# POWER GRID COMPANY OF BANGLADESH LIMITED

# Bidding Document
# for

# Design, Supply, Erection, Testing & Commissioning of capacity enhancement and Capacitor Bank installation with associated switchgear in existing grid substation (Package-2, Lot-2)

## Volume 1 of 3

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| **OCB No.** | **:** | **PGCB/CEEGSTL/SS/Package-2/Lot-2** |
| **Country** | **:** | **Bangladesh** |

Employer:

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# Part I: Bidding Procedures

Section 1- Instructions to Bidder (ITB)
Section 2- Bid Data Sheet (BDS)
Section 3- Evaluation and Qualification Criteria (EQC)
Section 4- Bidding Forms (BDF)
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# Section 1 - Instructions to Bidders

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# Section 1 - Instructions to Bidders

## A. General

**1. Scope of Bid**

1.1 In connection with the Invitation for Bids indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues this Bidding Document for the procurement of plant and services as specified in Section 6 (Employer's Requirements). The name, identification, and number of lots (contracts) of the International Competitive Bidding (ICB) are provided in the BDS.

1.2 Unless otherwise stated, throughout this Bidding Document definitions and interpretations shall be as prescribed in Section 7 (General Conditions of Contract).

**2. Source of Funds**

2.1 Government of Bangladesh (GoB) and Power Grid Company of Bangladesh Ltd.(hereinafter "Employer") have allocated necessary funds towards the cost of the proposed works as indicated in the BDS.

**3. Corrupt Practices**

3.1 Anticorruption policy requires that Employer, as well as bidder's, suppliers and contractors under this contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy:

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

(i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

(ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

(b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract; and

(c) will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, to participate in Employer's financed activities if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, an Employer's financed contract.

3.2 Furthermore, Bidders shall be aware of the provision stated in the Conditions of Contract (GCC 9.6 and 42.2.1 (c)).

**4. Eligible Bidders**

4.1 A Bidder may be a private entity or a government-owned entity - subject to ITB 4.5 - or any combination of such entities with the intent to enter into an agreement supported by a letter of intent or under an existing agreement in the form of a joint venture, consortium, or association (JV). In the case of a JV:

(a) all partners shall be jointly and severally liable, and

(b) the JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.

4.2 A Bidder, and all partners constituting the Bidder, shall have a nationality of an eligible country, in accordance with Section 5 (Eligible Countries). A Bidder shall be deemed to have the nationality of a country if the Bidder is a national or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.

4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process if, including but not limited to:

(a) they have controlling shareholders in common; or

(b) they receive or have received any direct or indirect subsidy from any of them; or

(c) they have the same legal representative for purposes of this bid; or

(d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to material information about or improperly influence the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or

(e) a Bidder participates in more than one bid in this bidding process, either individually or as a partner in a joint venture, except for alternative offers permitted under ITB Clause 13. This will result in the disqualification of all Bids in which it is involved. However, subject to any finding of a conflict of interest in terms of ITB 4.3 (a) - (d) above, this does not limit the participation of a Bidder as a subcontractor in another bid or of a firm as a subcontractor in more than one bid; or

(f) a Bidder or any affiliated entity, participated as a consultant in the preparation of the design or technical specifications of the plant and services that are the subject of the bid.

4.4 A firm shall not be eligible to participate in any procurement activities under a GoB-financed or GoB-supported project while under sanction by United Nation Security Council pursuant to its Anticorruption Policy (see ITB 3), whether such sanction was directly imposed by United Nation Security Council, or imposed by United Nation Security Council pursuant to the

Agreement for Mutual Enforcement of Debarment Decisions. A bid from a sanctioned or cross-debarred firm will be rejected.

4.5 Government-owned entities in the Employer's country shall be eligible only if they can establish that they

(a) are legally and financially autonomous,

(b) operate under the principles of commercial law, and

(c) are not dependent agencies of the Employer or the Borrower.

4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

4.7 Bidders shall not be insolvent, be in receivership, be bankrupt, be in the process of bankruptcy, be not temporarily barred from undertaking business and it shall not be the subject of legal proceedings for any of the foregoing.

4.8 Firms of a country shall be excluded if, by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods from that country or any payments to persons or entities in that country.

4.9 These above requirements for eligibility will extend, as applicable, to each JV partner and Subcontractor proposed by the Bidders.

**5. Eligible Plant and Services**

5.1 The plant and services to be supplied under the Contract shall have their origin in eligible source countries as defined in ITB 4.2 above and all expenditures under the Contract will be limited to such plant and services.

5.2 For purposes of this Clause, the term "plant" means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided in the facilities; and "installation services" means all those services ancillary to the supply of the Plant for the Facilities, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation, installation, testing, pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training etc.

5.3 For purposes of ITB 5.1 above, "origin" means the place where the plant, or component parts thereof are mined, grown, produced or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components.

## B. Contents of Bidding Document

**6. Sections of Bidding Document**

6.1 The Bidding Document consists of Parts I, II, and III, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.

**PART I Bidding Procedures**

Section 1 - Instructions to Bidders (ITB)
Section 2 - Bid Data Sheet (BDS)
Section 3 - Evaluation and Qualification Criteria (EQC)

Section 4 - Bidding Forms (BDF)
Section 5 - Eligible Countries (ELC)

**PART II Requirements**
Section 6 - Employer's Requirements (ERQ)

**PART III Conditions of Contract and Contract Forms**
Section 7 - General Conditions of Contract (GCC)
Section 8 - Special Conditions of Contract (SCC)
Section 9 - Contract Forms (COF)

6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Document.

6.3 The Employer is not responsible for the completeness of the Bidding Document and its addenda, if they were not obtained directly from the source stated by the Employer in the Invitation for Bids.

6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the bid.

**7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting**

7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer's address indicated in the BDS or raise his enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond to any request for clarification, provided that such request is received no later than twenty-one (21) days prior to the deadline for submission of bids. The Employer's response shall be in writing with copies to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 24.2.

7.2 The Bidder is advised to visit and examine the site where the plant is to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for the provision of plant and services. The costs of visiting the site shall be at the Bidder's own expense.

7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

7.4 The Bidder's designated representative is invited to attend a pre-bid meeting, if provided for in the BDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than one week before the pre-bid

meeting.

7.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.

7.7 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

**8. Amendment of Bidding Document**

8.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Document by issuing addenda.

8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 6.3.

8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 24.2

## C. Preparation of Bids

**9. Cost of Bidding**

9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

**10. Language of Bid**

10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in the language **specified in the BDS.** Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language of Bid**,** in which case, for purposes of interpretation of the Bid, such translation shall govern.

**11. Documents Comprising the Bid**

11.1 The Bid shall comprise two envelopes submitted simultaneously, one called the Technical Bid containing the documents listed in ITB 11.2 and the other the Price Bid containing the documents listed in ITB 11.3, both envelopes enclosed together in an outer single envelope.

11.2 The Technical Bid submitted by the Bidder shall comprise the following:

(a) Letter of Technical Bid;

(b) Bid Security or Bid Securing Declaration, in accordance with ITB 21;

(c) alternative bids, if permissible, in accordance with ITB 13;

(d) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 22.2;

(e) documentary evidence establishing in accordance with ITB 14.1 that the plant and services offered by the Bidder in its bid or in any alternative

bid, if permitted, are eligible;

(f) documentary evidence in accordance with ITB 15 establishing the Bidder's eligibility and qualifications to perform the contract if its Bid is accepted;

(g) Technical Proposal in accordance with ITB 17.

(h) documentary evidence establishing in accordance with ITB 16 that the plant and services offered by the Bidder conform to the Bidding Document;

(i) in the case of a bid submitted by a JV, JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the Plant to be executed by the respective partners;

(j) List of subcontractors, in accordance with ITB 17.2; and

(k) any other document required in the BDS.

11.3 The Price Bid submitted by the Bidder shall comprise the following:

(a) Letter of Price Bid;

(b) completed schedules as required, including Price Schedules, in accordance with ITB 12 and 18;;

(c) alternative price bids, if permissible, in accordance with ITB 13; and

(d) any other document required in the BDS

**12. Letter of Bid and Schedules**

12.1 The Letters of Technical Bid and Price Bid, and the Schedules, and all documents listed under ITB 11, shall be prepared using the relevant forms furnished in Section 4 (Bidding Forms). The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

**13. Alternative Bids**

13.1 Unless otherwise indicated in the BDS, alternative bids shall not be considered. If they are allowed, the BDS will also indicate whether they are permitted in accordance with ITB 13.3, or invited in accordance with ITB13.2 and/or ITB 13.4.

13.2 When alternatives to the Time Schedule are explicitly invited, a statement to that effect will be included in the BDS, and the method of evaluating different time schedules will be described in Section 3 (Evaluation and Qualification Criteria).

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the Employer's requirements as described in the bidding document must also provide: (i) a price at which they are prepared to offer a plant meeting the Employer's requirements; and (ii) all information necessary for a complete evaluation of the alternatives by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed installation methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.

13.4 When bidders are invited in the BDS to submit alternative technical solutions for specified parts of the facilities, such parts shall be described in Section 6 (Employer's Requirements). Technical alternatives for the specific parts of the facilities that comply with the performance and technical criteria specified for the plant and services shall be considered by the Employer on their own merits, pursuant to ITB 32.

**14. Documents Establishing the Eligibility of Plant and Services**

14.1 To establish the eligibility of the plant and services in accordance with ITB Clause 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section 4 (Bidding Forms).

**15. Documents Establishing the Eligibility and Qualifications of the Bidder**

15.1 To establish its eligibility and qualifications to perform the Contract in accordance with Section 3 (Evaluation and Qualification Criteria), the Bidder shall provide the information requested in the corresponding information sheets included in Section 4 (Bidding Forms).

15.2 Domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility as described in ITB 38.

**16. Documents Establishing Conformity of the Plant and Services**

16.1 The documentary evidence of the conformity of the plant and services to the Bidding Document may be in the form of literature, drawings and data, and shall furnish:

(a) a detailed description of the essential technical and performance characteristics of the plant and services, including the functional guarantees of the proposed plant and services, in response to the Specification;

(b) a list giving full particulars, including available sources, of all spare parts and special tools necessary for the proper and continuing functioning of the plant for the period named in the BDS, following completion of plant and services in accordance with provisions of contract; and

(c) a commentary on the Employer's Specification and adequate evidence demonstrating the substantial responsiveness of the plant and services to those specifications. Bidders shall note that standards for workmanship, materials and equipment designated by the Employer in the Bidding Document are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, brand names and/or catalog numbers in its bid, provided that it demonstrates to the Employer's satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Specification.

16.2 In order to facilitate evaluation of Technical Bids, deviations, if any, from the terms and conditions or Specification shall be listed as indicated in ITB 18.2.

**17. Technical Proposal, Subcontractors**

17.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section 4 (Bidding Forms), in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and

the completion time.

17.2 For major items of plant and services as listed by the Employer in Section 3 (Evaluation and Qualification Criteria), which the Bidder intends to purchase or subcontract, the Bidder shall give details of the name and nationality of the proposed Subcontractors, including manufacturers, for each of those items. In addition, the Bidder shall include in its bid information establishing compliance with the requirements specified by the Employer for these items. Bidders are free to list more than one Subcontractor against each item of the plant and services. Quoted rates and prices will be deemed to apply to whichever Subcontractor is appointed, and no adjustment of the rates and prices will be permitted.

17.3 The Bidder shall be responsible for ensuring that any Subcontractor proposed complies with the requirements of ITB 4, and that any plant, or services to be provided by the Subcontractor comply with the requirements of ITB 5 and ITB 15.1

**18. Bid Prices and Discounts**

18.1 Unless otherwise specified in the BDS and/or Section 6 (Employer's Requirements), bidders shall quote for the entire plant and services on a "single responsibility" basis such that the total bid price covers all the Contractor's obligations mentioned in or to be reasonably inferred from the bidding document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the plant. This includes all requirements under the Contractor's responsibilities for testing, pre-commissioning and commissioning of the plant and, where so required by the bidding document, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the Bidding Document, all in accordance with the requirements of the General Conditions. Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.

18.2 Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the bidding document. If a Bidder wishes to make a deviation, such deviation shall be listed in the relevant form in Section 4 (Bidding Forms). The Bidder shall also provide the additional price if any, for withdrawal of the deviation.

18.3 Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section 4 (Bidding Forms). Where no different Price Schedules are included in the Bidding Document, bidders shall present their prices in the following manner: Separate numbered Schedules included in Section 4 (Bidding Forms) shall be used for each of the following elements. The total amount from each Schedule (1 to 4) shall be summarized in a Grand Summary (Schedule 5) giving the total bid price(s) to be entered in the Bid Form.

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 Grand Summary (Schedule Nos. 1 to 4)

Schedule No. 6: Spare Parts

Bidders shall note that the plant and equipment included in Schedule Nos. 1 and 2 above exclude materials used for civil, building and other construction works. All such materials shall be included and priced under Schedule No. 4, Installation and Other Services.

18.4 In the Schedules, bidders shall give the required details and a breakdown of their prices as follows:

(a) Plant to be supplied from abroad (Schedule No. 1):

(i) the price of the plant shall be quoted as per Incoterms specified in the BDS

(ii) all custom duties and other taxes paid or payable in the Employer's country on the plant if the contract is awarded to the Bidder; and

(iii) the total price for the plant

(b) Plant supplied from within the Employer's country (Schedule No. 2):

(i) The price of the plant shall be quoted as per Incoterms specified in the BDS,

(ii) Sales tax and all other taxes payable in the Purchaser's country on the plant if the contract is awarded to the Bidder, and

(iii) The total price for the plant.

(c) Design Services. (Schedule No. 3).

(d) Installation and other Services shall be quoted separately (Schedule No. 4) and shall include rates or prices for local transportation, insurance and other services incidental to delivery of the plant, all labor, contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the Bidding Document, as necessary for the proper execution of the installation and other services, including all taxes, duties, levies and charges payable in the Employer's country as of twenty-eight (28) days prior to the deadline for submission of bids.

(e) Recommended spare parts shall be quoted separately (Schedule 6) as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.

18.5 The current edition of Incoterms, published by the International Chamber of Commerce shall govern.

18.6 The prices shall be either fixed or adjustable as specified in the BDS.

(a) In the case of Fixed Price, prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation on any account. A bid submitted with an adjustable price

quotation will be treated as non responsive and rejected.

(b) In the case of Adjustable Price, prices quoted by the Bidder shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, transport and contractor's equipment in accordance with the procedures specified in the corresponding Appendix to the Contract Agreement. A bid submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. Bidders are required to indicate the source of labor and material indices in the corresponding Form in Section 4 (Bidding Forms).

18.7 If so indicated in BDS 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer any price reduction (discount) for the award of more than one contract shall specify in their Letter of Price Bid the price reductions applicable to each package, or alternatively, to individual contracts within the package, and the manner in which the price reductions will apply.

**19. Currencies of Bid and Payment**

19.1 The currency(ies) of the bid shall be, as specified in the BDS. Payment of the Contract Price shall be made in the currency or currencies in which the Bid Price is expressed in the Bid of the successful Bidder.

19.2 Unless specified in the BDS, Bidders shall indicate in the Schedule of Prices and the Letter of Price Bid the portion of the bid price that corresponds to expenditures incurred in the currency of the Employer's country.

19.3 Unless specified in the BDS, Bidders expecting to incur expenditures in other currencies for inputs to the Facilities supplied from outside the Employer's country and wishing to be paid accordingly, may indicate in the Schedule of Prices and the Letter of Price Bid up to three foreign currencies of their choice.

**20. Period of Validity of Bids**

20.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Employer. A bid valid for a shorter period shall be rejected by the Employer as non responsive.

20.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 21, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid.

**21. Bid Security**

21.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its bid, a Bid Securing Declaration or a bid security in original form and in the amount and currency as specified in the BDS.

21.2 A Bid Securing Declaration shall use the form included in Section 4 (Bidding Forms). The Employer will declare a Bidder ineligible to be awarded a Contract for a specified period of time if the Bid Securing Declaration is executed, as provided in the BDS.

21.3 The bid security shall be a demand guarantee in following form:

(a) an unconditional bank guarantee;

from a reputable source from an eligible source country as specified in the BDS. The bid security shall be submitted using the Bid Security Form included in Section 4 (Bidding Forms). The form must include the complete name of the Bidder or any partner of Joint Venture. The bid security shall be valid for twenty-eight days (28) beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 20.2.

21.4 If a bid security is specified, any bid not accompanied by a substantially compliant bid security or bid securing declaration shall be rejected by the Employer as non responsive.

21.5 If a bid security is specified pursuant to ITB 21.1, the bid security of the unsuccessful Bidder shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB 45.

21.6 If a bid security is specified pursuant to ITB 21.1, the bid security of successful Bidders shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.

21.7 The bid security may be forfeited or the bid securing declaration executed:

(a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 20.2 or

(b) if the successful Bidder fails to:

(i) sign the Contract in accordance with ITB 44;

(ii) furnish a performance security in accordance with ITB 45; or

(iii) accept the arithmetical corrections of its Bid in accordance with ITB 36.

