of being under any category of debarment by the Central Government or by the Ministry/ Department of the Government of India or Procuring Entity from participation in Tender Processes. Failure to do so shall amount to a violation of this code of integrity.

### **13.3 Misdemeanours and Penalties**

The following shall be considered misdemeanours - if a bidder/ contractor either directly or indirectly, at any stage during the Tender Process or during the execution of resultant contracts:

- 1) commits any of the following misdemeanours:
  - (a) violates the code of Integrity mentioned in GCC-clause 13.1;
  - (b) any other misdemeanour, e.g., supply of sub-standard quality of material/ services/ work or non-performance or abandonment of contract or failure to abide by 'Bid Security'.
- 2) commits any of the following misdemeanours under the local laws/codes:
  - (a) has been convicted of an offence:
    - (i) Any involvement in Corruption; or
    - (ii) causing any loss of life or property or causing a threat to public health as part of the execution of a public procurement contract.
    - (iii) doubtful loyalty to the borrower and funding country or national security consideration.

### **13.4 Penalties for Misdemeanours**

Without prejudice to and in addition to the rights of the Procuring Entity to other remedies as per the Tender-documents or the contract, if the Procuring Entity concludes that a (prospective) bidder/ contractor directly or through an agent has committed a misdemeanour in competing for the tender or in executing a contract, the Procuring Entity shall be entitled, and it shall be lawful on his part to take appropriate measures, including the following:

#### **13.4.1 if his bids are under consideration in any procurement**

- 1) Enforcement of Bid Security or encashment of Bid Security.
- 2) calling off of any pre-contract negotiations,
- 3) rejection and exclusion of Bidder from the Tender Process; and
- 4) The LOC Funding Institution to consider debarment as per its extant debarment guidelines.

#### **13.4.2 if a contract has already been awarded**

- 1) Termination of Contract for Default and availing all remedies prescribed thereunder;

- 2) Encashment and/ or Forfeiture of any contractual security or bond relating to the procurement;
- 3) Recovery of payments including advance payments, if any, made by the Procuring Entity along with simple interest thereon @ 5% p.a.

#### **13.4.3 Remedies in addition to the above:**

In addition to the above penalties, the Procuring Entity shall be entitled, and it shall be lawful on his part to:

- 1) Initiate proceedings in an applicable court of law against Bidder or any of its successors, or any other law for transgression not addressable by other remedies listed in this sub-clause.
- 2) Remove Bidder or any of its successors from the list of registered suppliers. Suppliers removed from the list of registered vendors or their related entities may be allowed to apply afresh for registration after the expiry of the period of removal.
- 3) Debar, a bidder/ contractor from participation in future procurements without prejudice to Procuring Entity's legal rights and remedies. Debarment shall automatically extend to all the allied firms of the debarred firm. In the case of Joint Venture/ consortium, all its members shall also stand similarly debarred.

#### **13.4.4 Commitments of the Procuring Entity**

- 1) The Procuring Entity commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
  - (a) No employee of the Procuring Entity, personally or through family members, shall in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
  - (b) The Procuring Entity shall, during the tender process, treat all Bidder(s) with equity and reason. The Procuring Entity shall in particular, before and during the tender process, provide to all Bidder(s) the same information and shall not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
  - (c) The Procuring Entity shall exclude from the process all known prejudiced persons.
- 2) If the Procuring Entity obtains information on the conduct of any of its employees, which is a criminal offence, or if there be a substantive suspicion in this regard, the Procuring Entity shall initiate suitable disciplinary actions.

## Section V: Special Conditions of Contract (SCC)

Document No. Tend No./ xxxx; Tender Title: Goods

(Ref ITB-clause 1.4)

*{Note for Procuring Entity: Text in grey italics font within square bracket [e.g., Mention ...] are just suggestions/ directions and must be replaced by applicable text - remove brackets and convert the font to regular and black. Delete the rows not required. Clauses other than those mentioned below may also be mentioned, if these need to be changed}*

*Note for Bidders: Following Special Conditions of Contract (SCC) shall apply for this procurement. These Special Conditions shall modify/ substitute/ supplement the corresponding (GCC) clauses as indicated below. Whenever there is any conflict between the provision in the GCC and that in the SCC, the provision contained in the SCC shall prevail over those in GCC.*

| <b>GCC Clause No.</b>  | <b>Topic</b>  | <b>Modified/ replaced by SCC Provisions</b>  |
|--|---|--|
| <b>GCC 1, 2, 3 and 4: General, The Contract, Governing Laws and Jurisdiction, Communications</b> |   |  |
| GCC 1.1, 1.2, 1.3, 1.4   | Definitions and Abbreviations   | <i>[Add additional Abbreviations if any]</i>   |
| GCC 2.1  | Language of Contract  | <i>[Add additional Language if any]</i>  |
| GCC 2.5  | Contract Documents & Their Precedence   | <i>[Add additional documents which would be part of the contract if any]</i><br><i>[Add additional laws, codes, rules, regulations that would be attracted in the contract if any]</i> |
| GCC 3.1  | Governing Laws and jurisdiction   | <i>[Mention any deviations from the clause]</i>  |
| GCC 4.1, 4.3   | Communications  | <i>[Add additional communication requirements if any]</i>  |
| GCC 4.2  | The Person Signing Communications   | <i>[Mention any deviations from the clause]</i>  |
| <b>GCC 5: Contractor's Obligations and Restrictions on its Rights</b>                            |   |  |
| GCC 5.7  | Confidentiality, Secrecy and IPR Rights   | <i>[Mention confidentiality or secrecy requirements, if any. If the official secrets act covers the contract, please prominently mark Contract and correspondence as Secret]</i>       |
| GCC 5.8  | Performance Bond/ Security  | <i>[Add additional information if any]</i>   |
| GCC 5.11   | Custody and Return of the Procuring Entity's Materials/ Equipment/ Documents loaned to Contractor | <i>[Mention if any asset is agreed to be loaned and conditions for such loan – Bank Guarantee, insurance etc.]</i>   |

|          |                                      |   |
|----------|--------------------------------------|---|
| GCC 5.12 | Labour Codes and Related Obligations | <i>[Specifically mention if applicable; otherwise, this clause would not apply to this procurement. Provide supplementary information for clause 5.11, if needed.]</i>  |
| GCC 5.13 | Additional Obligations               | <ul style="list-style-type: none"> <li data-bbox="823 371 1364 674">i. In case the bidder is blacklisted/ debarred/sanctioned during Contract implementation, the bidder shall immediately inform the Procuring Entity and Exim Bank of such blacklisting/ debarment/ sanction and reasons thereof. This may lead to cancellation of the Contract.</li> <li data-bbox="823 707 1364 1357">ii. In case, during Contract implementation, the account of the bidder is classified as Non-Performing Asset (NPA) with any Bank/FI or bidder's companies/ promoters/ directors appear in Reserve Bank of India (RBI) Caution List, RBI Wilful Defaulter List (Suit filed as well as non-suit filed), Credit Information Bureau India Ltd. (CIBIL) Defaulter List or any other negative list of central and state government agencies, updated from time to time, the bidder shall immediately inform the Procuring Entity and Exim Bank of the same along with reasons thereof. This may lead to cancellation of the Contract.</li> <li data-bbox="823 1391 1364 1581">iii. As per the GOI guidelines, goods and services for minimum 75% value of the contracts covered under the Line of Credit, must be sourced from India (Indian Content).</li> <li data-bbox="823 1615 1364 1760">iv. Compliance with the IDEAS Guidelines dated March 31, 2022, and any amendments thereof from time to time by GOI.</li> <li data-bbox="823 1794 1364 1948">v. Compliance with the Public Procurement Orders No. 1, 2, 3 &amp; 4, and any amendments/clarifications issued in this regard by GOI from time to time.</li> </ul> |

|   |   |  |
|---|---|--|
|   |   | vi. Compliance with the Exim Bank's Debarment and Contract Non-Performance Policies which are available at Exim Bank's website at :<br><br>_____   |
| <b>GCC 6: Scope of Supply and Technical Specifications</b>  |   |  |
| GCC 6.1, 6.6  | Incidental Works/ Services, Spares                    | <i>[Mention incidental Works/ Services required if any]</i>  |
| GCC 6.3   | Quantity Tolerance                                    | <i>[Mention any change in tolerance% if any]</i>   |
| GCC 6.4   | Country of Origin and Minimum Indian Content          | <i>[Mention additional restrictions if any]</i>  |
| GCC 6.5   | Option Quantity Clause                                | <i>[Specifically mention if applicable; otherwise, this clause would not apply to this procurement. Mention any change in option % if any]</i>   |
| GCC 6.6   | Spares in Supply of Capital Goods/Machinery and Plant | <i>[Customise here if this is a Contract for the supply of Capital Goods/ Machinery &amp; Plant. Also, see the clause below]</i>   |
| GCC 6.7   | Warranty/ Guarantee                                   | <i>[Mention if it is applicable and period for which it is applicable. Usually, this clause should be enabled only in case of procurement of Capital Goods/ Machinery and Plant and not for other Goods.</i><br><br><i>Example for guidance purpose,</i><br><br><i>for 30 months after their delivery or 24 months from the date of placement in service (e.g., installation and commissioning), whichever shall be sooner.]</i> |
| <b>GCC 7 and 8: Inspection, Quality Assurance, Packing, Transportation, Insurance and Receipt</b> |   |  |
| GCC 7.1   | Tests and Inspections                                 | <i>[Mention any unique pre-production samples or type testing is required in a private testing house, if any. Mention who shall bear the cost]</i>   |
| GCC 8.  | Packing, Transportation and Receipt                   | <i>[Add additional information if any]</i>   |
| GCC 8.4.4   | Distribution of Despatch Documents                    | <i>[Add additional documents if any]</i>   |

