

# **BIDDING DOCUMENTS**

**FOR**

## **“PROJECT FOR RENOVATION AND MODERNIZATION OF UMIAM-UMTRU STAGE III HYDROELECTRIC POWER STATION”**

**“Rehabilitation of Electro Mechanical Equipments”**

**(Package – 1)**

**VOLUME –I of II**



**EMPLOYER: MEGHALAYA POWER GENERATION  
CORPORATION LIMITED**

**COUNTRY: INDIA**

**PROJECT: PROJECT FOR RENOVATION AND  
MODERNIZATION OF UMIAM-UMTRU STAGE  
III HYDROELECTRIC POWER STATION**

**LOAN NO. : ID-P271**

**TABLE OF CONTENTS**

	<b>PAGE NO.</b>
Invitation for Bids.....	2
<b>PART 1 - BIDDING PROCEDURES .....</b>	<b>3</b>
<b>OPTION A: SINGLE-STAGE TWO-ENVELOPE BIDDING.....</b>	<b>4</b>
<b>SECTION I. INSTRUCTIONS TO BIDDERS .....</b>	<b>6</b>
<b>SECTION II. BID DATA SHEET .....</b>	<b>8</b>
<b>SECTION III. EVALUATION AND QUALIFICATION CRITERIA (WITHOUT PREQUALIFICATION) .....</b>	<b>13</b>
<b>SECTION IV. BIDDING FORMS .....</b>	<b>24</b>
Letter of Technical Bid.....	24
Letter of Price Bid .....	25
Price Schedules.....	27
Schedules of Rates and Prices .....	28
Schedule No. 1. Plant and Mandatory Spare Parts Supplied from Abroad .....	28
Schedule No. 2. Plant and Mandatory Spare Parts Supplied from Within the Employer’s Country.....	29
Schedule No. 3. Design Services.....	30
Schedule No. 4. Installation and Other Services.....	31
Schedule No. 5. Provisional Sums.....	32
Schedule No. 6. Grand Summary .....	33
Schedule No. 7. Recommended Spare Parts.....	34
Price Adjustment .....	35
Technical Proposal.....	37
Site Organization .....	38
Method Statement.....	39
Mobilization Schedule .....	40
Construction Schedule .....	41



**Project for Renovation and Modernization of Umiam-Umtru Stage III Hydroelectric Power Station :  
Rehabilitation of Electro Mechanical Equipments (Volume-I of II)**

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Plant .....	42
Safety Plan.....	43
Form FUNC: Functional Guarantee .....	44
Form PER -1: Proposed Personnel .....	45
Form PER -2: Resume of Proposed Personnel .....	46
Form EQU: Equipment.....	47
Form SUB: Proposed Subcontractors for Major Items of Plant and Installation Services .....	48
Form MAN: Manufacturer's Authorization .....	49
Bidder's Qualification without Prequalification.....	50
Form ELI - 1: Bidder Information .....	51
Form ELI - 2: Bidder's Party Information.....	52
Form CON: Historical Contract Non-Performance .....	53
Form FIN - 1: Financial Situation.....	56
Form FIN - 2: Average Annual Turnover.....	56
Form FIR - 1: Financial Resources.....	58
Form FIR - 2: Current Contract Commitments.....	59
Form EXP - 1: General Experience .....	60
Form EXP - 2(a): Specific Experience .....	61
Form EXP - 2(b): Experience in Key Activities.....	63
Form ACK- Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Loans .....	65
Form of Bid Security (Bank Guarantee).....	67
Form of Bid Security (Bid Bond) .....	69
SECTION V. ELIGIBLE SOURCE COUNTRIES OF JAPANESE ODA LOANS .....	70
PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS .....	72
SECTION VII. GENERAL CONDITIONS (GC).....	74

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SECTION VII. GENERAL CONDITIONS (GC).....	75
Annex - DISPUTE BOARD GUIDELINES .....	80
SECTION VIII. PARTICULAR CONDITIONS .....	83
Particular Conditions.....	86
SECTION IX. CONTRACT FORMS .....	88
Notification of Award - Letter of Acceptance .....	89
Contract Agreement .....	90
Appendix 1 Terms and Procedures of Payment .....	93
Appendix 2 Price Adjustment.....	98
Appendix 3 Insurance Requirements.....	101
Appendix 4 Time Schedule .....	103
Appendix 5 List of Major Items of Plant and Installation Services and List of Approved Subcontractors .....	104
Appendix 6 Scope of Works and Supply by the Employer .....	106
Appendix 7 List of Documents for Approval or Review .....	107
Appendix 8 Functional Guarantees .....	108
Performance Security Form - Bank Guarantee .....	110
Bank Guarantee Form for Advance Payment .....	112
Implementation Schedule.....	114

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**Project for Renovation and Modernization of Umiam-Umtru Stage III Hydroelectric Power Station :  
Rehabilitation of Electro Mechanical Equipments (Volume-I of II)**

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# **INVITATION FOR BIDS**

## **Invitation for Bids**

Date: 3<sup>rd</sup> January 2022

Loan Agreement No: ID-P271

IFB No: *MePGCL/CE:GEN/T-133(Pt-I)/2021-22/116*

Reference Identification No: *MePGCL/CE:GEN/T-133(Pt-I)/2021-22/116*

1. The President of India has received a loan from Japan International Cooperation Agency (JICA) towards the cost of Renovation works of UMIAM-UMTRU STAGE III HYDRO ELECTRIC POWER STATION. It is intended that part of the proceeds of this loan will be applied to eligible payments under the Contract for the PROJECT FOR RENOVATION AND MODERNIZATION OF UMIAM-UMTRU STAGE III HYDROELECTRIC POWER STATION.
2. Bidding will be conducted through procedures in accordance with the applicable Guidelines for Procurement under Japanese ODA Loans, and is open to all Bidders from eligible source countries, as defined in the Loan Agreement.
3. The Meghalaya Power Generation Corporation Limited now invites sealed Bids from eligible Bidders for the construction and completion of Plant Design, Supply and Installation of equipments (Rehabilitation of Electro Mechanical Equipments – Package - 1) for UMIAM UMTRU Stage III HEPS. International Competitive Bidding will be conducted in accordance with JICA's Single stage Bidding Procedure.
4. Interested eligible Bidders may obtain further information from and inspect the Bidding Documents at the office of Chief Engineer (Generation) Meghalaya Power Generation Corporation Limited, Lumjingshai Short Round Road, Shillong, Meghalaya – 793001. email: [cegen.meecl@gov.in](mailto:cegen.meecl@gov.in).
5. A complete set of the Bidding Documents may be purchased by interested Bidders on the submission of a written application to the address above/download it from our website [www.meecl.nic.in](http://www.meecl.nic.in) and upon payment of a non-refundable fee of 40,000 (Forty Thousand) INR in the form of Demand Draft in favour of “Principal Account, MeECL”, payable at Shillong and the DD should be enclosed with the Tender Documents.
6. Bids must be delivered to the address above on or before 13:00 Hours (IST) on 4<sup>th</sup> March 2022 and must be accompanied by a Bid Security of 6.0 Crores (Six Crores) INR.
7. Bids will be opened in the presence of Bidders’ representatives who choose to attend at 15:00 Hours (IST) 4<sup>th</sup> March 2022 at the office of:

MeECL Conference Hall,  
Registered Office of MePGCL, Lumjingshai,  
Street Address: Short Round Road  
City: Shillong, Meghalaya  
ZIP Code: 793001  
Country: India  
Telephone: +91 3642591415, Electronic mail address: [cegen.meecl@gov.in](mailto:cegen.meecl@gov.in)

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## **PART 1 - BIDDING PROCEDURES**

# **OPTION A: SINGLE-STAGE TWO-ENVELOPE BIDDING**



## **SECTION I. INSTRUCTIONS TO BIDDERS**

## SECTION I. INSTRUCTIONS TO BIDDERS

The Instructions to Bidders governing this bidding process are the “Instructions to Bidders included in **Option A**, Single-Stage Two-Envelope Bidding, Section I,” of the Standard Bidding Documents for Procurement of Plant Design, Supply and Installation (version 1.1) published by JICA in February 2013. Those Instructions to Bidders are available on the JICA’s web site shown below:

[http://www.jica.go.jp/english/our\\_work/types\\_of\\_assistance/oda\\_loans/oda\\_op\\_info/guide/tender/index.html](http://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/guide/tender/index.html)

A copy of the Instructions to Bidders is not attached to these Bidding Documents.



## **SECTION II. BID DATA SHEET**

**SECTION II. BID DATA SHEET**

<b>A. General</b>	
<b>ITB 1.1</b>	The number of the Invitation for Bids is: MePGCL/CE:GEN/T-133(Pt-I)/2021-22/116
<b>ITB 1.1</b>	The Employer is: Meghalaya Power Generation Corporation Ltd
<b>ITB 1.1</b>	The name, identification and number of the lot(s) (contract(s)) comprising this ICB is: Rehabilitation of Electro Mechanical Equipments for Umiam-Umtru Stage-III Power Station, Package-1 / Lot-1/ Contract-1
<b>ITB 2.1</b>	The Borrower is: The President of India
<b>ITB 2.1</b>	The number of the Loan Agreement is: ID-P271 The amount of a Japanese ODA Loan is: 5497 Million Yen The signed date of the Loan Agreement is: 29th October 2018
<b>ITB 2.1</b>	The name of the Project is: Project for Renovation and Modernization of Umiam-Umtru Stage III Hydroelectric Power Station
<b>ITB 2.2</b>	The applicable Guidelines for Procurement under Japanese ODA Loans are those published in: April 2012
<b>ITB 3.1(c)</b>	A list of debarred firms and individuals is available at the World Bank's website: <a href="http://www.worldbank.org/debarr">www.worldbank.org/debarr</a>
<b>ITB 4.5</b>	This bidding process is not subject to prequalification.
<b>B. Bidding Documents</b>	
<b>ITB 7.1</b>	For <b><u>clarification purposes</u></b> only, the Employer's address is: Attention: Chief Engineer (Generation), Meghalaya Power Generation Corporation Limited (MePGCL) Street Address: LUMJINGSHAI, Short Round Road City: Shillong, Meghalaya ZIP Code: 793001 Country: India Telephone : +91 3642591415 Electronic mail address: cegen.meecl@gov.in
<b>ITB 7.1</b>	Responses to any request for clarification, if any, will be issued to bidder via email or hard copy or in employer's web page.
<b>ITB 7.4</b>	A pre-bid meeting will take place at the following date, time and place: Date: 3 <sup>rd</sup> February 2022 Time: 11:30 Hours (IST)



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Rehabilitation of Electro Mechanical Equipments (Volume-I of II)**

	<p>Place: Office of The Chief Engineer (Generation), Meghalaya Power Generation Corporation Limited (MePGCL), LUMJINGSHAI, Short Round Road, Shillong, Meghalaya, India</p> <p>A site visit conducted by the Employer will not be organized. [The bidders shall conduct site visit(s), as per their convenience, prior to the pre-bid meeting, seeking due permission from the Employer.]</p>
<b>ITB 8.2</b>	Addenda, if any, will be published on the Employer's web page (www.meecl.nic.in)
<b>C. Preparation of Bids</b>	
<b>ITB 10.1</b>	The language of the Bid is: ENGLISH
<b>ITB 11.2(1)</b>	<p>The Bidder shall submit with its Technical Bid the following additional documents:</p> <p>(a) Documentary evidence establishing, in accordance with Section III EQC, that the Works to be carried out by the Bidder conform to the Bidding Documents</p> <p>(b) Power of attorney</p>
<b>ITB 11.3 (d)</b>	<p>The Bidder shall submit with its Price Bid the following additional documents:</p> <p>(a) Power of Attorney</p>
<b>ITB 13.1</b>	Alternative Bids are not permitted.
<b>ITB 16.1 (b)</b>	<p>The period following completion of Plant and Installation Services during which spare parts, special tools etc. shall be available, is:</p> <p style="text-align: center;">20 years for Electro-mechanical components/Spares.</p>
<b>ITB 18.1</b>	<p>Bidders shall quote for the entire Plant and Installation Services on a single responsibility basis.</p> <p>The Bidder shall comply with the guidelines of the state of Meghalaya /Government of India on Covid-19 as would be issued from time to time and the cost thereof shall be borne by the Contractor; this has been arrived at after discussion with the Consultants. Guidelines issued by Govt. Of India on 18<sup>th</sup> May 2020 is provided at Annexure-A the same can be downloaded from the link <a href="https://www.mohfw.gov.in/pdf/GuidelinesonpreventivemeasurestocontainspreadofCOVID19inworkplacesettings.pdf">https://www.mohfw.gov.in/pdf/GuidelinesonpreventivemeasurestocontainspreadofCOVID19inworkplacesettings.pdf</a>. Latest guidelines may be accessed from the Govt. of India website <a href="https://www.mohfw.gov.in">https://www.mohfw.gov.in</a> and Govt. of Meghalaya website <a href="https://meghealth.gov.in/">https://meghealth.gov.in/</a></p>
<b>ITB 18.5 (a)</b>	Named place of destination is: Umium-Umtru Stage-III Power Station, MePGCL, Kyrdemkulai, Via: Zero Point, P.O.: Umsning - 793105, District: Re Bhoi, Meghalaya, India.