21.8 The Bid Security or the Bid Securing Declaration of a JV shall be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security or the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent referred to in ITB 4.1.

**22. Format and Signing of Bid**

22.1 The Bidder shall prepare one original of the Technical Bid and one original of the Price Bid comprising the Bid as described in ITB 11 and clearly mark it "ORIGINAL - TECHNICAL BID" and "ORIGINAL - PRICE BID". Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE". In addition, the Bidder shall submit copies of the bid, in the number specified in the BDS and clearly mark each of them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

22.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be

signed or initialed by the person signing the bid.

22.3 A bid submitted by a JV shall be signed so as to be legally binding on all partners.

22.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.

## D. Submission and Opening of Bids

**23. Submission, Sealing and Marking of Bids**

23.1 Bidders may submit their bids by mail or by hand. When so specified in the BDS, bidders shall have the option of submitting their bids electronically. Procedures for submission, sealing and marking are as follows:

(a) Bidders submitting bids by mail or by hand shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL", "ALTERNATIVE" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB sub-Clauses 23.2 and 23.3.

(b) Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the BDS.

23.2 The inner and outer envelopes shall:

(a) bear the name and address of the Bidder;

(b) be addressed to the Employer in accordance with ITB 24.1; and

(c) bear the specific identification of this bidding process indicated in the BDS 1.1.

23.3 The outer envelopes and the inner envelopes containing the Technical Bid shall bear a warning not to open before the time and date for the opening of Technical Bid, in accordance with ITB Sub-Clause 27.1.

23.4 The inner envelopes containing the Price Bid shall bear a warning not to open until advised by the Employer in accordance with ITB Sub-Clause 27.7.

23.5 Alternative Bids, if permissible in accordance with ITB Clause 13, shall be prepared, sealed, marked, and delivered in accordance with the provisions of ITB Clauses 20 and 21, with the inner envelopes marked in addition "ALTERNATIVE NO…." as appropriate.

23.6 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the bid.

**24. Deadline for Submission of Bids**

24.1 Bids must be received by the Employer at the address and no later than the date and time indicated in the BDS.

24.2 The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

**25. Late Bids**

25.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 24. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

**26. Withdrawal, Substitution, and Modification of Bids**

26.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 22.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

(a) prepared and submitted in accordance with ITB 22 and ITB 23 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "Withdrawal," "Substitution," "Modification;" and

(b) received by the Employer prior to the deadline prescribed for submission of bids, in accordance with ITB 24.

26.2 Bids requested to be withdrawn in accordance with ITB 26.1 shall be returned unopened to the Bidders.

26.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Technical Bid or any extension thereof.

**27. Bid Opening**

27.1 The Employer shall conduct the opening of Technical Bids in the presence of Bidders` designated representatives who choose to attend, and at the address, date and time specified in the BDS. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB Sub-clause 23.1, shall be as specified in the BDS. The Price Bids will remain unopened and will be held in custody of the Employer until the specified time of their opening. If the Technical Bid and the Price Bid are submitted together in one envelope, the Employer may reject the entire Bid. Alternatively, the Price Proposal may be immediately resealed for later evaluation.

27.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening.

27.3 Second, outer envelopes marked "SUBSTITUTION" shall be opened. The inner envelopes containing the Substitution Technical Bid and/or Substitution Price Bid shall be exchanged for the corresponding envelopes being substituted, which are to be returned to the Bidder unopened. Only the Substitution Technical Bid, if any, shall be opened, read out, and

recorded. Substitution Price Bid will remain unopened in accordance with ITB Sub-Clause 27.1. No envelope shall be substituted unless the corresponding Substitution Notice contains a valid authorization to request the substitution and is read out and recorded at bid opening.

27.4 Next, outer envelopes marked “MODIFICATION” shall be opened. No Technical Bid and/or Price Bid shall be modified unless the corresponding Modification Notice contains a valid authorization to request the modification and is read out and recorded at the opening of Technical Bids. Only the Technical Bids, both Original as well as Modification, are to be opened, read out, and recorded at the opening. Price Bids, both Original as well as Modification, will remain unopened in accordance with ITB Sub-Clause 27.1.

27.5 All other envelopes holding the Technical Bids shall be opened one at a time, and the following read out and recorded:

(a) the name of the Bidder;

(b) whether there is a modification or substitution;

(c) the presence of a Bid Security, if required; and

(d) any other details as the Employer may consider appropriate.

Only Technical Bids and alternative Technical Bids read out and recorded at bid opening shall be considered for evaluation. No Bid shall be rejected at the opening of Technical Bids except for late bids, in accordance with ITB Sub-Clause 25.1.

27.6 The Employer shall prepare a record of the opening of Technical Bids that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; and alternative proposals; and the presence or absence of a bid security or a bid securing declaration, if one was required. The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted bids in time, and posted online when electronic bidding is permitted.

27.7 At the end of the evaluation of the Technical Bids, the Employer will invite bidders who have submitted substantially responsive Technical Bids and who have been determined as being qualified for award to attend the opening of the Price Bids. The date, time, and location of the opening of Price Bids will be advised in writing by the Employer. Bidders shall be given reasonable notice of the opening of Price Bids.

27.8 The Employer will notify Bidders in writing who have been rejected on the grounds of their Technical Bids being substantially non-responsive to the requirements of the Bidding Document and return their Price Bids unopened.

27.9 The Employer shall conduct the opening of Price Bids of all Bidders who submitted substantially responsive Technical Bids, in the presence of Bidders` representatives who choose to attend at the address, date and time specified by the Employer. The Bidder’s representatives who are present shall be requested to sign a register evidencing their attendance.

27.10 All envelopes containing Price Bids shall be opened one at a time and the

following read out and recorded:

(a) the name of the Bidder;

(b) whether there is a modification or substitution;

(c) the Bid Prices, including any discounts and alternative offers; and

(d) any other details as the Employer may consider appropriate.

Only Price Bids, discounts, and alternative offers read out and recorded during the opening of Price Bids shall be considered for evaluation. No Bid shall be rejected at the opening of Price Bids.

27.11 The Employer shall prepare a record of the opening of Price Bids that shall include, as a minimum: the name of the Bidder, the Bid Price (per lot if applicable), any discounts, and alternative offers. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted bids in time, and posted online when electronic bidding is permitted.

## E. Evaluation and Comparison of Bids

**28. Confidentiality**

28.1 Information relating to the evaluation of bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.

28.2 Any attempt by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.

28.3 Notwithstanding ITB 28.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it should do so in writing.

**29. Clarification of Bids**

29.1 To assist in the examination, evaluation, and comparison of the Technical and Price Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the substance of the Technical Bid or prices in the Price Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids, in accordance with ITB 36.

29.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Employer's request for clarification, its bid may be rejected.

**30. Deviations, Reservations, and Omissions**

30.1 During the evaluation of bids, the following definitions apply:

(a) "Deviation" is a departure from the requirements specified in the Bidding Document;

(b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding

Document; and

(c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.

**31. Preliminary Examination of Technical Bids**

31.1 The Employer shall examine the Technical Bid to confirm that all documents and technical documentation requested in ITB Sub-Clause 11.2 have been provided, and to determine the completeness of each document submitted. If any of these documents or information is missing, the Bid may be rejected.

31.2 The Employer shall confirm that the following documents and information have been provided in the Technical Bid. If any of these documents or information is missing, the offer shall be rejected.

(a) Letter of Technical Bid;

(b) written confirmation of authorization to commit the Bidder;

(c) Bid Security, if applicable; and

(d) Technical Proposal in accordance with ITB 17.

**32. Responsiveness of Technical Bid**

32.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB11.

32.2 A substantially responsive Technical Bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

(a) if accepted, would:

(i) affect in any substantial way the scope, quality, or performance of the plant and services specified in the Contract; or

(ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer's rights or the Bidder's obligations under the proposed Contract; or

(b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

32.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 17, Technical Proposal, in particular to confirm that all requirements of Section 6 (Employer's Requirements) have been met without any material deviation or reservation.

32.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

**33. Nonmaterial Nonconformities**

33.1 Provided that a Bid is substantially responsive, the Employer may waive any non-conformities in the bid that do not constitute a material deviation, reservation or omission.

33.2 Provided that a Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Bid

related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the Price Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

33.3 Provided that a Bid is substantially responsive, the Employer shall rectify nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the method indicated in Section 3 (Evaluation and Qualification Criteria).

**34. Detailed Evaluation of Technical Bids**

34.1 The Employer will carry out a detailed technical evaluation of the bids not previously rejected as being substantially non-responsive, in order to determine whether the technical aspects are in compliance with the Bidding Document. In order to reach such a determination, the Employer will examine and compare the technical aspects of the bids on the basis of the information supplied by the bidders, taking into account the following:

(a) overall completeness and compliance with the Employer's Requirements; deviations from the Employer's Requirements; conformity of the plant and services offered with specified performance criteria; suitability of the plant and services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the bid. The bid that does not meet minimum acceptable standards of completeness, consistency and detail will be rejected for non-responsiveness;

(b) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services; and

(c) other relevant factors, if any, listed in Section 3 (Evaluation and Qualification Criteria).

34.2 Where alternative technical solutions have been allowed in accordance with ITB 13, and offered by the Bidder, the Employer will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

**35. Eligibility and Qualification of the Bidder**

35.1 The Employer shall determine to its satisfaction during the evaluation of Technical Bids whether a Bidder meets the eligibility and qualifying criteria specified in Section 3 (Evaluation and Qualification Criteria).

35.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 15.

35.3 An affirmative determination shall be a prerequisite for the opening and evaluation of a Bidder's Price Bid. A negative determination shall result into the disqualification of the Bid, in which event the Employer shall return the unopened Price Bid to the Bidder.

35.4 The capabilities of the manufacturers and subcontractors proposed in its Bid to be used by the Bidder for identified major items of supply or services will

also be evaluated for acceptability in accordance with Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to substitute an acceptable manufacturer or subcontractor without any change to the Bid price. If a bidder does not provide an acceptable substitute manufacturer or subcontractor by the date and time set in the Employer's request for substitution of manufacturer or subcontractor, its bid may be rejected.

**36. Correction of Arithmetical Errors**

36.1 During the evaluation of Price Bids, the Employer shall correct arithmetical errors on the following basis:

(a) where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly;

(b) where there are errors between the total of the amounts of Schedule Nos. 1 to 4 and the amount given in Schedule No. 5 (Grand Summary), the former shall prevail and the latter will be corrected accordingly; and

(c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail subject to (a) and (b) above.

36.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified and its bid security may be forfeited or its bid securing declaration executed.

**37. Conversion to Single Currency**

37.1 For evaluation and comparison purposes, the currency(ies) of the bid shall be converted into a single currency as specified in the BDS .

**38. Margin of Preference**

38.1 Unless otherwise specified in the BDS, a margin of preference shall not apply.

**39. Evaluation of Price Bids**

39.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

39.2 To evaluate a Price Bid, the Employer shall consider the following:

(a) the bid price, excluding provisional sums and the provision, if any, for contingencies in the Price Schedules;

(b) price adjustment for correction of arithmetical errors in accordance with ITB 36.1;

(c) price adjustment due to discounts offered in accordance with ITB 18.7;

(d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 37; and

(e) the evaluation factors indicated in Section 3 (Evaluation and Qualification Criteria).

39.3 If price adjustment is allowed in accordance with ITB 18.6, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid

evaluation.

39.4 If this Bidding Document allows Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Price Bid, is specified in Section 3 (Evaluation and Qualification Criteria).

39.5 If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the methods and time schedule proposed. After evaluation of the price analyses, taking into consideration the terms of payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

**40. Comparison of Bids**

40.1 The Employer shall compare all substantially responsive Bids to determine the lowest evaluated bid, in accordance with ITB 39.2.

**41. Employer's Right to Accept Any Bid, and to Reject Any or All Bids**

41.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

## F. Award of Contract

**42. Award Criteria**

42.1 The Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be eligible and qualified to perform the Contract satisfactorily.

42.2 The Employer reserves the right to accept any of the deviations submitted in accordance with ITB 18.2 by the lowest evaluated bidder, at the price shown for the deviation in the bid.

**43. Notification of Award**

43.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the plant and services (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price").

43.2 At the same time, the Employer will publish in an English language newspaper or well-known freely accessible website the results identifying the bid and lot numbers and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded. After publication of the award, unsuccessful bidders may request in writing to the Employer for a debriefing

seeking explanations on the grounds on which their bids were not selected. The Employer shall promptly respond in writing to any unsuccessful Bidder who, after Publication of contract award, requests a debriefing.

43.3 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

43.4 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 43.1, requests in writing the grounds on which its bid was not selected.

**44. Signing of Contract**

44.1 Promptly after notification, the Employer shall send the successful Bidder the Contract Agreement.

44.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.

**45. Performance Security**

45.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the conditions of contract, subject to ITB 39.5, using for that purpose the Performance Security Form included in Section 6 (Employer's Requirements), or another form acceptable to the Employer. The performance security shall be issued from a scheduled bank located in Employer's country.

45.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security or execution of the bid securing declaration. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

# Section 2 - Bid Data Sheet

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| **A. Introduction** | |
| **ITB 1.1** | The number of the Invitation for Bids is: 27.21.0000.101.07.418.22.5935; dated October 25, 2022. |
| | **The Employer is: Power Grid Company of Bangladesh Limited (PGCB)** |
| | The name of the ICB is:<br>**Design, Supply, Erection, Testing & Commissioning of capacity enhancement and Capacitor Bank installation with associated switchgear in existing grid substation (Package-2, Lot-2).**<br><br>The procedure of bidding: Single stage two envelopes and open tendering method (OTM).<br><br>The identification number of the ICB is: **PGCB/CEEGSTL/SS/Package-2/Lot-2**<br><br>The number and identification of lot (contracts) comprising this ICB is: **1(one)** |
| **ITB 2.1** | Government of Bangladesh (GoB) and Power Grid Company of Bangladesh have allocated necessary funds for the Project:<br><br>The name of the project is:<br><br>**Capacity Enhancement of Existing Grid Substation and Transmission Lines.**<br><br>**ICB No. PGCB/CEEGSTL/SS/Package-2/Lot-2** |
| **B. Bidding Documents** | |
| **ITB 4.1** | The percentage of share of the nominated Representative or Partner-in Charge of the Joint Venture / Consortium shall be at least 50% of the Bid Price.<br><br>The percentage of share of each partner in Joint Venture / Consortium shall be at least 20 % of the Bid Price |
| **ITB 4.4** | The following text is added at the end:<br><br>A firm that is under a declaration of ineligibility by PGCB or GoB in accordance with ITB 3, or by the Employer in accordance with ITB 21.8, at the date of the deadline for bid submission or thereafter, shall be disqualified. |
| **ITB 4.8** | There is no prequalification process. |

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| **ITB 7.1** | For **clarification purposes** only, the Employer's address is:<br><br>Attention:<br><br>Company Secretary<br>Power Grid Company of Bangladesh Limited<br>2nd Floor, PGCB Head Office, Aveneue-3,<br>Jahurul Islam City, Aftabnagar,<br>Dhaka-1212, Bangladesh<br><br>Tel:+88 (2)+88-02-55046731, +88-02-55046732, +88-02-55046733, +88-02-55046734, +88-02-55046735<br><br>Fax: +88 (2)5504 6722<br><br>Email: se.contract@pgcb.gov.bd, share.cs@pgcb.gov.bd, tabbassom.pgcb.contract@gmail.com |
| **ITB 7.4** | A Pre-Bid meeting will take place. Date, time and place are as follows :<br><br>Date: 10 November, 2022; Time: 12:00 Hours Local Time (GMT+6 hours).<br><br>Place: Bid Opening Room, 7th Floor, Head office Building, Avenue-3, Jahurul Islam City, Aftabnagar, Dhaka-1212, Bangladesh<br><br>Site visits will not be organized by the Employer.<br><br>Bidders are advised to conduct site visits at their own responsibility. The Employer may arrange necessary permissions if requested by the Bidders. |
| **C. Preparation of Bids** | |
| **ITB 10.1** | The language of the Bid is: English<br><br>The following text is added at the end:<br><br>Such kind of Translation shall be certified by any Notary Public or any Government Authorized Agency of the Bidder's country. |
| **ITB 11.2 (k)** | The Bidder shall submit with its Technical Bid the following documents along with other required documents as mentioned elsewhere of the bidding documents:<br><br>i) Certificate of incorporation;<br><br>ii) Delivery & Completion time Schedule as per Schedule C in Volume 1 of 2 of the Bidding Document;<br><br>iii) Name & Nationality of manufacturer's as per requirement of Schedule D in Volume 1 of 2 of the Bidding Document;<br><br>iv) Technical Particulars and Guarantees as per Schedule E in Volume 1 of 2 |