|  |                           |  |
|--|---------------------------|--|
| <b>GCC 9: Terms of Delivery and Delays</b> |                           |  |
| GCC 9.5                                    | Part Supplies             | <i>[Mention if part shipments or instalments are allowed]</i>  |
| GCC 9.12                                   | Liquidated Damages        | <i>[Mention any change in LD % if any]</i>   |
| <b>GCC 10: Prices and Payments</b>         |                           |  |
| GCC 10.2                                   | Taxes and Duties          | <i>[Mention any instruction regarding Taxes and Duties, if any]</i>  |
| GCC 10.3                                   | Terms and Mode of payment | <p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p><b>Payment for Goods and related Services:</b></p> <p><i>[currency of the Contract Price]</i> in the following manner:</p> <p>(i) <b>Advance Payment:</b> ___ (__) percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract, and upon submission of claim and a bank guarantee for equivalent amount valid until the Goods are delivered and in the form provided in the bidding documents or another form acceptable to the Procuring Entity as also payment authorisation issued by the Borrower as per the terms of the LOC Agreement.</p> <p><i>[Advance payment may be restricted upto 20% of the Contract Price.]</i></p> <p>(ii) <b>On Shipment:</b> _____ (__) percent of the Contract Price of the Goods shipped shall be paid through irrevocable confirmed letter of credit opened in favor of the Supplier in a bank in its country, upon submission of documents specified in GCC Clause 13.</p> <p><i>[Advance payment and Payment On Shipment may not exceed 90% of the Contract Price.]</i></p> |

|  |                        |  |
|--|------------------------|--|
|  |                        | <p>(iii) <b>On Acceptance:</b> Ten (10) percent of the Contract Price of Goods received shall be paid within thirty (30) days of receipt of the Goods upon submission of claim supported by the acceptance certificate issued by the Procuring Entity.</p> <p>(iv) <b>Retention Money:</b> Ten (10) percent to be released upon completion of supply and installation and commissioning of the goods and issuance final acceptance certificate and upon completion of warranty/guarantee period.</p> <p>Pre-disbursement Conditions: <u>All confirmations regarding the availability of land, right of way, basic resources (as applicable), as also clearances, tax and duty exemptions, financial closure and other commitments from the Borrowing Government/ Employer should be in place along with the contract or prior to the release of advance payment.</u></p> |
| GCC 10.3.2                             | Advance Payment        | <p>10%</p> <p>Procuring Entity may grant interest bearing advance ranging from 5% to 20% of the contract value in tranches, depending upon the nature of requirements.</p>   |
| <b>GCC 11 : Resolution of Disputes</b> |                        |  |
| GCC 11.2                               | Resolution of Disputes | <p>The rules of procedure for arbitration proceedings pursuant to GCC Clause 11.2 shall be as follows:</p> <p><b>GCC 11.2 (a)—All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce or the United Nations Commission on International Trade Law (UNCITRAL), by one or more arbitrators appointed in accordance with said Rules.</b></p>   |



## Section VI: Schedule of Requirements

(Ref ITB-clause 1.4)

*Note for Bidders: Regarding this Schedule, Bidders must fill Form 2: 'Schedule of Requirements - Compliance' with their Technical bid.*

*{Note for Procuring Entity: Add additional details notes regarding requirements, if not covered elsewhere in Tender Documents}*

| Tender Title        |            |                                  |                      |          |                      |                          |             |  |
|---------------------|------------|----------------------------------|----------------------|----------|----------------------|--------------------------|-------------|--|
| Tender Reference No |            | Tend No./ xxxx                   |                      |          |                      |                          |             |  |
| Sched<br>ule        | Item<br>Sr | Minimum<br>Indian<br>Content (%) | Description of Goods | Quantity | Units of<br>Quantity | Delivery<br>Requirements | Destination |  |
| 1                   | 2          | 3                                | 4                    | 5        | 6                    | 7                        | 8           |  |
| Schedule-1          |            | <i>[Description of Schedule]</i> |                      |          |                      |                          |             |  |
|                     | 1.1        |                                  |                      |          |                      |                          |             |  |
|                     | 1.2        |                                  |                      |          |                      |                          |             |  |
|                     | 1.3        |                                  |                      |          |                      |                          |             |  |
| Schedule-2          |            | <i>[Description of Schedule]</i> |                      |          |                      |                          |             |  |
| Sched<br>ule-2      | 2.1        |                                  |                      |          |                      |                          |             |  |
|                     | 2.2        |                                  |                      |          |                      |                          |             |  |
|                     | 2.3        |                                  |                      |          |                      |                          |             |  |

(1) General Background of requirements: *[inter-alia - Where would the Goods are going to be used]*

(2) Preferred Transportation: *[inter-alia - Transportation by Road, Rail, Sea or Air]*

(3) Required Delivery Schedule:

- (4) Required Terms of Delivery: *[inter-alia - Free at Destination/ Delivered at Place DAP], Destination, Ultimate Consignee]*
- (5) Scope of Supply: *[inter-alia - any Accessories, Mandatory Spares, optional spares etc.]*
- (6) Incidental Works/ Services: *[Inter-alia - Installation, Commissioning, Training, or any other incidental requirements]*

**Section VII: Technical Specifications and Quality Assurance**

(Ref ITB-clause 1.4)

*{Note for Procuring Entity: Add additional details regarding Technical Specifications and Quality Assurance, if not covered in elsewhere in Tender Documents – inter-alia - Warranty obligations, Environmental compliance, Energy-saving requirements etc.}*

*Note for Bidders: Regarding this Schedule, Bidders shall submit Form 3: ‘Technical Specifications And Quality Assurance – Compliance’ with their Technical bid.*

**Technical Specification and Quality Assurance**

Schedule-1:

Item 1.1.....

Item 1.2.....

Item 1.3.....

Schedule- 2:

Item 2.1.....

Item 2.2.....

Item 2.3.....

## **Section VIII: Qualification Criteria**

(Ref ITB-clause 1.4)

*{Note for Procuring Entity: Add additional details regarding Qualification Criteria, if not covered in elsewhere in Tender Documents}*

*Note for Bidders: Regarding this Schedule, Bidders shall submit Form 4: 'Qualification Criteria – Compliance' with their Technical bid.*

## **BIDDING FORMS**

## Form 1: Bid Form (Covering Letter)

(Ref ITB-clause 9.2)

(To be submitted as part of Technical bid, along with supporting documents, if any)

(On Bidder's Letter-head)

(Strike out alternative phrases not relevant to you)

Bidder's Name \_\_\_\_\_

[Address and Contact Details]

Bidder's Reference No. \_\_\_\_\_ Date.....

To

*[Mention name and complete address of the Procuring Entity]*

Phone No.

Email:

Ref: Your Tender Document No. Tend No./ xxxx; Tender Title: Goods

Sir/ Madam

Having examined the abovementioned Tender Document, we, the undersigned, hereby submit/ upload our Techno-commercial and Financial bid (Price Schedule) for the supply of Goods and incidental Works/ Services in conformity with the said Tender Documents.

*(Please tick appropriate boxes or strike out sentences/ phrases not applicable to you)*

### 1) **Our Credentials:**

(a) We are submitting this bid: -

- on our behalf, and there are no agents/ dealers involved in this tender, and hence no agency agreement or payments/ commissions/ gratuity is involved. Our company law and taxation regulatory requirements and authorization for signatories and related documents are submitted in Form 1.1 (Bidder Information).

Or

- as authorised dealer offering goods manufactured by our OEMs. Our OEM's law and taxation regulatory requirements and authorization for signatories and related documents are submitted in Form 1.3 (OEM's Authorization).

(b) We..... hereby certify that  We/  our Principals/ OEM M/ s..... are proven, established, and reputed manufacturers with factories at ..... which are fitted with modern equipment and where the production methods, quality control, and

testing of all materials and parts manufactured or used by us shall be open to inspection by the representative of the Procuring Entity.

**2) Our Eligibility and Qualifications to participate**

- a) We confirm that we continue to comply with all the eligibility and qualification criteria stipulated in the preceding prequalification process (mentioned in TIS) based on which we were prequalified and in this Tender Document, and the relevant declarations are made along with documents in Form 1.2 of this Bid-Form. We fully meet the qualification criteria stipulated in this Tender Document, and the relevant details are submitted along with documents in Form 4: 'Qualification Criteria – Compliance'. We shall be dutybound to proactively inform you of any change in our compliance with these criteria as soon as it occurs in the corresponding forms CON-1 / CON-2 / CON-3 / FIN-1 / FIN-2.
- b) We confirm that we don't have any Conflict of Interest as stipulated in this Tender Document. We shall be dutybound to proactively inform you of any change in our compliance with Conflict-of-Interest stipulations as soon as it occurs.
- c) We, along with any of our subcontractors, suppliers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by any multilateral development bank (MDB), such as World Bank, Asian Development Bank, or any authority of GOI or the Borrowing Government. In case we are blacklisted/ debarred/sanctioned subsequent to the prequalification process (i.e. including, during selection process and Project implementation phase), we shall immediately inform the Procuring Entity and Exim Bank of such blacklisting/ debarment/sanction and reasons thereof and we note that this may lead to cancellation of the bid submitted by us and/or cancellation of the Contract, if awarded;
- d) In case, subsequent to the prequalification process (i.e. including, during selection process and Contract implementation phase), if our account is classified as Non-Performing Asset (NPA) with any Bank/FI or our companies/ promoters/ directors appear in Reserve Bank of India (RBI) Caution List, RBI Wilful Defaulter List (Suit filed as well as non-suit filed), Credit Information Bureau India Ltd. (CIBIL) Defaulter List or any other negative list of central and state government agencies, updated from time to time, we shall immediately inform the Procuring Entity and Exim Bank of the same along with reasons thereof and note that this may lead to cancellation of the Bid submitted by us and/or cancellation of the Contract, If awarded.
- e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, in force in the country of the Procuring Entity.

