

## **INSTRUCTION TO BIDDERS (ITB)**

### **A. GENERAL**

**1.0** North Eastern Electricity Supply Company of Orissa Ltd. (NESCO), Western Electricity Supply Company of Orissa Ltd. (WESCO) and Southern Electricity Supply Company of Orissa Ltd. (SOUTHCO), hereinafter referred to as the “Purchaser” are desirous of implementing the various Systems Improvement / Repair & Maintenance works at their respective licensed area in the state of Orissa. The Purchaser has now floated this Limited Tender for procurement of various items as notified earlier in this bid document.

### **2.0 SCOPE OF WORK**

The scope shall include Design, Manufacture, Shop Testing at works conforming to the Technical Specifications enclosed along with Packing, Forwarding, Freight and Insurance and Unloading and proper stacking at Purchaser’s stores.

### **3.0 DISCLAIMER**

3.01 This Document includes statements, which reflect various assumptions, which may or may not be correct. Each Bidder/Bidding Consortium should conduct its own estimation and analysis and should check the accuracy, reliability and completeness of the information in this Document and obtain independent advice from appropriate sources in their own interest.

3.02 Neither Purchaser nor its employees will have any liability whatsoever to any Bidder or any other person under the law or contract, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage whatsoever which may arise from or be incurred or suffered in connection with anything contained in this Document, any matter deemed to form part of this Document, provision of Services and any other information supplied by or on behalf of Purchaser or its employees, or otherwise arising in any way from the selection process for the Supply.

3.03 Though adequate care has been taken while issuing the Bid document, the Bidder should satisfy itself that documents are complete in all respects. Intimation of any discrepancy shall be given to this office immediately.

3.04 This Document and the information contained herein are Strictly Confidential and are for the use of only the person(s) to whom it is issued. It may not be copied or distributed by the recipient to third parties (other than in confidence to the recipient’s professional advisors).

### **4.0 COST OF BIDDING**

The Bidder shall bear all costs associated with the preparation and submission of its Bid and Purchaser will in no case be responsible or liable for those costs.

## **B. BIDDING DOCUMENTS**

### **5.0 BIDDING DOCUMENTS**

5.01 The Scope of Work, Bidding Procedures and Contract Terms are described in the Bidding Documents. In addition to the covering letter accompanying Bidding Documents, the Bidding Documents include:

- (a) Instructions to Bidders (ITB)
- (b) General Conditions of Contract (GCC)
- (c) Technical Specifications (TS)
- (d) Bid Form
- (e) BG Formats
- (f) Price Schedule
- (g) Drawings

5.02 The Bidder is expected to examine the Bidding Documents, including all Instructions, Forms, Terms and Specifications. Failure to furnish all information required by the Bidding Documents or submission of a Bid not substantially responsive to the Bidding Documents in every respect will may result in the rejection of the Bid.

### **6.0 AMENDMENT OF BIDDING DOCUMENTS**

6.01 At any time prior to the deadline for submission of Bids, the Purchaser may, for any reasons, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the Bidding Documents by Amendment.

6.02 The Amendment shall be part of the Bidding Documents, pursuant to Clause 5.01, and it will be notified in writing by Fax/e-mail to all the Bidders who have received the Bidding Documents and confirmed their participation to Bid, and will be binding on them.

6.03 In order to afford prospective Bidders reasonable time in which to take the Amendment into account in preparing their Bids, the Purchaser may, at its discretion, extend the deadline for the submission of Bids.

## **C. PREPARATION OF BIDS**

### **7.0 LANGUAGE OF BID**

The Bid prepared by the Bidder, and all correspondence and documents relating to the Bid exchanged by the Bidder and the Purchaser, shall be written in the English Language. Any printed literature furnished by the Bidder may be written in another Language, provided that this literature is accompanied by an English

translation, in which case, for purposes of interpretation of the Bid, the English translation shall govern.

## **8.0 DOCUMENTS COMPRISING THE BID**

The Bid prepared and submitted by the Bidder shall comprise the following components:

- (a) Bid Form & other Schedules (STRICTLY AS PER FORMAT) and Technical Data Sheets completed as per Technical Specification;
- (b) All the Bids must be accompanied with the required bid security.
- (c) Power of Attorney indicating that the person(s) signing the Bid have the authority to sign the Bid and thus that the Bid is binding upon the Bidder during the full period of its validity, in accordance with clause 12.0.