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| | of the Bidding Document;<br><br>v) Proposed Subcontractors as per Schedule F in Volume 1 of 2 of the Bidding Document;<br><br>vi) Confirmation Letter as per schedule-G in Volume 1 of 2 of the Bidding Document;<br><br>vii) Drawings/documents as per requirement of Section 6- Employer's Requirement in Volume 1 of 2 of the Bidding Document,<br><br>A Bidder who is not doing business in Bangladesh may submit the name and address of a local agent who is able to liaise with the Employer. |
| **ITB 11.3 (d)** | Cash flow statement for project implementation. |
| **ITB 13.1** | Alternative bids are not permitted. |
| **ITB 13.2** | Alternatives to the Time Schedule shall not be permitted. |
| **ITB 13.4** | Alternative technical solutions are not permitted. |
| **ITB 16.1 (b)** | The period following completion of plant and services in accordance with provisions of contract shall be five years. |
| **ITB 18.1** | Bidders shall quote for the entire plant and services on a single responsibility basis. |
| **ITB 18.3 and 18.4** | Custom duty and any other taxes on Installation and Other Services in the Employer's Country shall be as per provision of GCC14, Section 7, Volume 1 of 3 the Bid Document. |

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| **ITB 18.4(a)(i)** | The Incoterm for quoting plant to be supplied from abroad is: **CIP**<br><br>Destinations are as follows:<br><br>Cumilla , Joydevpur , Valuka , Netrokona , Lalmonirhat , Rajendrapur ,Agargaon , Saiadpur , Polash-bari . |
| **ITB 18.4(b)(i)** | The Incoterm for quoting plant to be supplied from within the Employer's country is: **EXW** |
| **ITB 18.6** | The prices quoted by the Bidder shall be: Adjustable |

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| | The formula for adjusting the prices and explanatory details are specified in the Special Conditions of Contract (SCC) clause 11.2 and Appendix 2 of Contract Agreement. Bidder shall fill out the Tables of Adjustment Data in section 4 (Bidding forms). |
| **ITB 19.1** | The currency(ies) of the Bid shall be as follows:<br>(a) Plant and equipment to be supplied from abroad shall be quoted entirely in: US Dollar and/or Euro.<br>(b) Plant and equipment to be supplied from within the Employer's country shall be quoted in the currency of the Employer's country: Bangladesh Taka, and/or the above mentioned currency.<br>(c) Installation shall be quoted in local currency. |
| **ITB 19.2** | Not used. |
| **ITB 19.3** | Not used. |
| **ITB 20.1** | The bid validity period shall be **180 (one hundred eighty)** days. |
| **ITB 21.1** | Bids shall include a Bid Security issued by bank using the form included in Section 4 (Bidding Forms). The amount and currency of the bid security shall be:<br>**US$ 175,000.00 (United States Dollar One hundred seventy five thousand) only or an equivalent amount in freely convertible currency**<br>Any Bid not accompanied by a bid security in compliance with the above amount shall be rejected.<br>The Bidder shall submit the original of above bid security with the original technical bid, otherwise the bid shall be rejected. |
| **ITB 21.2** | The ineligibility period will be: Not applicable. |
| **ITB 21.3** | From a scheduled bank located in Employer's country.<br>Bid Security may also be issued in the name of the Joint Venture or any Partner of the JV. |
| **ITB 21.9** | New sub-clause is added as below:<br>**(i)** If a Bidder submitted a bid security/bank guarantee which is issued by any foreign bank located outside Employer's country, such bid security shall be confirmed by a correspondent bank registered in the Employer's country.<br>**(ii)** The authenticity of the Bid Security/ Bank Guarantee submitted by a bidder shall be examined and verified by the Employer in writing from the Bank issuing the Security, prior to finalization of the Evaluation Report.<br>**(iii)** If a Bid Security/ Bank Guarantee is not found authentic, the bid proposal which it covers shall not be considered for subsequent evaluation and |

| | |
|---|---|
| | shall be rejected.<br>**(iv)** Bid not accompanied by a valid Bid Security as stated under Sub-clause 21 shall be considered as non-responsive. |
| **ITB 22.1** | In addition to the original of the bid, the number of copies is:<br>2 (two) hard copies and 2 (two) electronic copies.<br>In case of discrepancies, the hard copy will prevail.<br>• The electronic copy of the technical bid shall be included in the envelope with the original technical bid.<br>• The electronic copy of the price bid shall be included in the envelope with the original price bid.<br>• The electronic copy of the price bid shall additionally include the price schedules in editable format (MS Excel). The price schedules shall, however, also be included as hard copy, duly signed.<br>Packing:<br>• Each technical bid (original, copy 1 and copy 2) shall be packed in a separate "inner" envelope.<br>• These three ‘’inner" envelopes containing the technical bids shall be packed together in one ‘’outer" envelope: Technical Bids<br>• Each price bid (original, copy 1 and copy 2) shall be packed in a separate ‘’inner" envelope.<br>• These three ‘’inner" envelopes containing the price bids shall be packed together in one ‘’outer" envelope: Price Bids |
| **ITB 22.2** | The written confirmation of authorization to sign on behalf of the Bidder shall consist of a written Power of Attorney which should either be:<br>(a) notarized or<br>(b) attested to by an appropriate authority in the bidders’ home country; or (c) authenticated Board resolution to be signed by a person having the power of attorney of the Company. |

## D. Submission and Opening of Bids

| | |
|---|---|
| **ITB 23.1** | Bidders shall not have the option of submitting their bids electronically. |
| **ITB 23.2(c)** | The identification of this bidding process is: Single Stage Single Envelop |
| **ITB 24.1** | For bid submission purposes only, the Employer’s address is<br>Attention: Company Secretary<br>Power Grid Company of Bangladesh Limited |

| | |
|---|---|
| | Head Office, Avenue-03, Jahurul Islam City<br>Aftabnagar, Badda, Dhaka-1212, Bangladesh.<br><br>**The deadline for bid submission is :**<br><br>**Date: December 07, 2022.**<br><br>**Time: 12:00 Hours Local Time (GMT+ 6 hours).** |
| **ITB 27.1** | **The bid opening shall take place at**<br>Power Grid Company of Bangladesh Limited<br>Head Office, Avenue-03, Jahurul Islam City<br>Aftabnagar, Badda, Dhaka-1212, Bangladesh.<br><br>**Date: December 07, 2022.**<br>**Time: 12:05 Hours Local Time (GMT+ 6 hours).** |
| ITB 27.5 | The Letter of Technical Bid shall be initialed by at least three representatives of the Employer attending Technical Bid opening. |
| ITB 27.10 | The Letter of Price Bid and Price Schedules shall be initialed by at least three representatives of the Employer attending the Price Bid opening. |

## E. Evaluation, and Comparison of Bids

| | |
|---|---|
| **ITB 37.1** | The currency that shall be used for bid evaluation and comparison purposes to<br><br>convert all bid prices expressed in various currencies into a single currency is:<br><br>**Bangladesh Taka (BDT).**<br><br>The source of exchange rate shall be: **The selling rate of Bangladesh Bank in Bangladesh.**<br><br>The date for the exchange rate shall be: **the date of opening of the Technical Proposals.** |
| **ITB 38.1** | A margin of preference shall apply.<br><br>The application methodology will be as specified in Section 3 (Evaluation and Qualification Criteria). |
| **ITB 39.5** | Following text shall be added after ITB 39.5:<br><br>If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, then the Employer may increase the amount of the performance security up to 25% of the total Contract Price. |

| | |
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| **ITB 45.3** | New sub-clause is added as below:<br>**(i)** If the Performance Security submitted, under ITB Clause 45 is not found authentic, the Employer shall proceed to take measures against the Bidder in accordance with ITB Clause 3.2.” |

# Section 3 - Evaluation and Qualification Criteria

This section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with ITB 34 and ITB 35, no other methods, criteria, or factors shall be used. The Bidder shall provide all the information requested in the forms included in Section 4 (Bidding Forms).

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# 1. Evaluation

## 1.1 Technical Evaluation

In addition to the criteria listed in ITB 34.1 (a) – (c), the following factors shall apply:
NIL

## 1.2 Economic Evaluation

Any adjustments in price that result from the procedures outlined below shall be added, for purposes of comparative evaluation only to arrive at an "Evaluated Bid Price" or as arithmetic correction.

### 1.2.1 Quantifiable Deviations and Omissions

(a) Pursuant to ITB 33.3 & 39.2, the cost of all quantifiable nonmaterial nonconformities or omissions (minor omissions or missing items) shall be evaluated. The Employer will make its own assessment of the cost of any nonmaterial nonconformities and omissions for the purpose of ensuring fair comparison of bids.

(b) Scope of work of each bid will be examined for completeness and compliance with the contract requirements and If the item(s) appear to be excluded, an amount representing the average amount for excluded items of all other responsive bids will be added to the bid price for evaluation purpose.

If any Bidder has not quoted price against any particular item or kept blank in the price column, the price of that item will be deemed to be included in the total bid price.

(c) if there is a discrepancy between the quantity of any item quoted by the bidder and the quantity specified in the bidding document. The quantity specified in the bidding document shall prevail and the total cost will be corrected by multiplying the unit rate and quantity.

(d) If any bidder quoted any additional item(s) which are not mentioned in the bidding document shall be excluded and the total quoted bid price shall be corrected accordingly.

(e) In case of items quoted without indicating any quantity, the total price quoted against such items shall prevail and the unit price of that item(s) shall be obtained by dividing the total quoted price by the quantity specified in the bidding document.

(f) If

(i) the discount(s)/rebate(s) offered by the Bidder is a percentage discount and the price component(s) on which the said discount is not indicated in the bid, the same shall be considered on the total bid price [i.e. proportionately on each price component], in the event of an award.

(ii) However, if the lump-sum discount is offered, the foreign currency portion of the same shall be considered in full on the foreign currency price component of bid price and the Bangladesh Taka portion shall be considered in full on the Bangladesh Taka price component of the bid price (by proportionately reducing foreign currency/Bangladesh Taka price of individual items), in case of an award.

To obtain the unit price of each item, the discount mentioned in (i) and (ii) above shall be applied proportionately to each of the individual item(s) and the above unit price shall be applicable for the whole of the contract period.

(g) In case no unit price is mentioned but the total price is mentioned against an item, the total price will be divided by the total no. of units of that item that is mentioned by the bidder to find the unit price and the total price shall be corrected by multiplying that unit price with the original no. of unit as mentioned in the bidding document of that item.

(h) In case there is any ambiguity between unit price and total price then the unit price shall prevail and the total price shall be corrected by multiplying that unit price with the original no. of unit as mentioned in the bidding document of that item.

### 1.2.2 Time Schedule

Total time to complete the all plants and services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of commissioning activities is:

**720 (seven hundred twenty) days.**

The bids, indicating a longer time for completion, will be rejected. No credit will be given for earlier completion.

### 1.2.3 Capitalization Cost

#### 1.2.3.1 Capitalization Cost due to transformer loss

Operating costs of the transformers i.e. capitalization cost (Evaluated price of Transformer loss) due to transformer loss evaluation will be taken into account in accordance with the following formula to arrive at an “Evaluated Bid Price.”.

Evaluated price of transformer loss = N.a + L.b + M.c
Where,

N = Average No load loss (core-loss) in kW
L = Average Load loss (copper-loss) at 75°C in kW
M = Total load of transformer cooling fans at transformer maximum continuous rating in kW (when all the cooling fans are in operation)
a = Cost/kW of average no-load loss (core-loss) valued at Taka 600,000.00
b = Cost/kW of average load loss (copper-loss) valued at Taka 300,000.00
c = Cost/kW of auxiliary power valued at Taka 300,000.00

The details of the above are explained in transformer specification in section-4, volume 2 of 3 of the Bidding documents.
If any bidder proposes more than one manufacturer, bid will be evaluated & ranked considering highest capitalization (worst case) value of transformer losses.

**It is noted that the confirmation letter shall be submitted regarding transformer loss in manufacturers letter head pad signed by the person who has issued the manufacturing authorization.**

The acceptance of transformers yielding component losses higher than the guaranteed values shall be governed by either of the following;

i) Component losses in excess of guaranteed values but within the tolerance permitted under IEC60076 Part 1.
Transformers shall be accepted subject to full compliance with all technical particulars including temperature rise at CMR and subject to the Contractor accepting deduction from the Contract Price of changes for each kW on part

thereof component losses in excess of the guaranteed values at the above evaluation rate.

ii) Component losses in excess of guaranteed values and exceeding the tolerance permitted under IEC 60076 Part 1.

The acceptance of transformers shall be entirely at the discretion of the Employer including rejection of the transformers and subject to the Contractor accepting the deduction from the Contract Price of changes for each kW on part thereof component losses in excess of the guaranteed values, at the above loss evaluation rates.

In the event of transformers yielding, component and total losses, which are either equal to or below the guaranteed values, the bidder will not be entitled to any premium in respect of reduction in losses below the guaranteed values.

**1.2.3.2 Capitalization Cost due to capacitor bank**

"The loss of capacitor should not exceed 0.2 Watt/kVar. Evaluation price of the capacitor bank will be equal to total offered cost (CIP) of capacitor bank + capitalization cost due to total losses of capacitor bank.

Guaranteed values for losses of capacitor bank in Watt shall be stated in Schedule E of Particulars and Guarantees by the Bidder.

The cost on losses will be monetized as follows:
Capitalization cost due to total losses of capacitor bank = Tk. 200 x total loss in watt

The details of the above are explained in the technical specifications of the capacitor bank in Section 4 of volume 2 of the bidding documents.

If any bidder proposes more than one manufacturer, bid will be evaluated & ranked considering the highest capitalization (worst case) value of losses.

It is noted that the confirmation letter shall be submitted regarding this loss in manufacturers letter head pad signed by the person who has issued the manufacturing authorization.

**1.2.4 Functional Guarantees of the facilities**

Not applicable.

**1.2.5 Work, services, facilities, etc., to be provided by the Employer**

Not applicable.

**1.2.6 Specific additional criteria**

Not applicable.

**1.2.7 Domestic Preference**

A margin of preference will be granted to eligible domestically produced Plant & Equipment with the following provisions:

(a) The preference margin shall not be applied to the whole facilities but only to the eligible domestically produced Plant & Equipment within the Contract;

(b) Plant & Equipment offered from outside the Employer's country shall be quoted CIP (Section 4, Bidding Forms), and Plant and Equipment offered locally shall be quoted EXW (ex-works, ex-factory, ex warehouse, ex showroom, or off-the-shelf, as applicable) free of sales and similar taxes (Section 4, Bidding Forms).

(c) All other cost components for services and works such as costs for design, local handling, transportation, storage, installation and commissioning shall be quoted as per Section 4, Bidding Forms, Schedule No. 3 – Design Services and Schedule No. 4 – Installation and Other Services;

(d) In the comparison of bids, only the CIP price component of each bid for the plant & equipment [which are offered from domestically by other bidder(s) as mentioned (a) above] offered from outside the Employer's country shall be increased by ten percent (10%). However, to be qualified for domestic preference, the bidder has to submit documentary evidence from their local manufacturers that at least 30% value is added locally through wage and/or raw materials.

(e) No margin of preference shall be applied to any of the services or works included in the contract;

(f) If a bidder proposes a plant/equipment from two or more manufacturers among which some manufacturers are from within Employer's country and other manufacturers from outside Employer's country, then the bidder shall quote price for that plant/equipment either in EXW price column or in CIP price column. In case, such bidder quotes EXW price, then domestic preference will be applied as mentioned above provided that the proposed local (within Employer's country) manufacturer found technically responsive.
If proposed local (within Employer's country) manufacturer found technically non-responsive, domestic preference will not be applicable.

On the other hand, in case, such bidder quotes CIP price for that plant/equipment, then domestic preference will not be applicable.

**1.2.8 For calculating the lowest evaluated price -**

(a) for evaluation purpose, include Customs Duties (CD) and Value Added Tax (VAT) in the case of CIP Bids for imported Goods and include VAT for Goods manufactured locally. The rate of CD & VAT is given below:

| **Plant/Equipment** | **Percentage of CD & VAT to be added with CIP for evaluation purpose** |
|---|---|
| Power Transformer & Shunt Reactor | 17.47% of CIP |
| All other equipment/plants | 23.86% of CIP |

(b) It may be mentioned here that the bidders are required to quote EXW price excluding VAT on EXW for local manufacturers. The VAT on EXW shall be considered as 7.0% of quoted EXW for evaluation purpose. .

**1.2.9** (i) In case the bidder proposes anyone equipment from more than one manufacturer, only one price shall be quoted for such equipment offered in the technical proposal. The bid shall be rejected if the bidder quotes different prices for particular equipment which have been proposed from different manufacturers.

(ii) Bidders shall not be permitted or required to modify the mix of local and foreign Plant and Equipment after bid opening.

## 1.3 Technical Alternatives

Not applicable.