<b>ITB 18.5 (d)</b>	Named place of final destination is: Umium-Umtru Stage-III Power Station, MePGCL, Kyrdemkulai, Via: Zero Point, P.O.: Umsning - 793105, District: Re Bhoi, Meghalaya, India.
<b>ITB 18.7</b>	The prices quoted by the Bidder shall be: Adjustable
<b>ITB 19.1</b>	<p>The currency(ies) of the Bid shall be as follows:</p> <p>(a) Plant and equipment to be supplied from outside of the employer's country shall be quoted entirely in Japanese Yen or US Dollar or EURO or currency of employer country i.e. INR.</p> <p>(b) Plant and equipment to be supplied from within the Employer's country shall be quoted in INR.</p> <p>(c) Design and installation shall be quoted in either foreign (Japanese Yen or US Dollar or EURO) and/or local (INR) currency, depending upon the currency in which the costs are to be incurred.</p>
<b>ITB 20.1</b>	The Bid validity period shall be <b>120 days</b> .
<b>ITB 20.3(b)</b>	The Fixed portion of the adjustable price contract for Supply portion shall be adjusted by Increase or Decrease in Wholesale Price Index (WPI) of Employer's Country or of outside the Employer's Country as the case may be, depending upon the inputs from within the Employer's Country or inputs from outside the Employer's Country. The Fixed portion of the adjustable price contract for Installation & Service portion shall be adjusted by Increase or Decrease in Consumer Price Index (CPI) of the of Employer's Country or of outside the Employer's Country as the case may be, depending upon the inputs from within the Employer's Country or inputs from outside the Employer's Country.
<b>ITB 21.1</b>	The amount and currency of the Bid Security shall be 6.0 Crores (Six Crores) INR (Six Crores Indian Rupees) or equivalent USD in favour of "Chief Engineer (Generation), Meghalaya Power Generation Corporation Limited, (MePGCL)".
<b>ITB 21.2(d)</b>	Other types of acceptable securities: None
<b>ITB 22.1</b>	In addition to the original of the Bid, the number of copies is: Two (2)
<b>ITB 22.2</b>	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: Original Power of Attorney (legally valid) authorizing the signatory of the bid to commit for the bidder, signed by their legally authorized representative(s).
<b>D. Submission and Opening of Bids</b>	
<b>ITB 24.1</b>	For <b><u>Bid submission purposes</u></b> only, the Employer's address is: Attention: Chief Engineer (Generation), Meghalaya Power Generation Corporation Limited (MePGCL)



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**Project for Renovation and Modernization of Umiam-Umtru Stage III Hydroelectric Power Station :  
Rehabilitation of Electro Mechanical Equipments (Volume-I of II)**

	<p>Street Address: LUMJINGSHAI, Short Round Road City: Shillong, Meghalaya ZIP Code: 793001 Country: India Telephone : +91 3642591415 Electronic mail address: cegen.meecl@gov.in <b>The deadline for Bid submission is:</b> Date: 4<sup>th</sup> March 2022 Time: 13:00 Hours (IST)</p>
<b>ITB 27.1</b>	<p>The Technical Bid opening shall take place at: Floor /room: MeECL Conference Hall, Registered Office of MePGCL, Lumjingshai, Street Address: Short Round Road City: Shillong, Meghalaya ZIP Code: 793001 Country: India Date: 4<sup>th</sup> March 2022 Time: 15:00 Hours (IST)</p>
<b>E. Evaluation, and Comparison of Bids</b>	
<b>ITB 37.1</b>	<p>The currency that shall be used for Bid evaluation and comparison purposes to convert all Bid Prices expressed in various currencies into a single currency is: Indian Rupees (INR)  The source of exchange rate shall be: Reserve Bank of India  The date for the exchange rate shall be: <b>4<sup>th</sup> March 2022</b></p>

## **SECTION III. EVALUATION AND QUALIFICATION CRITERIA (WITHOUT PREQUALIFICATION)**

**SECTION III. EVALUATION AND QUALIFICATION CRITERIA (WITHOUT  
PREQUALIFICATION)**

**1. Evaluation**

**1.1 Technical Evaluation**

In addition to the criteria listed in ITB 35.1 (a) – (b) the following factors shall apply:

**1.1.1 Personnel**

The Bidder must demonstrate that it has the personnel for the key positions that meet the following requirements:

No.	Position	Total Work Experience (years)	Experience in Similar Works (years)
1	Project Manager	20	15
2	Erection Manager Electrical	15	12
3	Erection Manager Mechanical	15	12
4	Engineer Electrical	10	7
5	Engineer Mechanical	10	7
6	Engineer Civil	10	8
7	EHS Officer	12	10

The Bidder shall provide details of the proposed personnel and their experience records in Forms PER-1 and PER-2 in Section IV, Bidding Forms.

**1.1.2 Equipment**

The Bidder must demonstrate that it has the key equipment listed hereafter:

No.	Equipment Type and Characteristics	Minimum Number required
1	Crane- not less than 100 T	01
2	Crane 40 T	01
3	Hydra 15 T	02
4	Diesel Generator 100 KVA	01
5	Diesel Generator 40 KVA	01
6	Open body Tippers	02
7	Tipper	01

The Bidder shall provide further details of proposed items of equipment using Form EQU in Section IV, Bidding Forms.

**1.2 Economic Evaluation**

In addition to the criteria listed in ITB 38.2 (a) – (c) the following criteria shall apply.

**1.2.1 Quantifiable nonmaterial nonconformities**

Pursuant to ITB 34.3 and ITB 38.2 (d), the cost of all quantifiable nonmaterial nonconformities or omissions (minor omissions or missing items) shall be evaluated.

**1.2.2 Other Factors**

The following factors and methods will apply under ITB 38.2 (f):

**(a) Time Schedule**

Time to complete the Plant and Installation Services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities is: 1216 days. No credit will be given for earlier completion.

The completion time specified shall be for the entire Plant and Installation Services.

**(b) Operating and Maintenance Costs**

Since the operating and maintenance costs of the facilities being procured form a major part of the life cycle cost of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each Bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the Employer or other employers similarly placed. Such costs shall be added to the Bid Price for evaluation.

Reference to the methodology specified in the Specification or elsewhere in the Bidding Documents: Methodology is mentioned below.

The Methodology/Format is specified below in connection with operating and maintenance cost of this plant after RM&U until a major overhauling facilities become necessary that is 25 years of life cycle.

Sl. No.	Description of item	Amount to be filled by Bidder
<b>A. Operating Cost</b>		
01	Employees cost for Operational personnel.	
02	Shift Allowances, Compensatory and Overtime allowance for Operational personnel	
<b>B. Maintenance Cost</b>		
01	Employees cost for Maintenance personnel.	
02	Shift Allowances, Compensatory and Overtime allowance for Operational personnel	
03	Cost of Spare parts	
04	Lubricants & Insulating Oil	
05	Consumables	
06	Fuels for Diesel Generator	
07	Power House Building Maintenance	
08	Vehicle running expenditure	
09	Vehicle Repairing and Maintenance	

The price of recommended spare parts quoted in Price Schedule No. 7 shall not be considered for evaluation.

**(c) Functional Guarantees of the Plant and Installation Services**

The minimum (or maximum) requirements stated in the Specification for functional guarantees required in the Specification are:

Functional Guarantee	Minimum
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	<b>(or Maximum, as appropriate) Requirement</b>
1. Efficiency of Prototype Turbines at rated head and rated output	93% (Minimum)
2. Efficiency of Generators at rated conditions	98% (Minimum)
3. Efficiency of Power Transformers	99% (Minimum)

For the purposes of evaluation, for each percentage point that the functional guarantee of the proposed Plant and Installation Services is below the norm specified in the Specification and in the above table, but above the minimum acceptable levels also specified therein, an adjustment of 3 Crores (Three Crores) INR will be added to the Bid Price. If the drop below the norm or the excess above the minimum acceptable levels is less than one percent, the adjustment will be prorated accordingly.

**(d) Work, services, facilities, etc., to be provided by the Employer**

Facilities: Electric power supply and Land on lease basis

Where Bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the Bidding Documents, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the Contract. Such costs shall be added to the Bid Price for evaluation.

**(e) Specific additional criteria – Not applicable**

The following additional criteria will be used in the evaluation: Nil

The relevant evaluation method, if any, shall be as follows: Nil

**1.2.3 Award Criteria for Multiple Contracts (ITB 38.4) – Not applicable**

**1.3 Alternatives Technical Solutions – Not applicable**

Alternatives technical solutions, if invited in accordance with ITB 13.4, will be evaluated as follows: Nil

**2. Qualification**

**(i) Exchange Rate for Qualification Criteria**

Wherever a Form in Section IV, Bidding Forms, requires a Bidder to state a monetary amount, Bidders should indicate the USD equivalent using the rate of exchange determined as follows:

- (a) For turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year.
- (b) Value of single Contract - Exchange rate prevailing on the date of the Contract.

Exchange rates shall be taken from the publicly available source **identified in BDS 37.1** or, in case such rates are not available in the source identified above, any other publicly available source acceptable to the Employer. Any error in determining the exchange rates may be corrected by the Employer.

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Factor /Sub-Factor	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
<b>2.1 Eligibility</b>							
2.1.1	Nationality	Nationality in accordance with ITB 4.3.	Must meet requirement	N/A	Must meet requirement	N/A	Form ELI –1 and 2, with attachments
2.1.2	Conflict of Interest	No conflicts of interests as described in ITB 4.2.	Must meet requirement	N/A	Must meet requirement	N/A	Letter of Bid
2.1.3	JICA Ineligibility	Not having been declared ineligible by JICA as described in ITB 4.4.	Must meet requirement	N/A	Must meet requirement	N/A	Letter of Bid Form ACK
<b>2.2 Historical Contract Non-Performance</b>							
2.2.1	History of non-performing Contracts	Non-performance of a Contract(i) did not occur as a result of Contractor’s default since 1st January 2019.	Must meet requirement(ii)	N/A	Must meet requirement(ii)	N/A	Form CON
2.2.2	Pending Litigation	All pending litigation shall in total not represent more than Fifty percent (50 %) of the Bidder’s net worth and shall be treated as resolved against the Bidder.	Must meet requirement(ii)	N/A	Must meet requirement(ii)	N/A	Form CON
2.2.3	Litigation History	No consistent history of court/arbitral award decisions against the Bidder(iii) since 1st January 2016	Must meet requirement(ii)	N/A	Must meet requirement(ii)	N/A	Form CON
<b>Notes for the Bidder</b>							
(i) Non-performance, as decided by the Employer, shall include all Contracts: (a) where non performance was not challenged by the Contractor, including through referral to the dispute resolution mechanism under the respective Contract, and							



Eligibility and Qualification Criteria		Compliance Requirements			Documentation		
No.	Factor /Sub-Factor	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
		<p>(b) that were so challenged but fully settled against the Contractor.</p> <p>Non-performance shall not include Contracts where Employers decision was overruled by the dispute resolution mechanism. Non-performance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective Contract and where all appeal instances available to the Applicant have been exhausted.</p> <p>(ii) This requirement also applies to Contracts executed by the Bidder as a JV member.</p> <p>(iii) The Bidder shall provide accurate information on the related Bidding Form about any litigation or arbitration resulting from Contracts completed or ongoing under its execution over the last five (5) years. A consistent history of awards against the Bidder or any member of a joint venture may result in rejection of the Bid.</p>					

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Factor/ Sub-Factor	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
<b>2.3 Financial Situation</b>							
2.3.1	<b>Financial Performance</b>	The audited balance sheets or, if not required by the law of the Bidder's country, other financial statements acceptable to the Employer, for the last 5 years shall be submitted and must demonstrate the current soundness of the Bidder's financial position and its prospective long term profitability.  As the minimum requirement, a Bidder's net worth calculated as the difference between total assets and total liabilities should be positive.	Must meet requirement	N/A	Must meet requirement	N/A	Form FIN – 1 with attachments
2.3.2	<b>Average Annual Turnover</b>	Minimum average annual turnover of 19 (Nineteen) Million USD, calculated as total certified payments received for Contracts in progress and/or completed, within the last five years divided by five years.	Must meet requirement	Must meet requirement	Must meet Twenty five percent (25%) of the requirement	Must meet Forty percent (40%) of the requirement	Form FIN – 2
2.3.3	<b>Financial Resources</b>	(i) The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the cash flow requirements estimated as 4.8 Million USD for	Must meet requirement	Must meet requirement	Must meet Twenty five percent (25%) of the requirement	Must meet Forty percent (40%) of the requirement	Form FIR - 1

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Factor/ Sub-Factor	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
<b>2.3 Financial Situation</b>							
		the subject Contract(s) net of the Bidder's other commitments.					
		(ii) The Bidder shall also demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.	Must meet requirement	Must meet requirement	N/A	N/A	Form FIR – 1 and Form FIR - 2

Eligibility and Qualification Criteria	Compliance Requirements	Documentation
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No.	Factor/ Sub-Factor	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
2.4 Experience							
2.4.1	General Experience	Experience under contracts in the role of prime contractor (single entity or JV member), Subcontractor, or management contractor(i) for at least the last five years starting 1st January 2016.	Must meet requirement	N/A	Must meet requirement	N/A	Form EXP - 1
2.4.2 (a)	Specific Experience	A minimum number of three similar(ii) contracts that have been satisfactorily and substantially(iii) completed as a prime contractor (single entity or JV member)(iv) between 1st January 2012 and the Bid submission deadline.	Must meet requirement	Must meet requirements(v)	N/A	N/A	Form EXP - 2(a)
2.4.2 (b)	Specific Experience	For the above or other contracts completed and under implementation as prime contractor (single entity or JV member), management contractor or Subcontractor(vi) between 1st January 2012 and the Bid submission deadline, a minimum experience in the following key activities successfully completed: Renovation, Modernisation & Upgradation of Hydro Electric Power Projects.	Must meet requirements (can be a specialist Subcontractor)	Must meet requirements (can be a specialist Subcontractor)	N/A	N/A	Form EXP - 2(b)