**3) Our Bid to supply Goods:**

We offer to supply the subject Goods of requisite quality and within Delivery Schedules in conformity with the Tender Document. The relevant details are submitted in Form 2: 'Schedule of Requirements– Compliance and Form 3: 'Technical Specifications and Quality Assurance— Compliance.'

**4) Prices:**

We hereby offer to perform the Services at our lowest prices and rates mentioned in the separately uploaded Price-Schedule. It is hereby confirmed that the prices quoted therein by us are:

- (a) based on terms of delivery and delivery schedule confirmed by us; and
- (b) Cost break-up of the quoted cost, showing inter-alia costs (including taxes and duties thereon) of all the included incidental Goods/ Works considered necessary to make the proposal self-contained and complete, has been indicated therein, and
- (c) based on the terms and mode of payment as stipulated in the Tender Document. We have understood that if we quote any deviation to terms and mode of payment, our bid is liable to be rejected as nonresponsive, and
- (d) have been arrived at independently, without restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to:
  - i) those prices; or
  - ii) the intention to submit an offer; or
  - iii) the methods or factors used to calculate the prices offered.
- (e) have neither been nor shall be knowingly disclosed by us, directly or indirectly, to any other bidder or competitor before bid opening or contract award unless otherwise required by law.

**5) Affirmation to terms and conditions of the Tender Document:**

We have understood the complete terms and conditions of the Tender Document. We accept and comply with these terms and conditions without reservations, although we are not signing and submitting some of the sections of the Tender Document. Deviations, if any, are submitted by us in Form 5: 'Terms and Conditions-- Compliance'.

**6) Bid Security:**

We have submitted the Bid Security as Earnest Money Deposit (EMD) for the amount of USD \_\_\_\_ (US Dollars ..... ) valid upto \_\_\_\_ in favour of ..... in the form of Bank Guarantee in Form 7: : 'Format for Bid Security', with reference number \_\_\_\_ dated \_\_\_\_, issued by \_\_\_\_\_ as per the Tender Documents.

**7) Abiding by the Bid Validity**

We agree to keep our bid valid for acceptance for a period upto -----, as required in the Tender Document or for a subsequently extended period, if any, agreed to by us and are aware of penalties in this regard stipulated in the Tender Document in case we fail to do so.

**8) Non-tempering of Downloaded Tender Document and Uploaded Scanned Copies**

We confirm that we have not changed/ edited the contents of the downloaded Tender Document. We realise that any such change noticed at any stage, including after the contract award, shall be liable to punitive action in this regard stipulated in the Tender Document. We also confirm that scanned copies of documents/ affidavits/ undertakings uploaded along with our Technical bid are valid, true, and correct to the best of our knowledge and belief. If any dispute arises related to the validity and truthfulness of such documents/ affidavits/ undertakings, we shall be responsible for the same. Upon



accepting our Financial bid, we undertake to submit for scrutiny, on-demand by the Procuring Entity, originals, and self-certified copies of all such certificates, documents, affidavits/ undertakings.

**9) Commitments**

We commit ourselves to take all measures necessary to prevent corruption. We commit ourselves to observe the following principles during participation in the tender process and during the contract execution.

- a. We shall not, directly or through any other person or firm, offer, promise, or give to any of the Procuring Entity's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
- b. We shall not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the tender process.
- c. We shall not commit any offence under the relevant IPC/ PC Act; further, we shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Procuring Entity as part of the business relationship, regarding plans, technical proposals, and business details, including information contained or transmitted electronically.
- d. We shall, when presenting our bid, disclose any and all payments made, are committed to, or intend to make to agents, brokers, or any other intermediaries in connection with the award of the contract.
- e. We shall not instigate third persons to commit offences outlined above or be an accessory to such offences.

**10) A Binding Contract:**

We further confirm that, if our bid is accepted, all such terms and conditions shall continue to be acceptable and applicable to the resultant contract, even though some of these documents may not be included in the contract Documents submitted by us. We do hereby undertake that, until a formal contract is signed or issued, this bid, together with your written Letter of Award (LoA), shall constitute a binding contract between us.

**11) Performance Guarantee and Signing the contract**

We further confirm that, if our bid is accepted, we shall provide you with performance security of the required amount stipulated in the Tender Document for the due performance of the contract. We are fully aware that in the event of our failure to deposit the required security amount and/ or failure to execute the agreement, the Procuring Entity has the right to avail any or all punitive actions laid down in this regard, stipulated in the Tender Document.

**12) Signatories:**

Form 1: bid Form (Covering Letter)

[100]

We confirm that we are duly authorized to submit this bid and make commitments on behalf of the Bidder. Supporting documents are submitted in Form 1.1 annexed herewith. We acknowledge that our digital/digitized signature is valid and legally binding.

**13) Rights of the Procuring Entity to Reject bid(s):**

We further understand that you are not bound to accept the lowest or any bid you may receive against your above-referred Tender Document.

.....

(Signature with date)

.....

(Name and designation)

Duly authorized to sign bid for and on behalf of

[name & address of Bidder and seal of company]

## Form 1.1: Bidder Information

(Ref 9.2 of ITB)

(To be submitted as part of Technical bid)

(On Company Letter-head)

(Along with supporting documents, if any)

Bidder's Name \_\_\_\_\_

[Address and Contact Details]

Bidder's Reference No. \_\_\_\_\_ Date.....

Tender Document No. Tend No./ xxxx; Tender Title: Goods

*Note: Bidder shall fill in this Form following the instructions indicated below. No alterations to its format shall be permitted, and no substitutions shall be accepted. Bidder shall enclose certified copies of the documentary proof/ evidence to substantiate the corresponding statement wherever necessary and applicable. Bidder's wrong or misleading information shall be treated as a violation of the Code of Integrity and Ethics. Such Bids shall be liable to be rejected as nonresponsive, in addition to other punitive actions provided for such misdemeanours in the Tender Document.*

*(Please tick appropriate boxes or strike out sentences/ phrases not applicable to you)*

**1) Bidder/ Contractor particulars:**

- (a) Name of the Company:.....
- (b) Corporate Identity No. (CIN): .....
- (c) Registration, if any, with The Procuring Entity: .....
- (d) Place of Registration/ Principal place of business/ manufacture .....
- (e) Complete Postal Address: .....
- (f) Pin code/ ZIP code: .....
- (g) Telephone nos. (with country/ area codes): .....
- (h) Mobile Nos.: (with country/ area codes): .....
- (i) Contact persons/ Designation: .....
- (j) Email IDs: .....

*Submit documents to demonstrate eligibility as per NIT-Clause 3 and ITB-clause 3.2 - A self-certified copy of registration certificate – in case of a partnership firm – Deed of Partnership; in case of Company – Notarized and certified copy of its Registration; and in case of Society – its Byelaws and registration certificate of the firm.*

**2) Taxation Registrations:**

- (a) PAN number: .....
- (b) GSTIN number: .....
- (c) Registered/ Certified Works/ Factory where the Goods would be mainly manufactured and Place of Consignor : .....

(d) Contact Names, Nos. & email IDs for (Please mention primary and secondary contacts):  
.....

We solemnly declare that our GST rating on the GST portal/ Govt. official website is not negative/ blacklisted.

*Documents to be submitted: Self-attested Copies of PAN card and GSTIN Registration.*

**3) Authorization of Person(s) signing the bid on behalf of the Bidder**

- (a) Full Name: \_\_\_\_\_
- (b) Designation: \_\_\_\_\_
- (c) Signing as:

- A sole proprietorship firm. The person signing the bid is the sole proprietor/ constituted attorney of the sole proprietor,
- A partnership firm. The person signing the bid is duly authorised being a partner to do so, under the partnership agreement or the general power of attorney,
- A company. The person signing the bid is the constituted attorney by a resolution passed by the Board of Directors or in pursuance of the Authority conferred by Memorandum of Association.

*Documents to be submitted: Registration Certificate/ Memorandum of Association/ Partnership Agreement/ Power of Attorney/ Board Resolution*

**4) Bidder’s Authorized Representative Information**

- (a) Name:
- (b) Address:
- (c) Telephone/ Mobile numbers:
- (d) Email Address:

(Signature with date)

.....

(Name and designation)

Duly authorized to sign bid for and on behalf of  
[name & address of Bidder and seal of company]

DA: As above

.....

## **Bidders Qualification following Prequalification**

The Bidder shall update the information given during the corresponding prequalification exercise to demonstrate that he continues to meet the criteria used at the time of prequalification regarding

- (a) **Eligibility**
- (b) **Pending Litigation**
- (c) **Financial Status**

For this purpose, the Bidder shall use the relevant forms included in this Section.