## **9.0 BID FORM**

9.01 The Bidder shall complete an 'Original' and another one 'Copy' of the Bid Form and the appropriate Price & Other Schedules and Technical Data Sheets furnished in the Bidding Documents.

### **9.02 Bid Security**

Pursuant to Clause 8.0 (b) above, the bidder shall furnish, as part of its bid, a bid security amounting to 1% of the total bid value (FOR Destination) as already specified. The bid security is required to protect the Purchaser against the risk of Bidder's conduct which would warrant the security's forfeiture.

The bid security shall be denominated in the currency of the bid, and shall be in the following form:

- (a) a bank guarantee issued by any scheduled bank strictly as per the format enclosed and shall be valid for a period of thirty (30) days beyond the validity of the bid.
- (b) Bank Draft in favour of NESCO, payable at Bhubaneswar.

Unsuccessful bidders' bid security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of bid validity. The successful bidder's bid security will be discharged upon furnishing the performance security.

The bid security may be forfeited :

- (a) if the Bidder:
  - i) withdraws its bid during the period of bid validity specified by the Bidder in the Bid Form; or
- (b) in the case of a successful Bidder, if the Bidder fails:

- (i) to sign the Contract, or
- (ii) to furnish the required performance security.

## **10.0 BID PRICES**

- 10.01 Bidders shall quote for the entire Scope of Supply with a break-up of prices for individual items. The total Bid Price shall also cover all the Supplier's obligations mentioned in or reasonably to be inferred from the Bidding Documents in respect of Design, Supply, Transportation to site, all in accordance with the requirement of Bidding Documents. The Bidder shall complete the appropriate Price Schedules included herein, stating the Unit Price for each item & total Price.
- 10.02 The prices offered shall be inclusive of all costs as well as Duties, Taxes and Levies paid or payable during execution of the supply work, break up of price constituents, should be there.
- 10.03 Prices quoted by the Bidder shall be "Firm" and not subject to any price adjustment during the performance of the Contract. A Bid submitted with an adjustable price quotation will be treated as non-responsive and rejected.

## **11.0 BID CURRENCIES**

Prices shall be quoted in Indian Rupees Only.

## **12.0 PERIOD OF VALIDITY OF BIDS**

- 12.01 Bids shall remain valid for 120 days from the date of opening of the Bid.
- 12.02 Notwithstanding Clause 12.01 above, the Purchaser may solicit the Bidder's consent to an extension of the Period of Bid Validity. The request and the responses thereto shall be made in writing by Fax/e-mail.

## **13.0 ALTERNATIVE BIDS**

Bidders shall submit Bids, which comply with the Bidding Documents. Alternative Bids will not be considered. The attention of Bidders is drawn to the provisions of Clause 22.03 & 22.04 regarding the rejection of Bids, which are not substantially responsive to the requirements of the Bidding Documents.

## **14.0 FORMAT AND SIGNING OF BID**

- 14.01 The original Bid Form and accompanying documents (as specified in Clause 9.0), clearly marked "Original Bid", plus one copy must be received by the Purchaser at the date, time and place specified pursuant to Clauses 15.0 and 16.0. In the event of any discrepancy between the original and the copies, the original shall govern.

- 14.02 The original and copy of the Bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to sign on behalf of the Bidder. Such authorization shall be indicated by written Power-of-Attorney accompanying the Bid.
- 14.03 The Bid shall contain no interlineations, erasures or overwriting except as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