Notes for the Bidder

- (i) A management contractor is a firm which takes on the role of contract management as a “general” contractor of sort could do. It does not normally perform directly the work(s) associated with the Contract. Rather, it manages the work of other (sub) contractors while bearing full responsibility and risk for price, quality, and timely performance of the contract.
- (ii) The similarity shall be based on the physical size, complexity, methods/technology and/or other characteristics described in Section VI,

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Factor/ Sub-Factor	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
2.4 Experience							
<p>Employer's Requirements. Summation of number of small value Contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted.</p> <p>(iii) Substantial completion shall be based on 80% or more works completed under the Contract.</p> <p>(iv) For contracts under which the Bidder participated as a JV member, only the Bidder's share, by value, shall be considered to meet this requirement.</p> <p>(v) In case of a JV, the value of Contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single Contract has been met. Instead, each Contract performed by each member shall satisfy the minimum value of a single Contract as required for single entity. In determining whether the JV meets the requirement of total number of Contracts, only the number of Contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.</p> <p>(vi) For Contracts under which the Bidder participated as a JV member or Subcontractor, only the Bidder's share shall be counted to meet this requirement.</p>							



## 2.5 Subcontractors/manufacturers

Subcontractors/manufacturers for the following major items of supply or services must meet the following minimum criteria, herein listed for that item:

Item No.	Description of Item	Minimum Criteria to be met
1	Vertical Hydro Turbine – Francis type	30.8 MW
2	Vertical Hydro Generator	30 MW
3	Power Transformer – 11 / 132 KV	37.5 MVA
4.	EOT Crane	150 Ton
5.	Installation of Hydro-generating Units and associated equipments	60 MW (Total Plant capacity)
6.	Lift	Capacity suitable for use in a Hydro Power Plant

Failure to comply with this requirement will result in rejection of the Subcontractor.

In the case of a Bidder who offers to supply and install major items of supply under the Contract that the Bidder did not manufacture or otherwise produce, the Bidder shall provide the manufacturer's authorization, using Form MAN provided in Section IV, Bidding Forms, showing that the Bidder has been duly authorized by the manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer's country. The Bidder is responsible for ensuring that the manufacturer or producer complies with the requirements of ITB 4 and ITB 5 and meets the minimum criteria listed above for that item.

## **SECTION IV. BIDDING FORMS**

## **SECTION IV. BIDDING FORMS**

### **Letter of Technical Bid**

Date: *[insert date of Bid submission]*  
Loan Agreement No.: *[insert number]*  
IFB No.: *[insert number]*  
Alternative No.: *[insert identification No. if this is a Bid for an alternative]*

To: *[Meghalaya Power Generation Power Corporation Limited.]*,

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB 8): *[insert the number and issuing date of each Addendum]*;
- (b) We, including any Subcontractors/ manufacturers, for any part of the Contract, meet the eligibility requirements in accordance with ITB 4 and ITB 5;
- (c) We, including any Subcontractors/ manufacturers, for any part of the Contract, have no conflict of interest in accordance with ITB 4;
- (d) We offer to *[insert the services that apply, i.e., design, manufacture, test, deliver, install, precommission and commission]*, in conformity with the Bidding Documents, the following Plant and Installation Services: *[insert a brief description of the Plant and Installation Services]*;
- (e) Our Bid shall be valid for a period of *[specify the number of calendar days]* days from the date fixed for the Bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) We are not participating, as a Bidder or as a Subcontractor/ manufacturers, in more than one Bid in this bidding process in accordance with ITB 4.2 (c), other than alternative Bids submitted in accordance with ITB 13; and
- (g) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption.

Name of the Bidder\**[insert complete name of the Bidder]*

Name of the person duly authorized to sign the Bid on behalf of the Bidder\*\* *[insert complete name of person duly authorized to sign the Bid]*

Title of the person signing the Bid *[insert complete title of the person signing the Bid]*

Signature of the person named above *[insert signature of person whose name and capacity are shown above]*

Date signed *[insert date of signing]* day of *[insert month]*, *[insert year]*

\*: In the case of the Bid submitted by a Joint Venture specify the name of the Joint Venture as Bidder

\*\* : Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid.

**Letter of Price Bid**

Date: *[insert date of Bid submission]*

Loan Agreement No.: *[insert number]*

IFB No.: *[insert number]*

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

To: *[Meghalaya Power Generation Corporation Limited.]*,

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB 8): *[insert the number and issuing date of each Addendum]*;
- (b) We offer to *[insert the services that apply, i.e., design, manufacture, test, deliver, install, pre commission and commission]*, in conformity with the Bidding Documents, the following Plant and Installation Services: *[insert a brief description of the Plant and Installation Services]*;
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is:  
In case of only one lot, total price of the Bid *[insert the total price of the Bid in words and figures, indicating the various amounts and the respective currencies]*  
*[In case of multiple lots, insert the total price of each lot]*  
*[In case of multiple lots, insert the total price of all lots (sum of all lots)]*;
- (d) The discounts offered and the methodology for their application are:  
The discounts offered are: *[specify in detail each discount offered]*  
The exact method of calculations to determine the net price after application of discounts is shown below: *[specify in detail the method that shall be used to apply the discounts]*;
- (e) Our Bid shall be valid for a period of *[specify the number of calendar days]* days from the date fixed for the Bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our Bid is accepted, we commit to obtain a Performance Security in accordance with the Bidding Documents;
- (g) We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding Contract between us, until a formal Contract is prepared and executed; and
- (h) We understand that you are not bound to accept the lowest evaluated Bid or any other Bid that you may receive.

Name of the Bidder\**[insert complete name of the Bidder]*

Name of the person duly authorized to sign the Bid on behalf of the Bidder\*\* *[insert complete name of person duly authorized to sign the Bid]*

Title of the person signing the Bid *[insert complete title of the person signing the Bid]*

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Signature of the person named above [insert signature of person whose name and capacity are shown above]

Date signed [insert date of signing] day of [insert month], [insert year]

\*: In the case of the Bid submitted by a Joint Venture specify the name of the Joint Venture as Bidder

\*\* : Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid.

## **Price Schedules**

### **Notes on Prices Schedules**

#### **General**

1. The Price Schedules are divided into separate Schedules as follows:  
Schedule No. 1: Plant (including Mandatory Spare Parts) Supplied from Abroad  
Schedule No. 2: Plant (including Mandatory Spare Parts) Supplied from Within the Employer's Country  
Schedule No. 3: Design Services  
Schedule No. 4: Installation and Other Services  
Schedule No. 5: Provisional Sums  
Schedule No. 6: Grand Summary  
Schedule No. 7: Recommended Spare Parts (Spare parts for Operation and Maintenance)
2. The Schedules do not generally give a full description of the Plant to be supplied and the services to be performed under each item. Bidders shall be deemed to have read the Employer's Requirements and other sections of the Bidding Documents and reviewed the Drawings to ascertain the full scope of the requirements included in each item prior to filling in the rates and prices. The entered rates and prices shall be deemed to cover the full scope as aforesaid, including overheads and profit.
3. If Bidders are unclear or uncertain as to the scope of any item, they shall seek clarification in accordance with ITB 7 prior to submitting their Bid.

#### **Pricing**

4. Prices shall be filled in indelible ink, and any alterations necessary due to errors, etc., shall be initialed by the Bidder.  
As specified in the Bid Data Sheet and Particular Conditions of Contract, prices shall be fixed and firm for the duration of the Contract, or prices shall be subject to adjustment in accordance with the corresponding Appendix (Price Adjustment) to the Contract Agreement.
5. Bid Prices shall be quoted in the manner indicated and in the currencies specified in the Instructions to Bidders in the Bidding Documents.  
For each item, Bidders shall complete each appropriate column in the respective Schedules, giving the price breakdown as indicated in the Schedules.  
Prices given in the Schedules against each item shall be for the scope covered by that item as detailed in Section VI (Employer's Requirements) or elsewhere in the Bidding Documents.
6. Payments will be made to the Contractor in the currency or currencies indicated under each respective item.
7. When requested by the Employer for the purposes of making payments or partial payments, valuing variations or evaluating claims, or for such other purposes as the Employer may reasonably require, the Contractor shall provide the Employer with a breakdown of any composite or lump sum items included in the Schedules.











**Schedule No. 6. Grand Summary**

Item	Description	Total Price <sup>1</sup>	
		Foreign	Local
	Total Schedule No. 1. Plant, and Mandatory Spare Parts Supplied from Abroad		
	Total Schedule No. 2. Plant, and Mandatory Spare Parts Supplied from Within the Employer's Country		
	Total Schedule No. 3. Design Services		
	Total Schedule No. 4. Installation and Other Services		
	Total Schedule No. 5. Provisional Sums		
<b>TOTAL (to Bid Form)</b>			

<p><b>Name of Bidder</b> _____</p> <p><b>Signature of Bidder</b> _____</p>
--

1 Specify currency in accordance with specifications in Bid Data Sheet under ITB 19.1 in Single-Stage Bidding, or ITB 34.1 in Two-Stage Bidding. Create and use as many columns for Foreign Currency requirement as there are foreign currencies.



### Price Adjustment

Where the Contract Period (excluding the Defects Liability Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labor and material components. In such cases the Bidding Documents shall include in this form a formula of the following general type, pursuant to GC Sub-Clause 11.2.

Where Contracts are of a shorter duration than eighteen (18) months, the following provision shall not be included. Instead, it shall be indicated under this form that the prices are to remain firm and fixed for the duration of the Contract.

#### Sample Price Adjustment Formula

Prices payable to the Contractor, in accordance with the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labor and material components, in accordance with the following formula:

$$P^1 = P^0 \times (a + b L^1/L^0 + c M^1/M^0) - P^0$$

in which:

$P^1$  = adjustment amount payable to the Contractor

$P^0$  = Contract Price (base price)

$a$  = percentage of fixed element in Contract Price ( $a = \_ \%$ )

$b$  = percentage of labor component in Contract Price ( $b = \_ \%$ )

$c$  = percentage of material and equipment component in Contract Price ( $c = \_ \%$ )

$L^0, M^0$  = labor and material/equipment component indices or reference prices in the country of origin on the Base Date

$L^1, M^1$  = labor and material/equipment component indices applicable to the appropriate industry in the country of origin on the date of adjustment, for adjustments related to Plant and components supplied under Schedules No.1, No.2 and No.3; and, in case of adjustment for Installation Services provided under Schedule No.4, indices or reference prices applicable to the appropriate industry in the country of origin on the month the Installation Services were provided.

N.B.  $a+b+c= 100\%$ .

*[The Bidder shall propose the coefficients  $b$  and  $c$  in its Bid. The formula, including all coefficients, shall be determined and finalized at Contract negotiations.]*

#### Conditions Applicable To Price Adjustment

The Bidder shall indicate the source of labor and materials indices and the base date indices in its Bid.

Item	Source of Indices Used	Base Date Indices
------	------------------------	-------------------



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The Base Date shall be the date twenty eight (28) days prior to: [*insert “the Bid submission deadline” or “the submission deadline for Second Stage Bids”, as appropriate*].

For Plant or components supplied under Schedules No.1, No.2 and No.3, the date of adjustment shall be the mid-point of the sequences shown in the Program of Performance submitted by the Bidder, pursuant to GC 18.2, for design or manufacture of the Plant or components.

In respect of Installation Services provided under Schedule No.4, the adjustment shall apply to the monthly measured value of work performed by the Contractor during the preceding month. The adjustment shall be made monthly to the payments for Installation Services effected as provided in Appendix 1 of the Contract Agreement.

The following conditions shall apply:

- (a) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the terms of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay.
- (b) If the currency in which the Contract Price,  $P_0$ , is expressed is different from the currency of the country of origin of the labor and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract Price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.
- (c) No price adjustment shall be payable on the portion of the Contract Price paid to the Contractor as an advance payment.

*[For complex Plant and Installation Services involving several sources of supply and/or a substantial amount of installation works, a family of formulas may be necessary, with provision for the usage of Contractor’s equipment in the works formula.]*

### **Technical Proposal**

- Site Organization
- Method Statement
- Mobilization Schedule
- Construction Schedule
- Plant
- Safety Plan
- Functional Guarantee
- Personnel
- Contractor's Equipment
- Proposed Subcontractors for Major Items of Plant and Installation Services
- [*Others*]

## **Site Organization**

*[Insert Technical Proposal for Site Organization.]*

## **Method Statement**

*[Insert Technical Proposal for Method Statement.]*

## **Mobilization Schedule**

*[Insert Technical Proposal for Mobilization Schedule.]*

## **Construction Schedule**

*[Insert Technical Proposal for Construction Schedule.]*

## **Plant**

*[Insert Technical Proposal for Plant.]*

## **Safety Plan**

*[Insert Technical Proposal for Safety Plan.]*

**Form FUNC: Functional Guarantee**

*[The Bidder shall copy in the left column of the table below, the identification of each functional guarantee required in the Specification and stated by the Employer in para. 1.2.2 (c) of Section III. Evaluation and Qualification Criteria for Single-Stage Bidding, or in para. 1.1.2 (c) of Section III. Evaluation and Qualification Criteria for Two-Stage Bidding, Second Stage Evaluation, and in the right column, provide the corresponding value for each functional guarantee of the proposed plant and equipment.]*

<b>Required Functional Guarantee</b>	<b>Value of Functional Guarantee of the Proposed Plant and Equipment</b>
1.	
2.	
3.	
...	