# Historical Contract Non-Performance, Pending Litigation and Litigation History

## Form CON-1/CON-2/CON-3

*[Each of the following tables shall be filled in for the Applicant and for each member of a Joint Venture]*

Bidder's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member Name \_\_\_\_\_

Tend. No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Information pertaining to: *[Insert name of JV Leader or JV Member/s]*

| <b>Form CON-1 : Non-Performed Contracts</b>  |                                       |   |  |
|--|---------------------------------------|---|--|
| <input type="checkbox"/> Contract non-performance did not occur since _____ <i>(insert date)</i> |                                       |   |  |
| <input type="checkbox"/> Contract(s) not performed since _____ <i>(insert date)</i>              |                                       |   |  |
| Year   | Non- performed portion of contract    | Contract Identification   | Total Contract Amount (current value, currency, exchange rate and US\$ equivalent) |
| <i>[insert financial year]</i>   | <i>[insert amount and percentage]</i> | Contract Identification: <i>[indicate complete contract name/ number, date, value and any other identification]</i><br><br>Name of Employer: <i>[insert full name]</i><br><br>Address of Employer: <i>[insert street/city/country]</i><br><br>Reason(s) for non-performance: <i>[indicate main reason(s)]</i> | <i>[insert amount in USD equivalent and specify exchange rate and date]</i>        |

| <b>Form CON-2 : Pending Litigation</b>  |                              |  |  |  |
|---|------------------------------|--|--|--|
| <input type="checkbox"/> No pending litigation<br><input type="checkbox"/> Pending litigation as indicated below. |                              |  |  |  |
| Year of dispute   | Amount in dispute (currency) | Contract Identification  | Total Contract Amount (currency), USD Equivalent (exchange rate) | Amount of specific provision already made, if any                  |
| <i>[insert financial year]</i>  | <i>[insert amount]</i>       | Contract Identification: <i>[indicate complete contract name, number, date, value and any other identification]</i><br><br>Name of Employer: <i>[insert full name]</i><br><br>Address of Employer: <i>[insert street/city/country]</i><br><br>Matter in dispute: <i>[indicate main issues in dispute]</i><br><br>Party who initiated the dispute: <i>[indicate "Employer" or "Exporter"]</i><br><br>Status of dispute: <i>[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i> | <i>[insert amount]</i>   | <i>[insert amount in USD equivalent and specify exchange rate]</i> |

| <b>Form CON-3 : Litigation History</b>   |                                    |   |   |
|--|------------------------------------|---|---|
| <input type="checkbox"/> No litigation since _____<br><input type="checkbox"/> Litigation Awards as indicated below. |                                    |   |   |
| Year of award  | Outcome as percentage of Net Worth | Contract Identification   | Total Contract Amount (currency), USD Equivalent (exchange rate)            |
| <i>[insert financial year]</i>   | <i>[insert percentage]</i>         | Contract Identification: <i>[indicate complete contract name, number, date, value and any other identification]</i><br><br>Name of Employer: <i>[insert full name]</i><br><br>Address of Employer: <i>[insert street/city/country]</i><br><br>Matter in dispute: <i>[indicate main issues in dispute]</i><br><br>Party who initiated the dispute: <i>[indicate "Employer" or "Exporter"]</i><br><br>Result of dispute: <i>[Indicate if resolution was treated by the Adjudicator, under Arbitration or dealt with by the Judiciary and whether resolved in favour or against the Applicant]</i> | <i>[insert amount in USD equivalent and specify exchange rate and date]</i> |



## Financial information

### Form FIN-1 : Financial Status and Capacity

[The following table shall be filled in for the Applicant and for each member of a Joint Venture and shall be certified by the statutory auditor.]

Bidder's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member Name \_\_\_\_\_

Tend. No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Information pertaining to: [Insert name of JV leader or JV member/s]

#### 1. Financial data

| Type of Financial information in               | Historic information for previous five (5) years,<br>(amount in Indian Rupees) |           |            |            |            |
|--|--|-----------|------------|------------|------------|
|  | FY20__-__  | FY20__-__ | FY 20__-__ | FY 20__-__ | FY 20__-__ |
| <b>Sources of Fund</b>                         |  |           |            |            |            |
| Share Holder's Fund                            |  |           |            |            |            |
| Loan Fund                                      |  |           |            |            |            |
| <b>Application of Fund</b>                     |  |           |            |            |            |
| Fixed Assets                                   |  |           |            |            |            |
| Investments                                    |  |           |            |            |            |
| Net Current Assets                             |  |           |            |            |            |
| (i) Current assets, loans and advances         |  |           |            |            |            |
| Less: (ii) Current liabilities & provisions    |  |           |            |            |            |
| Misc. exp. to the extent not W/Off or adjusted |  |           |            |            |            |
| Profit and Loss Account                        |  |           |            |            |            |
| <b>Net Worth</b>                               |  |           |            |            |            |
| Net Worth                                      |  |           |            |            |            |
| <b>Information from Income Statement</b>       |  |           |            |            |            |

|   |  |  |  |  |  |  |  |
|---|--|--|--|--|--|--|--|
| Income                                      |  |  |  |  |  |  |  |
| Expenditure                                 |  |  |  |  |  |  |  |
| Profit/(Loss) Before Tax (PBT)              |  |  |  |  |  |  |  |
| Profit/(Loss) After Tax (PAT)               |  |  |  |  |  |  |  |
| <b>Information From Cash flow Statement</b> |  |  |  |  |  |  |  |
| Cash Flow from Operating Activities         |  |  |  |  |  |  |  |
| Cash Flow from Investments                  |  |  |  |  |  |  |  |
| Cash Flow from Financing Activities         |  |  |  |  |  |  |  |

## 2. Sources of Finance

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

### A. Details of Credit Facilities available to the Applicant [In equi. USD]

| Sr No | Type of Facility                      | Sanctioned Limit | Utilised Limit | Unutilised Limit |
|-------|---------------------------------------|------------------|----------------|------------------|
|       | Fund Based Limits                     |                  |                |                  |
|       | a.                                    |                  |                |                  |
|       | b.                                    |                  |                |                  |
|       | c.                                    |                  |                |                  |
|       | <b>Total Fund Based</b>               |                  |                |                  |
|       | Non-fund Based Limits                 |                  |                |                  |
|       | a                                     |                  |                |                  |
|       | b                                     |                  |                |                  |
|       | C                                     |                  |                |                  |
|       | <b>Total Non –fund Based</b>          |                  |                |                  |
|       | <b>Total Fund and Non-Based Limit</b> |                  |                |                  |

- B. Details of Other Liquid Assets such as fixed deposits, other liquid assets and any other financial means which may be used to meet the cash flow requirements for works currently in progress by the Applicant

| Sr. No | Type of Liquid Assets | Amount [In equi. USD] |
|--------|-----------------------|-----------------------|
| 1.     |                       |                       |
| 2.     |                       |                       |
| 3.     |                       |                       |

**2. Financial documents**

The Bidder and its parties shall provide copies of financial statements for 5 years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.2.

The audited balance sheets and statements of profit & loss, annual report for the last 5 financial years [FY \_\_\_\_\_ to FY \_\_\_\_\_] shall be submitted. It must demonstrate the current soundness of the Applicant’s financial position and indicate its prospective long-term profitability in terms of:

- a. Positive net worth for each of the last five financial years;
- b. Positive profit (i.e. Profit Before Tax) for at least 2 out of last 5 financial years;
- c. Annual Revenue for any one (1) of the last five (5) financial years as defined above, be not less than USD \_\_ million.

In case of JV, requirement [a] and [b] above shall be met by each member and requirement under [c], each member shall meet at least 25%, lead member shall meet at least 40% and all members together shall meet 100%.

The Applicant shall demonstrate that it has access to, or has available, liquid assets, lines of credit and other financial means [independent of any contractual advance payment] sufficient to meet the project cash flow requirements of ongoing contracts, including the present contract, net of the Applicants’ other commitments. Minimum required liquid assets and / or credit facilities to be made available for project shall not be less than **USD xx million** (Exchange rate used for Prequalification shall be applied).

In case of JV, for requirement (ii) above, each member shall meet at least 25%, lead member shall meet at least 40% and all members together shall meet 100%.

The financial statements shall

- (a) reflect the financial status of the Bidder or in case of JV member, and not an affiliated entity (such as parent company or group member).
- (b) be independently audited or certified in accordance with local legislation.
- (c) be complete, including all notes to the financial statements.
- (d) correspond to accounting periods already completed and audited.

Attached are copies of financial statements<sup>1</sup> for the last 5 years required above; and complying with the requirements.

---

<sup>1</sup> If the most recent set of financial statements is for a period earlier than 12 months from the date of bid, the reason for this should be justified.

### Form FIN-2 : Annual Turnover

[The following table shall be filled in for the Applicant and for each member of a Joint Venture and shall be certified by the Statutory Auditors.]

Bidder's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member Name \_\_\_\_\_

Tend. No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Information pertaining to : [Insert name of JV leader or JV member/s]

| Year   | Turnover Amount (INR) |                    |                | Exchange rate*<br>(v/s USD) | Turnover in USD equivalent |
|--------|-----------------------|--------------------|----------------|-----------------------------|----------------------------|
|        | Contracts in India    | Overseas Contracts | Total Turnover |                             |                            |
|        | [A]                   | [B]                | C = [A+B]      | [E]                         | C/E                        |
| Year 1 |                       |                    |                |                             |                            |
| Year 2 |                       |                    |                |                             |                            |
| Year 3 |                       |                    |                |                             |                            |
| Year 4 |                       |                    |                |                             |                            |
| Year 5 |                       |                    |                |                             |                            |

\* Exchange rate prevalent on 31st March shall be used to calculate turnover for respective financial year.

Registration No/ Membership No:

Stamp (of the Statutory Auditors of the Applicant/each JV member)

Date:

Place:

UDIN:

## Form 1.2: Eligibility Declarations

(Ref ITB-clause 9.2)

(To be submitted as part of Technical bid)

(On Company Letter-head)

(Along with supporting documents, if any)

Tender Document No. Tend No./ xxxx; Tender Title: Goods

Bidder's Name \_\_\_\_\_

[Address and Contact Details]

Bidder's Reference No. \_\_\_\_\_ Date.....