#### **D. SUBMISSION OF BIDS**

##### **15.0 SEALING AND MARKING OF BIDS**

- 15.01 Bid submission: One original & one Copy (hard copies) of all the Bid Documents shall be sealed and submitted to the Purchaser before the closing time for submission of the bid.
- 15.02 The Technical Documents and the Bid Security shall be enclosed in a sealed envelope and the said envelope shall be superscribed with "Technical & Bid Security". The price bid shall be inside another sealed envelope with superscription "Price Bid". Both these envelopes shall be sealed inside another big envelope. All the envelopes should bear the Name and Address of the Bidder and marking for the Original and Copy. The envelopes should be super-scribed with "Tender Notice No. & Due date of opening".
- 15.03 The Bidder has the option of sending the Bids in person. Bids submitted by Telex/Telegram/Fax will not be accepted. No request from any Bidder to the Purchaser to collect the proposals from Airlines/Cargo Agents etc shall be entertained by the Purchaser.
- 15.04 **The Bidder, along with the bid documents has to submit Samples.** The sample should clearly indicate (i) Name of the bidder (ii) Tender No., (iii) Group & Item Srl. No. etc. The samples shall not be returned back to the bidder. Samples submitted earlier against other tender notices shall not exempt the bidder to submit fresh samples under this tender. If a bidder has already submitted a sample at CSO within a period of 1 year from the date of this Limited Tender, then the said bidder need not submit fresh sample, unless he is required to carry out modifications in the samples already submitted.

##### **16.0 DEADLINE FOR SUBMISSION OF BIDS**

- 16.01 The original Bid, together with the required copies, must be received by the Purchaser at the address specified no later than 2.00 PM. on 24.12.2008.
- 16.02 The Purchaser may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Documents in accordance with Clause 9.0, in

which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline will thereafter be subject to the deadline as extended.

**17.0 ONE BID PER BIDDER**

Each Bidder shall submit only one Bid either by itself, or as a partner in a Joint Venture. A Bidder who submits or participates in more than one Bid will cause all those Bids to be rejected.

**18.0 LATE BIDS**

Any Bid received by the Purchaser after the deadline for submission of Bids prescribed by the Purchaser, pursuant to Clause 16.0, will be declared "Late" and rejected and returned unopened to the Bidder.

**19.0 MODIFICATIONS AND WITHDRAWAL OF BIDS**

19.01 The Bidder is not allowed to modify or withdraw its Bid after the Bid's submission.

**E EVALUATION OF BID**

**20.0 PROCESS TO BE CONFIDENTIAL**

Information relating to the examination, clarification, evaluation and comparison of Bids and recommendations for the award of a contract shall not be disclosed to Bidders or any other persons not officially concerned with such process. Any effort by a Bidder to influence the Purchaser's processing of Bids or award decisions may result in the rejection of the Bidder's Bid.

**21.0 CLARIFICATION OF BIDS**

To assist in the examination, evaluation and comparison of Bids, the Purchaser may, at its discretion, ask the Bidder for a clarification of its Bid. All responses to requests for clarification shall be in writing and no change in the price or substance of the Bid shall be sought, offered or permitted.

**22.0 PRELIMINARY EXAMINATION OF BIDS / RESPONSIVENESS**

22.01 Purchaser will examine the Bids to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the Bids are generally in order.

- 22.02 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price per item that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price per item will be corrected. If there is a discrepancy between the Total Amount and the sum of the total price per item, the sum of the total price per item shall prevail and the Total Amount will be corrected.
- 22.03 Prior to the detailed evaluation, Purchaser will determine the substantial responsiveness of each Bid to the Bidding Documents including production capability and acceptable quality of the Goods offered. A substantially responsive Bid is one, which conforms to all the terms and conditions of the Bidding Documents without material deviation.
- 22.04 A Bid determined as not substantially responsive will be rejected by the Purchaser and / or the Purchaser and may not subsequently be made responsive by the Bidder by correction of the non-conformity.

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

- 23.01 The evaluation of Bids shall be done based on the delivered cost competitiveness basis.
- 23.02 The evaluation of the Bids shall be a stage-wise procedure. The following stages are identified for evaluation purposes:

In the first stage, the Bids would be subjected to a responsiveness check. The Technical Proposals and the Conditional ties of the Bidders would be evaluated.

Subsequently, the Financial Proposals along with Supplementary Financial Proposals, if any, of Bidders with Techno-commercially Acceptable Bids shall be considered for final evaluation.

- 23.03 The Purchaser's evaluation of a Bid will take into account, in addition to the Bid price, the following factors, in the manner and to the extent indicated in this Clause:

- (a) Supply Schedule
- (b) Deviations from Bidding Documents

Bidders shall base their Bid price on the terms and conditions specified in the Bidding Documents.