# 2. Qualification

## 2.1 Eligibility

| Criteria | Compliance Requirements | | | | Documents |
|---|---|---|---|---|---|
| | | Joint Venture | | | |
| Requirement | Single Entity | All Partners Combined | Each Partner | At Least One Partner | Submission Requirements |
| **2.1.1 Nationality** | | | | | |
| Nationality in accordance with ITB Sub-Clause 4.2. | must meet requirement | must meet requirement | must meet requirement | not applicable | Forms ELI - 1; ELI - 2 with attachments |
| **2.1.2 Conflict of Interest** | | | | | |
| No conflicts of interest in accordance with ITB Sub-Clause 4.3. | must meet requirement | must meet requirement | must meet requirement | not applicable | Letter of Technical Bid |
| **2.1.3 Eligibility** | | | | | |
| Not having been declared ineligible or Black listed by CPTU or not having any pending dispute (Court case) with PGCB or any other government entity as described in ITB Sub-Clause 4.4. | must meet requirement | must meet requirement | must meet requirement | not applicable | Letter of Technical Bid |
| **2.1.4 Government-owned Entity** | | | | | |
| Bidder required to meet conditions of ITB Sub-Clause 4.5. | must meet requirement | must meet requirement | must meet requirement | not applicable | Forms ELI - 1; ELI - 2 with attachments |
| **2.1.5 UN Eligibility** | | | | | |
| Not having been excluded by an act of compliance with UN Security Council resolution or Employer's country law in accordance with ITB Sub-Clause 4.7. | must meet requirement | must meet requirement | must meet requirement | not applicable | Letter of Technical Bid |

## 2.2 Pending Litigation

| Criteria | Compliance Requirements | | | | Documents |
|---|---|---|---|---|---|
| | | Joint Venture | | | |
| Requirement | Single Entity | All Partners Combined | Each Partner | One Partner | Submission Requirements |
| **2.2.1 Pending Litigation** | | | | | |
| All pending litigation shall be treated as resolved against the Bidder and so shall in total not represent more than **50 percent** of the Bidder's net worth. | must meet requirement by itself or as partner to past or existing JV | not applicable | must meet requirement by itself or as partner to past or existing JV | not applicable | Form LIT - 1 |

## 2.3 Financial Situation

| Criteria | Compliance Requirements | | | | Documents |
|---|---|---|---|---|---|
| | | Joint Venture | | | |
| Requirement | Single Entity | All Partners Combined | Each Partner | One Partner | Submission Requirements |
| **2.3.1 Historical Financial Performance** | | | | | |
| Submission of 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 three (03) years** to demonstrate the current soundness of the Bidder's financial position and its prospective long-term profitability. As a minimum, bidders net worth calculated as the difference between total assets and total liabilities should be positive. | must meet requirement | not applicable | must meet requirement | not applicable | Form FIN - 1 with attachments |
| **2.3.2 Average Annual Turnover** | | | | | |
| Minimum average annual turnover of **USD 9.0 (Nine) million c**alculated as total certified payments received for contracts in progress or completed, for the last three (3) years. | must meet requirement | must meet requirement | must meet 20% of the requirement | must meet 40% of the requirement | Form FIN - 2 |

### 2.3.3 Financial Resources

| | | | | | |
|---|---|---|---|---|---|
| Using Forms FIN – 3 and FIN - 4 in Section 4 (Bidding Forms) the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:<br>the cash-flow /credit facility requirement, USD 1.15 million (US Dollar One point one five million) or equivalent. | must meet requirement | must meet requirement | must meet 20% of the requirement | must meet 40% of the requirement | Form FIN - 3 |

**** The bidder who is currently working as a contractor in more than two projects of PGCB shall submit documentary evidence that they have sufficient financial & technical capabilities to perform this project.**

## 2.4 Experience

### 2.4.1 General Experience

| Criteria | Compliance Requirements | | | | Documents |
|---|---|---|---|---|---|
| | | Joint Venture | | | |
| Requirement | Single Entity | All Partners Combined | Each Partner | One Partner | Submission Requirements |
| All the Bidders must have general experience under contracts in the role of prime contractor (single entity or JV member), Subcontractor, or management contractor in the power sector for at least 10 (ten) years prior to the Bid submission deadline.<br><br>Evidence of above experience shall be submitted in the bid which will be in the user's respective letterhead stationery indicating address, telephone and fax numbers of the user and shall include Name of the project, Name of the Employer, Description of the work, Commissioning date and Contract amount. | Must meet requirement | not applicable | Must meet requirement | not applicable | Form EXP - 1 |

### 2.4.2 Specific Experience

| Criteria | Compliance Requirements | | | | Documents |
|---|---|---|---|---|---|
| Requirement | Single Entity | Joint Venture | | | Submission Requirements |
| | | All Partners Combined | Each Partner | One Partner | |
| Participation as Contractor in at least 3 (three) similar contracts with an aggregate value of USD 11.0 (eleven) million or equivalent that have been successfully completed between the year 2012 and the Bid submission deadline. The above three contracts must meet the criteria mentioned below:<br><br>Scope of each contract must include at least design, supply, delivery, installation, testing & commissioning of new or extension/renovation of existing substation of 110/X kV or higher voltage rated AIS and/or GIS substation with at least two (2) bays of 110/x kV voltage rating or higher.<br><br>The above contracts should meet the criteria mentioned below:<br><br>a) at least one contract shall include 110/X kV or higher voltage power transformer having contract value at least USD 7.0 (Seven) million.<br>b) at least one contract shall be AIS (Air Insulated Switch Gear) type<br>c) at least one contract shall be GIS (Gas Insulated Switch Gear) type<br>d) at least one contracts shall be constructed outside the Bidder's own country or in Bangladesh.<br>e) at least one contracts shall be in successful operation for minimum of three years in between year 2012 and the Bid submission deadline.<br><br>However, the above criteria must be fulfilled within maximum of four Contracts.<br><br>The similarity shall be based on the physical size, complexity, methods, technology or other characteristics as described in Section 6 (Employer's Requirements). | Must meet requirement. | Must meet requirement. | Not applicable | Must meet requirement for two comparable contracts. | Form EXP - 2(a) |

| | | | | | |
|---|---|---|---|---|---|
| All of the above experiences shall be supported by end user's certificates in their letterhead indicating their address, email, telephone & fax number and details of project (i.e. name, address & nationality of customer; details of Contract, voltage & equipment; completion period, commissioning date/commercial operation date, Contract value).<br><br>In case of JV, the partner's contribution shall be not less than 20 % within the contract, otherwise that project will not be considered. | | | | | |

[1]For contracts under which the Bidder participated as a joint venture member, only the Bidder's share, by value, shall be considered to meet this requirement

**(b) Experience in Key Activities (May be complied by specialist subcontractors. Employer shall require evidence of subcontracting agreement for this Bid from Bidder.)**

| Criteria | Compliance Requirements | | | | Documents |
|---|---|---|---|---|---|
| | | Joint Venture | | | |
| **Requirement** | **Single Entity** | **All Partners Combined** | **Each Partner** | **One Partner** | **Submission Requirements** |
| For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities : | must meet requirement | must meet requirement | not applicable | not applicable | Form EXP - 2(b) |
| Not applicable | Not applicable | Not applicable | Not applicable | Not applicable | Not applicable |

## 2.5 Personnel

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

| No. | Position | Total Work Experience in Power Sector (years) | Experience in Similar Works (years) |
|---|---|---|---|
| 1 | Contractor's Representative/Project | ≥15 | ≥10 |

| | | | |
|---|---|---|---|
| | Manager(In case of Joint Venture or Consortium, the Representative must come from the majority shareholder of the JV or consortium) | | |
| 2 | Substation Design Engineer | ≥10 | ≥5 |
| 3 | Site Manager | ≥10 | ≥5 |
| 4 | Control and Protection Engineer | ≥10 | ≥5 |
| 5 | Civil Engineer | ≥10 | ≥5 |
| 6 | Workforce Management / Health & Safety (Accident Prevention) Officer * | ≥5 | ≥3 |

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

The Bidder shall provide details of the proposed personnel and their experience records in the relevant information form included in Volume 1 – Section 4 (Bidding forms).

### 2.6 Equipment

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

| No. | Equipment Type and Characteristics | Min. Number Required |
|---|---|---|
| 1 | Mobile Crane | 1 |
| 2 | Dump truck | 2 |
| 3 | Concrete mixer | 2 |
| 4 | CT analyzer | 1 |
| 5 | Dissolve Gas Analyser | 1 |
| 6 | 5kV Digital Insulation Resistance Tester | 1 |
| 7 | Digital Micro Ohm Meter 0-600 A DC for contact resistance measurement. | 1 |
| 8 | 1 Phase AC Primary injection test set 0- 500A | 1 |
| 9 | Secondary Injection equipment | 1 |
| 10 | Protection relay testing equipment | 1 |
| 11 | Ten delta test equipment | 1 |
| 12 | AC Hipot Tester for XLPE cable | 1 |
| 13 | SF6 Gas Leak Detector | 1 |

The Bidder shall provide further details of proposed items of equipment using Form EQU in Section IV, Bidding Forms. The Contractor must arrange the additional (in quantity and capacity) and/or special equipment which is not mentioned in the above list but technically requires for timely completion of the works. Equipment of the sub-contractors can also be considered as the Contractor's equipment.

### 2.7 Manufacturers/Subcontractors

#### 2.7.1 Manufacturers

Manufacturers for the fallowing major items of plant and services must meet the following minimum criteria, herein listed for that item. Failure to comply with this requirement may result in rejection of the Subcontractor and may result in rejection of the bid also.

A) Evidence from the End Users of satisfactory service of respective equipment will be issued by the end user's respective letterhead stationary indicating:

- official name, address, telephone and fax numbers of the user
- technical details (i.e. kV, MVA/ Current/ Model as applicable) of the equipment
- Installation date
- end user's issuing date in their letter

B) Supply Record of respective equipment will be issued by the manufacturer in manufacturers

Letterhead stationary indicating:

- project/contract name & number against which the equipment has been supplied & installed
- technical details (i.e. kV, MVA & Current, as applicable) of the equipment
- Year of supply
- User name, address, contact information to whom the equipment has been supplied

C) Requirement:

| No. | Equipment/ Services | Minimum Criteria |
|---|---|---|
| 1. | Power transformers 132/33kV | i) Manufacturer's authorization (in case the bidder do not manufacture the proposed equipment).<br>ii) Valid copies of ISO 9001 or equivalent certificates of proposed manufacturers,<br>iii) Manufacturer's proposed factory shall have at least ten (10) years of manufacturing experience of 110/x kV or higher voltage rating power transformer. Bidder shall furnish the above supply record illustrating the supply of at least ten (10) numbers of transformers having similar or higher capacity (Voltage & MVA) supplied outside the manufacturer's own country or in employer's country within last ten (10) years.<br>iv) Evidence from end user for a minimum of three (3) years satisfactory service of similar or higher capacity (voltage & MVA) power transformer(s) as on the date of bid opening. Evidence from end user(s) shall be from respective end user's letterhead stationary indicating address, telephone and fax number.<br>i) Satisfactory Type test reports as per clause 1.3 of section-6 of volume-1 of 3 of the bidding Document for similar or higher rating transformer.<br>v) Technical data sheets, drawings, wiring diagrams, catalogues and other technical documents as per bid document. |
| 2. | Capacitor Bank | i) At least last ten (10) years' experience in manufacturing of similar or higher voltage rating equipment. Bidder shall furnish the supply record of similar or higher rating proposed equipment at least for the last 10 years.<br>ii) Manufacturer's authorization letter.<br>iii) Evidence from end users (at least one) of satisfactory service of similar type equipment with same specification or higher rating for a minimum of three (3) years outside manufacturer's own country or in employer's country as on the date of tender opening.<br>iv) Copies of valid ISO 9001:2015 or equivalent certificates issued by an authorized agency of proposed manufacturer's factory.<br>**v)** Satisfactory Type test reports as per clause 1.3 of section-6 of volume-1 of 3 of the Tender Document for similar rating equipment.<br>vi) Technical data sheets, drawings, wiring diagrams, catalogues and other technical documents as per bid document. |
| 3. | Reactor | i) At least last ten (10) years' experience in manufacturing of similar or higher voltage rating equipment. Bidder shall furnish the supply record of similar or higher rating proposed equipment at least for the last 10 years.<br>ii) Manufacturer's authorization letter.<br>iii) Evidence from end users (at least one) of satisfactory service of similar type equipment with same specification or higher rating for a minimum of three (3) years outside manufacturer's own country |

| No. | Equipment/ Services | Minimum Criteria |
|---|---|---|
| | | or in employer's country as on the date of tender opening.<br>iv) Copies of valid ISO 9001:2015 or equivalent certificates issued by an authorized agency of proposed manufacturer's factory.<br>**v)** Satisfactory Type test reports as per clause 1.3 of section-6 of volume-1 of 3 of the Tender Document for similar rating equipment.<br>vi) Technical data sheets, drawings, wiring diagrams, catalogues and other technical documents as per bid document. |
| 4. | AIS Vacuum Circuit Breaker (33kV) | i) Manufacturer's Authorization (in case the bidder does not manufacture the proposed equipment)<br>ii) Manufacturer's proposed factory shall have at least ten (10) years of manufacturing experience prior to the date of bid submission for similar or higher rating Circuit breaker with minimum delivery of one hundred (100) similar or higher rating circuit breakers including 50 nos. outside manufacturer's country or in employer's country over the last 5 years.<br>iii) Valid Copies of valid ISO 9001:2015 or equivalent certificates issued by an authorized agency of proposed manufacturer's factory.<br>iv) At least one evidence from end users for satisfactory service of similar rating equipment for a minimum of three (3) years outside manufacturer's country or in employer's country as on the date of bid opening.<br>v) Satisfactory Type test reports as per clause 1.3 of section-6 of volume-1 of 3 of the bidding Document for similar rating equipment. |
| 5. | AIS Disconnector Switch (33 kV) | i) Manufacturer's Authorization (in case the bidder does not manufacture the proposed equipment)<br>ii) Manufacturer's proposed factory shall have at least ten (10) years of manufacturing experience prior to the date of bid submission for similar or higher rating disconnector with minimum delivery of one hundred (100) similar or higher rating disconnector including 50 nos. outside manufacturer's country or in employer's country over the last 5 years.<br>iii) Valid Copies of valid ISO 9001:2015 or equivalent certificates issued by an authorized agency of proposed manufacturer's factory.<br>iv) At least one evidence from end users for satisfactory service of similar or higher rating equipment for a minimum of three (3) years outside manufacturer's country or in employer's country as on the date of bid opening.<br>v) Satisfactory Type test reports as per clause 1.3 of section-6 of volume-1 of 3 of the bidding Document for similar or higher rating equipment. |
| 6. | Instrument Transformers (33kV VT) | i) Manufacturer's Authorization (in case the bidder does not manufacture the proposed equipment)<br>ii) Valid ISO 9001 or equivalent certificates of proposed manufactures.<br>iii) Manufacturer's proposed factory shall have at least ten (10) years of manufacturing experience prior to the date of bid submission for similar or higher rating equipment.<br>iv) At least one evidence from end users for satisfactory service of similar or higher rating equipment for a minimum of three (3) years outside manufacturer's country or in employer's country as on the date of bid opening.<br>v) Satisfactory Type test reports as per clause 1.3 of section-6 of volume-1 of 3 of the bidding Document for similar or higher rating equipment. |
| 7. | Instrument Transformers (33kV CT) | i) Manufacturer's Authorization (in case the bidder does not manufacture the proposed equipment)<br>ii) Valid ISO 9001 or equivalent certificates of proposed manufactures.<br>iii) Manufacturer's proposed factory shall have at least ten (10) years of manufacturing experience prior to the date of bid submission for similar or higher rating equipment.<br>iv) At least one evidence from end users for satisfactory service of similar or higher rating equipment for a minimum of three (3) years outside manufacturer's country or in employer's country as on the date of bid opening.<br>v) Satisfactory Type test reports as per clause 1.3 of section-6 of volume-1 of 3 of the bidding Document for similar or higher rating equipment. |
| 8. | Surge Arrester | i) Manufacturer's Authorization (in case the bidder do not manufacture the proposed equipment)<br>ii) Valid ISO 9001 or equivalent certificates of proposed manufactures.<br>iii) At least last ten (10) years of experience in manufacturing minimum similar or higher rating Surge |

| No. | Equipment/ Services | Minimum Criteria |
|---|---|---|
| | | Arresters, with minimum delivery of three hundred (300) similar or higher rating Surge Arresters including 100 nos. outside manufacturer's country over the last 5 years.<br>iv) Evidence from end users (at least one) of satisfactory service of similar type equipment with same specification or higher rating for a minimum of three (3) years outside manufacturer's own country as on the date of bid opening.<br>vi) Satisfactory Type test reports as per clause 1.3 of section-6 of volume-1 of 3 of the bidding Document for similar or higher rating equipment. |
| 9. | XLPE HV Power Cable (33KV) | i) Manufacturers must have ISO 9001:2008 or equivalent certification.<br>ii) Proposed manufacturer(s) should have 10 years of manufacturing experience of XLPE power cable including 33kV or higher rating. Bidder shall submit at least for the last 10 years supply record of XLPE power cable from the proposed manufacturer.<br>i) Evidence from end users (at least one) of satisfactory service of similar type equipment with same specification or higher rating for a minimum of three (3) years outside manufacturer's country or in employer's country as on the date of bid opening.<br>ii) Satisfactory Type test reports as per clause 1.3 of section-6 of volume-1 of 3 of the bidding Document for similar or higher rating equipment.<br>iii) Technical data sheets, drawings, block diagrams, wiring diagrams, catalogues and other technical documents as per bid document. |
| 10. | XLPE Cable Termination | iii) Manufacturers must have ISO 9001:2008 or equivalent certification.<br>iv) Proposed manufacturer(s) should have 10 years of manufacturing experience of XLPE power cable termination similar or higher rating. Bidder shall submit at least for the last 10 years supply record of cable termination from the proposed manufacturer.<br>iv) Evidence from end users (at least one) of satisfactory service of similar type equipment with same specification or higher rating for a minimum of three (3) outside manufacturer's country or in employer's country as on the date of bid opening.<br>v) Satisfactory Type test reports as per clause 1.3 of section-6 of volume-1 of 3 of the bidding Document for similar or higher rating equipment.<br>vi) Technical data sheets, drawings, block diagrams, wiring diagrams, catalogues and other technical documents as per bid document. |
| 11. | Protective Relays and Substation Automation System(SAS) | The bidder shall visit the site and accordingly shall propose manufacturers as per section-5 of volume 2 of the bidding document and shall match with the existing substation protection & SAS system.<br>- Only manufacturer's authorization letter shall be submitted with the bid. |
| 12. | Gas Insulated Switchgear (GIS) | The bidder shall visit the existing substation site and accordingly shall propose same manufacturer with same country of make.<br>- Only manufacturer's authorization letter shall be submitted with the bid. |

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 the form provided in Section 4 (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 5 and meets the minimum criteria listed above for that item.