*Note: The list below is indicative only. You may attach more documents as required to confirm your eligibility criteria.*

### Eligibility Declarations

*(Please tick appropriate boxes or cross out any declaration not applicable to the Bidder)*

We hereby confirm that we comply with all the stipulation of NIT-clause 3 and ITB-clause 3.2 and declare as under and shall provide evidence of our continued eligibility to the Procuring Entity as may be requested:

- 1) **Legal Entity of Bidder:** \_\_\_\_\_
- 2) **OEM/ Manufacturer/ Agent/ Dealership Status:** \_\_\_\_\_
- 3) We  are/  are not a JV \_\_\_\_\_
- 4) We solemnly declare that we (including our affiliates or subsidiaries or constituents):
  - a) are not insolvent, in receivership, bankrupt or being wound up, not have our affairs administered by a court or a judicial officer, not have our business activities suspended and are not the subject of legal proceedings for any of these reasons;
  - b) We certify that we fulfil any other additional eligibility condition if prescribed in Tender Document.
  - c) We have no conflict of interest, which substantially affects fair competition. The prices quoted are competitive and without adopting any unfair/ unethical/ anti-competitive means. No attempt has been made or shall be made by us to induce any other bidder to submit or not to submit an offer to restrict competition.
- 5) **Restrictions on procurement from bidders from a country or countries, or a class of countries under Rule 144 (xi) of the General Financial Rules 2017:** We certify as under:

*"We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries, and solemnly certify that we fulfil all requirements in this regard and are eligible to be considered. We certify that:*

- (a) *we are not from such a country or, if from such a country, we are registered with the Competent Authority (copy enclosed). and;*
- (b) *we shall not subcontract any work to a contractor from such countries unless such contractor is registered with the Competent Authority.*

**(b) We also declare that**

We have not been notified as ineligible under this order for an offered Goods in the Procuring Country by any Government Agency.

**6) Penalties for false or misleading declarations:**

We hereby confirm that the particulars given above are factually correct and nothing is concealed and undertake to advise any future changes to the above details. We understand that any wrong or misleading self-declaration would violate the Code of Integrity and attract penalties as mentioned in this Tender Document.

.....

(Signature with date)

.....

(Name and designation)

Duly authorized to sign bid for and on behalf of

.....

.....

[name & address of Bidder and seal of company]

DA: As applicable

### Form 1.3: OEM's Authorization

(Ref ITB-clause 9.2)

(On Company Letter Head)

(To be submitted as part of Technical bid)

OEM's Name \_\_\_\_\_

[Address and Contact Details]

OEM's Reference No. \_\_\_\_\_ Date.....

[Name and complete address of the Procuring Entity]

Dear Sirs,

Ref. Your Tender Document No. Tend No./ xxxx; Tender Title: Goods

- 1) We, -----, are proven and reputable manufacturers of the Tendered Goods. We have factories at----- . We hereby authorise Messrs----- (*name and address of the authorised dealer*) to submit a bid, process the same further and enter into a contract with you against above referred Tender Process for the supply of above Goods manufactured by us. Their registration number with us is ....., dated/ since.....
- 2) We further confirm that no Contractor or firm or individual other than Messrs. .... (*name and address of the above-authorised dealer*) is authorized for this purpose.
- 3) As principals, we commit ourselves to extend our full support for warranty obligations, as applicable as per the Tender Document, for the Goods and incidental Works/ Services offered for supply by the above firm against this Tender Document.
- 4) Our details are as under:
  - (a) Name of the Company:.....
  - (b) Complete Postal Address: .....
  - (c) Pin code/ ZIP code: .....
  - (d) Telephone nos. (with country/ area codes): .....
  - (e) Fax No.: (with country/ area codes): .....
  - (f) Mobile Nos.: (with country/ area codes): .....
  - (g) Contact persons/ Designation: .....
  - (h) Email IDs: .....

5) We enclose herewith, as appropriate, *our ----- (Bye-Laws/ Registration Certificate/ Memorandum of Association/ Partnership Agreement/ Power of Attorney/ Board Resolution)*

Yours faithfully,

.....

[signature with date, name, and designation]

for and on behalf of Messrs.....

[name & address of the OEM and seal of company]

DA: As above



# Form 1.4 : Format for Joint Bidding Agreement for Joint Venture

(Refer Clause 3.2.5)

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the ..... day of ..... 20...

**AMONGST**

1. {..... incorporated under the ..... Act, [year]}<sup>§</sup>

and having its registered office at ..... (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

2. {..... incorporated under the ..... Act, [year]}<sup>§§</sup>

and having its registered office at ..... (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST and SECOND PART are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

**WHEREAS,**

(A) ..... (hereinafter referred to as the “**Procuring Entity**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited bids (the Bids) by its Tender Document No \_\_\_\_ dated .....(the “**Tender Document**”) for procurement of [mention name of project] (the “**Supply Project**”).

(B) The Parties are interested in jointly bidding for the Supply Project as members of a Consortium and in accordance with the terms and conditions of the Tender Document in respect of the Project, and

(C) It is a necessary condition under the Tender document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

\_\_\_\_\_

<sup>§</sup> Please mention name of the Lead Member of the JV/ Consortium, whether company, LLP, partnership, etc, stating the relevant Act (with year) under which incorporated.

<sup>§§</sup> Please mention name of other than Lead Member of the JV/ Consortium, whether company, LLP, partnership, etc, stating the relevant Act (with year) under which incorporated.

In this Jt. Bidding Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the Tender Document.

**2. Consortium**

2.1 The Parties do hereby irrevocably constitute an unincorporated consortium (the “JV” or “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Supply Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Supply Project, it shall, if required by the terms of the local laws of project country and the Bidding process, incorporate a joint venture / or any other form of corporate entity for entering into an Agreement with the Procuring Entity and for performing all its obligations as the Contractor in terms of the Agreement for the Supply Project.

**4. Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

- a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the date under the Agreement when all the obligations of the Contractor shall become effective;
- b) Party of the Second Part shall be {define the role of the Second Party or state “the other Member of the Consortium”};

**5. Joint and Several Liability**

Notwithstanding the arrangement inter se the parties, the Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the Tender Document and the Agreement, till such time as the final completion of the Supply Project is achieved in accordance with the Agreement.

**6. Stake in the Consortium**

6.1 The Parties agree that the proportion of shareholding / participation interest/ profit share/ economic interest, amongst the Parties shall be as follows:

First Party:

Second Party:

- 6.2 The Parties undertake that a minimum of 51% (fifty one per cent) of the subscribed and paid up equity share capital / participation interest / profit share / economic interest, as applicable, of the JV/ Consortium shall, at all times be held by the First Party.
- 6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the date of commencement of the Contract of the Supply Project and the final completion thereof, hold subscribed and paid up equity share capital, as applicable, of the JV/ Consortium equivalent to at least 26% (twenty six per cent) of the Total Project Cost.

## **7 Representation of the Parties**

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
- (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien,

charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

**8 Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the final completion of the Supply Project is achieved under and in accordance with the Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium does not get selected for award of the Project, the Agreement will stand terminated or upon return of the Bid Security by the Procuring Entity to the Bidder, as the case maybe.

**9 Miscellaneous**

9.2 This Joint Bidding Agreement shall be governed by laws of India.

9.3 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Procuring Entity.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SECOND PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

*Notes:*

- 1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
  
- 2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.*
  
- 3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.*

### Form 1.5 : Format for Power of Attorney for signing of Bid

(Refer Clause ITB 3.2.5)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./ Ms. (name), ..... son/daughter/wife of ..... and presently residing at ....., who is presently employed with us and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the \*\*\*\*\* Supply Project proposed or being developed by the \*\*\*\*\* (the "Procuring Entity") including but not limited to signing and submission of all Bids and other documents and writings, participate in Pre-Bids and other conferences and providing information/ responses to the Procuring Entity, representing us in all matters before the Procuring Entity, signing and execution of all contracts and undertakings consequent to acceptance of our Bid, and generally dealing with the Procuring Entity in all matters in connection with or relating to or arising out of our Bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Contract with the Procuring Entity.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2.....

For

.....

(Signature, name, designation and address)

Witnesses:

1.

2.

(Notarised)

Accepted

..... (Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

## Form 1.6: Format for Power of Attorney for Lead Member of Joint Venture

(Refer Clause ITB 3.2.5)

Whereas the \*\*\*\*\* (“the Procuring Entity”) has invited Bids from interested parties for the \*\*\*\*\* Project (the “Project”).

Whereas, ..... and ..... (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Tender Document and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, ..... having our registered office at ..... and M/s. .... having our registered office at....., (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s. .... having its registered office at ....., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of Consortium’s bid for the Project, including but not limited to signing and submission of all Bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Procuring Entity, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the contract is entered into with the Procuring Entity.



AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF ..... 2.....

For .....

(Signature)

.....

(Name & Title)

For .....

(Signature)

Witnesses:

1.

2.

..... (Executants)

(To be executed by all the Members of the Consortium)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

## Form 2: Schedule of Requirements - Compliance

### Schedule of Requirements

(Ref ITB-clause 9.2, Schedule VI: Schedule of Requirements)

(To be submitted as part of Technical bid)

(on Company Letter-head)

Tender Document No. Tend No./ xxxx; Tender Title: Goods

Bidder's Name \_\_\_\_\_

[Address and Contact Details]

Bidder's Reference No. \_\_\_\_\_ Date.....