The cost of all quantifiable deviations and omissions from the specification, terms and conditions specified in Bidding Documents shall be evaluated. The Purchaser will make its own assessment of the cost of any deviation for the purpose of ensuring fair comparison of Bids.

- 23.04 Any adjustments in price, which result from the above procedures, shall be added for the purposes of comparative evaluation only to arrive at an "Evaluated Bid Price". Bid Prices quoted by Bidders shall remain unaltered.

## **F. AWARD OF CONTRACT**

### **24.0 CONTACTING THE PURCHASER**

- 24.01 From the time of Bid opening to the time of contract award, if any Bidder wishes to contact the Purchaser on any matter related to the Bid, it should do so in writing.

- 24.02 Any effort by a Bidder to influence the Purchaser and / or in the Purchaser's decisions in respect of Bid evaluation, Bid comparison or Contract Award, will result in the rejection of the Bidder's Bid.

### **25.0 THE PURCHASER'S RIGHT TO ACCEPT ANY BID AND TO REJECT ANY OR ALL BIDS**

The Purchaser reserves the right to accept or reject any Bid and to annul the Bidding process and reject all Bids at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Purchaser's action.

### **26.0 AWARD OF CONTRACT**

The Purchaser will award the Contract to the successful Bidder whose Bid has been determined to be the lowest - evaluated responsive Bid, provided further that the Bidder has been determined to be qualified to satisfactorily perform the Contract. Purchaser reserves the right to award order other bidders in the tender, provided it is required for progress of project & provided he agrees to come to the lowest rate.

### **27.0 THE PURCHASER'S RIGHT TO VARY QUANTITIES**

The Purchaser reserves the right to vary the quantity i.e. increase or decrease the numbers/ quantities without any change in terms and conditions during the execution of the Order.

### **28.0 LETTER OF INTENT/ NOTIFICATION OF AWARD**

The letter of intent / Notification of Award shall be issued to the successful Bidder whose bids have been considered responsive, techno-commercially acceptable and evaluated to be the lowest (L1). The successful Bidder shall be

required to furnish a letter of acceptance within 7 days of issue of the letter of intent /Notification of Award by Purchaser.

## **29.0 PERFORMANCE SECURITY**

Within 15 days of the receipt of Notification of Award/ Letter of Intent from the Purchaser, the successful Bidder shall furnish the Performance Security in the form of Bank Guarantee for an amount of 10% (Ten percent) of the Contract Price in accordance with the General Conditions of Contract in the Performance Security Form provided in Vol.-II, Annexure - II of the Bidding Documents. Upon submission of the performance security, the bid security shall be released.

## **30.0 CORRUPT OR FRAUDULENT PRACTICES**

30.01 The Purchaser requires that the Bidders observe the highest standard of ethics during the procurement and execution of the Project. In pursuance of this policy, the Purchaser:

(a) Defines, for the purposes of this provision, the terms set forth below as follows:

- (i) "Corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; and
- (ii) "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Purchaser, and includes collusive practice among Bidders (prior to or after Bid submission) designed to establish Bid prices at artificial non-competitive levels and to deprive the Purchaser of the benefits of free and open competition.

(b) Will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;

(c) Will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded an contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, an contract.

30.02 Furthermore, Bidders shall be aware of the provision stated in the General Conditions of Contract.

## **GENERAL CONDITION OF CONTRACT (GCC)**

### **1.0 General Instructions**

- 1.01 All the Bids shall be prepared and submitted in accordance with these instructions.
- 1.02 Bidder shall bear all costs associated with the preparation and delivery of its Bid, and the Purchaser will in no case shall be responsible or liable for these costs.
- 1.03 The Bid should be submitted by the Bidder in whose name the bid document has been issued and under no circumstances it shall be transferred/sold to any other party.
- 1.04 The Purchaser reserves the right to request for any additional information and also reserves the right to reject the proposal of any Bidder, if in the opinion of the Purchaser, the data in support of Tender requirement is incomplete.
- 1.05 The Bidder is expected to examine all instructions, forms, terms & conditions and specifications in the Bid Documents. Failure to furnish all information required in the Bid Documents or submission of a Bid not substantially responsive to the Bid Documents in every respect may result in rejection of the Bid. However, the Purchaser's decision in regard to the responsiveness and rejection of bids shall be final and binding without any obligation, financial or otherwise, on the Purchaser.