**Form PER -1: Proposed Personnel**

Date: *[insert day, month, year]*  
Bidder's Legal Name: *[insert full name]*  
Joint Venture Party Legal Name: *[insert full name]*  
IFB No.: *[insert number]*  
Page *[insert page number]* of *[insert total number]* pages

*[The Bidder shall provide the names of suitably qualified personnel to meet the specified requirements stated in Section III, Evaluation and Qualification Criteria, Clause 1.1.1 for Single-Stage Bidding or Clause 1.1 for Two-Stage Bidding.]*

<b>1.</b>	<b>Title of position*</b>
	<b>Name</b>
<b>2.</b>	<b>Title of position*</b>
	<b>Name</b>
<b>3.</b>	<b>Title of position*</b>
	<b>Name</b>
<b>4.</b>	<b>Title of position*</b>
	<b>Name</b>

\*As listed in Section III.



**Form PER -2: Resume of Proposed Personnel**

Date: *[insert day, month, year]*  
 Bidder's Legal Name: *[insert full name]*  
 Joint Venture Party Legal Name: *[insert full name]*  
 IFB No.: *[insert number]*  
 Page *[insert page number]* of *[insert total number]* pages

*[The Bidder shall provide the data on the experience of the personnel indicated in Form PER-1, in the form below.]*

<b>Name of Bidder</b>
-----------------------

<b>Position</b>		
<b>Personnel information</b>	<b>Name</b>	<b>Date of birth</b>
	<b>Professional qualifications</b>	
<b>Present employment</b>	<b>Name of employer</b>	
	<b>Address of employer</b>	
	<b>Telephone</b>	<b>Contact (manager / personnel officer)</b>
	<b>Fax</b>	<b>E-mail</b>
	<b>Job title</b>	<b>Years with present employer</b>

*[Summarize professional experience over the last 20 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.]*

From	To	Company / Project / Position / Relevant technical and management experience

**Form EQU: Equipment**

Date: [insert day, month, year]

Bidder's Legal Name: [insert full name]

Joint Venture Party Legal Name: [insert full name]

IFB No.: [insert number]

Page [insert page number] of [insert total number] pages

*[The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria, Clause 1.1.2 for Single-Stage Bidding or Clause 1.2 for Two-Stage Bidding. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.]*

<b>Item of equipment</b>		
<b>Equipment information</b>	<b>Name of manufacturer</b>	<b>Model and power rating</b>
	<b>Capacity</b>	<b>Year of manufacture</b>
<b>Current status</b>	<b>Current location</b>	
	<b>Details of current commitments</b>	
<b>Source</b>	<b>Indicate source of the equipment</b> <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Bidder.

<b>Owner</b>	<b>Name of owner</b>	
	<b>Address of owner</b>	
	<b>Telephone</b>	<b>Contact name and title</b>
	<b>Fax</b>	<b>Telex</b>
<b>Agreements</b>	<b>Details of rental / lease / manufacture agreements specific to the project</b>	



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**Form SUB: Proposed Subcontractors for Major Items of Plant and Installation Services**

A list of major items of Plant and Installation Services is provided below.

The following Subcontractors and/or manufacturers are proposed for carrying out the item of the facilities indicated. Bidders are free to propose more than one for each item.

<b>Major Items of Plant and Installation Services</b>	<b>Proposed Subcontractors/Manufacturers</b>	<b>Nationality</b>

**Form MAN: Manufacturer's Authorization**

*[The Bidder shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer.]*

Date: *[insert date (as day, month and year) of Bid Submission]*

IFB No.: *[insert number of bidding process]*

To: *[insert complete name of Purchaser]*

**WHEREAS**

We *[insert complete name of Manufacturer or Manufacturer's authorized agent]*, who are official manufacturers of *[insert type of goods manufactured]*, having factories at *[insert full address of Manufacturer's factories]*, do hereby authorize *[insert complete name of Bidder]* to submit a Bid the purpose of which is to provide the following goods, manufactured by us *[insert name and/or brief description of the goods]*, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 27, Defect Liability, of the General Conditions of Contract, with respect to the goods offered by the above firm.

Name: *[insert complete name of person signing the Bid]*

In the capacity of *[insert legal capacity of person signing the bid]*

Signed: *[insert signature of person whose name and capacity are shown above]*

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Bidder]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

### **Bidder's Qualification without Prequalification**

To establish its qualification to perform the Contract in accordance with Section III, Evaluation and Qualification Criteria, the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder:

- Form ELI - 1: Bidder Information
- Form ELI - 2: Bidder's Party Information
- Form CON: Historical Contract Non-Performance
- Form FIN - 1: Financial Situation
- Form FIN - 2: Average Annual Construction Turnover
- Form FIR - 1: Financial Resources
- Form FIR - 2: Current Contract Commitments
- Form EXP - 1: General Construction Experience
- Form EXP - 2(a): Specific Construction Experience
- Form EXP - 2(b): Construction Experience in Key Activities

**Form ELI - 1: Bidder Information**

Date: [insert day, month, year]

IFB No.: [insert number]

Page [insert page number] of [insert total number] pages

[The Bidder shall provide the following information.]

1. Bidder's legal name:[insert full name]
2. In case of JV, legal name of the representative member and of each member: [insert full name of each member in the JV and specify the representative member]
3. Bidder's actual or intended country of registration: [insert country of registration]
4. Bidder's actual or intended year of incorporation: [insert year of incorporation]
5. Bidder's legal address in country of registration: [insert street/number/town or city/country]
6. Bidder's authorized representative information Name: [insert full name] Address: [inset street/number/town or city/country] Telephone/Fax numbers: [insert telephone/fax numbers, including country and city codes] Email Address: [insert E-mail address]
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of legal entity named above, in accordance with ITB 4.3. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

**Form ELI - 2: Bidder's Party Information**

Date: *[insert day, month, year]*

IFB No.: *[insert number]*

Page *[insert page number]* of *[insert total number]* pages

*[The following form is additional to Form ELI-1, and shall be completed to provide information relating to each JV member (in case the Bidder is a JV) as well as any specialist Subcontractor proposed to be used by the Bidder for any part of the Contract resulting from this process.]*

1. Bidder's legal name: <i>[insert full name]</i>
2. Bidder's Party legal name: <i>[insert full name of Bidder's Party]</i>
3. Bidder's Party country of registration: <i>[insert country of registration]</i>
4. Bidder's Party year of incorporation: <i>[insert year of incorporation]</i>
5. Bidder's Party legal address in country of registration: <i>[insert street/number/town or city/country]</i>
6. Bidder's Party authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert street/number/town or city/country]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[insert E-mail address]</i>
7. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 4.3.
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

**Form CON: Historical Contract Non-Performance**

*[The following table shall be filled in for the Bidder and for each member of a JV.]*

Date: *[insert day, month, year]*

Bidder's Legal Name: *[insert full name]*

Joint Venture Party Legal Name: *[insert full name]*

IFB No.: *[insert number]*

Page *[insert page number]* of *[insert total number]* pages

**1. History of Non-Performing Contracts**

<b>Non-Performing Contracts</b>			
<input type="checkbox"/> Contract non-performance did not occur since 1st January <i>[insert year]</i> , in accordance with the Prequalification criteria, or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.1, as appropriate.			
<input type="checkbox"/> Contract(s) not performed since 1st January <i>[insert year]</i> , in accordance with the Prequalification criteria, or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.1, as appropriate, is(are) indicated below:			
Year	Non- performed portion of Contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and USD equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	<ul style="list-style-type: none"> <li>• Contract Identification: <i>[indicate complete Contract name, number, and any other identification]</i></li> <li>• Name of Employer: <i>[insert full name]</i></li> <li>• Address of Employer: <i>[insert street/city/country]</i></li> <li>• Reason(s) for non performance: <i>[indicate main reason(s)]</i></li> </ul>	<i>[insert amount]</i>



## 2. Pending Litigation

Pending Litigation				
<input type="checkbox"/> No pending litigation in accordance with the Prequalification criteria, or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.2, as appropriate.				
<input type="checkbox"/> Pending litigation in accordance with the Prequalification criteria, or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.2, as appropriate, is indicated below:				
Year of dispute	Amount in dispute (currency)	Outcome as Percentage of Net Worth	Contract Identification	Total Contract Amount (current value, currency, exchange rate and USD equivalent)
[insert year]	[insert amount]	[insert percentage]	<ul style="list-style-type: none"> <li>Contract Identification: [indicate complete Contract name, number, and any other identification]</li> <li>Name of Employer: [insert full name]</li> <li>Address of Employer: [insert street/ city/ country]</li> <li>Matter in dispute: [indicate main issues in dispute]</li> <li>Status of dispute: [indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</li> </ul>	[insert amount]



### 3. Litigation History

Litigation History		
<input type="checkbox"/> No court/arbitral award decisions against the Bidder since 1st January <i>[insert year]</i> , in accordance with the Prequalification criteria, or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.3, as appropriate.		
<input type="checkbox"/> Court/arbitral award decisions against the Bidder since 1st January <i>[insert year]</i> , in accordance with the Prequalification criteria, or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2.3, as appropriate, are indicated below:		
Year of award	Contract Identification	Total Contract Amount (current value, currency, exchange rate and USD equivalent)
<i>[insert year]</i>	<ul style="list-style-type: none"> <li>Contract Identification: <i>[indicate complete Contract name, number, and any other identification]</i></li> <li>Name of Employer: <i>[insert full name]</i></li> <li>Address of Employer: <i>[insert street/city/country]</i></li> <li>Matter in dispute: <i>[indicate main issues in dispute]</i></li> <li>Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i></li> <li>Status of dispute: <i>[indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i></li> </ul>	<i>[insert amount]</i>

**Form FIN - 1: Financial Situation**

*[The following table shall be filled in for the Bidder and for each member of a JV.]*

Date: *[insert day, month, year]*

Bidder's Legal Name: *[insert full name]*

Joint Venture Party Legal Name: *[insert full name]*

IFB No.: *[insert number]*

Page *[insert page number]* of *[insert total number]* pages

**1. Financial data**

Type of Financial information in (currency)	Historic information for previous <i>[insert number]</i> years (amount, currency, exchange rate, USD equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Statement of Financial Position (Information from Balance Sheet)</b>					
Total Assets (TA)					
Total Liabilities (TL)					
Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
<b>Information from Income Statement</b>					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Profits After Taxes (PAT)					

**2. Financial documents**

The Bidder and its Parties shall provide copies of the financial statements for *[number of years]* years pursuant to the Prequalification Criteria or Section III, Evaluation and Qualifications Criteria, Sub-factor 2.3.1. The financial statements shall:

- (a) reflect the financial situation of the Bidder or in case of JV member, of each 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 *[number of years]* years required above; and complying with the requirements.

**Form FIN - 2: Average Annual Turnover**

*[The following table shall be filled in for the Bidder and for each member of a JV.]*

Date: *[insert day, month, year]*

Bidder's Legal Name: *[insert full name]*

<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.



Joint Venture Party Legal Name: *[insert full name]*

IFB No.: *[insert number]*

Page *[insert page number]* of *[insert total number]* pages

<b>Annual Turnover Data (Construction only)</b>			
<b>Year</b>	<b>Amount and Currency</b>	<b>Exchange rate</b>	<b>USD equivalent</b>
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>	<i>[insert applicable exchange rate]</i>	<i>[insert amount in USD equivalent]</i>
<b>Average Annual Construction Turnover *</b>			

\* Total USD equivalent for all years divided by the total number of years, in accordance with the Prequalification criteria, or Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.2, as appropriate.

**Form FIR - 1: Financial Resources**

*[The following table shall be filled in for the Bidder and for each member of a JV.]*

Date: *[insert day, month, year]*

Bidder's Legal Name: *[insert full name]*

Joint Venture Party Legal Name: *[insert full name]*

IFB No.: *[insert number]*

Page *[insert page number]* of *[insert total number]* pages

*[Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject Contract or Contracts as indicated in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.2 (Following Prequalification), or Sub-Factor 2.3.3 (Without Prequalification), as appropriate.]*

<b>Financial Resources</b>		
<b>No.</b>	<b>Source of financing</b>	<b>Amount (USD equivalent)</b>
1		
2		
3		

**Form FIR - 2: Current Contract Commitments**

*[The following table shall be filled in for the Bidder and for each member of a JV.]*

Date: *[insert day, month, year]*

Bidder's Legal Name: *[insert full name]*

Joint Venture Party Legal Name: *[insert full name]*

IFB No.: *[insert number]*

Page *[insert page number]* of *[insert total number]* pages

*[Bidders and each member of a JV should provide information on their current commitments on all Contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for Contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued, in accordance with Section III, Evaluation and Qualification Criteria, Clause 2.2 (Following Prequalification), or Sub-Factor 2.3.3 (Without Prequalification), as appropriate.]*

<b>Current Contract Commitments</b>					
<b>No.</b>	<b>Name of Contract</b>	<b>Employer's Contact Address, Tel, Fax</b>	<b>Value of Outstanding Work [Current USD Equivalent]</b>	<b>Estimated Completion Date</b>	<b>Average Monthly Invoicing Over Last Six Months [USD/month]</b>
1					
2					
3					
4					
5					

**Form EXP - 1: General Experience**

*[The following table shall be filled in for the Bidder and for each member of a JV.]*

Date: *[insert day, month, year]*

Bidder's Legal Name: *[insert full name]*

Joint Venture Party Legal Name: *[insert full name]*

IFB No.: *[insert number]*

Page *[insert page number]* of *[insert total number]* pages

*[Identify Contracts that demonstrate continuous work over the past [number] years pursuant to Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.1. List Contracts chronologically, according to their commencement (starting) dates.]*

<b>General Experience</b>			
<b>Starting Year</b>	<b>Ending Year</b>	<b>Contract Identification</b>	<b>Role of Bidder</b>
<i>[indicate year]</i>	<i>[indicate year]</i>	<ul style="list-style-type: none"> <li>• Contract name: <i>[insert full name]</i></li> <li>• Brief description of the works performed by the Bidder: <i>[describe works performed briefly]</i></li> <li>• Amount of Contract: <i>[insert amount, currency, exchange rate and USD equivalent]</i></li> <li>• Name of Employer: <i>[indicate full name]</i></li> <li>• Address: <i>[indicate street/number/town or city/country]</i></li> </ul>	<i>[insert "Prime Contractor"(Single entity or JV member) or "Subcontractor" or "Management Contractor"]</i>

**Form EXP - 2(a): Specific Experience**

[The following table shall be filled in for Contracts performed by the Bidder and by each member of a JV.]