*Note to Bidders: Fill up this Form regarding Section VI: Schedule of Requirements maintaining the same numbering and structure. Add additional details not covered elsewhere in your bid in this regard.*

| Tender Title        |         |                |                    |                    |                      |          |                   |                  |             |                |
|---------------------|---------|----------------|--------------------|--------------------|----------------------|----------|-------------------|------------------|-------------|----------------|
| Tender Reference No |         | Tend No./ xxxx |                    |                    |                      |          |                   |                  |             |                |
| Schedule            | Item Sr | HSN Code       | <sup>2</sup> GST % | Indian Content (%) | Description of Goods | Quantity | Units of Quantity | Delivery offered | Destination | Bidder's GSTIN |
| 1                   | 2       | 3              | 4                  | 5                  | 6                    | 7        | 8                 | 9                | 10          | 11             |
|                     |         |                |                    |                    |                      |          |                   |                  |             |                |

<sup>2</sup> Mention total % and breakup into CGST, SGST, IGST, Cess etc.

| Tender Title        |         |                |                    |                    |                      |          |                   |                  |             |                |
|---------------------|---------|----------------|--------------------|--------------------|----------------------|----------|-------------------|------------------|-------------|----------------|
| Tender Reference No |         | Tend No./ xxxx |                    |                    |                      |          |                   |                  |             |                |
| Schedule            | Item Sr | HSN Code       | <sup>2</sup> GST % | Indian Content (%) | Description of Goods | Quantity | Units of Quantity | Delivery offered | Destination | Bidder's GSTIN |
| Schedule-1          | 1.1     |                |                    |                    |                      |          |                   |                  |             |                |
|                     | 1.2     |                |                    |                    |                      |          |                   |                  |             |                |
|                     | 1.3     |                |                    |                    |                      |          |                   |                  |             |                |

|            |     |  |  |  |  |  |  |  |  |  |
|------------|-----|--|--|--|--|--|--|--|--|--|
| Schedule-2 | 2.1 |  |  |  |  |  |  |  |  |  |
|            | 2.2 |  |  |  |  |  |  |  |  |  |
|            | 2.3 |  |  |  |  |  |  |  |  |  |

- (1) Background of Goods offered:
- (2) Transportation:
- (3) Delivery Schedule:
- (4) Terms of Delivery:
- (5) Scope of Supply (Accessories, Spare Parts):
- (6) Incidental Works/ Services:

## Deviations from Schedule of Requirements

*Note to Bidders: Highlight deviations, if any, from Section VI: Schedule of Requirements in this Form.*

| Sl. No. | Ref of Tender Document<br>Section, Clause |                        | Subject | Confirmation/<br>Deviation/<br>Exception/<br>reservation | Justification/<br>Reason |
|---------|---|------------------------|---------|--|--------------------------|
|         | Section                                   | Clause/ sub-<br>clause |         |  |                          |
|         |   |                        |         |  |                          |
|         |   |                        |         |  |                          |
|         |   |                        |         |  |                          |
|         |   |                        |         |  |                          |

We shall comply with, abide by, and accept without variation, deviation, or reservation all requirements detailed in Section VI: Schedule of Requirements in the Tender Document, except those mentioned above. If mentioned elsewhere in our bid, contrary terms and conditions shall not be recognised and shall be null and void.

.....

(Signature with date)

.....

(Name and designation)

Duly authorized to sign bid for and on behalf of

.....

[name & address of Bidder and seal of company]

**Form 3: Technical Specifications and Quality Assurance - Compliance**

(Ref ITB-clause 9.2, Schedule VII: Technical Specifications and Quality Assurance)

(To be submitted as part of Technical bid)

(on Company Letter-head)

Tender Document No. Tend No./ xxxx; Tender Title: Goods

Bidder’s Name \_\_\_\_\_

[Address and Contact Details]

Bidder’s Reference No. \_\_\_\_\_ Date.....

*Note to Bidders: Highlight in this form deviations, if any, from Section VII: Technical Specifications and Quality Assurance, maintaining the same numbering and structure. Submit copies of original test certificates for standards/ specification tests on the Goods and other relevant documents like technical data, literature, drawings, etc. Add additional details not covered elsewhere in your bid in this regard.*

| Sl. No. | Ref of Technical Specification and Quality Assurance Clause |                    | Subject | Confirmation/ Deviation/ Exception/ reservation | Justification/ Reason |
|---------|---|--------------------|---------|---|-----------------------|
|         | Section   | Clause/ sub-Clause |         |   |                       |
|         |   |                    |         |   |                       |
|         |   |                    |         |   |                       |
|         |   |                    |         |   |                       |
|         |   |                    |         |   |                       |

We shall comply with, abide by, and accept without variation, deviation, or reservation all Technical Specifications, Quality Assurance and Warranty requirements in the Tender Document, except those mentioned above. If mentioned elsewhere in our bid, contrary terms and conditions shall not be recognised and shall be null and void.

.....  
 (Signature with date)

.....  
 (Name and designation)

Duly authorized to sign bid for and on behalf of  
 .....

[name & address of Bidder and seal of company]

DA: Relevant documents like technical data, literature, drawings, and other documents

## Form 4: Qualification Criteria - Compliance

(Ref ITB-clause 9.2, Schedule VIII Qualification Criteria)

(To be submitted as part of Technical bid)

(on Company Letter-head)

Tender Document No. Tend No./ xxxx; Tender Title: Goods

Bidder's Name \_\_\_\_\_

[Address and Contact Details]

Bidder's Reference No. \_\_\_\_\_ Date.....

*Note to Bidders: Furnish statements and documents to confirm conformity to Qualification Criteria may be mentioned/ attached here. The list below is indicative only. You may attach more documents as required for qualification criteria. Add additional details not covered elsewhere in your bid in this regard. Non-submission or incomplete submission of documents may lead to rejection of the bid as nonresponsive. Also highlight in this form deviations, if any, from Section VIII: Qualification Criteria.*

- 1) Location of the manufacturing Factory
- 2) Details of Plant and Machinery executed and function in each department (Monographs & description pamphlets) be supplied, if available.
- 3) Details of arrangement for quality control of products such as laboratory etc
- 4) Installed production capacity of item(s) quoted for, with the existing plant and machinery.
  - (a) The installed monthly production capacity for----- and the type of-----
  - (b) What portion of the production capacity shall be reserved for this contract? Indicate reserved capacity in terms of the number of items of Goods per month.
  - (c) average monthly production of ----- during the last 5 years on a single shift basis
  - (d) Existing order on hand for -----
- 5) Have you supplied the Goods tendered for or other identical items in the past? If so, details of supplies in the last five years may be furnished in Form 4.1.
- 6) Details relating to Section VIII: Qualification Criteria.....



7) Documents Attached supporting the compliance to qualification criteria:

| Sr | Document Attached, duly filled, signed, and copies self-attested |
|----|--|
| 1  |  |
| 2  |  |
| 3  |  |

.....

(Signature with date)

.....

(Name and designation)

Duly authorized to sign bid for and on behalf of

.....

[name & address of Bidder and seal of company]

DA: As above, if any

## Form 4.1: Performance Statement

### Statement of Supplies During Last Five Years and Outstanding Current Orders

(Ref ITB-clause 9.2 Schedule VIII Qualification Criteria)

(To be submitted as part of Technical bid)

(on Company Letter-head)

Tender Document No. Tend No./ xxxx; Tender Title: Goods

Bidder's Name \_\_\_\_\_

[Address and Contact Details]

Bidder's Reference No. \_\_\_\_\_ Date.....

*Note to Bidders: Fill up this Form your past performance highlighting their qualification to supply relevant Goods. Statements and Documents to the Performance Statement may be mentioned/ attached here. The list below is indicative only. You may attach more documents as required to showcase your past performance. Add additional details not covered elsewhere in your bid in this regard.*

| Order issued by | Order No. & Date | Qty ordered | Quantity supplied | Price at which supplied | The total value of the order | Status as on date---- |
|-----------------|------------------|-------------|-------------------|-------------------------|------------------------------|-----------------------|
|                 |                  |             |                   |                         |                              |                       |
|                 |                  |             |                   |                         |                              |                       |
|                 |                  |             |                   |                         |                              |                       |
|                 |                  |             |                   |                         |                              |                       |
|                 |                  |             |                   |                         |                              |                       |

.....  
 (Signature with date)

.....  
 (Name and designation)

Duly authorized to sign bid for and on behalf of

.....  
 .....

[name & address of Bidder and seal of company]

DA: Performance records/ contracts

### Form 5: Terms And Conditions - Compliance

(Ref ITB-clause 9.2)

(To be submitted as part of Technical bid)

(on Company Letter-head)

Bidder's Name \_\_\_\_\_

[Address and Contact Details]

Bidder's Reference No. \_\_\_\_\_

Date.....

Tender Document No. Tend No./ xxxx; Tender Title: Goods

*Note to Bidders: Fill up this Form regarding Terms and Conditions in the Tender Document, maintaining the same numbering and structure. Add additional details not covered elsewhere in your bid in this regard.*

| Sl. No. | Ref of Tender Document Section, Clause |                    | Subject | Confirmation/ Deviation/ Exception/ reservation | Justification/ Reason |
|---------|--|--------------------|---------|---|-----------------------|
|         | Section                                | Clause/ sub-Clause |         |   |                       |
|         |  |                    |         |   |                       |
|         |  |                    |         |   |                       |
|         |  |                    |         |   |                       |
|         |  |                    |         |   |                       |

We shall comply with, abide by, and accept without variation, deviation, or reservation all terms and conditions of the Tender Document, except those mentioned above. If mentioned elsewhere in our bid, contrary terms and conditions shall not be recognised and shall be null and void.

.....

(Signature with date)

.....

(Name and designation)

Duly authorized to sign bid for and on behalf of

.....

.....

[name & address of Bidder and seal of company]

DA: If any, at the option of the Bidder.

Form 5: Terms and Conditions - Compliance

## Form 6: Check-List for Bidders

(Ref ITB-clause 9.2)

(To be submitted as part of Technical bid)

(on Company Letter-head)

Bidder's Name \_\_\_\_\_

[Address and Contact Details]

Bidder's Reference No. \_\_\_\_\_ Date.....