### **2.0 Definition of Terms**

- 2.01 "Purchaser" shall mean NESCO / WESCO / SOUTHCO.
- 2.02 "Bidder" shall mean the firm who quotes against this bid document issued by the Purchaser. "Contractor" or "Seller" shall mean the successful Bidder and/or Bidders whose bid has been accepted by the Purchaser and on whom the "Letter of intent" is placed by the Purchaser and shall include his heirs, legal representatives, successors and permitted assigns wherever the context so admits.
- 2.03 "Site" shall mean the Electricity Distribution Area of the Company.
- 2.04 "Specification" shall mean collectively all the terms and stipulations contained in those portions of this bid document known as Instruction to Bidder, Bid form and other forms as per Volume - III, General Conditions of Contract, Specifications and the Amendments, Revisions, Deletions or Additions, as may be made by the Purchaser from time to time.
- 2.05 "Letter of Intent" shall mean the official notice issued by the Purchaser notifying the Contractor that his proposal has been accepted and it shall include amendments thereto, if any, issued by the Purchaser. The "Letter of Intent" issued by the

Purchaser shall be binding on the “Contractor”. The date of Letter of Intent shall be taken as the effective date of the commencement of contract.

- 2.06 “Purchase Order” shall mean the Purchase Order and amendments thereof and the drawings, specifications and other documents / papers referred to therein which shall constitute the “Contract”.
- 2.07 “Month” shall mean the calendar month and “Day” shall mean the calendar day.
- 2.08 “Codes and Standards” shall mean all the applicable codes and standards as indicated in the Technical Specification.
- 2.09 “Offer Sheet” shall mean Bidder's firm offer submitted to Purchaser in accordance with the specification.
- 2.10 “Contract” shall mean THE “letter of Intent” issued by the Purchaser.
- 2.11 “Contract Price” shall mean the price referred to in the “Letter of intent”.
- 2.12 “Contract Period” shall mean the period during which the “Contract” shall be executed as agreed between the Contractor and the Purchaser in the Contract inclusive of extended contract period for reasons beyond the control of the Contractor and/or Purchaser due to force majeure.
- 2.13 “Goods” shall mean all items to be supplied under Purchase Order whether raw materials, processes materials, equipment, fabricated products, drawings or other documents as applicable.
- 2.14 “Store” shall mean the Purchaser store as defined elsewhere in this tender document.

### **3.0 Contract Documents & Priority**

- 3.01 Contract Documents: The Specification, terms and conditions of the contract shall consist solely of these Tender conditions and offer sheet.
- 3.02 Priority: Should there be any discrepancy between any term hereof and any term of the Offer Sheet, the terms of these tender document shall prevail.

### **4.0 Scope of Work**

- 4.01 The “Scope of Work” shall be on the basis of Bidder’s responsibility, completely covering the obligations, responsibility and workmanship, provided in this Bid Enquiry whether implicit or explicit.
- 4.02 The Purchaser reserves the right to vary the quantity i.e increase or decrease, which shall be communicated to successful bidder during project execution.

4.03 All relevant drawings, data and instruction manuals and other necessary inputs shall be under the scope of contract.

## **5.0 General Requirements**

5.01 The contractor shall supply, deliver best quality goods.

5.02 The company also reserves the right to add from the scope of work or delete from the scope of work so assigned to the Supplier, if the circumstances so warrant.

5.03 The contractor shall be responsible for loading and unloading of all materials with proper material handling equipment.

## **6.0 Quality Assurance and Inspection**

6.01 Immediately on award of contract, the bidder shall prepare detailed quality assurance plan / test procedure identifying the various stages of manufacture, quality checks performed at each stage, raw material inspection and the Customer hold points. The document shall also furnish details of method of checking, inspection and acceptance standards / values and get the approval of Purchaser before proceeding with manufacturing. However, Purchaser shall have the right to review the inspection reports, quality checks and results of contractors in house inspection department which are not Customer hold points and the contractor shall comply with the remarks made by purchaser or his representative on such reviews with regards to further testing, rectification or rejection, etc.