Bidders shall also submit all other documents which are not mentioned here but mentioned in any other places of the Bidding Document.

If the bidder proposes equipment from the manufacturers as given below, then only **valid ISO 9001, authorization letters and Schedule E (Technical Particulars & Guarantees)** will require to be submitted, no need to provide any other documents as mentioned above:

| Item | Equipment name | Manufacturer and Country of Origin of equipment * |
|---|---|---|
| 1 | Power Cable (XLPE type) | LS Cable and System, Korea<br>TBEA Shandong lunengTaishan Cable Co. Ltd, China<br>Jiangsu Zhongtian Technology Co. Ltd , China<br>Phelps dodge, Thailand<br>Taihan, Korea |
| 2 | Cable Termination | LS Cable and System, Korea<br>Südkabel GmbH, Germany<br>PFISTERER Holding AG, Germany<br>PFISTERER IXOSIL AG, Switzerland<br>CYG Electric co. Ltd. China<br>Changsha Cable Accessories Ltd(CCA), China |
| 3 | Circuit Breaker | SIEMENS, Germany<br>Hitachi(ABB), Sweden<br>GE, France |
| 4 | Disconnector | Hapam, Netherlands<br>Coelme, Italy<br>GE Grid Solutions, Italy |
| 5 | Instrument Transformer | Trench, Italy<br>Arteche, Spain<br>Pfiffner, Switzerland |
| 6 | Surge Arrester | Tridelta, Germany<br>Toshiba, Japan<br>ABB, Sweden<br>SIEMENS, Germany |
| 7 | Disc & Post Insulator | Dalian, China<br>NGK, China<br>NGK, Japan<br>Aditya Birla, India |
| 8 | Battery & Charger | AEG, France<br>Saft, Sweden<br>Statron, Switzerland<br>Benning, Germany/USA<br>Borri, Italy<br>Teletecnica, Italy<br>GAZ, Germany |

# Section 4- Bidding Forms

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# 1. Letter of Technical Bid

**(Issuing Authority's letterhead)**

Invitation for Bid No.: _____

ICB No.: _____

Bid No.: _____

Date: _____

To:

The Company Secretary
Power Grid Company of Bangladesh Limited
Head Office, Avenue-03, Jahurul Islam City
2nd Floor, Aftabnagar
Badda, Dhaka-1212, Bangladesh.

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);
b. We offer to design, manufacture, supply, deliver, install, test and commission in conformity with the Bidding Document the following Plant and Services:

**Design, Supply, Erection, Testing & Commissioning of capacity enhancement and Capacitor Bank installation with associated switchgear in existing grid substation (Package-2, Lot-2).**

c. Our bid consisting of the Technical Bid and the Price Bid shall be valid for a period of ____ 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;
d. We, including any subcontractors or manufacturers for any part of the contract, have or will have nationalities from eligible countries, in accordance with ITB-4.2;
e. We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3;
f. We are not participating, as a Bidder or as a Joint Venture / Consortium partner, in more than one bid in this bidding process in accordance with ITB 4.3, other than alternative offers submitted in accordance with ITB 13;
g. Our firm, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been declared ineligible, under the Employer's country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council;

h. We are not a government owned entity / We are a government owned entity but meet the requirements of ITB 4.5;*

i. We agree to permit the Employer or their representative to inspect our accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by the Employer.

Signature(s) and Seal:

_____

*Signature(s) of the authorized Bidder's representative(s)*
*Place for Seal*

Name(s):

_____

*Name(s) of the authorized Bidder's representative(s)*

Title(s):

_____

*Title(s) of the authorized Bidder's representative(s)*

Duly authorized to sign the Bid for and behalf of:

_____

*Name of Bidder*

Place and Date:

_____

*Place and date*

_____

* Use one of the two options as appropriate

# 2. Letter of Price Bid

**(Issuing Authority's letterhead)**

Invitation for Bid No.: _____

ICB No.: _____

Bid No.: _____

Date: _____

To:

The Company Secretary
Power Grid Company of Bangladesh Limited
Head Office, Avenue-03, Jahurul Islam City
2nd Floor, Aftabnagar
Badda, Dhaka-1212, Bangladesh.

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);

b. We offer to design, manufacture, supply, deliver, install, test and commission in conformity with the bidding document the following plant and services:

***(Insert the relevant Package and Lot Number)***

c. The total price of our Bid, excluding any discounts offered in item (d) below is the sum of:

_____

_____

*(Total price)*

d. The discounts offered and the methodology for their application are:

_____

_____

*(Discount(s) and Methodology)*

e. Our bid shall be valid for a period of ___ 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 notification of award, 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.

i. We agree to permit Employer or its representative to inspect our accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by the Employer.

Signature(s) and Seal:

_____

*Signature(s) of the authorized Bidder's representative(s)*
*Place for Seal*

Name(s):

_____

*Name(s) of the authorized Bidder's representative(s)*

Title(s):

_____

*Title(s) of the authorized Bidder's representative(s)*

Duly authorized to sign the Bid for and behalf of:

_____

*Name of Bidder*

Place and Date:

_____

*Place and date*

# 3. Price Schedules

# 4. Bid Security

*[Bank's Name, and Address of Issuing Branch or Office]*

ICB No.: .....

Invitation for Bid No.: .....

Bid Security/Tender Guarantee No.: .....

Date: .....

Address of guarantor bank:

_____

_____

_____

Address of beneficiary (contracting agency):

_____

_____

_____

We have been informed that _____

_____

_____

*(Name of Tenderer)*

(hereinafter called "the Tenderer") has submitted to you its tender dated _____

(hereinafter called "the Tender") for the execution of _____

_____

_____

*[Name of contract]*

under Invitation to Bidders No. _____

*(The ITB)*

Furthermore, we understand that, according to your conditions, tenders must be supported by a tender guarantee.

At the request of the Tenderer, we _____

_____

*(Name of Bank)*

hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of

_____

*(Amount in figures)*

(_____)

*(Amount in words)*

upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer:

(a) has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Letter of Tender; or

(b) having been notified of the acceptance of its Tender by the Purchaser during the period of tender 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 Tender Document.

This guarantee will expire:

(a) if the Tenderer is the successful Tenderer, upon our receipt of copies of the contract signed by the Tenderer and the performance security issued to you upon the instruction of the Tenderer; and

(b) if the Tenderer is not the successful Tenderer, upon the earlier of

  (i) our receipt of a copy of your notification to the Tenderer of the name of the successful Tenderer; or

  (ii) twenty-eight days after the expiration of the Tenderer's Tender.

(c) no later than _____

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758 or 458 as applicable.

Signature(s) and Seal:

_____

*Signature(s) of the authorized Bank's representative(s) or agent*
*Place for Seal*

Name(s):

_____

*Name(s) of the authorized Bank's representative(s) or agent*

Title(s):

_____

*Title(s) of the authorized Bank's representative(s) or agent*

Place and Date:

_____

*Place and date*

# 5. Declaration of Undertaking

Not Used.

# 6. Technical Proposal

**Site Organization**

**Method Statement**

**Mobilization Schedule**

**Construction Schedule**

**Personnel**

**Equipment**

**Proposed Subcontractors for Major Items of Plant and Services**

**Time Schedule**

## 6.1 Site Organization

## 6.2 Method Statement

## 6.3 Mobilization Schedule

## 6.4 Construction Schedule

## 6.5 Personnel

Bidders should provide the names of suitably qualified personnel to meet the requirements specified in Volume 1 - Section 3 (Evaluation and Qualification Criteria).

The data on their experience should be supplied using the Form below for each candidate.

### 6.5.1 Form PER-1: Proposed Personnel

| | | |
|---|---|---|
| 1. | Title of position* | |
| | Name | |
| 2. | Title of position* | |
| | Name | |
| 3. | Title of position* | |
| | Name | |
| 4. | Title of position* | |
| | Name | |

*As listed in Volume 1 - Section 3 (Evaluation and Qualification Criteria).

### 6.5.2 Form PER-2: Resume of Proposed Personnel

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

Summarize professional experience in reverse chronological order.

Indicate particular technical and managerial experience relevant to the project.

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

## 6.6 Form EQP: Equipment

The Bidder shall provide adequate information to demonstrate clearly that he has the capability to meet the requirements for the key equipment listed in Volume 1 - Section 3 (Evaluation and Qualification Criteria). A separate form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

| **Item of Equipment** | | | | |
|---|---|---|---|---|
| Equipment Information | Name of manufacturer | | Model and power rating | |
| | Capacity | | Year of manufacture | |
| Current Status | Current location | | | |
| | Details of current commitments | | | |
| Source | Indicate source of the equipment<br>☐Owned ☐Rented ☐Leased ☐Specially manufactured | | | |

The Bidder must provide proof of the ownership for own equipment (inventory list, copy of registration, etc.) or following information for hired equipment:

| | | |
|---|---|---|
| Owner | Name of owner | |
| | Address of owner | |
| | Contact name and title | |
| | Telephone | E-mail |
| Agreements | Details of rental / lease / manufacture agreements specific to the project | |

## 6.7 Proposed Subcontractors/Manufacturers for Major Items of Plant and Services

### Manufacturers

Please refer to Schedule D - "Manufacturers, Places of Manufacture and Testing"

### Subcontractors

Please refer to Schedule F - “Proposed Subcontractors”

## Manufacturer's Authorization

*(to be filled by the manufacturer's/their authorized agent on their official letterhead)*

*(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)*

ICB No.: .....

Invitation for Bid No.: .....

Manufacturer's Authorization No.: .....

Date: .....

To:

The Company Secretary
Power Grid Company of Bangladesh Limited
Head Office, Avenue-03, Jahurul Islam City
2nd Floor, Aftabnagar
Badda, Dhaka-1212, Bangladesh.

We, _____

_____

_____

_____

*(Name of Manufacturer or Manufacturer's authorized agent)*

Who are official manufacturers or agent authorized by the manufacturer of:_____

_____

_____

_____

*(Type of Goods)*

Having factory(ies) at: _____

_____

*(Address of Manufacturer's factory(ies))*

Do hereby authorize: _____

_____

_____

_____

*(Name of Bidder)*

To submit a Bid, the purpose of which is to provide the following goods, manufactured by us: _____

_____

_____

_____

_____

*(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 of the General Conditions of Contract, with respect to the goods offered by the above firm.

Signature(s) and Seal:

_____

*Signature(s) of the authorized Manufacturer's representative(s) or agent*
*Place for Seal*

Name(s):

_____

*Name(s) of the authorized Manufacturer's representative(s) or agent*

Title(s):

_____

*Title(s) of the authorized Manufacturer's representative(s) or agent*

Duly authorized to sign the Bid for and behalf of:

_____

*(Name of Manufacturer or Manufacturer's authorized agent)*

Place and Date:

_____

*Place and date*

## 6.8 Time Schedule

To be used by Bidder when alternative time for completion is invited in ITB 13.2.

Not applicable.

# 7. Bidders Qualification

To establish his qualifications to perform the contract in accordance with Volume 1 - Section 3 (Evaluation and Qualification Criteria), the Bidder shall provide the information requested in the corresponding information sheets included hereunder.

## 7.1 Form ELI-1: Bidder's Information Sheet

| **Bidder** | |
|---|---|
| Bidder's legal name | |
| In case of JV / Consortium, legal name of each partner | |
| Bidder's country of constitution | |
| Bidder's year of constitution | |
| Bidder's legal address in country of constitution | |
| **Bidder's authorized representative(s)** | |
| Name(s) | |
| Title(s) | |
| Address(s) | |
| Telephone numbers, fax numbers, e-mail addresses | |

☐ Attached are copies of the following original documents.

1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.
2. Authorization to represent the firm or JV/Consortium named in above, in accordance with ITB 22.2.
3. In case of JV / Consortium, letter of intent to form JV / Consortium or JV / Consortium agreement, in accordance with ITB 4.1.
4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITB 4.5.

## 7.2 Form ELI-2: Joint Venture / Consortium Information Sheet

Each member of a Joint Venture / Consortium must fill in this form.

| **Joint Venture, Consortium** | |
|---|---|
| Bidder's legal name | |
| Joint Venture / Consortium partner's legal name | |
| Joint Venture / Consortium partner's country of constitution | |
| Joint Venture / Consortium partner's year of constitution | |
| Joint Venture / Consortium partner's legal address in country of constitution | |
| **Joint Venture / Consortium Partner's Authorized Representative(s)** | |
| Name(s) | |
| Title(s) | |
| Address(s) | |
| Telephone numbers, Fax numbers, E-mail addresses | |

☐ Attached are copies of the following original documents:

1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.
2. Authorization to represent the firm named above, in accordance with ITB 20.2.
3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5.

## 7.3 Form LIT: Pending Litigation

Each Bidder or member of a Joint Venture / Consortium must fill in this form

| **Pending Litigation** | | | |
|---|---|---|---|
| ☐ No pending litigation<br>in accordance with Criteria 2.2 of Volume 1 - Section 3 (Evaluation and Qualification Criteria)<br>☐ Pending litigation<br>in accordance with Criteria 2.2 of Volume 1 - Section 3 (Evaluation and Qualification Criteria) | | | |
| Year | Matter in Dispute | Value of Pending Claim in USD Equivalent | Value of Pending Claim as a Percentage of Net Worth |
| | | | |
| | | | |
| | | | |
| | | | |

## 7.4 Form FIN-1: Financial Situation

Each Bidder or member of a Joint Venture / Consortium must fill in this form

| **Financial Data for last Three Years (USD Equivalent)** | |
|---|---|
| Year 1: | |
| Year 2: | |
| Year 3: | |
| **Information from the Balance Sheet** | |
| Total assets | |
| Total liabilities | |
| Net worth | |
| Current assets | |
| Current liabilities | |
| **Information from the Income Statement** | |
| Total revenues | |
| Profits before taxes | |
| Profits after taxes | |

☐ Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last three years, as indicated above, complying with the following conditions.

- All such documents reflect the financial situation of the Bidder or partner to a Joint Venture / Consortium, and not sister or parent companies.
- Historic financial statements must be audited by a certified accountant.
- Historic financial statements must be complete, including all notes to the financial statements.
- Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

## 7.5 Form FIN-2: Annual Turnover

Each Bidder or member of a Joint Venture / Consortium must fill in this form

The information supplied should be the Annual Turnover of the Bidder or each member of a Joint Venture / Consortium in terms of the amounts billed to clients for each year for contracts in progress or completed, converted to US Dollars at the rate of exchange at the end of the period reported.

| Annual Turnover Data for the Last Three Years | | | |
|---|---|---|---|
| **Year** | **Amount (Currency)** | **Exchange Rate** | **USD Equivalent** |
| | | | |
| | | | |
| | | | |

## 7.6 Form FIN-3: Financial Resources

Each Bidder or member of a Joint Venture / Consortium must fill in this form.

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 Volume 1 - Section 3 (Evaluation and Qualification Criteria).

| Financial Resources | | |
|---|---|---|
| **No.** | **Source of Financing** | **Amount (USD Equivalent)** |
| 1 | | |
| 2 | | |
| 3 | | |

## 7.7 Form FIN-4: Current Contract Commitments

Each Bidder or member of a Joint Venture / Consortium must fill in this form.