Date: [insert day, month, year]  
Bidder's Legal Name: [insert full name]  
Joint Venture Party Legal Name: [insert full name]  
IFB No.: [insert number]  
Page [insert page number] of [insert total number] pages

[Fill out one (1) form per Contract, in accordance with Section III, Evaluation and Qualification Criteria (Without Prequalification), Sub-Factor 2.4.2(a).]

<b>Similar Contract No.</b> [insert number] of [insert number of similar Contracts required]	<b>Information</b>		
Contract Identification	[insert Contract name and reference identification number, if applicable]		
Award date	[insert day, month, year, e.g., 15 June, 2015]		
Completion date	[insert day, month, year, e.g., 03 October, 2017]		
Role in Contract	<b>Prime Contractor Only</b>		
Total Contract Amount	[insert Contract amount(s) and currency(ies)]	USD [insert exchange rate and total Contract amount in USD equivalent]	
If member in a JV, specify participation in total Contract amount	[insert percentage of participation]	[insert amount(s) and currency(ies) of participation]	USD [insert exchange rate and amount of participation in USD equivalent]
Employer's Name	[insert full name]		
Address	[indicate street/number/town or city/country]		
Telephone/fax number	[insert telephone/fax numbers, including country and city area codes]		
E-mail	[insert E-mail address, if available]		

<b>Similar Contract No.</b> [insert number of similar Contracts required]	<b>Information</b>		



Description of the similarity in accordance with Sub-Factor 2.4.2(a) of Section III:	
1. Physical size of required works items	<i>[insert physical size of items]</i>
2. Complexity	<i>[insert description of complexity]</i>
3. Methods/Technology	<i>[insert specific aspects of the methods/technology involved in the Contract]</i>
4. Other Characteristics	<i>[insert other characteristics as described in Section VI, Employer's Requirements]</i>

**Form EXP - 2(b): Experience in Key Activities**

[The following table shall be filled in for Contracts performed by the Bidder and by each member of a JV.]

Date: [insert day, month, year]  
Bidder's Legal Name: [insert full name]  
Joint Venture Party Legal Name: [insert full name]  
Subcontractor's Legal Name: [insert full name]  
IFB No.: [insert number]

Page [insert page number] of [insert total number] pages

[Fill out one (1) form per Contract, in accordance with Section III, Evaluation and Qualification Criteria (Without Prequalification), Sub-Factor 2.4.2(b).]

1. Key Activity No. (1): [insert brief description of the Activity, emphasizing its specificity]

Total Quantity of Activity under the Contract: \_\_\_\_\_

<b>Contract with Similar Key Activities Information</b>			
<b>Item</b>	<b>Information</b>		
Contract Identification	[insert Contract name and number, if applicable]		
Award date	[insert day, month, year, e.g., 15 June, 2015]		
Completion date	[insert day, month, year, e.g., 03 October, 2017]		
Role in Contract [check the appropriate box]	Prime Contractor		Management Contractor
	Single <input type="checkbox"/>	JV member <input type="checkbox"/>	<input type="checkbox"/>
Total Contract Amount	[insert Contract amount(s) and currency(ies)]		USD [insert Exchange rate and total Contract amount in USD equivalent]
Quantity (as applicable) performed under the Contract per year or part of the year  [insert extent of participation indicating actual quantity of key activity successfully completed in the role performed]	Total quantity in the Contract  (i)	Percentage participation  (ii)	Actual Quantity Performed  (i) x (ii)
Year 1			
Year 2			
Year 3			



Year 4			
Employer's Name	[insert full name]		
Address	[indicate street / number / town or city / country]		
Telephone/fax number	[insert telephone/fax numbers, including country and city area codes]		
E-mail	[insert E-mail address, if available]		

2. Activity No. (2) \_\_\_\_\_

3. Activity No. (3) \_\_\_\_\_

**Form ACK- Acknowledgement of Compliance with the Guidelines for Procurement  
under Japanese ODA Loans**

A) I, *[insert name and position of authorized signatory]*, being duly authorized by *[insert name of Bidder/members of joint venture (“JV”)]* (hereinafter referred to as the “Bidder”) to execute this Acknowledgement of Compliance with the Guidelines for Procurement under Japanese ODA Loans, hereby certify on behalf of the Bidder and myself that:

- (i) all information provided in the Bid submitted by the Bidder and its subcontractors for *[insert name of the Project, and name, number and identification of lot(s) (contracts(s)) as stated in BDS 1.1]* is true, correct and accurate to the best of the Bidder’s and my knowledge and belief; and
- (ii) the Bidder or any of its subcontractors has not, directly or indirectly, taken any action which is or constitutes a corrupt or fraudulent practice and is not subject to any conflict of interest as stipulated in the relevant section of the Guidelines and the Bidding Document.

*<If debarment for more than one year by the World Bank Group is NOT imposed, use the following sentence B).>*

B) I certify that the Bidder has NOT been debarred by the World Bank Group for more than one year since the date of issuance of Invitation for Bids.

*<If debarment for more than one year by the World Bank Group has been imposed BUT three (3) years have passed since the date of such debarment decision, use the following sentence B’).>*

B’) I certify that the Bidder has been debarred by the World Bank Group for a period more than one year BUT that on the date of issuance of Invitation for Bids at least three (3) years had passed since the date of such debarment decision. Details of the debarment are as follows:

name of the debarred firm	starting date of debarment	ending date of debarment	reason for debarment

C) I certify that the Bidder will not enter into a subcontract with a firm which has been debarred by the World Bank Group for a period more than one year, unless on the date of the subcontract at least three (3) years have passed since the date of such debarment decision.

D) I certify, on behalf of the Bidder and its subcontractors, that if selected to undertake works and services in connection with the Contract, the Bidder and its subcontractors shall carry out such works and services in continuing compliance with the terms and conditions of the Contract.

E) I further certify, on behalf of the Bidder and its subcontractors, that if the Bidder and any of its subcontractors is requested, directly or indirectly, to engage in any corrupt or fraudulent practice under any applicable law, such as the payment of a rebate, at any time or any stage of a process of procurement such as negotiations, execution or implementation of contract (including amendment

thereof), the Bidder shall report all relevant facts regarding such request to the relevant section in JICA (details of which are specified below) in a timely manner.

JICA's information desk on fraud and corruption (A report can be made to either of the offices identified below.)

(1) JICA Headquarters: Legal Affairs Division, General Affairs Department

URL: <https://www2.jica.go.jp/en/odainfo/index.php>

Tel: +81 (0)3 5226 8850

(2) **JICA India Office**

Address

16th Floor, Hindustan Times House, 18-20, Kasturba Gandhi Marg, New Delhi - 110-001

Tel: (91-11) 4909-7000

Fax: (91-11) 4909-7001/7002/7003/7004

Email: [id\\_oso\\_rep@jica.go.jp](mailto:id_oso_rep@jica.go.jp)

Media Enquiries: [jicaid-PR-India@jica.go.jp](mailto:jicaid-PR-India@jica.go.jp)

The Bidder acknowledges and agrees that the reporting obligation stated above shall NOT in any way affect the Bidder's responsibilities, obligations or rights, under relevant laws, regulations, contracts, guidelines or otherwise, to disclose or report such request or other information to any other person(s) including the Employer or to take any other action, required to or allowed to, be taken by the Bidder. The Bidder further acknowledges and agrees that JICA is not involved in or responsible for the procurement process in any way.

- F) If any of the statements made herein is subsequently proven to be untrue or incorrect based on facts subsequently determined, or if any of the warranties or covenants made herein is not complied with, the Bidder will accept, comply with, and not object to any remedies taken by the Employer and any sanctions imposed by or actions taken by JICA.

\_\_\_\_\_ **Authorized  
Signatory**  
[insert name of signatory; title]

**For and on behalf of**  
[insert name of the Bidder]  
Date: [insert date]

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**Form of Bid Security (Bank Guarantee)**

[*Guarantor letterhead or SWIFT identifier code*]

**Beneficiary:** Chief Engineer (Generation) Meghalaya Power Generation Corporation Limited.]

**IFB No.:** [*Employer to insert number of Invitation for Bids*]

**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 [*insert description of Contract*] under Loan Agreement No. [*insert Loan Agreement Number*].

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 [*insert amount in words, (insert amount in figures)*] 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 (hereinafter called “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) fails to execute the Contract Agreement, or (ii) fails to furnish the Performance Security, in accordance with the Instructions to Bidders of the Beneficiary’s Bidding Documents.

This guarantee will expire and shall be returned to the Applicant: (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) twenty-eight (28) 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, ICC Publication No. 458<sup>1</sup>.

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<sup>1</sup> As the case may be, ICC Publication No. 758 (or subsequent ICC Publications) may be used. In such cases, modify the Publication number.



**MePGCL**  
Generating Clean And Green Energy

**Project for Renovation and Modernization of Umiam-Umtru Stage III Hydroelectric Power Station :  
Rehabilitation of Electro Mechanical Equipments (Volume-I of II)**

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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.]*

**Form of Bid Security (Bid Bond)**

BOND NO. [*insert Bond No.*]

BY THIS BOND [*insert name of Bidder*] as Principal (hereinafter called “the Principal”), and [*insert name, legal title, and address of surety*], authorized to transact business in [*insert name of country of Employer*], as Surety (hereinafter called “the Surety”), are held and firmly bound unto [*insert name of Employer*] as Obligee (hereinafter called “the Employer”) in the sum of [*insert amount of Bond in words and figures*]<sup>1</sup>, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Bid to the Employer dated the [*insert day*] day of [*insert month*], 20 [*insert year*], for the construction of [*insert name of Contract*] (hereinafter called the “Bid”).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- (a) withdraws its Bid during the period of Bid validity specified in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Employer during the period of Bid validity; (i) fails or refuses to execute the Contract Form, if required; or (ii) fails or refuses to furnish the Performance Security in accordance with the Instructions to Bidders;

then the Surety undertakes to immediately pay to the Employer up to the above amount upon receipt of the Employer’s first written demand, without the Employer having to substantiate its demand, provided that in its demand the Employer shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date twenty-eight (28) days after the date of expiration of the Bid validity as stated in the Invitation for Bid or extended by the Employer at any time prior to this date, notice of which extension(s) to the Surety being hereby waived.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this [*insert day*] day of [*insert month*] 20 [*insert year*].

Principal: \_\_\_\_\_

Surety: \_\_\_\_\_

Corporate Seal (where appropriate)

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Signature)

(Printed name and title)

(Printed name and title)

<sup>1</sup> The amount of the Bond shall be denominated in the currency of the Employer’s country or the equivalent amount in a freely convertible currency.

## **SECTION V. ELIGIBLE SOURCE COUNTRIES OF JAPANESE ODA LOANS**

**SECTION V. ELIGIBLE SOURCE COUNTRIES OF JAPANESE ODA LOANS**

Eligible Source Countries: All countries except Pakistan and China.

## **PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS**

## **SECTION VII. GENERAL CONDITIONS (GC)**



**SECTION VII. GENERAL CONDITIONS (GC)**

## **SECTION VII. GENERAL CONDITIONS (GC)**

The General Conditions governing this Contract are the Standard General Conditions of Contract set forth in Part 3, Section VII of the Standard Bidding Documents for Procurement of Plant Design, Supply and Installation (version 1.1) published by JICA in February, 2013. Those General Conditions of Contract are available on the JICA's web site shown below:

[http://www.jica.go.jp/english/our\\_work/types\\_of\\_assistance/oda\\_loans/oda\\_op\\_info/guide/tender/index.html](http://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/guide/tender/index.html)

A copy of these General Conditions is not attached to these Bidding Documents/this Contract.

## **APPENDIX**

### **A General Conditions of Dispute Board Agreement**

#### **1. Definitions**

Each “Dispute Board Agreement” is a tripartite agreement by and between:

- (a) the “Employer”;
- (b) the “Contractor”; and
- (c) the “Member” who is defined in the Dispute Board Agreement as being:
  - (i) the sole member of the Dispute Board (“DB”) and, where this is the case, all references to the “Other Members” do not apply, or
  - (ii) one of the three persons who are jointly called the DB and, where this is the case, the other two persons are called the “Other Members”.