6.02 Witness and Hold points are critical steps in manufacturing, inspection and testing where the contractor is obliged to notify the Purchaser in advance so that it may be witnessed by the Purchaser. Final inspection is a mandatory hold point. The contractor has to proceed with the work past a hold point only after clearance by purchaser or a witness waiver letter from Purchaser.

6.03 The performance of waiver of QA activity by Purchaser at any stage of manufacturing does not relieve the contractor of any obligation to perform in accordance with and meet all the requirements of the procurement documents and also all the codes & reference documents mentioned in the procurement document nor shall it preclude subsequent rejection by the purchaser.

6.04 On completion of manufacturing the items can be dispatched only after issue of shipping release by the Purchaser.

6.05 All testing and inspection shall be done without any extra cost.

**6.06 Purchaser reserves the right to send any material out of the supply to any recognized laboratory for testing at the cost of the seller. In case the material is found not in order with the technical requirement / specification, the goods in the lot shall be rejected along with any other penalty which may be levied is to**

**be borne by the bidder. To avoid any conflict the Seller is advised to send his representative to the stores to see that the material sent for testing is being sealed in the presence of bidder's representative.**

## **7.0 Packing, Packing List & Marking**

- 7.01 **Packing:** Seller shall pack or shall cause to be packed all Commodities in such a manner as shall be reasonably suitable for shipment by road or rail to Orissa Distribution Companies without any risk of damage in transit. The packing shall be sufficient to withstand, without limitation, rough\_handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage.
- 7.02 **Packing List:** One copy of the packing list shall be enclosed in each package delivered. There shall also be enclosed in one package a master packing list identifying each individual package, which is part of the shipment. On any packaging where it is not feasible to place the packing list inside the container, all pertinent information shall be stenciled on the outside and will thus constitute a packing list.
- 7.03 **Marking:** Seller shall mark each container, box or package for easy identification of his materials as follows:

**Commodity Name:**  
**Name of the Supplier:**  
**Net Weight:**  
**Size:**

## **8.0 Price Basis**

- 8.01 Bidders shall quote individual price breakup for the quoted items.

The price shall be inclusive of all taxes, Duties and other Levies of whatsoever nature, transportation to site and vice versa and in-transit Insurances.

The above Prices shall also include unloading and proper stacking at/ from Purchaser Stores to site / stores.

## **10.0 Terms of Payment**

The Payment shall be made as under:

- a) 100% Payment with taxes & duties on Prorata basis within 30 days of receipt of goods in our specified stores in good condition subject to detailed verification thereof and approval of guarantee & test certificate.

- b) For claiming 100% payment a Bank Guarantee of 10% value of the value of the goods on prorated basis, is to be provided which shall remain valid for a period beyond 90 days from the warranty period as per clause no. 12.0.
- c) All Payments shall be made after certification from Purchaser's Engineer Incharge. All Payments are subject to receipt of correct Documents.

### **11.0 Price Validity**

All bids submitted shall remain valid, firm and subject to unconditional acceptance by Purchaser for 120 days post bid opening date. For awarded Contract, the prices shall remain valid and firm till contract completion.

### **12.0 Warranty / Guarantee**

12.01 The bidder shall guarantee for the equipments/workmanship for a minimum period of 24 months from the date of commissioning or 30 months from the date of last receipt goods at stores, whichever is earlier. The manufacturer shall guarantee to replace or repair to the satisfaction of the purchaser the defective parts at site free of cost within the above period. Should however, the manufacturer fails to do so within a reasonable time, the purchaser reserves the right to effect repair or replacement and recover such charges for repair or replacement from the contractor. Contractor shall submit a performance Guarantee of 10% of the order value valid for a period of 90 days beyond the expiry of the warranty period.

12.02 If during the defect liability period any services performed found to be defective, these shall be promptly rectified by contract its own cost (including the cost of dismantling and reinstallation) on the instruction of Purchaser.

### **13.0 Composite Performance Bank Guarantee**

13.01 Within Fifteen (15) days from the date of the Award notice, Seller shall submit a Composite Performance Bank Guarantee (CPBG) in favour of Purchaser equivalent to Ten percent (10%) of the total price of the Contract (the "Performance Bank Guarantees"). The PBG shall be valid for a period of 90 days beyond the warranty period as per clause no. 12.01.