Bidders and each partner to a Joint Venture / Consortium 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.

| **Current Contract Commitments** | | |
|---|---|---|
| 1 | Name of the contract | |
| | Employer (name, address, telephone, e-mail) | |
| | Value of Outstanding Work (Current USD Equivalent) | |
| | Estimated Completion Date | |
| | Average monthly invoicing over last six months (USD/month equivalent) | |
| 2 | Name of the contract | |
| | Employer (name, address, telephone, e-mail) | |
| | Average monthly invoicing over last six months (USD/month equivalent) | |
| | Estimated completion date | |
| | Average monthly invoicing over last six months (USD/month equivalent) | |
| 3 | Name of the contract | |
| | Employer (name, address, telephone, e-mail) | |
| | Value of outstanding work (current USD equivalent) | |
| | Estimated completion date | |
| | Average monthly invoicing over last six months (USD/month equivalent) | |

## 7.8 Form EXP-1: General Experience

Each Bidder must fill in this form. Each Bidder must fill up one (1) form per contract.

| General Experience | |
|---|---|
| Name of the contract | |
| Employer (name, address, telephone, e-mail) | |
| Role of the Bidder | |
| Brief description of the works executed by the Bidder | |

The Bidder shall submit end user's certificates as evidence of the above. These certificates shall be issued by the end user on his letterhead indicating address, telephone, fax number and e-mail of the end user. They shall be signed and sealed by the issuing authority and shall include the following details of each project that has been executed:

- name, address and nationality of customer
- details of contract, rated voltage, type, line length, etc. for transmission lines contracts and/or rated voltage, type of switchyard, transformer capacity, number of bays, etc. for substation contracts
- completion period
- commissioning date/commercial operation
- contract value

## 7.9 Form EXP-2(a): Specific Experience

Each Bidder must fill this form. One form must be filled per contract.

| **Contract of Similar Size and Nature** | |
|---|---|
| Name of the contract | |
| Employer (name, address, telephone, e-mail) | |
| Role of the Bidder | |
| Brief description of the works executed by the Bidder and similarity | |

The Bidder shall submit end user's certificates as evidence of the above. These certificates shall be issued by the end user on his letterhead indicating address, telephone, fax number and e-mail of the end user. They shall be signed and sealed by the issuing authority and shall include the following details of each project that has been executed:

- name, address and nationality of customer
- details of contract, rated voltage, type, line length, etc. for transmission lines contracts and/or rated voltage, type of switchyard, transformer capacity, number of bays, etc. for substation contracts
- completion period
- commissioning date/commercial operation
- contract value

## 7.10 Form EXP-2(b): Specific Experience in Key Activities

Each Bidder must fill this form. One form must be filled per contract.

| **Contract with Similar Activities** | |
|---|---|
| Name of the contract | |
| Employer (name, address, telephone, e-mail) | |
| Role of the Bidder | |
| Brief description of the works executed by the Bidder and similarity | |

The Bidder shall submit end user's certificates as evidence of the above. These certificates shall be issued by the end user on his letterhead indicating address, telephone, fax number and e-mail of the end user. They shall be signed and sealed by the issuing authority and shall include the following details of each project that has been executed:

- name, address and nationality of customer
- details of contract, rated voltage, type, line length, etc. for transmission lines contracts and/or rated voltage, type of switchyard, transformer capacity, number of bays, etc. for substation contracts
- completion period
- commissioning date/commercial operation
- contract value

# Section 5 - Eligible Countries

## Eligible Countries

All countries shall be eligible countries except Israel and if the country of origin is ruled out by sanctions issued by the UN Security Council or sanctions issued by the European Union or the Government of the People's Republic of Bangladesh.

# Part II: Requirements

## Section 6 - Employer’s Requirements (ERQ)

# Section 6- Employer's Requirements

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# 1. Scope of Supply of Plant and Services

## 1.1 General Description of the Scope

| | |
|---|---|
| The number of the Invitation letter for Bids is: | 27.21.0000.101.07.418.22.5935; dated October 25, 2022. |
| The Employer is: | **Power Grid Company of Bangladesh Limited** |
| The name of the ICB is: | **Design, Supply, Erection, Testing & Commissioning of capacity enhancement and Capacitor Bank installation with associated switchgear in existing grid substation (Package-2, Lot-2).** |
| The identification number of the ICB is: | **PGCB/CEEGSTL/SS/Package-2/Lot-2** |
| The number of lots (contracts) comprising this ICB is: | **1 ( One )** |

## 1.2 Brief Description of the Scope of Works

Please refer to Volume 2 of the bidding document.

## Type Test Requirements

Following type test certificates of the equipment of similar or higher specifications (voltage & capacity) required by the bid shall be submitted as per relevant IEC and shall be from any independent testing laboratory.

Type test certificates of Power Transformer of similar or higher specifications (voltage & capacity) required by the tender shall be submitted as per relevant IEC/equivalent standard and shall be issued by STL[1] member testing laboratories or from manufacturer's own testing laboratory. Test carried out at manufacturer's own testing laboratory must have been witnessed and certified by a representative from STL member testing laboratories.

Type test certificates of GIS, Circuit Breaker, Instrument Transformer (CT/VT), Disconnector switch (DS) and Lightning Arrester shall be issued by STL member testing laboratories.

**(i) Power Capacitor Unit**

(a) Thermal stability test
(b) Tangent of dielectric loss angle at elevated temperature
(c) Voltage test between terminals
(d) Impulse voltage test between terminals and container
(e) Short circuit discharge test
(f) Disconnecting test on internal fuses

(g) Endurance test (special test in accordance to IEC 60871-2)

**(ii) Power Transformer**

(h) Temperature rise test.

(i) Dielectric tests (Induced over voltage test, Lightning impulse voltage withstand test, Separate source voltage withstand test / Applied voltage test (AV)).

(j) Short circuit withstand* test (special test)

For 132/33kV Transformer

* Short circuit test certificates/reports shall be of minimum 132kV, 80MVA three phase Power Transformer. For all of the above test, the transformer must be a Grid transformer, generating step-up transformer shall not be acceptable.

**(iii) GIS Switchgear**

(a) On one Complete Switchgear

| Sl No | IEC 62271-203 Clause | Test Name |
|---|---|---|
| i. | 6.2 | Dielectric tests: |
| | | - Lightning impulse voltage tests |
| | | - Power-frequency voltage tests |
| | | |
| ii. | 6.4 | Measurement of the resistance of circuits |
| iii. | 6.5 | Temperature-rise tests |
| iv. | 6.6 | Short-time and peak withstand current tests |
| v. | 6.104 | Pressure test on partitions |
| vi. | 6.105 | Test under conditions of arcing due to an internal fault |
| vii. | 6.106 | Insulator tests |

(b) Circuit Breaker

| Sl No | IEC 62271-203 Clause | Test Name |
|---|---|---|
| i. | 6.101 | Mechanical and environmental tests |
| ii. | 6.103 | Test circuits for short circuit making and breaking tests |
| iii. | 6.108 | Single-phase and double-earth fault tests |
| iv. | 6.109 | Short-line fault tests |
| v. | 6.110 | Out-of-phase making and breaking tests |

(c) Disconnector & Earthing Switch

| Sl No | IEC 62271-203 Clause | Test Name |
|---|---|---|
| i. | 6.101 | Tests to prove the short-circuit making performance of earthing switches |
| ii. | 6.102 | Operating and mechanical endurance tests |
| iii. | 6.106 | Bus-transfer current switching tests |
| iv. | 6.107 | Induced current switching tests |

(d) Gas leakage rate (Per year)

**(iv) Circuit Breaker (AIS)**

(a) Dielectric tests (LI, SI & Power Frequency)
(b) Temperature-rise tests
(c) Short time withstand current and peak withstand current tests
(d) Short circuit Current making & breaking tests
(e) Capacitive current switching tests
(f) Reactor Switching test
(g) Mechanical operation tests.
(h) Out of phase making & breaking test.

**(v) Lightning arrester (AIS)**

(a) Power frequency voltage withstands and lightning impulse voltage withstand
(b) tests on complete arrester housing.
(c) Operating duty test.
(d) Long duration current impulse withstands test.
(e) Residual voltage test.
(f) Pressure relief test/Short circuit test

**(vi) Disconnector (AIS)**

(a) Lightning Impulse voltage withstand dry test.
(b) Switching Impulse voltage withstand dry test.
(c) Power frequency voltage withstand dry test.
(d) Short time withstand current test.
(e) Temperature rise test

**(vii) Voltage Transformer (AIS)**

(a) Temperature rise test.
(b) Impulse voltages (Lightning & Switching Impulse) withstand tests for voltage transformers for service in exposed installation.
(c) Capacitance and tanδ measurement at power-frequency.
(d) Short circuit test
(e) Accuracy tests.
(f) Transient response test

**(viii) Current Transformer (AIS)**

(a) Short time current test.

(b) Impulse voltages withstand tests for current transformers for service in exposed installation.

(c) Power frequency voltage withstand test.

(d) Temperature rise test.

(e) Measurement of Errors

**(ix) XLPE Power Cable**

(a) Bending test followed by partial discharge test

(b) Tan Delta measurement

(c) Heating cycle voltage test

(d) Partial discharge tests: At ambient temperature, and at high temperature.

(e) Switching impulse voltage test

(f) Lightning impulse voltage test

(g) Short Circuit Capability Test

**(x) Other equipment's:** As per relevant IEC or equivalent standards.

For each equipment, the Bidder shall provide the List of performed Type tests as following

| **Equipment** | | | | | |
|---|---|---|---|---|---|
| **No.** | **Type test** | **Name of Type test laboratory** | **Number of Type test report** | **Date of report** | **Number of pages** |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

* The Independent laboratory shall be accredited based on ISO / IEC Guide 25 / 17025 by the national accreditation body of the country where the laboratory is located.

# 2. Specifications

Please refer to Volume 2 of the Bidding Document.

# 3. Drawings

Please refer to Volume 2 of the Bidding Document.

# 4. Supplementary Information

## 4.1 Project Country

The works will be performed in Bangladesh.

## 4.2 Contract Site

The project spreads over Cumilla , Joydevpur , Valuka , Netrokona , Lalmonirhat , Rajendrapur ,Agargaon , Saiadpur , Polashbari .

Port Facilities and Transport to Site
Chittagong, Dhaka, Narayanganj, Benapole and Mongla are the ports of entry for material to Bangladesh by sea and road. Inland transport from Chittagong, Narayanganj, Benapole and Mongla to the site can be by barge or road.

The contractor is responsible for performing all dispatch, shipment, delivery, unloading, inland transportation and obtaining all approvals and consents etc. necessary for the movement of plant and contractors equipment from the port to the site.

All necessary access roads, jetties or offloading points etc. required for the transport of the plant etc. to site will be the Contractor's responsibility.

Where heavy loads are to be moved the Contractor shall be responsible for performing surveys of the routes to ensure that all portions have adequate load bearing capacity.

A comprehensive method statement shall be submitted to the Engineer/ Employer detailing the proposed transport route(s) and requirements. Plans indicating all bridges, ducts, culverts, railway crossings, overhead lines, water mains etc., and their load bearing capacity or clearances as appropriate shall be given together with proposed means of achieving the transportation requirements. Any reinforcement, strengthening, modifications or temporary works required to obtain the necessary capacity shall be the responsibility of the contractor. The cost of the above is to be included in the Bid price.

No plant is to be consigned to Bangladesh by air freight without the prior written approval of the Employer.

# 5. Bank Guarantees and Certificates

## 5.1 Form of Performance Security

Bank's Name, and Address of Issuing Branch or Office
Beneficiary: Name and Address of Employer
Date:
Performance Guarantee No.:

We have been informed that ____ name of the Contractor ____ (hereinafter called "the Contractor") has entered into Contract No. ____ reference number of the Contract ____ dated___ with you, for the execution of name of contract and brief description of Works ____ (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 Contractor, we ____ name of the Bank. ____ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ____name of the currency and amount in figures*. ____ (____ amount in words ____) such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than the earlier of:

(a) 12 months after our receipt of

(i) a copy of the Operational Acceptance Certificate; or
(ii) a registered letter from the Contractor, attaching a copy of the notice to the project manager that the Facilities are ready for commissioning, and stating that 14 days have elapsed from receipt of such notice (or 7 days have elapsed if the notice was a repeated notice) and the project manager has failed to issue a Operational Acceptance Certificate or inform the Contractor in writing of any defects or deficiencies; or
(iii) a registered letter from the Contractor stating that no Operational Acceptance Certificate has been issued but the Employer is making use of the Facilities; or

(b) the ____ day of, 201_.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that of article 15(A.)

_____
Seal of Bank and Signature(s)

## 5.2 Form of Advance Payment Security

Bank's Name, and Address of Issuing Branch or Office
Beneficiary: Name and Address of Employer
Date:
Advance Payment Guarantee No.:

We have been informed that ***name of the Contractor.***(hereinafter called "the Contractor") has entered into Contract No. ***reference number of the Contract.*** dated with you, for the execution of ***name of contract and brief description of Works.***(hereinafter called "the Contract").

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum(the Guarantor shall insert an amount representing the amount of the advance payment 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.).(.amount in words.)is to be made against an advance payment guarantee.

At the request of the Contractor, we ***name of the Bank.*** hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ***name of the currency and amount in figures*.***(***.amount in words.)***upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number ***Contractor's account number.at name and address of the Bank.***

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the day of***(insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee")***, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

_____
Seal of Bank and Signature(s)

## 5.3 Form of Completion Certificate

Contract: [insert name of contract and contract identification details]

Date: _____
Certificate No.:_____

To: [insert name and address of Contractor.]

Dear Ladies and/or Gentlemen,

Pursuant to GC Clause 24 (Completion of the Facilities) of the General Conditions of the Contract entered into between yourselves and the Employer dated [insert date], relating to the [brief description of the Facilities], we hereby notify you that the following part(s) of the Facilities was (were) complete on the date specified below, and that, in accordance with the terms of the Contract, the Employer hereby takes over the said part(s) of the Facilities, together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the Facilities or part thereof: [description]

2. Date of Completion: [date]

However, you are required to complete the outstanding items listed in the attachment hereto as soon as practicable.

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

[Signature]
Project Manager

## 5.4 Form of Operational Acceptance Certificate

Contract: [insert name of contract and contract identification details.]

Date: _____
Certificate No.:_____

To: [insert name and address of Contractor.]

Pursuant to GC Sub-Clause 25.3 (Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the Employer dated [date], relating to the [brief description of the Facilities], we hereby notify you that the following part(s) of the Facilities were satisfactorily attained operational acceptance criteria on the date specified below:

1. Description of the Facilities or part thereof: [description]
2. Date of Operational Acceptance: [date]

Very truly yours,

[Signature]
Project Manager

# 6. Change Orders

## 6.1 Change Order Procedure

### 6.1.1 General

This section provides samples of procedures and forms for implementing changes in the Facilities during the performance of the Contract in accordance with GC Clause 39 (Change in the Facilities) of the General Conditions.

### 6.1.2 Change Order Log

The Contractor shall keep an up-to-date Change Order Log to show the current status of Requests for Change and Changes authorized or pending, as Annex 8. Entries of the Changes in the Change Order Log shall be made to ensure that the log is up-to-date. The Contractor shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the Employer.

### 6.1.3 References for Changes

(1) Request for Change as referred to in GC Clause 39 shall be serially numbered CR-X-nnn.
(2) Estimate for Change Proposal as referred to in GC Clause 39 shall be serially numbered CN-X-nnn.
(3) Acceptance of Estimate as referred to in GC Clause 39 shall be serially numbered CA-X-nnn.
(4) Change Proposal as referred to in GC Clause 39 shall be serially numbered CP-X-nnn.
(5) Change Order as referred to in GC Clause 39 shall be serially numbered CO-X-nnn.

Note:
(a) Requests for Change issued from the Employer's Home Office and the Site representatives of the Employer shall have the following respective references:

| | |
|---|---|
| Home Office | CR-H-nnn |
| Site | CR-S-nnn |

(b) The above number "nnn" is the same for Request for Change, Estimate for Change Proposal, Acceptance of Estimate, Change Proposal and Change Order.

## 6.2 Change Order Forms

### 6.2.1 Request for Change Proposal Form

[Employer's Letterhead]

Date:

To: [Contractor's name and address]

Attention: [Name and title]

Contract Name: [Contract name]
Contract Number: [Contract number]

Dear Ladies and/or Gentlemen:

With reference to the captioned Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within [number] days of the date of this letter [or on or before ( date)].

1. Title of Change: [Title]
2. Change Request No./Rev.: [Number]
3. Originator of Change:
   Employer: [Name]
   Contractor (by Application for Change Proposal No. [Number Refer to Annex 6.2.7]
4. Brief Description of Change: [Description]
5. Facilities and/or Item No. of equipment related to the requested Change: [Description]
6. Reference drawings and/or technical documents for the request of Change:
   Drawing No./Document No. / Description
7. Detailed conditions or special requirements on the requested Change: [Description]
8. General Terms and Conditions:
   (a) Please submit your estimate to us showing what effect the requested Change will have on the Contract Price.
   (b) Your estimate shall include your claim for the additional time, if any, for completion of the requested Change.
   (c) If you have any critical opinion regarding the adoption of the requested Change in connection with the conformability to the other provisions of the Contract or the safety of the Plant or Facilities, please inform us of your opinion in your proposal of revised provisions.
   (d) Any increase or decrease in the work of the Contractor relating to the services of its personnel shall be calculated.
   (e) You shall not proceed with the execution of the work for the requested Change until we have accepted and confirmed the amount and nature in writing.