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the “Contract” and is defined in the Dispute Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

#### **2. General Provisions**

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

- (a) the Commencement Date defined in the Contract,
- (b) when the Employer, the Contractor and the Member have each signed the Dispute Board Agreement, or
- (c) when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than seventy (70) days’ notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.

#### **3. Warranties**

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Project Manager. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor relied upon the Member’s representations that he/she is:

- (a) experienced in the work which the Contractor is to carry out under the Contract,
- (b) experienced in the interpretation of contract documentation, and
- (c) fluent in the language for communications defined in the Contract.

#### **4. General Obligations of the Member**

The Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or the Project Manager, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;



- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Project Manager, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (e) comply with the annexed procedural rules and with GC Sub-Clause 45.3;
- (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Project Manager regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) become conversant with the Contract and with the progress of the Facilities (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- (j) treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and
- (k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

5. General Obligations of the Employer and the Contractor

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DB's activities under the Contract and the Dispute Board Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

- (a) be appointed as an arbitrator in any arbitration under the Contract;
- (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or
- (c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.



Whenever the Employer or the Contractor refers a dispute to the DB under GC Sub-Clause 45.3, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6. Payment

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

- (a) a retainer fee per calendar month, which shall be considered as payment in full for:
  - (i) being available on twenty-eight (28) days' notice for all site visits and hearings;
  - (ii) becoming and remaining conversant with all project developments and maintaining relevant files;
  - (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
  - (iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Operational Acceptance Certificate is issued for the whole of the Facilities.

With effect from the first day of the calendar month following the month in which Operational Acceptance Certificate is issued for the whole of the Facilities, the retainer fee shall be reduced by one third. This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Board Agreement is otherwise terminated.

- (b) a daily fee which shall be considered as payment in full for:
  - (i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members (if any);
  - (ii) each working day on site visits, hearings or preparing decisions; and
  - (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;
- (d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first twenty-four (24) calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the Parties fail to agree on the retainer fee or the daily fee the appointing entity or official named in the PC shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a site visit or hearing. All invoices shall be accompanied by a brief description of activities

performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within fifty-six (56) calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in accordance with GC Sub-Clause 12.3.

If the Member does not receive payment of the amount due within seventy (70) days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

#### 7. Termination

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving forty-two (42) days' notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

#### 8. Default of the Member

If the Member fails to comply with any of his obligations under Clause 4 concerning his impartiality or independence in relation to the Employer or the Contractor, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

#### 9. Disputes

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. The arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

**Annex**  
**DISPUTE BOARD GUIDELINES**

1. Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the site at intervals of not more than one hundred forty (140) days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than seventy (70) days, except as required to convene a hearing as described below.
2. The timing of and agenda for each site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of site visits is to enable the DB to become and remain acquainted with the progress of the Contract and of any actual or potential problems or claims, and, as far as reasonable, to prevent potential problems or claims from becoming disputes.
3. Site visits shall be attended by the Employer, the Contractor and the Project Manager and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.
4. The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.
5. If any dispute is referred to the DB in accordance with GC Sub-Clause 45.3, the DB shall proceed in accordance with GC Sub-Clause 45.3 and these Guidelines. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:
  - (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
  - (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
6. The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.
7. Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Project Manager, and to proceed in the absence of any Party who received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.
8. The Employer and the Contractor empower the DB, among other things, to:
  - (a) establish the procedure to be applied in deciding a dispute,
  - (b) decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it,
  - (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Guidelines,
  - (d) take the initiative in ascertaining the facts and matters required for a decision,



- (e) make use of its own specialist knowledge, if any,
  - (f) decide upon the payment of financing charges in accordance with the Contract,
  - (g) decide upon any provisional relief such as interim or conservatory measures,
  - (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute, and
  - (i) appoint, should the DB so consider necessary and the Parties agree, a suitable expert at the cost of the Parties to give advice on a specific matter relevant to the dispute.
9. The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with GC Sub-Clause 45.3, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:
- (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;
  - (b) it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
  - (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
    - (i) either the Employer or the Contractor does not agree that they do so, or
    - (ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.

## **SECTION VIII. PARTICULAR CONDITIONS**



**SECTION VIII. PARTICULAR CONDITIONS**

**Particular Conditions**

<b>PC 1. Definitions</b>	
PC 1.1	The Employer is: Meghalaya Power Generation Corporation Limited The Project Manager is: Mr. Pankaj Lochan Mohanty (Consultant)
<b>PC 5. Law and Language</b>	
PC 5.1	The Contract shall be interpreted in accordance with the laws of: India
PC 5.2	The ruling language is: English
<b>PC 7. Scope of Facilities</b>	
PC 7.3	The Contractor agrees to supply spare parts for a period of years:  20 years for Electro-mechanical components/Spares.  The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components including control system spares based on Software/Electronics System shall be supplied as promptly as possible, but at the most within six (6) months of placing the order and opening the letter of credit. In addition, in the event of discontinuity of production of spare parts, advance notification will be made to the Employer with sufficient time to permit the Employer to procure the needed requirement. Following such termination, the Contractor will furnish to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.
<b>PC 8. Time for Commencement and Completion</b>	
PC.8.1	The Contractor shall commence work on the Facilities within 30 ( <i>thirty</i> ) days from the Effective Date for determining Time for Completion as specified in the Contract Agreement.
PC 8.2	The Time for Completion of the whole of the Facilities shall be 1216 days (One thousand two hundred sixteen days) from the Effective Date as described in the Contract Agreement.
<b>PC 11. Contract Price</b>	
PC 11.2	The Contract Price shall be adjusted in accordance with the provisions of Appendix 2 (Price Adjustment) to the Contract Agreement.
<b>PC 13. Securities</b>	
PC 13.3.1	The amount of Performance Security, as a percentage of the Contract Price for the Facility or for the part of the Facility for which a separate Time for Completion is provided, shall be: 10% of Contract Price
PC 13.3.2	The Performance Security shall be in the form of a Bank Guarantee as per the forms included in Section IX, Contract Forms.
PC 13.3.3	The Performance Security shall not be reduced on the date of the Operational Acceptance.
<b>PC 22. Installation</b>	



PC 22.2.5	Working Hours Normal working hours are: 08:00 to 12:00 hours and 13:00 to 17:00 Hours
PC 22.2.8	Funeral Arrangements: Facilities available at Nongpoh, Shillong
<b>PC 25. Commissioning and Operational Acceptance</b>	
PC 25.2.2	The Guarantee Test of the Facilities shall be successfully completed within 30 (thirty) days from the date of Completion.
<b>PC 26. Completion Time Guarantee</b>	
PC 26.2	Applicable rate for liquidated damages: 0.5% per 1-week delay Maximum deduction for liquidated damages: 10% of Contract Price.
PC 26.3	No bonus will be given for earlier Completion of the Facilities or part thereof.
<b>PC 45. Disputes and Arbitration</b>	
PC 45.1	The DB shall be appointed within 28 days after the Effective Date. The DB shall be one sole member.
PC 45.2	Appointment (if not agreed) to be made by: FIDIC or ICC

## **SECTION IX. CONTRACT FORMS**



**Notification of Award - Letter of Acceptance**

*[on letterhead paper of the Employer]*

*[insert date]*

To: *[insert name and address of the Contractor]*

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]* for the Contract Price in the aggregate of *[insert amount in words and figures]* *[insert 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 twenty-eight (28) days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section IX, Contract Forms, of the Bidding Documents.

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Agency: \_\_\_\_\_

Attachment: Contract Agreement

## **Contract Agreement**

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

BETWEEN

(1) \_\_\_\_\_[*insert name of Employer*], a corporation incorporated under the laws of \_\_\_\_\_[*insert country of Employer*] and having its principal place of business at \_\_\_\_\_[*insert address of Employer*] (hereinafter called “the Employer”), and (2) \_\_\_\_\_[*insert name of Contractor*], a corporation incorporated under the laws of \_\_\_\_\_[*insert country of Contractor*] and having its principal place of business at \_\_\_\_\_[*insert address of Contractor*] (hereinafter called “the Contractor”).

WHEREAS the Employer desires to engage the Contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, viz. \_\_\_\_\_[*insert list of Facilities*] (hereinafter called “the Facilities”), and the Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

### **Article 1. Contract Documents**

#### 1.1 Contract Documents (Reference General Conditions (“GC”) Clause 2)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

- (a) This Contract Agreement and the Appendices hereto
- (b) Letter of Technical Bid
- (c) Letter of Price Bid
- (d) Particular Conditions
- (e) General Conditions
- (f) Employer’s Requirements
- (g) Other completed Bidding Forms submitted with the Bid
- (h) Acknowledgment of Compliance with Guidelines for Procurement under Japanese ODA Loans
- (i) [*Any other documents shall be added here*]

#### 1.2 Order of Precedence (Reference GC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

#### 1.3 Definitions (Reference GC Clause 1)

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions.

### **Article 2. Contract Price and Terms of Payment**

#### 2.1 Contract Price (Reference GC Clause 11)

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of: \_\_\_\_\_[*insert amount(s) in foreign currency(ies) in words and figures*] as specified in Price Schedule No. 6 (Grand Summary), and \_\_\_\_\_[*insert amount in local currency in words and figures*], or such other sums as may be determined in accordance with the terms

and conditions of the Contract.

**2.2 Terms of Payment** (Reference GC Clause 12)

The Contract Price shall be paid by the Employer to the Contractor at the times, in the manner, and in accordance with the provisions of Appendix 1 (Terms and Procedures of Payment) hereto.

The Employer shall instruct its bank to issue an irrevocable confirmed documentary credit made available to the Contractor in a bank in the country of the Contractor. The credit shall be for an amount of \_\_\_\_\_ [*insert amount equal to the total named in Schedule 1 less the advance payment to be made for Plant and Equipment supplied from abroad*]; and shall be subject to the Uniform Customs and Practice for Documentary Credits 1993 Revision, ICC Publication No. 600.

In the event that the amount payable under Schedule No. 1 is adjusted in accordance with GC 11.2 or with any of the other terms of the Contract, the Employer shall arrange for the documentary credit to be amended accordingly.

**Article 3. Effective Date**

**3.1 Effective Date** (Reference GC Clause 1)

The Effective Date from which the Time for Completion of the Facilities shall be counted is the date when this Contract Agreement has been duly executed for and on behalf of the Employer and the Contractor.

**Article 4. Communications**

4.1 The address of the Employer for notice purposes, pursuant to GC Clause 4.1 is: \_\_\_\_\_ [*insert Employer's address*].

4.2 The address of the Contractor for notice purposes, pursuant to GC Clause 4.1 is: \_\_\_\_\_ [*insert Contractor's address*].

**Article 5. Appendices**

5.1 The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Contract Agreement.

5.2 Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by, for and on behalf of the Employer

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Title]

in the presence of \_\_\_\_\_

Signed by, for and on behalf of the Contractor

\_\_\_\_\_  
*[Signature]*

\_\_\_\_\_  
*[Title]*

in the presence of \_\_\_\_\_

#### APPENDICES

- Appendix 1 Terms and Procedures of Payment
- Appendix 2 Price Adjustment
- Appendix 3 Insurance Requirements
- Appendix 4 Time Schedule
- Appendix 5 List of Major Items of Plant and Installation Services and List of Approved Subcontractors
- Appendix 6 Scope of Works and Supply by the Employer
- Appendix 7 List of Documents for Approval or Review
- Appendix 8 Functional Guarantees

## **Appendix 1. Terms and Procedures of Payment**

In accordance with the provisions of GC Clause 12 (Terms of Payment), the Employer shall pay the Contractor in the following manner on the basis of the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Bidder unless otherwise agreed between the parties.

### **TERMS OF PAYMENT**

#### **Schedule No. 1. Plant and Equipment Supplied from Abroad**

In respect of plant and equipment supplied from abroad, the following payments shall be made:

Ten percent (10%) of the total CIP amount as an advance payment within twenty-one (21) days after receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata CIP amount upon Incoterm “CIP”, upon delivery to the carrier within forty-five (45) days after receipt of invoice and documents.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

#### **Schedule No. 2. Plant and Equipment Supplied from within the Employer’s Country**

In respect of plant and equipment supplied from within the Employer’s country, the following payments shall be made:

Ten percent (10%) of the total EXW amount as an advance payment within twenty-one (21) days after receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata EXW amount upon Incoterm “Ex-Works,” upon delivery to the carrier within forty-five (45) days after receipt of invoice and documents.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

#### **Schedule No. 3. Design Services**

In respect of design services for both the foreign currency and the local currency portions, the following payments shall be made:

Ten percent (10%) of the total design services amount as an advance payment within twenty-one (21) days after receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer.

Ninety percent (90%) of the total or pro rata design services amount upon approval of design in accordance with GC Clause 20 by the Project Manager within forty-five (45) days after receipt of invoice.

#### **Schedule No. 4. Installation Services**

In respect of installation services for both the foreign and local currency portions, the following

payments shall be made:

Ten percent (10%) of the total installation services amount as an advance payment within twenty-one (21) days after receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.

Eighty percent (80%) of the measured value of work performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Employer's authorization of the Contractor's application, will be made monthly within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

In the event that the Employer fails to make any payment on its respective due date, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate of 3% above the discount rate of Reserve Bank of India per year for period of delay until payment has been made in full.