13.02 The Bank Guarantee established under Clause 13.01 shall be forfeited without recourse to the seller and payable against the presentation by Purchaser to the bank with a claim that the seller has failed to comply with any term or condition set forth in the Contract.

13.03 The Bank Guarantee established under the contract will be automatically and unconditionally forfeited without recourse if Purchaser in its sole discretion determines that Seller has failed to comply with any Terms or Condition set forth in the contract.

13.04 The Bank Guarantees will be released without interest within thirty (30) days from the last date up to which the Performance Bank Guarantee has to be kept valid (as defined in Clause 13.01).

#### **14.0 Technical information / data.**

The company and the contractor, to the extent of their respective rights permitting to do so, shall exchange such technical information and data as is reasonably required by each party to perform its obligations and responsibilities. The company and the contractor agree to keep each other in confidence and to use the same degree of care as it uses with respect to its own proprietary data to prevent its disclosure to third parties of all technical and confidential information. The technical information, drawings, records and other document shall not be copied, transferred, traced or divulged and / or disclosed to third party in full / part not misused in any other form. This technical information, drawing etc. shall be returned to the company with all approved copies and duplicates. In the event of any breach of this contract, the contractor shall indemnify the company against any loss, cost of damages or claim by any party in respect of such breach

#### **15.0 Effective Date of Commencement of Contract:**

The date of the issue of the Letter of Intent shall be treated as the effective date of the commencement of contract.

#### **16.0 Taxes & Duties :**

All taxes, duties, levies of whatsoever nature, entry tax, octroi, turnover tax, service tax, income tax, work contract tax etc., levied by State or Central Governments or local bodies shall be to the contractor 's account including any taxes, duties and levies which may be levied fresh by the Governments during currency of the Contract. The contractor shall furnish their Excise/Sales Tax registration number, PAN No. etc. in the bid documents as well as Invoice/Challans etc.

#### **17.0 Time – The Essence of Contract**

The time and the date of completion of the “Supply” as stipulated in the Letter Of Intent / Purchase order issued to the Contractor shall be deemed to be the essence of the “Contract”. The Supply has to be completed not later than the aforesaid Schedule and date of completion of supply.

#### **18.0 Liquidated Damages (LD)**

18.01 If supply of items / equipments is delayed beyond the supply schedule as stipulated in purchase order/LOI, then the Contractor shall be liable to pay to the

Purchaser as LD for such delay, a sum of 1% of the contract price for every week delay or part thereof. The LD shall be computed on the undelivered value of goods as per the delivery schedule.

18.02 The total amount of LD for delay under the contract will be subject to a maximum of ten percent (10%) of the contract price

18.03 The Purchaser may, without prejudice to any method of recovery, deduct the amount for such damages from any amount due or which may become due to the Contractor or from the Performance Bank Guarantee or file a claim against the contractor.

## **19.0 The Laws and Jurisdiction of Contract:**

19.01 The laws applicable to this Contract shall be the Laws in force in India.

19.02 All disputes arising in connection with the present Contract shall be settled amicably by mutual consultation failing which shall be finally settled as per the rules of Arbitration and Conciliation Act, 1996 at the discretion of Purchaser. The jurisdiction of arbitration shall be at Bhubaneswar, Orissa, India.

## **20.0 Events of Default**

20.01 Events of Default. Each of the following events or occurrences shall constitute an event of default ("Event of Default") under the Contract:

- (a) Seller fails or refuses to pay any amounts due under the Contract;
- (b) Seller fails or refuses to deliver Commodities conforming to this Bid document / specifications, or fails to deliver Commodities within the period specified in P.O. or any extension thereof
- (c) Seller becomes insolvent or unable to pay its debts when due, or commits any act of bankruptcy, such as filing any petition in any bankruptcy, winding-up or reorganization proceeding, or acknowledges in writing its insolvency or inability to pay its debts; or the Seller's creditors file any petition relating to bankruptcy of Seller;
- (d) Seller otherwise fails or refuses to perform or observe any term or condition of the Contract and such failure is not remediable or, if remediable, continues for a period of 30 days after receipt by the Seller of notice of such failure from Purchaser.