[Employer's Name]
[Signature]
[Name of signatory]
[Title of signatory]

### 6.2.2 Estimate for Change Proposal Form

[Contractor's Letterhead]

Date

To: [Employer's name and address]

Attention: [Name and title]

Contract Name: [Contract name]
Contract Number: [Contract number]

Dear Ladies and/or Gentlemen:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below-referenced Change Proposal in accordance with GC Sub-Clause 39.2.1 of the General Conditions. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GC Sub-Clause 39.2.2, is required before estimating the cost for change work.

1. Title of Change: [Title]

2. Change Request No./Rev.: [Number]

3. Brief Description of Change: [Description]

4. Scheduled Impact of Change: [Description]
5. Cost for Preparation of Change Proposal: [insert costs which shall be in the currencies of the Contract]

   (a) Engineering (Amount)

      (i) Engineer _____hrs x _ rate/hr = _____

      (ii) Draftsperson _____hrs x _ rate/hr = _____
      Subtotal _____hrs _____
      Total Engineering Cost _____

   (b) Other Cost _____

   Total Cost (a) + (b) _____

[Contractor's Name]
[Signature]
[Name of signatory]
[Title of signatory]

### 6.2.3 Acceptance of Estimate Form

[Employer's Letterhead]

Date:

To: [Contractor's name and address]

Attention: [Name and title]

Contract Name: [Contract name]
Contract Number: [Contract number]

Dear Ladies and/or Gentlemen:

We hereby accept your Estimate for Change Proposal and agree that you should proceed with the preparation of the Change Proposal.

1. Title of Change: [Title]

2. Change Request No./Rev.: [Request number/revision]

3. Estimate for Change Proposal No./Rev.: [Proposal number/revision]

4. Acceptance of Estimate No./Rev.: [Estimate number/revision]

5. Brief Description of Change: [Description]

6. Other Terms and Conditions: In the event that we decide not to order the Change accepted, you shall be entitled to compensation for the cost of preparation of Change Proposal described in your Estimate for Change Proposal mentioned in para. 3 above in accordance with GC Clause 39 of the General Conditions.

[Employer's Name]
[Signature]
[Name of signatory]
[Title of signatory]

### 6.2.4 Change Proposal Form

[Contractor's Letterhead]

Date:

To: [Employer's name and address]

Attention: [Name and title]

Contract Name: [Contract name]
Contract Number: [Contract number]

Dear Ladies and/or Gentlemen:

In response to your Request for Change Proposal No. [Number], we hereby submit our proposal as follows:

1. Title of Change: [Name]

2. Change Proposal No./Rev.: [Proposal number / revision]

3. Originator of Change: Employer: [Name] / Contractor: [Name]

4. Brief Description of Change: [Description]

5. Reasons for Change: [Reason]

6. Facilities and/or Item No. of Equipment related to the requested Change: [Facilities]

7. Reference drawings and/or technical documents for the requested Change: [Drawing/Document No./Description]

8. Estimate of increase/decrease to the Contract Price resulting from Change Proposal:

| | | Amount [insert amounts in the currencies of the Contract] |
|---|---|---|
| (a) | Direct material | _____ |
| (b) | Major construction equipment | _____ |
| (c) | Direct field labour (Total hrs) | _____ |
| (d) | Subcontracts | _____ |
| (e) | Indirect material and labour | _____ |
| (f) | Site supervision | _____ |
| (g) | Head office technical staff salaries | |
| | Process engineer _____hrs @ _____ rate/hr | _____ |
| | Project engineer _____hrs @ _____ rate/hr | _____ |
| | Equipment engineer _____hrs @ _____ rate/hr | _____ |
| | Procurement _____hrs @ _____ rate/hr | _____ |
| | Draftsperson _____hrs @ _____ rate/hr | _____ |

Total _____hrs

| | | |
|---|---|---|
| (h) | Extraordinary costs (computer, travel, etc.) | _____ |
| (i) | Fee for general administration, % of Items | _____ |
| (j) | Taxes and customs duties | _____ |
| | Total lump sum cost of Change Proposal | [Sum of items (a) to (j)] |
| | Cost to prepare Estimate for Change Proposal | [Amount payable if Change is not accepted] |

9. Additional time for Completion required due to Change Proposal

10. Effect on the Functional Guarantees

11. Effect on the other terms and conditions of the Contract

12. Validity of this Proposal: within [Number] days after receipt of this Proposal by the Employer
13. Other terms and conditions of this Change Proposal:
    (a) You are requested to notify us of your acceptance, comments or rejection of this detailed Change Proposal within [Number] days from your receipt of this Proposal.
    (b) The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.
    (c) Contractor's cost for preparation of this Change Proposal: [insert amount. This cost shall be reimbursed by the Employer in case of Employer's withdrawal or rejection of this Change Proposal without default of the Contractor in accordance with GC Clause 39 of the General Conditions]

[Contractor's Name]
[Signature]
[Name of signatory]
[Title of signatory]

### 6.2.5 Change Order Form

[Employer's Letterhead]

Date:

To: [Contractor's name and address]

Attention: [Name and title]

Contract Name: [Contract name]
Contract Number: [Contract number]

Dear Ladies and/or Gentlemen:

We approve the Change Order for the work specified in the Change Proposal (No. [number]), and agree to adjust the Contract Price, Time for Completion and/or other conditions of the Contract in accordance with GC Clause 39 of the General Conditions.

1. Title of Change: [Name]

2. Change Request No./Rev.: [Request number / revision]

3. Change Order No./Rev.: [Order number / revision]

4. Originator of Change: Employer: [Name] / Contractor: [Name]

5. Authorized Price:
   Ref. No.: [Number] Date: [Date]
   Foreign currency portion [Amount] plus Local currency portion [Amount]

6. Adjustment of Time for Completion
   None Increase [Number] days Decrease [Number] days

7. Other effects, if any

Authorized by: _____ Date:
Employer

Accepted by: _____ Date:
Contractor

### 6.2.6 Pending Agreement Change Order Form

[Employer's Letterhead]

Date

To: [Contractor's name and address]

Attention: [Name and title]

Contract Name: [Contract name]
Contract Number: [Contract number]

Dear Ladies and/or Gentlemen:

We instruct you to carry out the work in the Change Order detailed below in accordance with GC Clause 39 of the General Conditions.

1. Title of Change: [Name]

2. Employer's Request for Change Proposal No./Rev.: [number/revision] dated: [date]

3. Contractor's Change Proposal No./Rev.: [number / revision] dated: [date]

4. Brief Description of Change: [Description]

5. Facilities and/or Item No. of equipment related to the requested Change: [Facilities]

6. Reference Drawings and/or technical documents for the requested Change:
   [Drawing / Document No. / Description]

7. Adjustment of Time for Completion:

8. Other change in the Contract terms:

9. Other terms and conditions:

[Employer's Name]
[Signature]
[Name of signatory]
[Title of signatory]

### 6.2.7 Application for Change Proposal Form

[Contractor's Letterhead]

Date

To: [Employer's name and address]

Attention: [***Name and title]***

Contract Name: [Contract name]
Contract Number: [Contract number]

Dear Ladies and/or Gentlemen:

We hereby propose that the below-mentioned work be treated as a Change in the Facilities.

1. Title of Change: [Name]

2. Application for Change Proposal No./Rev.: [Number / revision] dated: [Date]

3. Brief Description of Change: [Description]

4. Reasons for Change:

5. Order of Magnitude Estimation (amount in the currencies of the Contract): [Amount]

6. Scheduled Impact of Change:

7. Effect on Functional Guarantees, if any:

8. Appendix:

[Contractor's Name]
[Signature]
[Name of signatory]
[Title of signatory]

# 7. Form-JV: Form of Joint Venture Agreement

To: The Company Secretary
Power Grid Company of Bangladesh Ltd.

Address: ……

THIS JOINT VENTURE AGREEMENT is made and entered into this the ……th day of……., 20 of the Christian Era.
BETWEEN

M/s.....a company organized and existing under the laws of ……with its registered office located at……..,hereinafter called as "the Partner of the FIRST PART".

AND

M/s.....a company organized and existing under the laws of ……...with its registered office located at……,hereinafter called as "the Partner of the SECOND PART".

**1. Formation of the Joint Venture**

1.1 The partners aforesaid herewith forms a Joint Venture ("Joint Venture") with the following objectives:

- to prepare and submit a joint bid ("bid") to Power Grid Company of Bangladesh ("PGCB") in respect of construction of……, Contract No.……("Project") to be implemented by PGCB.
- to entirely and completely execute and perform the contract concluded between PGCB and the Joint Venture ("Contract").
- to comply with all the relative provisions as set out in the bidding documents of the Project.

1.2 The Joint Venture operates under the name of "……." (PGCB…..Project). The seat of the Joint Venture Partner in Charge shall be at……..Its address is:

.....(PGCB…….Project)

1.3 The Partner of the……..part is the Partner-in Charge of the Joint Venture.

1.4 The percentage of share of the Partner-in Charge of the Joint Venture is more than 50% of the Bid Price of this Contract. The percentage of share of each partner in this Joint Venture Agreement is as follows:

a) First Part:.....% of the Bid Price
b) Second Part:.....% of the Bid Price
c) .....

1.5 Joint Venture's local address shall be: ……..

**2. Supplies and service ("Works")**

2.1 The partners of the Joint Venture shall be jointly and severally responsible for successful execution of the aforesaid Project of PGCB.

2.2 Allocation of supplies and services ("Works") between/among the partners to prepare and submit the bid/offer and to perform the Contract shall cover value and scope as defined in clause 4 and 5 of this Joint Venture Agreement.

**3. Principles of Cooperation**

3.1 Each partner shall be responsible for the completeness of its scope of work and shall bear all risks including commercial and technical risks.

3.2 Each partner shall provide the entirety of supplies and services required for the fulfilment of its share of work.

3.3 Each partner will be totally (technically/commercially) responsible for its own part and will execute its part and shall also be responsible for getting its part tested and approved by PGCB as per contract. It shall also be responsible for removing any and all deviations/deficiencies, which may occur or may be pointed out by PGCB or its Consultant up-till Final Acceptance Certificate (FAC) about the Project.

3.4 Each partner shall contribute working capital for equipment, labour and materials or any expense to be incurred for execution of the Project or any other investment required in connection with implementation of the Project work in proportion to its participation ratio.

3.5 Each partner shall be fully responsible for the fulfilment of all obligations jointly and severally for execution of the contract in the event the Project is awarded to the Joint Venture and shall hold each other harmless and indemnify against any damage arising from its default or non-fulfilment of obligations to perform the respective share of responsibilities as per this Joint Venture Agreement.

3.6 Each partner shall assist each other to the best of its ability and protect mutual interest as if it were its own.

**4. Responsibilities of the Partner in Charge**

In addition to its scope as defined in clause 2.1 hereof

- overall responsibility.
- coordination and supervision of the time schedule, as well as of all technical questions and queries of interest to the partners.
- bidding, commercial negotiation, signing and execution of contract.
- incur liabilities, receive payments, take in instruction for and on behalf of any or all partners during entire execution of the Contract.

## 5. Responsibilities of the Partner of……Part

In addition to its scope as defined in clause 2.1

- it shall keep the Partner in Charge informed of any matter in due time, that may affect performances of the Contract.

## 6. Joint Venture Partner's Authority

6.1 Mr…….. and Mr…….shall represent the Partner of ……Part and the Partner of the……Part respectively and Mr……...shall be the Project Incharge.

## 7. Liability and Warranty

7.1 Liability Arising out of PGCB's Claims

7.1.1 The partners shall be jointly and severally liable to PGCB for the performance of the Contract. With respect to one another, each partner shall be solely responsible for its share of the work.

7.1.2 If PGCB claims penalty or liquidated damages for delay, the partner responsible for the delay shall be solely liable without prejudice to the PGCB's further right to hold the other partner responsible.

7.1.3 Any defect and damage resulting from such defect shall immediately be rectified by the partner in whose share of the work it is located or occurs. These costs shall also include of experts for establishing the defect, for additional measures necessitated as a result of the defect, for changes in the share of the work of another partner necessitated by correction of such defect and for repeat inspections or acceptance tests.

7.2 Liability Arising out of 3rd Party Claims

In case of 3rd party claims, the partner responsible for the event causing the claim shall be solely liable.

7.3 Liability of the Partner with Respect to each other

With respect to claims of the partner against each other, unless governed by Article 6.1 and 6.2 hereof, the following shall apply:

7.3.1 Each partner shall be liable to the other partner for damages which it, its employees, agent or subcontractor, if any, wilfully or negligently cause to the other partner.

## 8. Insurance

The Joint Venture shall arrange all insurance including Erection All Risk insurance for the whole Project as per provisions of the bidding document of PGCB.

**9. Finance and Securities**

Each partner shall bear the cost for any financing of its scope of supplies and services, where PGCB requires guarantee, securities or any other securities, the partner shall share such cost to the extent of the value of their respective scope of supplies and services.

**10. Invoicing and Payment**

The Partner in Charge shall invoice for the Joint Venture's scope of supplies and services to PGCB and receive payments directly.

**11. Bid Security, Performance Bond and Advance Payment Bond**

Bid Security, Performance Bond, Advance Payment Bond etc. will be issued in the name of the Joint Venture or any Partner of the JV. The partners shall bear the costs and risk in the proportion to their participation ratio.

**12. Scope of Joint Venture's Activities**

The activities of the Joint Venture are limited to the bidding and, on being awarded, to the performance of contract with PGCB for execution of the Project.

**13. Arbitration**

Any/all disputes arising out of this agreement shall be amicably and promptly settled upon direct negotiation between/among the parties; otherwise, the dispute shall be referred to arbitration for settlement under the Rules of Arbitration of the International Chamber of Commerce, Paris.

**14. Governing Laws**

This Joint Venture Agreement, supplements and arrangements regarding its performance shall be governed, construed and enforced in accordance with the substantive laws of _____ without reference to other laws.

**15. Supplementary**

The partners may sign supplementary agreement as an amendment to this agreement concerning the relevant matters arising from the performance of the Project. Such supplementary agreement shall come into force with the ratification of PGCB.

**16. Miscellaneous**

No partner shall disclose or divulge this Joint Venture Agreement to any other third party except to PGCB nor shall it assign, pledge, sell or otherwise dispose of or part with all or part of its designated

responsibility to the others without the agreement of PGCB in writing.

**17. Commencement and Validity of the Agreement**

17.1 This Agreement shall come into force upon signing of the partners.

17.2 This Agreement shall terminate:

- when the Project is awarded by PGCB to a bidder other than this Joint Venture.
- in the event of an order, after total performance of the Contract (expiry of period of warranty, payment of the last instalment, return of equipment etc.) and after fulfilment of all obligations of the partners as provided for in this Agreement.

In witness whereof, the partners hereby have caused this Joint Venture Agreement to be executed by their duly authorized representatives as appear below on the day, month and the year first above written.

| | |
|---|---|
| Signed by: | Signed by: |
| …… | …… |
| On behalf of: | On behalf of: |
| …… | …… |
| Witness…… | Witness…… |

# Part III: Condition of Contract and Contract Forms

Section 7- General Condition of Contract (GCC)

Section 8 - Special Condition of Contract (SCC)

Section 9- Contract Forms (COF)

# CONDITIONS OF CONTRACT AND CONTRACT FORMS

# Section 7

# General Conditions of Contract

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# A. Contract and Interpretation

## 1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned them:

"Contract" means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term "the Contract" shall in all such documents be construed accordingly.

"Contract Documents" means the documents listed in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments thereto).

"GCC" means the General Conditions of Contract.

"SCC" means the Special Conditions of Contract.

"day" means calendar day.

"year" means 365 days.

"month" means calendar month.

"Party" means the Employer or the Contractor, as the context requires.

"Employer" means the person named as such in the SCC and includes the legal successors or permitted assigns of the Employer.

"Project Manager" means the person appointed by the Employer in the manner provided in GCC Subclause 17.1 (Project Manager) hereof and named as such in the SCC to perform the duties delegated by the Employer.

"Contractor" means the person(s) named as Contractor in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor.

"Contractor's Representative" means any person nominated by the Contractor and approved by the Employer in the manner provided in GCC Subclause 17.2 (Contractor's Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.

"Construction Manager" means the person appointed by the Contractor's Representative in the manner provided in GCC Subclause 17.2.4.

"Subcontractor," including manufacturers, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant, is sub-contracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.

"Dispute Board" means the person or persons named as such in the SCC appointed by agreement between the Employer and the Contractor to make a decision on or to settle any dispute or difference between the Employer and the Contractor referred to him or her by the

parties pursuant to GCC Subclause 45.1 (Dispute Board) hereof.

"The Bank" means the financing institution named in the SCC.

"Contract Price" means the sum specified in Article 2.1 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.

"Facilities" means the Plant to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract.

"Plant" means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GCC Subclause 7.3 hereof), but does not include Contractor's Equipment.

"Installation Services" means all those services ancillary to the supply of the Plant for the Facilities, to be provided by the Contractor under the Contract, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor's Equipment and the supply of all construction materials required), installation, testing, pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc. as the case may require.