Tender Document No. Tend No./ xxxx; Tender Title: Goods

*Note to Bidders: This check-list is merely to help the bidders to prepare their bids, it does not over-ride or modify the requirement of the tender. Bidders must do their own due diligence also.*

| Sr  | Documents submitted, duly filled, signed   | Yes/ No/<br>NA |
|-----|--|----------------|
| 1.  | Form 1.- bid Form (to serve as covering letter and declarations applicable for both the Techno-commercial bid and Financial bid) |                |
| 2.  | Form 1.1: Bidder Information along with Power of attorney and Registration Certificates etc.                                     |                |
| 2.a | Self-attested copy of Registration certificates etc. of the firm   |                |
| 2.b | Self-attested copy of PAN  |                |
| 2.c | Self-attested copy of GSTIN registration(s)  |                |
| 2.d | Self-attested copy of Power of Attorney etc. authorizing signatories on stamp paper to sign the bid                              |                |
| 2e. | Form ELI-1.1: Bidder Information Form  |                |
| 2f. | Form ELI-1.2: Bidder's JV Member's Information Form  |                |
| 2g. | Form CON-1: Past Contract Non-Performance  |                |
| 2h. | Form CON-2: Pending Litigation   |                |
| 2i. | Form CON-3: Litigation History   |                |
| 2j. | Form FIN-1: Financial Status and Capacity  |                |
| 2k. | Form FIN-2: Annual Consultancy Turnover  |                |
| 3.  | Form 1.2: Eligibility Declarations, along with supporting documents  |                |
| 3a. | Self-attested copy of Registration certificate for bidders/ subcontractors from restricted neighbouring countries                |                |
| 4.  | If applicable, Form 1.3: OEM's Authorization Form duly filled up (if applicable to Bidder concerned)                             |                |

|      |  |  |
|------|--|--|
| 4a.  | Self-attested copy of Registration certificates etc. of the OEM/ principal   |  |
| 4b.  | Self-attested copy of Power of Attorney etc. authorizing signatories on stamp paper to sign Form 1.3 of OEM/ Principal |  |
| 5.   | Form 1.4: Format for Joint Bidding Agreement for Joint Venture   |  |
| 6.   | Form 1.5: Format for Power of Attorney for signing of Bid  |  |
| 7.   | Form 1.6: Format for Power of Attorney for Lead Member of Joint Venture  |  |
| 8.   | Form 2: 'Schedule of Requirements - Compliance   |  |
| 9.   | Form 3: Technical Specifications and Quality Assurance - Compliance  |  |
| 9a.  | Relevant documents like technical data, literature, drawings, and other documents, at the option of Bidder             |  |
| 10.  | Form 4: Qualification Criteria - Compliance  |  |
| 10a. | Documents Attached supporting the compliance to qualification criteria   |  |
| 10b. | Form 4.1: Performance Statement  |  |
| 10c. | Documents/ contracts supporting the performance statement  |  |
| 11.  | Form 5: Terms and Conditions - Compliance  |  |
| 11a. | Documents if any at the option of Bidder, supporting deviation   |  |
| 12.  | Form 6: This Checklist   |  |
| 13.  | Form 7: Format for Bid Security  |  |
| 14.  | Price Schedule   |  |
| 15.  | Any other requirements, if stipulated in TIS/ AITB; or if considered relevant by the Bidder                            |  |

.....  
 (Signature with date)

.....  
 (Name and designation)

Duly authorized to sign bid for and on behalf of.....

[name & address of Bidder and seal of company]

## Form 7: Format for Bid Security.

(Ref ITB-clause 9.2)

*Note: To be submitted as part of Technical bid, along with supporting documents, if any.*

*Submit as Form 7 as part of Technical bid, a Bid Security.*

### Bid Security

**(Demand Guarantee)**

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[Procuring Entity to insert its name and address]*

**Tend No.:** *[Procuring Entity to insert reference number for the Tender Document]*

**Alternative No.:** *[Insert identification No if this is a Bid for an alternative]*

**Date:***[Insert date of issue]*

**BID GUARANTEE No.:***[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_ *[insert name of the Bidder, which in the case of a joint venture shall be the name of the joint venture (whether legally constituted or prospective) or the names of all members thereof]* (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its bid (hereinafter called "the Bid") for the execution of \_\_\_\_\_ under Tend No. \_\_\_\_\_ ("the Tender Document").

Furthermore, we understand that, according to the Beneficiary's conditions, bids must be supported by a bid guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of USD \_\_\_\_\_ (US Dollars \_\_\_\_\_) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

- (a) has withdrawn its Bid during the period of bid validity set forth in the Applicant's Letter of Bid ("the Bid Validity Period"), or any extension thereto provided by the Applicant; or
- (b) having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed or refused to (a) furnish the performance security and/or (b) accept the arithmetical correction of its Bid, in accordance with the Instructions to Bidders ("ITB") of the Beneficiary's bidding document.

This guarantee will expire: (a) if the Applicant is the successful bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the performance security issued to the Beneficiary in relation to such contract agreement; or (b) if the Applicant is not the successful bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the bidding process; or (ii) forty five days after the end of the Bid Validity Period.

Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

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*[Signature(s)]*

***Note: All italicized text is for use in preparing this form and shall be deleted from the final product.***

## **FORMATS**

y



### Format 1: Contract Form

(Ref Clause 13.2.5 of ITB)

[Name and complete address of the Procuring Entity]

Contract No..... dated.....

To

Contractor [Write Name]

[Complete address of the contractor]

**Subject:** -----

**Ref:** 1. *This office Letter of Award (LoA) No..... dated .....*

2. *This office Tender Document No. Tend No./ xxxx; Tender Title: Goods, dated..... and subsequent Amendment No....., dated..... (If any). (Hereinafter referred to as ‘the Tender Document’)*

3. *Your Tender No..... dated..... and subsequent communication(s)/ Revised Offer No..... dated ..... (If any), exchanged between you and this office in connection with this tender. (Hereinafter referred to as ‘Your Offer’)*

Dear Sir/ Madam,

Your bid referred above, read with subsequent letters mentioned above, for the Goods stipulated in the Schedules annexed herewith, have been accepted. Terms and conditions in this Contract and the documents listed in the clause below shall apply.

2. Terms and conditions in the documents mentioned under Reference no: 1, 2 and 3 above (including General and Special Conditions of Contract) shall also be part of this contract.

*Note: The words, expressions, definitions, and abbreviations used in this contract shall have the same meanings as are respectively assigned to them in the General Conditions of Contract of ‘the Tender Document’.*

(Signature, name and address of [Procuring Entity]’s authorized official)

For and on behalf of.....

Received and accepted this contract .....

(Signature, name, and address of the contractor’s executive duly authorized to sign on behalf of the contractor)

For and on behalf of .....

(Name and address of the contractor)

.....

(Seal of the contractor)

Place: \_\_\_\_\_ Date:

## Format 1.1: Bank Guarantee Format for Performance Security

(Ref Clause 13.2.4 of ITB and clause 5.8 of GCC)

### Performance Security

#### (Demand Guarantee)

*[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[insert name and Address of Procuring Entity]*

**Date:** *\_ [Insert date of issue]*

**PERFORMANCE GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *\_ [insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the supply of *\_ [insert name of contract and brief description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of USD \_\_\_\_\_ *[insert amount in figures]* (US Dollars \_\_\_\_\_) *[insert amount in words]*,<sup>3</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

---

<sup>3</sup> *The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Letter of Acceptance, and denominated in the US Dollars.*

This guarantee shall expire, no later than the .... Day of ....., 2...<sup>4</sup>, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

---

*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

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<sup>4</sup> *Insert the date sixty days after the expected completion date as described in GC Clause 5.8. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Procuring Entity might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”*

## Format 1.2: Bank Guarantee Format for Advance Payment

(Ref Clause 10.3 of SCC)

### Advance Payment Security

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[Insert name and Address of Procuring Entity]*

**Date:** *[Insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum USD \_\_\_\_\_ *[insert amount in figures]* (US Dollars \_\_\_\_\_) *[insert amount in words]* is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of USD \_\_\_\_\_ *[insert amount in figures]* (US Dollars \_\_\_\_\_) *[insert amount in words]*<sup>5</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

- (a) has used the advance payment for purposes other than toward delivery of Goods;  
or
- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

---

<sup>5</sup> *The Guarantor shall insert an amount representing the amount of the advance payment as specified in the Contract.*

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number *[insert number]* at *[insert name and address of Applicant's bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Contract Price, has been certified for payment, or on the *[insert day]* day of *[insert month]*, 2 *[insert year]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No.758, except that the supporting statement under Article 15(a) is hereby excluded.

---

*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

### Format 1.3: No Claim Certificate

(Refer Clause 12.3.1 of GCC)

(On company Letter-head)

Contractor's Name \_\_\_\_\_

[Address and Contact Details]

Contractor's Reference No. \_\_\_\_\_ Date.....

To

[Name and complete address of the Procuring Entity]

#### No Claim Certificate

Sub: Contract Agreement no. ----- dated -----for the supply of -----

We have received the sum of USD \_\_\_\_\_ (US Dollars  
\_\_\_\_\_ only) as final settlement due to us for the supply of

\_\_\_\_\_ under the abovementioned contract agreement.

We have received all the amounts payable to us with this payment and have no outstanding dispute of any description whatsoever regarding the amounts worked out as payable to us and received by us.

We hereby unconditionally and without any reservation whatsoever, certify that we shall have no further claim whatsoever, of any description, on any account, against the Procuring Entity, under contract above. We shall continue to be bound by the terms and conditions of the contract agreement regarding its performance.

Yours faithfully,

Signatures of contractor or

officer authorised to sign the contract documents.

on behalf of the contractor

(company Seal)

Date: \_\_\_\_\_

Place: \_\_\_\_\_

## Format 2: Authorization for Attending Pre-bid Conference.

(Refer ITB-Clause 8)

(on Company Official Letter Head)

Bidder's Name \_\_\_\_\_

[Address and Contact Details]

Bidder's Reference No. \_\_\_\_\_ Date.....

To

[Mention Name and complete address of the Procuring Entity]

Ref: Tender Document No. Tend No./ xxxx; Tender Title: Goods

Subject: Authorization for attending Pre-bid Conference on \_\_\_\_\_ (date).