## **21.0 Consequences of Default.**

- (a) If an Event of Default shall occur and be continuing, Purchaser may forthwith terminate the Contract by written notice.
- (b) In the event of an Event of Default, Purchaser may, without prejudice to any other right granted to it by law, or the Contract, take any or all of the following actions;
  - (i) present for payment, to the relevant bank the Performance Bank Guarantee;
  - (ii) purchase the same or similar Commodities from any third party; and/or
  - (iii) recover any losses and/or additional expenses Purchaser may incur as a result of Seller's default.

## **22.0 Force Majeure**

22.01 The term "Force Majeure" as employed herein include, but are not limited to, acts of God or force of nature, landslide, earthquake, flood, fire, lightning, explosion, major storm (hurricane, typhoon, cyclone etc.) or major storm warning, tidal wave, shipwreck and perils of navigation, act of war (declared or undeclared) or public enemy, strike (excluding employee strikes, lockouts or other industrial disputes or action solely among employee of Contractor or its subcontractors) act or omission of sovereign states or those purporting to represent sovereign states, blockade, embargo, quarantine, public disorder, sabotage, accident or similar events beyond the control of the parties or either of them.

Force Majeure shall not include occurrences as follows:

- (a) Late delivery of materials caused by congestion at Seller's facilities or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
- (b) Late performance by Seller and/or Sub-Seller caused by unavailability of raw materials, supervisors or labour, inefficiencies or similar occurrences.
- (c) Mechanical breakdown of any item of Seller's or its Sub-Seller's equipment, plant or machinery.
- (d) Delays due to ordinary storm or inclement weather or
- (e) Non-conformance by Sub-Seller.

Unless the delay arises out of a Force Majeure occurrence and is beyond both Seller's and Sub-Seller's or Seller's control and an alternate acceptable source

of services, equipment or material is unavailable. Additionally, Force Majeure shall not include financial distress of Seller or any Sub-Seller.

- 22.02 In the event of either party being rendered unable by Force Majeure to perform any obligation required to be performed by them under the Contract, the relative obligation of the party affected by such Force Majeure shall be suspended for the period during which such cause lasts. Time for performance of the relative obligation suspended by Force Majeure shall then stand extended by the period for which cause lasts.
- 22.03 Upon the occurrence of any Force Majeure event, the party so affected in the discharge of its obligation shall promptly, but no later than seven (7) days give written notice of such event to the other party. The affected party shall make every reasonable effort to remove or remedy the cause of such Force Majeure or mitigate its effect as quickly as possible. If such occurrence results in the suspension of all or part of the Work for a continuous period of more than, the parties shall meet and determine the measures to be taken.
- 22.04 Any delay or failure in performance by either party hereto shall not give rise to any claims for damages or loss of anticipated profits it, and to the extent, such delay or failure is caused by Force Majeure.

### **23.0 Transfer and Sub-Letting**

The Contractor shall not sublet, transfer, assign or otherwise part with the Contract or any part thereof, either directly or indirectly, without prior written permission of the Purchaser.

### **24.0 Third party insurance**

Contractor shall take the Insurance of Equipment during Transit. Any Claim pertaining to this shall be the responsibility of the Contractor.

### **25.0 Recoveries**

When ever under this contract any money is recoverable from and payable by the bidder, the purchaser shall be entitled to recover such sum by appropriating in part or in whole by deducting any sum due to which any time thereafter may become due from the Seller in this or any other contract. Should the sum be not sufficient to cover the full amount recoverable the bidder shall pay to the purchaser on demand the remaining balance.

### **26.0 Waiver**

Failure to enforce any condition herein contained shall not operate as a waiver of the condition itself or any subsequent breach thereof.

## **27.0 Indemnification**

- 27.01 Notwithstanding contrary to anything contained in this Tender, Contractor shall at his costs and risks make good any loss or damage to the property of the Purchaser and/or the other Contractor engaged by the Purchaser and/or the employees of the Purchaser and/or employees of the other Contractor engaged by the Purchaser whatsoever arising out of the negligence of the Contractor while performing the obligations under this contract.
- 27.02 Subject to this Clause 23.0 Purchaser shall, at its sole cost and expense, defend, indemnify and hold harmless Contractor and his assignees /or the employees of the Contractor whatsoever arising out of the negligence or willful act or omission or from the default of the Purchaser in the performance of the Contractor.