## **PAYMENT PROCEDURES**

The procedures to be followed in applying for certification and making payments shall be as follows:

### **1. Guidelines for preparation of bills**

#### **1.1. Preparation of Bills**

It may be explicitly understood by the Contractor that regulation of payments for installation works shall be made on **monthly** basis for the activities which are to be completed by the Contractor as per agreement between the Contractor and Employer. Thus, against each work the Contractor will claim payments for the activities which will be completed by the Contractor in each **month** and for this purpose the Installation R.A. Bills will be submitted in the first week of the succeeding month.

The R. A. bills, upon certification by Employer's Project Manager, will be paid according to procedure prescribed in the bid document.

#### **1.2. Precaution is to be taken by the Contractor during completion of construction activities to avoid dispute regarding rejection/ non-admittance of Running Account (R.A.) Bills for Installation works.**

#### **1.3. Specific Points to be noted by the Contractor for Claiming Payment:**

**1.3.1.** For claiming all types of payments, the documents as specified in "Payment Procedure" complete in all respects should be submitted.

**1.3.2.** Raising of proper claim complete in all respect is the responsibility of Contractor.

**1.3.3.** The quantities to be indicated in Contract award shall be provisional. There may be a possibility of variation in quantities required to be executed. Therefore, it shall be the responsibility of the Contractor to get adjusted the balance outstanding advance within contractual period in the last 2 or 3 installation bills.

**1.3.4.** The Contractor shall ensure that only valid and proper claims are made for payment of Plant consumed and Installation work carried out. In the event if it is found that any claim, not due as per Contract, has been claimed and payment received then such payments shall be refunded back to the Employer within three working days on receipt of notice of the Employer in this regard. The Employer reserves the right to not only recover such amount at a later date but also to **recover interest on such amount from the date of payment of such amount upto the date of recovery @ 2% per month on pro rata basis.**

**2. The following documents are required to be submitted for claiming payments:**

**2.1.1. For advance payment of 10% of the CIP amount of plant and equipment including Goods and Services Tax** (on acceptance of Advance payment Security in the form of Bank Guarantee):

- a. Four copies of the Contractor's invoice in prescribed format showing the Contract no. and date. The advance for supply and Installation services shall be shown separately.
- b. Four copies of "Claims for Payment" (Form CFP).
- c. Four copies and original irrevocable advance payment security for the equivalent amount made out in favor of the Employer.

**2.1.2. For 80% payment of CIP amount of Plant and equipment:**

- a. Four copies of the Contractor's invoice, in prescribed format, the Contract No. & date, description of the plant as per the Contract, along with *all, insurance certificate etc.* Invoice should be duly certified by Project Manager of the Employer and countersigned by concerned Superintending Engineer of the Employer.
- b. Four sets of consignment note, way bill and other documents in support of shipment by air / ship / railways / road.
- c. Four copies of test certificate approval issued by the Employer.
- d. Four copies of Certificate of validity of Insurance Policy.
- e. Four copies of "Claims for Payment" (Form CFP).
- f. Four copies of certificate of the Contractor that applicable taxes and duties have been paid to the concerned authorities.
- g. Four copies of Advance BG acceptance letter of the Employer.
- h. Four copies of a clear certificate mentioning bill details, details of Project site/ destination as per Proforma-II should be submitted to certify that there is "no negative price variation" on the date of the Plants consumed, covered under the above bill. (Applicable if the RA Bill includes material on which PV is payable).

In case if there is negative price variation, then Contractor will have to submit calculations towards price adjustment supported by IEEMA/ equivalent indices alongwith the bills. Certificate in this respect required to be given as per Proforma-III.

**2.1.3. 5% of CIP price of total or pro rata CIP amount upon completion of commissioning of work:**

- a. Four copies of the Contractor's invoice showing the description of the Plant as per the Contract and quantity. Invoice should be duly inscribed with name of Installation work, payment invoice Nos. & dates.
- b. Four copies of the certificate of successful completion of commissioning work issued by concerned Project Manager of the Employer.

**2.1.4. 5% of CIP price of total or pro rata CIP amount upon issue of the Operational Acceptance Certificate:**



- a. Four copies of the Contractor's invoice showing the description of the Plant as per the Contract and quantity. Invoice should be duly inscribed with name of Installation work, payment invoice Nos. & dates.
- b. Four copies of the Operational Acceptance Certificate issued by concerned Project Manager of the Employer.
- c. Four copies of "No Liability Certificate (22 point proforma)" issued by Project Manager of the Employer and countersigned by concerned Superintending Engineer and Chief Engineer of the Employer.

Note: The No Liability Certificate will be issued by Project Manager within fourteen (14) days of submission of request by the Contractor, after completion of all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract as per provision of Clause GCC 24.7.

**2.1.5. For advance payment of 10% of the total installation services amount:**

- a. Four copies of the contractor's invoice for 10% of the total installation services amount, in prescribed format, showing the Contract no. and date.
- b. Four copies of "Claims for Payment" (Form CFP).
- c. Four copies of Advance Payment Security Bank Guarantee acceptance letter of Employer.

**2.1.6. For 80% payment (90% payment if no advance is taken) of Installation Services carried out:**

- a. Four copies of the Contractor's invoice alongwith Installation R.A. bill in prescribed format showing the description of the activities, quantity, unit price and total amount. Invoice should be duly certified by the Project Manager of Employer and countersigned by concerned Superintending Engineer of the Employer.
- b. Four copies of Contractor's certificate that installation activities have been completed in all respects, at site.
- c. Four copies of "Claims for Payment" (Form CFP).
- d. Four copies of Certificate of validity of Insurance Policy.
- e. Four copies of Advance BG acceptance letter of the Employer (if advance payment received).
- f. Four copies of undertaking of the Contractor that applicable Taxes has been paid to the concerned authorities.

**2.1.7. 5% of Installation Services upon completion of commissioning of work:**

- a. Four copies of the Contractor's invoice showing the description of the Installation Services as per the Contract and quantity. Invoice should be duly inscribed with name of Installation work, payment invoice Nos. & dates.
- b. Four copies of the certificate of successful completion of commissioning work issued by concerned Project Manager of the Employer.

**2.1.8. 5% of Installation Services upon issue of the Operational Acceptance Certificate:**

- a. Four copies of the Contractor's invoice showing the description of the Installation Services as per the Contract and quantity. Invoice should be duly inscribed with name of Installation work, payment invoice Nos. & dates.
- b. Four copies of the Operational Acceptance Certificate issued by concerned Project Manager of the Employer.
- c. Four copies of "No Liability Certificate (22 point proforma)" issued by Project Manager of the Employer and countersigned by concerned Superintending Engineer and Chief Engineer of the Employer.

Note: The No Liability Certificate will be issued by Project Manager within fourteen (14) days of submission of request by the Contractor, after completion of all outstanding minor items so that the

Facilities are fully in accordance with the requirements of the Contract as per provision of Clause GCC 24.7.

**3.1. For payment of CIP/FORD of extra plant supplied on commissioning of work:**

- a. Four copies of the Contractor's invoice along with supply R.A. bill showing the contract No. & date, description of the Goods as per the Contract, name of Installation work, quantity supplied, period of bill (month), accepted unit Price, GST details.
- b. Material Receipt and Issue Certificate (MRIC) issued by concerned Project Manager of the Employer, in original, alongwith three photocopies.
- c. Four copies of Contractor's certificate that Plant has been delivered complete in all respects, as per Proforma-I.
- d. Four copies of test certificate(s), approval issued by the Employer.
- e. An undertaking of the Contractor that the amount claimed towards GST have been deposited to concerned Taxation Authorities.
- f. Four copies of Certificate of validity of Insurance Policy.
- g. Four copies of a clear certificate mentioning bill details, details of Project site/ destination as per Proforma-II should be submitted to certify that there is "no negative price variation" on the Plants supplied, covered under the above bill. (Applicable if the RA Bill includes material on which PV is payable).

In case if there is negative price variation, then the Contractor will have to submit calculations towards price adjustment supported by IEEMA/equivalent indices alongwith the bills. Certificate in this respect required to be given as per Proforma-III.

**3.2. For Payment of Price Adjustment (in Foreign Currency and also in Currency of Employer's country):**

- a. Four copies of the Contractor's invoice showing the description of the Plants as per the Contract, quantity, details of Despatch Instructions and name of Consignee/ Project site, 80% payment invoice & date.
- b. PV calculation with IEEMA circulars duly attested by Contractor and relevant Proforma.
- c. Four copies of "Claims for Payment" (Form CFP).
- d. An undertaking of the Contractor that the amount claimed towards GST have been deposited to concerned Taxation Authorities.
- e. Four copies of a clear certificate mentioning bill details, details of Project site/ destination as per Proforma-II should be submitted to certify that there is "no negative price variation" on the date of the Plants consumed, covered under the above bill.

In case if there is negative price variation, then the Contractor will have to submit calculations towards price adjustment supported by IEEMA/ equivalent indices alongwith the bills. Certificate in this respect is required to be given as per Proforma-III.

**4. Guidelines for submission of bills**

- 4.1. The invoices in respect of 10% advance payment in "Foreign Currency and also in Currency of Employer's Country" are required to be submitted to the Order Placing Authority.
- 4.2. All remaining Bills shall be submitted by the Contractor in the office of the concerned Project Manager of Employer. These invoices after processing by Project Manager and Regional Accounts Officer and countersignature of concerned Superintending Engineer of Employer will be received by Chief Financial Officer (C.F.O.) of Employer and the same will be processed for payment to the Contractor.
- 4.3. For foreign currency the payments is to be made by JICA as per Commitment Payment Procedure through Letter of Credit for which certificate of Acceptance for Payment (AFP) will be issued by



C.F.O. of Employer. For local currency the payments to be made as per Reimbursement Payment Procedure of JICA and shall be released by C.F.O. of Employer directly to Contractor.

- 5. Bank charges:** All bank charges shall be paid by the Contractor.

## Appendix 2. Price Adjustment

This Appendix 2 for Price Adjustment shall be the same as the Price Adjustment Form in Section IV, Bidding Forms of the Bidding Documents. The formula, indices and coefficients shall be agreed at Contract Negotiations between the Employer and the awarded Contractor.

### Price Adjustment Formula

Prices payable to the Contractor, in accordance with the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labor and material components, in accordance with the following formula:

$$P_1 = P_0 \times (a + b L_1/L_0 + c M_1/M_0) - P_0$$

in which:

$P_1$  = adjustment amount payable to the Contractor

$P_0$  = Contract Price (base price)

$a$  = percentage of fixed element in Contract Price ( $a = \_ \%$ )

$b$  = percentage of labor component in Contract Price ( $b = \_ \%$ )

$c$  = percentage of material and equipment component in Contract Price ( $c = \_ \%$ )

$L_0, M_0$  = labor and material/equipment component indices or reference prices in the country of origin on the Base Date

$L_1, M_1$  = Consumer Price Index (CPI) for labor component and appropriate Wholesale Price Index (WPI) for material/equipment component of the country of origin on the date of adjustment. The date of adjustment of the Index shall be two months prior to the date of supply (Scheduled date of supply or actual date of supply whichever is earlier) of material/equipment component and for Installation Services shall be the month (Scheduled month of Installation Services or actual month of Installation Services whichever is earlier) in which Installation Services are provided.

Note-1:  $a + b + c = 100\%$ . [The Bidder shall propose the coefficients  $b$  and  $c$  in its Bid. The formula, including all coefficients, shall be determined and finalized at Contract negotiations.]

Note-2: For the purpose of date of adjustment, the respective indices for the corresponding month shall be considered.

Note-3: "Base Date" means the date 28 days prior to the latest date for submission of the Bid, when Single-Stage Bidding procedure is used.

### COMPUTATION OF PRICE ADJUSTMENT:

#### A. Price Adjustment for Schedule-1 & 2 (Supply):

$$P_1 = P_0 \times \left( a + b \frac{L_1}{L_0} + c \frac{M_1}{M_0} \right) - P_0$$

in which:

$P_1$  = adjustment amount payable to the Contractor

$P_0$  = Contract Price (base price)

$a$  = percentage of fixed element in Contract Price ( $a = 10 \%$ )

$b$  = percentage of labor component in Contract Price ( $b = --- \%$ )

$c$  = percentage of material and equipment component in Contract Price ( $c = --- \%$ )

Where,  $a+b+c= 100\%$ .

#### B. Price Adjustment for Schedule-4 (Installation Services including supply of materials):

$$P_1 = P_0 \times \left( a + b \frac{L_1}{L_0} + c \frac{M_1}{M_0} \right) - P_0$$

in which:

$P_1$  = adjustment amount payable to the Contractor

$P_0$  = Contract Price (base price)

$a$  = percentage of fixed element in Contract Price ( $a = 10\%$ )

$b$  = percentage of labor component in Contract Price ( $b = \dots\%$ )

$c$  = percentage of material and equipment component in Contract Price ( $c = \dots\%$ )

where,  $a+b+c=100\%$ .

**N.B.:** The above formula is applicable for Installation Services, which includes supply component, e.g. Civil Works.

**C. Price Adjustment for Schedule-4 (Installation Services excluding supply of materials):**

$$P_1 = P_0 \times \left( a + b \frac{L_1}{L_0} + c \frac{M_1}{M_0} \right) - P_0$$

in which:

$P_1$  = adjustment amount payable to the Contractor

$P_0$  = Contract Price (base price)

$a$  = percentage of fixed element in Contract Price ( $a = 10\%$ )

$b$  = percentage of labor component in Contract Price ( $b = \dots\%$ )

$c$  = percentage of material and equipment component in Contract Price ( $c = \dots\%$ )

Where,  $a + b + c = 100\%$ .

**N.B.:** The above formula is applicable for Installation Services, which excludes supply component, i.e. pure erection works.