Following persons are hereby authorized to attend the Pre-bid Conference for the tender mentioned above on behalf of \_\_\_\_\_ (Bidder) in order of preference given below.

| Sr.                      | Name | Photo ID Type/ Number |
|--------------------------|------|-----------------------|
| I.                       |      |                       |
| II.                      |      |                       |
| Alternate Representative |      |                       |

Note:

1. Maximum of two representatives (carrying valid photo IDs) shall be permitted to attend the Pre-bid opening. An alternate representative shall be permitted when regular representatives are not able to attend.
2. Permission to enter the hall where the pre-bid conference is conducted may be refused if authorization as prescribed above is not submitted.

Signatures of bidder

or

Officer authorized to sign the bid.

Documents on behalf of the bidder

[name & address of Bidder and seal of company]



### Format 3: Letter of Award

(Refer ITB-Clause 13.2.3)

(on Procuring Entity Letter Head)

[date]

To: [name and address of the Supplier]

Subject: **Notification of Award Contract No.** .....

*This is to notify you that your Bid dated . . . . [insert date] . . . . for execution of the . . . . .  
.[insert name of the contract and identification number, as given in the SCC]. . . . . for  
the Contract Price of . . . . . [insert amount in numbers and words and name of currency],  
as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by  
our Agency.*

*You are requested to furnish the Performance Security **within 14 days in** accordance with ITB  
13.2.4, using for that purpose the of the Performance Security Form included as Format 1.1, of  
the Tender Document.*

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Procuring Entity: \_\_\_\_\_

**Attachment: Contract Agreement**

## **PRICE SCHEDULE**

If the Procuring Entity uses e-procurement system then the link to download the form for price bid should be provided here so that the bidder can fill and upload his bid on the e-Procurement Portal.

OR

If Procuring Entity does not use e-procurement, the following format may be adopted.

### Price Schedule No. 1: Goods Manufactured in India, to be Imported

| Amount in USD                              |                              |  |  |  |   |  | Date: _____                                      |
|--|------------------------------|--|--|--|---|--|--|
|  |                              |  |  |  |   |  | Tend. No: _____                                  |
|  |                              |  |  |  |   |  | Alternative No: _____                            |
|  |                              |  |  |  |   |  | Page N° _____ of _____                           |
| 1  | 2                            | 3  | 4  | 5  | 6   | 7  | 8  |
| Line Item<br>N°                            | Description of Goods         | Delivery Date as defined<br>by Incoterms | Quantity and<br>physical unit  | Unit price<br>FOB/CIP/DAP [insert<br>port of shipment or<br>place of destination]<br><br>in accordance with ITB<br>6.1.2 | FOB/CIP/DAP Price<br>per line item<br><br>(Col. 4x5)          | Price per line item for inland<br>transportation and other<br>services required in the<br>Purchaser's country to convey<br>the Goods to their final<br>destination specified in AITB | Total Price per Line item<br><br>(Col. 6+7)      |
| <i>[insert<br/>number of<br/>the item]</i> | <i>[insert name of good]</i> | <i>[insert quoted Delivery<br/>Date]</i> | <i>[insert number<br/>of units to be<br/>supplied and<br/>name of the<br/>physical unit]</i> | <i>[insert unit price<br/>FOB/CIP/DAP per unit]<br/><br/>[In case of FOB, insert<br/>freight charges<br/>separately]</i> | <i>[insert total<br/>FOB/CIP/DAP price<br/>per line item]</i> | <i>[insert the corresponding price<br/>per line item]</i>  | <i>[insert total price of the<br/>line item]</i> |
|  |                              |  |  |  |   |  |  |
|  |                              |  |  |  |   |  |  |
|  |                              |  |  |  |   | Total Price  |  |

Name of Bidder *[insert complete name of Bidder]* Signature of Bidder *[signature of person signing the Bid]* Date *[Insert Date]*

## Price Schedule No. 2: Goods Manufactured in Third Country, to be Imported

| Amount in USD                              |                                  |                      |  |  |  |   |  | Date: _____                                      |
|--|----------------------------------|----------------------|--|--|--|---|--|--|
|  |                                  |                      |  |  |  |   |  | Tend. No: _____                                  |
|  |                                  |                      |  |  |  |   |  | Alternative No: _____                            |
|  |                                  |                      |  |  |  |   |  | Page N° _____ of _____                           |
| 1  | 2                                | 3                    | 4  | 5  | 6  | 7   | 8  | 9  |
| Line Item<br>N°                            | Description of<br>Goods          | Country<br>of origin | Delivery Date as<br>defined by Incoterms | Quantity and<br>physical unit  | Unit price<br><br>FOB/CIP/DAP [insert<br>port of shipment or<br>place of destination]<br><br>in accordance with ITB<br>6.1.2 | FOB/CIP/DAP Price<br>per line item<br><br>(Col. 5x6)          | Price per line item for inland<br>transportation and other<br>services required in the<br>Purchaser's country to convey<br>the Goods to their final<br>destination specified in AITB | Total Price per Line item<br><br>(Col. 7+8)      |
| <i>[insert<br/>number of<br/>the item]</i> | <i>[insert name of<br/>good]</i> |                      | <i>[insert quoted<br/>Delivery Date]</i> | <i>[insert number<br/>of units to be<br/>supplied and<br/>name of the<br/>physical unit]</i> | <i>[insert unit price<br/>FOB/CIP/DAP per unit]<br/><br/>[In case of FOB, insert<br/>freight charges<br/>separately]</i>     | <i>[insert total<br/>FOB/CIP/DAP price<br/>per line item]</i> | <i>[insert the corresponding price<br/>per line item]</i>  | <i>[insert total price of the<br/>line item]</i> |
|  |                                  |                      |  |  |  |   |  |  |
|  |                                  |                      |  |  |  |   |  |  |
|  |                                  |                      |  |  |  |   | Total Price  |  |

Name of Bidder *[insert complete name of Bidder]* Signature of Bidder *[signature of person signing the Bid]* Date *[Insert Date]*

### Price Schedule No. 3: Goods Manufactured in the Host Country

| Procuring Entity's Country<br>_____ |                              | Amount in USD                         |  |                                |   | Date: _____<br>Tend. No: _____<br>Alternative No: _____<br>Page N° _____ of _____   |   |                                      |
|-------------------------------------|------------------------------|---------------------------------------|--|--------------------------------|---|---|---|--------------------------------------|
| 1                                   | 2                            | 3                                     | 4  | 5                              | 6   | 7   | 8   | 9                                    |
| Line Item N°                        | Description of Goods         | Delivery Date as defined by Incoterms | Quantity and physical unit   | Unit price EXW                 | Total EXW price per line item (Col. 4x5)      | Price per line item for inland transportation and other services required in the Purchaser's Country to convey the Goods to their final destination | Cost of local labor, raw materials and components from within the Purchaser's Country % of Col. 5   | Total Price per line item (Col. 6+7) |
| <i>[insert number of the item]</i>  | <i>[insert name of Good]</i> | <i>[insert quoted Delivery Date]</i>  | <i>[insert number of units to be supplied and name of the physical unit]</i> | <i>[insert EXW unit price]</i> | <i>[insert total EXW price per line item]</i> | <i>[insert the corresponding price per line item]</i>   | <i>[Insert cost of local labor, raw material and components from within the Purchase's country as a % of the EXW price per line item]</i> | <i>[insert total price per item]</i> |
|                                     |                              |                                       |  |                                |   |   |   |                                      |
|                                     |                              |                                       |  |                                |   |   |   |                                      |
|                                     |                              |                                       |  |                                |   |   |   |                                      |
| Total Price                         |                              |                                       |  |                                |   |   |   |                                      |

Name of Bidder *[insert complete name of Bidder]* Signature of Bidder *[signature of person signing the Bid]* Date *[insert date]*

### Price Schedule No. 4 - Related Services

|               |                        |
|---------------|------------------------|
| Amount in USD | Date: _____            |
|               | Tend. No: _____        |
|               | Alternative No: _____  |
|               | Page N° _____ of _____ |

| 2  | 3   | 4   | 5  | 6                                   |
|--|---|---|--|-------------------------------------|
| Description of Services (excludes inland transportation and other services required in the Purchaser's country to convey the goods to their final destination) | Country of Origin                                 | Delivery Date at place of Final destination                             | Quantity and physical unit   | Unit price                          |
| <i>[insert name of Services]</i>   | <i>[insert country of origin of the Services]</i> | <i>[insert delivery date at place of final destination per Service]</i> | <i>[insert number of units to be supplied and name of the physical unit]</i> | <i>[insert unit price per item]</i> |
|  |   |   |  |                                     |
|  |   |   |  |                                     |
|  |   |   |  |                                     |
|  |   |   |  |                                     |

|                 |
|-----------------|
| Total Bid Price |
|-----------------|

Name of Bidder *[insert complete name of Bidder]* Signature of Bidder *[signature of person signing the Bid]* Date *[insert date]*

## Price Schedule No. 5. Grand Summary

| Item No | Description   | Total Price<br>Amount in USD |               |       |       |
|---------|---|------------------------------|---------------|-------|-------|
|         |   | Indian                       | Third Country | Local | Total |
| 1/      | Price Schedule No. 1: Goods Manufactured in India, to be Imported         |                              |               |       |       |
| 2.      | Total Schedule No. 2: Goods Manufactured in Third Country, to be Imported |                              |               |       |       |
| 3.      | Price Schedule No. 3: Goods Manufactured in the Host Country              |                              |               |       |       |
| 4.      | Price Schedule No. 4 - Related Services                                   |                              |               |       |       |
|         | Total :   |                              |               |       |       |
|         | Percentage:   |                              |               |       | 100%  |

Name of Bidder \_\_\_\_\_

Signature of Bidder \_\_\_\_\_

**Procuring Entity**

**Tender Document**

**Tender Reference Number: Tend No./ xxxx**

**For Procurement of**

**GOODS**