**Conditions Applicable to Price Adjustment:**

The Bidder shall indicate the source of labor and materials indices and the base date indices in its Bid.

Item	Source of Indices Used	Base Date Indices

- (i) Scheduled delivery period of the quantity shall be reckoned to be the end of the period as indicated in the approved Bar Chart/PERT for the total quantity for the purpose of calculation of price adjustment. Similarly, scheduled period of Installation Services shall be reckoned to be the end of the period as indicated in the approved Bar Chart/PERT for the completion of Installation services for the purpose of calculation of price adjustment.
- (ii) If the price Adjustment amount works out to be positive, the same is payable to the Contractor by the Employer and if it works out to be negative, the same is to be recovered by the Employer from the Contractor.



- (iii) The agency has to furnish an undertaking that deduction can be made from any other bills pertaining to this project only being executed by them for this purpose.
- (iv) In the event there is negative price adjustment which can't be recovered from the bills of the Contractor in normal course, Performance Bank Guarantee can be utilized to the extent of negative price adjustment not recovered.
- (v) The above price adjustment provision shall be invoked by either party.
- (vi) No price increase shall be allowed beyond the original delivery / Installation dates unless specifically stated in the Time Extension Letter, if any, issued by the Employer. The Employer will, however, be entitled to any decrease in the Contract Price which may be caused due to lower price adjustment amount in case of delivery of Goods/ Installation beyond the original delivery / Installation dates.
- (vii) Consumer price Index (CPI) and Whole Sale Price Index (WPI) of the Country of Origin shall be nationally recognized indices published by the Federal/Central Govt. of that Country of Origin or by Federal/Central Bank of that Country of Origin. The source of indices used and the base date of indices for above CPI/WPI, as the case may be shall be indicated by the bidder which shall be finalized at the time of negotiations for signing of the contract agreement.

### Appendix 3. Insurance Requirements

#### Insurances to be Taken Out by the Contractor

In accordance with the provisions of GC Clause 34, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) Cargo Insurance

Covering loss or damage occurring, while in transit from the supplier's or manufacturer's works or stores until arrival at the Site, to the Facilities (including spare parts therefore) and to the construction equipment to be provided by the Contractor or its Subcontractors.

<b>Amount [in currency(ies)]</b>	<b>Deductible limits [in currency(ies)]</b>	<b>Parties insured [names]</b>	<b>From [place]</b>	<b>To [place]</b>
110 percent of CIF/ EXW price of Plant to be supplied by the Contractor	Nil	Joint Name of Employer (Principal Insured) and Contractor	Contractor's premises	Store set up by the Contractor for installation work at Project site

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to Operational Acceptance of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the defect liability period while the Contractor is on the Site for the purpose of performing its obligations during the defect liability period.

<b>Amount [in currency(ies)]</b>	<b>Deductible limits [in currency(ies)]</b>	<b>Parties insured [names]</b>
110% of the contract price of installation work	Nil	Joint Name of Employer (Principal Insured) and Contractor and Sub- Contractor

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the Employer's Personnel) and loss of or damage to property (including the Employer's property and any parts of the Facilities that have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

<b>Amount [in currency(ies)]</b>	<b>Deductible limits [in currency(ies)]</b>	<b>Parties insured [names]</b>	<b>From [place]</b>	<b>To [place]</b>
Rs. 0.5 million per person per occasion	Nil	Contractor / Sub- Contractor/ Employer	Contractor's premises	Installation work at project site

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in



accordance with statutory requirements.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(f) Employer's Liability

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(g) Other Insurances

The Contractor is also required to take out and maintain at its own cost the following insurances:

Details:

<b>Amount</b>  <b>[in currency(ies)]</b>	<b>Deductible limits</b> <b>[in</b> <b>currency(ies)]</b>	<b>Parties insured</b>  <b>[names]</b>	<b>From</b>  <b>[place]</b>	<b>To</b>  <b>[place]</b>
To be indicated by the Contractor	Nil	Contractor / Sub-Contractor / Employer	Contractor's premises	Installation work at Project site

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1, except for the Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1, except for the Cargo, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

### **Appendix 4. Time Schedule**

**Table-1. Time Schedule:**

<b>Key Activities</b>		<b>Duration in Months</b>
Completion of tender documents	Package 1	3
Tender process for E&M Works		9
Completion of E&M Works		40
Defect Liability Period For E&M Package		12

Implementation Schedule for E&M Package: Attached as Table-II (at the end of Vol-1 of Bid Document).

**Appendix 5. List of Major Items of Plant and Installation Services and List of Approved Subcontractors**

A list of major items of Plant and Installation Services is provided below.

The following Subcontractors and/or manufacturers are approved for carrying out the items of the Facilities indicated below. Where more than one Subcontractor are listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor. In accordance with GC Sub-Clause 19.1, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Employer and their names have been added to this list of Approved Subcontractors.

<b>Major Items of Plant and Installation Services</b>	<b>Approved Subcontractors/Manufacturers</b>	<b>Nationality</b>
1. Vertical Francis Turbine equipments / accessories		
2. Main Inlet Valves		
3. Penstock Butterfly Valves		
4. Vertical Generators		
5. Microprocessor based Digital Governing Systems		
6. Static Excitation Systems with DAVR		
7. OPU System		
8. HP / LP Air Compressor Systems		
9. Dewatering/ Drainage Pumps		
10. Cooling Water Pumping Systems		
11. Generator Transformers		
12. Unit Auxiliary Transformers		
13. Station Service Transformers		
14. Excitation Transformers		
15. SCADA System		
16. EOT Crane / Gantry Hoist		
17. Protection Equipment/ Relays		
18. Auxiliary Power Supply Panels		
19. Battery Bank		
20. Communication system		



<b>Major Items of Plant and Installation Services</b>	<b>Approved Subcontractors/Manufacturers</b>	<b>Nationality</b>
21. Internet Facilities		
22. CO2 Fire Fire Fighting System		
23. 11 KV Metal Enclosed Cubicles with Accessories		
24. 11 KV Circuit Breakers		
25. 132 KV Isolators		
26. 132 KV CT, PT, LA		
27. 33 KV CT, PT, LA		
28. Lift [ from Power House to Switchyard]  N. B.: The Power house is 285 steps from the Switchyard		

### **Appendix 6. Scope of Works and Supply by the Employer**

The following Personnel, Facilities, works and supplies will be provided/supplied by the Employer, and the provisions of GC Clauses 10, 21 and 24 shall apply as appropriate.

All Personnel, Facilities, works and supplies will be provided by the Employer in good time so as not to delay the performance of the Contractor, in accordance with the approved Time Schedule and Program of Performance pursuant to GC Sub-Clause 18.2.

Unless otherwise indicated, all Personnel, Facilities, works and supplies will be provided free of charge to the Contractor.

<b>Personnel</b>	<b>Charge to Contractor (if any)</b>
NIL	NIL

<b>Facilities</b>	<b>Charge to Contractor (if any)</b>
1. Electric Power Supply (In case of failure of Power supply, the Contractor shall run their DG set, at the earliest, so that the RMU works do not hamper.)	As per tariff of MePDCL
2. Land (on lease basis)	As per applicable lease rate of MePGCL / MeECL

<b>Works</b>	<b>Charge to Contractor (if any)</b>
NIL	NIL

<b>Supplies</b>	<b>Charge to Contractor (if any)</b>
NIL	NIL

### **Appendix 7. List of Documents for Approval or Review**

Pursuant to GC Sub-Clause 20.3.1, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GC Sub-Clause 18.2 (Program of Performance), the following documents for

A. Approval

1. Design documents, Drawings and Technical Specifications.
2. Use of Employer's resources such as land, water, electricity etc.
3. Equipments to be used for installation and construction activities.

B. Review

1. Statutory licenses.
2. List of Engineers and other personal with educational and experience certificates.
3. Skilled Manpower Licenses, educational and experience certificate).
4. Project Insurance Policies.

## **Appendix 8. Functional Guarantees**

### **1. General**

This Appendix sets out:

- (a) the functional guarantees referred to in GC Clause 28 (Functional Guarantees);
- (b) the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below;
- (c) the minimum level of the functional guarantees; and
- (d) the formula for calculation of liquidated damages for failure to attain the functional guarantees.

### **2. Preconditions**

The Contractor gives the functional guarantees (specified herein) for the facilities, subject to the following preconditions being fully satisfied:

*[List any conditions for the carrying out of the Guarantee Test referred to in GC Clause 25.2.]*

### **3. Functional Guarantees**

Subject to compliance with the foregoing preconditions, the Contractor guarantees are as follows:

3.1 **Production Capacity:** The Contractor should ensure / guarantee for achievement of maximum possible uprated production / generating capacity with newly designed Turbine and Generator.

**and/or**

3.2 **Raw Materials and Utilities Consumption:**

1. Quantity of water in Cumecs per unit of production / generation in MWh
2. Quantum of electrical energy in kwh needed for station auxiliary consumption per unit of production / generation in MWh

### **4. Failure in Guarantees and Liquidated Damages**

#### **4.1 Failure to Attain Guaranteed Production Capacity**

If the production capacity of the facilities attained in the guarantee test, pursuant to GC Sub-Clause 25.2, is less than the guaranteed figure specified in para. 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities, pursuant to GC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of 0.044 Million USD for every complete one percent (1%) of the deficiency in the production capacity of the Facilities, or at a proportionately reduced rate for any deficiency, or part thereof, of less than a complete one percent (1%).

#### **4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level**

If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figure specified in para. 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the guarantee test, pursuant to GC Sub-Clause 25.2, is not more than the maximum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities pursuant to GC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of:

- (i) 0.043 Million USD for every complete one percent (1%) of the excess consumption of

water, or part thereof, of less than a complete one percent (1%).

(ii) 0.005 Million USD for every complete one percent (1%) of the excess consumption of auxiliary power supply, or part thereof, of less than a complete one percent (1%).

#### 4.3 Minimum Levels

Notwithstanding the provisions of this paragraph, if as a result of the guarantee test(s), the following minimum levels of performance guarantees (and consumption guarantees) are not attained by the Contractor, the Contractor shall at its own cost make good any deficiencies until the Facilities reach any of such minimum performance levels, pursuant to GC Sub-Clause 28.2:

(a) production capacity of the Facilities attained in the guarantee test: ninety-five percent (95%) of the guaranteed production capacity (the values offered by the Contractor in its Bid for functional guarantees represents 100%);

**and/or**

(b) average total cost of consumption of all the raw materials and utilities of the Facilities: one hundred and five percent (105%) of the guaranteed figures (the figures offered by the Contractor in its Bid for functional guarantees represents 100%).

#### 4.4 Limitation of Liability

Subject to para. 4.3 above, the Contractor's aggregate liability to pay liquidated damages for failure to attain the functional guarantees shall not exceed ten percent (10 %) of the Contract Price.

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**Performance Security Form - Bank Guarantee**

[*Guarantor letterhead or SWIFT identifier code*]

**Beneficiary:** [*insert name and address of Employer*]

**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 Contractor, 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 Facilities*]. (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 [*insert amount in words*] ([*insert amount in figures*])<sup>1</sup>, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, 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 its demand or the sum specified therein.

This guarantee shall be reduced by half upon our receipt of:

- (a) a copy of the Operational Acceptance Certificate; or
- (b) a registered letter from the Applicant (i) attaching a copy of its notice requesting issuance of the Operational Acceptance Certificate and (ii) stating that the Project Manager has failed to issue such Certificate within the time required or provide in writing justifiable reasons why such Certificate has not been issued, so that Operational Acceptance is deemed to have occurred.

This guarantee shall expire no later than the earlier of:<sup>2</sup>

\_\_\_\_\_

<sup>1</sup> The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Letter of Acceptance and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

<sup>2</sup> This text shall be revised as and where necessary to take into account (i) partial acceptance of the Facilities in accordance with GC Sub-Clause 25.4.

- (a) twelve (12) months after our receipt of either (a) or (b) above; or
- (b) the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.<sup>1</sup>

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458<sup>2</sup>, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

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*[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>1</sup> Insert the date twenty-eight (28) days after the expected expiration date of the Defect Liability Period.

<sup>2</sup> As the case may be, ICC Publication No. 758 (or subsequent ICC Publications) may be used. In such cases, modify the Publication number.

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**Bank Guarantee Form for Advance Payment**

[*Guarantor letterhead or SWIFT identifier code*]

**Beneficiary:** [*insert name and address of the Employer*]

**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 Contractor, 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 Facilities*] (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of [*insert amount in words*] ([*insert amount in figures*]) 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 [*insert amount in words*]( [*insert amount in figures*]<sup>1</sup>) upon receipt by us of the Beneficiary’s first demand in writing accompanied by a written statement stating that the Applicant is in breach of its obligation under the Contract because the Applicant used the advance payment for purposes other than toward the execution of the Works.

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 in proportion to the value of each part-shipment or part-delivery of plant and equipment to the site, as indicated in copies of the relevant shipping and delivery documents that shall be presented to the Guarantor. This guarantee shall expire, at the latest, upon the Guarantor’s receipt of documentation indicating full repayment by the Applicant of the amount of the advance payment, or on the \_\_\_ day of \_\_\_\_\_, 2\_\_\_, whichever is earlier<sup>2</sup>. Consequently, any demand for payment under this guarantee must be received by the Guarantor at its office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458<sup>3</sup>.

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<sup>1</sup> The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

<sup>2</sup> Insert the expected expiration date of the Time for Completion.



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*[signature(s)]*

*[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]*