"Contractor's Equipment" means all facilities, equipment, machinery, tools, apparatus, appliances, or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Plant, or other things intended to form or forming part of the Facilities.

"Country of Origin" means the countries and territories eligible under the rules of the Bank as further elaborated in the SCC.

"Site" means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.

"Effective Date" means the date of fulfilment of all conditions stated in Article 3 (Effective Date) of the Contract Agreement, upon which the period until the Time for Completion shall be counted from.

"Time for Completion" means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained, as referred to in GCC Clause 8 and in accordance with the relevant provisions of the Contract.

"Completion" means that the Facilities (or a specific part thereof where specific parts are specified in the Contract) have been completed operationally and structurally and put in a tight and clean condition, that all work in respect of Pre-commissioning of the Facilities or such specific part thereof has been completed, and that the Facili-

ties or specific part thereof are ready for Commissioning as provided in GCC Clause 24 (Completion) hereof.

"Pre-commissioning" means the testing, checking and other requirements specified in the Employer's Requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GCC Clause 24 (Completion) hereof.

"Commissioning" means operation of the Facilities or any part thereof by the Contractor following Completion, which operation is to be carried out by the Contractor as provided in GCC Subclause 25.1 (Commissioning) hereof, for the purpose of carrying out Guarantee Test(s).

"Guarantee Test(s)" means the test(s) specified in the Employer's Requirements to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement in accordance with the provisions of GCC Subclause 25.2 (Guarantee Test) hereof.

"Operational Acceptance" means the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor's fulfilment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GCC Clause 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GCC Clause 25 (Commissioning and Operational Acceptance) hereof.

"Defect Liability Period" means the period of validity of the warranties given by the Contractor commencing at Completion of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 27 (Defect Liability) hereof.

**2. Contract Documents**

2.1 Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

**3. Interpretation**

3.1 In the Contract, except where the context requires otherwise,

a. words indicating one gender include all genders;
b. words indicating the singular also include the plural and words indicating the plural also include the singular;
c. provisions including the word "agree," "agreed," or "agreement" require the agreement to be record in writing;
d. the word "tender" is synonymous with "bid," "tenderer" with "Bidder," and "tender documents" with "Bidding Documents;" and
e. "written" or "in writing" means handwritten, typewritten, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

3.2 Incoterms

Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.

"Incoterms" means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.

3.3 Entire Agreement

Subject to GCC Sub-clause 16.4 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations, and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

3.4 Amendment

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party hereto.

3.5 Independent Contractor

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture, or other joint relationship between the parties hereto. Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives, or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Employer.

3.6 Non-Waiver

3.6.1 Subject to GCC Subclause 3.6.2 below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

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

3.7 Severability

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

3.8 Country of Origin

"Origin" means the place where the plant and component parts thereof are mined, grown, produced, or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components.

**4. Communications**

4.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests, and discharges, these communications shall be

a. in writing and delivered against receipt; and
b. delivered, sent, or transmitted to the address for the recipient's communications as stated in the Contract Agreement.

When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the Project Manager or the other Party, as the case may be.

**5. Law and Language**

5.1 The Contract shall be governed by and interpreted in accordance with laws of the country specified in the SCC.

5.2 The ruling language of the Contract shall be that stated in the SCC.

5.3 The language for communications shall be the ruling language unless otherwise stated in the SCC.

**6. Fraud and Corruption**

6.1 ADB's Anticorruption Policy requires Borrowers (including beneficiaries of ADB-financed activity), as well as Bidders, Suppliers, and Contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB

a. defines, for the purposes of this provision, the terms set forth below as follows:
   i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
   ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
   iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly

the actions of a party;

iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

v) "obstructive practice" means (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an ADB investigation; (b) making false statements to investigators in order to materially impede an ADB investigation; (c) failing to comply with requests to provide information, documents, or records in connection with an Office of Anticorruption and Integrity (OAI) investigation; (d) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (e) materially impeding ADB's contractual rights of audit or access to information; and

vi) "integrity violation" is any act which violates ADB's Anticorruption Policy, including (i) to (v) above and the following: abuse, conflict of interest, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB's Anticorruption Policy, including failure to adhere to the highest ethical standard.

b. will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;

c. will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation;

d. will impose remedial actions on a firm or an individual, at any time, in accordance with ADB's Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participate[1] in ADB-financed, administered, or supported activities or to benefit from an ADB-financed, administered, or supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and

[1] Whether as a Contractor, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document).

e. will have the right to require suppliers and contractors to permit ADB or its representative to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.

# B. Subject Matter of Contract

**7. Scope of Facilities**

7.1 Unless otherwise expressly limited in the Employer's Requirements, the Contractor's obligations cover the provision of all Plant and the performance of all Installation Services required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil works, pre-commissioning and delivery) of the Plant and the installation, completion, and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes, and any other documents as specified in the section Employer's Requirements. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, equipment, spare parts (as specified in GCC Subclause 7.3 below) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures, and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works, and services that will be provided or performed by the Employer, as set forth in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement.

7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.

7.3 In addition to the supply of Mandatory Spare Parts included in the Contract, the Contractor agrees to supply spare parts required for the operation and maintenance of the Facilities for the period specified in the SCC and the provisions, if any, specified in the SCC. However, the identity, specifications, and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Employer and the Contractor, and the price of such spare parts shall be that given in Price Schedule No. 6, which shall be added to the Contract Price. The price of such spare parts shall include the purchase price therefore and other costs and expenses (including the Contractor's fees) relating to the supply of spare parts.

**8. Time for Commencement and Completion**

8.1 The Contractor shall commence work on the Facilities within the period specified in the SCC and without prejudice to GCC Subclause 26.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the Appendix 4

(Time Schedule) to the Contract Agreement.

8.2 The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the time stated in the SCC or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

**9. Contractor's Responsibilities**

9.1 The Contractor shall design, manufacture, including associated purchases and/or subcontracting, install, and complete the Facilities in accordance with the Contract. When completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract.

9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities, including any data as to boring tests provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as of the date 28 days prior to bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.

9.3 The Contractor shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the country where the Site is located, which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Employer under GCC Subclause 10.3 hereof and that are necessary for the performance of the Contract.

9.4 The Contractor shall comply with all laws in force in the country where the Facilities are to be implemented. The laws will include all local, state, national, or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Subclause 10.1 hereof.

9.5 Any plant and services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 1 (Country of Origin). Any Subcontractors retained by the Contractor shall be from a country as specified in GCC Clause 1 (Country of Origin).

9.6 The Contractor shall permit ADB to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have

them audited by auditors appointed by ADB, if so required by ADB.

9.7 If the Contractor is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfilment of the provisions of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Employer.

9.8 Protection of the Environment

a) The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise, and other results of his operations.

b) The Contractor shall ensure that emissions, surface discharges, and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

**10. Employer's Responsibilities**

10.1 All information and/or data to be supplied by the Employer as described in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement shall be deemed to be accurate, except when the Employer expressly states otherwise.

10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.

10.3 The Employer shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities, or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer's name, (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract, and (c) are specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement.

10.4 If requested by the Contractor, the Employer shall use its best endeavours to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities, or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.

10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient,

properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Pre-commissioning, Commissioning, and Guarantee Tests, all in accordance with the provisions of the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement at or before the time specified in the program furnished by the Contractor under GCC Subclause 18.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.

10.6 The Employer shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Subclause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Subclause 25.2.

10.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Employer, except those incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Subclause 25.2.

10.8 In the event that the Employer shall be in breach of any of his obligations imposed by the Contract, then the additional cost reasonably incurred by the Contractor in consequence thereof shall be added to the Contract Price.

# C. Payment

## 11. Contract Price

11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.

11.2 Unless an adjustment clause is provided for in the SCC, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.

11.3 Subject to GCC Subclauses 9.2, 10.1, and 35 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

## 12. Terms of Payment

12.1 The Contract Price shall be paid as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement and in the Appendix (Terms and Procedures of Payment) to the Contract Agreement, which also outlines the procedures to be followed in making application for and processing payments.

12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.

12.3 In the event that the Employer fails to make any payment by its re-

spective due date or within the period set forth in the Contract, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) shown in the Appendix (Terms and Procedures of Payment) to the Contract Agreement for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.

12.4 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the Appendix (Terms and Procedures of Payment) to the Contract Agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's bid.

## 13. Securities

13.1 Issuance of Securities

The Contractor shall provide the securities specified below in favour of the Employer at the times, and in the amount, manner, and form specified below.

13.2 Advance Payment Security

13.2.1 The Contractor shall, within 28 days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the Appendix (Terms and Procedures of Payment) to the Contract Agreement, and in the same currency or currencies.

13.2.2 The security shall be in the form provided in the Bidding Documents or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Employer. The security shall be returned to the Contractor immediately after its expiration.

13.3 Performance Security

13.3.1 The Contractor shall, within 28 days of the notification of contract award, provide a security for the due performance of the Contract in the amount specified in the SCC.

13.3.2 The security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in one of the forms of bank guarantees provided in the Bidding Documents, as stipulated by the Employer in the SCC, or in another form acceptable to the Employer.

13.3.3 Unless otherwise specified in the SCC, the security shall be reduced by half on the date of the Operational Acceptance. The Security shall become null and void, or shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate Time for Completion is provided, 540 days after Completion of the Facilities or 365 days after Operational Acceptance of the Facilities, whichever occurs first; provided, how-

ever, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Subclause 27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to GCC Subclause 27.10, is liable for an extended defect liability obligation, the performance security shall be extended for the period and up to the amount specified in the SCC.

**14. Taxes and Duties**

14.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies, and charges assessed on the Contractor, its Subcontractors, or their employees by all municipal, state, or national government authorities in connection with the Facilities in and outside of the country where the Site is located.

14.2 Notwithstanding GCC Subclause 14.1 above, the Employer shall bear and promptly pay all customs and import duties as well as other local taxes like, e.g., a value-added tax (VAT), imposed by the law of the country where the Site is located on the Plant specified in Price Schedule No. 1 and that are to be incorporated into the Facilities.

14.3 If any tax exemptions, reductions, allowances, or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavours to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies, and charges prevailing at the date 28 days prior to the date of bid submission in the country where the Site is located (hereinafter called "Tax" in this GCC Subclause 14.4).If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 36 hereof.

# D. Intellectual Property

**15. License/Use of Technical Information**

15.1 For the operation and maintenance of the Plant, the Contractor hereby grants a non-exclusive and non-transferable license (without the right to sublicense) to the Employer under the patents, utility models, or other industrial property rights owned by the Contractor or by a third party from whom the Contractor has received the right to grant licenses thereunder, and shall also grant to the Employer a nonexclusive and non-transferable right (without the right to sublicense) to use the know-how and other technical information disclosed to the Employer under the Contract. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how, or other intellectual property right from the Contractor or any third party to the Employer.

15.2 The copyright in all drawings, documents, and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

**16. Confidential Information**

16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during, or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data, and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 16.

16.2 The Employer shall not use such documents, data, and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data, and other information received from the Employer for any purpose other than the design, procurement of Plant, construction, or such other work and services as are required for the performance of the Contract.

16.3 The obligation of a party under GCC Subclauses 16.1 and 16.2 above, however, shall not apply to that information, which

a) now or hereafter enters the public domain through no fault of that party;

b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto; and

c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

16.4 The above provisions of this GCC Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.

16.5 The provisions of this GCC Clause 16 shall survive termination, for whatever reason, of the Contract.

# E. Execution of the Facilities

**17. Representatives**

17.1 Project Manager

If the Project Manager is not named in the Contract, then within 14 days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals, and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information, and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager, except as herein otherwise provided.

17.2 Contractor's Representative and Construction Manager

17.2.1 If the Contractor's Representative is not named in the Contract, then within 14 days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within 14 days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment within 14 days giving the reason therefor, then the Contractor shall appoint a replacement within 14 days of such objection, and the foregoing provisions of this GCC Subclause 17.2.1 shall apply thereto.

17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the performance of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information, and all other communications

under the Contract.

All notices, instructions, information, and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Subclause 17.2.1.

17.2.3 The Contractor's Representative may, subject to the approval of the Employer which shall not be unreasonably withheld, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions, and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Subclause 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.

17.2.4 From the commencement of installation of the Facilities at the Site until Completion, the Contractor's Representative shall appoint a suitable person as the Construction Manager. The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick, or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, the Contractor's Representative or the Construction Manager shall appoint a suitable person to act as the Construction Manager's deputy.

17.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Subclause 22.4. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.

17.2.6 If any representative or person employed by the Contractor is

removed in accordance with GCC Subclause 17.2.5, the Contractor shall, where required, promptly appoint a replacement.

## 18. Work Program

18.1 Contractor's Organization

The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities within 21 days of the Effective Date. The chart shall include the identities of the key personnel, and the curricula vitae of such key personnel to be employed shall be supplied together with the chart. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such an organization chart.

18.2 Program of Performance

Within 28 days after the Effective Date, the Contractor shall submit to the Project Manager a detailed program of performance of the Contract, made in a form acceptable to the Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install, and pre-commission the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion, Commissioning, and Acceptance of the Facilities in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in the Appendix (Time Schedule) to the Contract Agreement and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion given in the SCC and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager.

18.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Subclause 18.2 above, and supply a progress report to the Project Manager every month.

The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.

18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in GCC Subclause 18.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities

within the Time for Completion under GCC Subclause 8.2, any extension thereof entitled under GCC Subclause 40.1, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

18.5 Procedures

The Contract shall be executed in accordance with the Contract Documents including the procedures given in the Forms and Procedures of the Employer's Requirements.

The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.

## 19. Subcontracting

19.1 The Appendix 5 (List of Major Items of Plant and Services and List of Approved Subcontractors) to the Contract Agreement specifies major items of plant and services and a list of approved Subcontractors against each item, including manufacturers. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties, or responsibilities under the Contract.

19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC Subclause 19.1.

19.3 For items or parts of the Facilities not specified in the Appendix (List of Major Items of Plant and Services and List of Approved Subcontractors for Major Items) to the Contract Agreement, the Contractor may employ such Subcontractors as it may select, at its discretion.

19.4 Each subcontract shall include provisions which would entitle the Employer to require the sub-contract to be assigned to the Employer under GCC 19.5 (if and when applicable), or in event of termination by the Employer under GCC 42.2.

19.5 If a Sub-contractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.

## 20. Design and Engineering

20.1 Specifications and Drawings

20.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.

The Contractor shall be responsible for any discrepancies, errors, or omissions in the specifications, drawings, and other

technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.

20.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification, or other document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.

20.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date 28 days prior to date of bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied subject to approval by the Employer and shall be treated in accordance with GCC Clause 39.

20.3 Approval/Review of Technical Documents by Project Manager

20.3.1 The Contractor shall prepare or cause its Subcontractors to prepare, and furnish to the Project Manager the documents listed in the Appendix (List of Documents for Approval or Review) to the Contract Agreement for its approval or review as specified and in accordance with the requirements of GCC Subclause 18.2 (Program of Performance).

Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

GCC Subclauses 20.3.2 through 20.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

20.3.2 Within 14 days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Subclause 20.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes.

If the Project Manager fails to take such action within the said 14 days, then the said document shall be deemed to have been approved by the Project Manager.

20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice. If the Project Manager disapproves a document, he shall spec-

ify the reasons for his decision.

20.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Subclause 20.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to an Dispute Board for determination in accordance with GCC Subclause 45.3 hereof. If such dispute or difference is referred to a Dispute Board, the Project Manager shall give instructions as to whether and, if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Dispute Board upholds the Contractor's view on the dispute and if the Employer has not given notice under Subclause 45.3 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Dispute Board shall decide, and the Time for Completion shall be extended accordingly.

20.3.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

20.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Subclause 20.3.

If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 39 shall apply to such request.

## 21. Procurement

21.1 Materials

Subject to GCC Subclause 14.2, the Contractor shall procure and transport all materials in an expeditious and orderly manner to the Site.

21.2 Employer-Supplied Materials

If the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement provides that the Employer shall furnish any specific items to the Contractor, the following provisions shall apply:

21.2.1 The Employer shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the parties and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GCC Subclause 18.2, unless otherwise mutually agreed.

21.2.2 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect, or default. The Employer shall immediately remedy any shortage, defect, or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect, or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody, and control of the Contractor. The provision of this GCC Subclause 21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.

21.2.3 The foregoing responsibilities of the Contractor and its obligations of care, custody, and control shall not relieve the Employer of liability for any undetected shortage, defect, or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GCC Clause 27 or under any other provision of Contract.

21.3 Transportation

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

21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the materials and the Contractor's Equipment.

21.3.3 Upon dispatch of each shipment of materials and the Contractor's Equipment, the Contractor shall notify the Employer by telex, cable, facsimile, or electronic means, of the description of the materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the parties.

21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the materials and the Contractor's Equipment to the Site. The Employer shall use its best endeavours in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges, or any other traffic facilities that may be caused by the transport of the materials and the Contractor's Equipment to the Site.

21.4 Customs Clearance

The Contractor shall, at its own expense, handle all imported materials and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GCC Subclause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 40.

## 22. Installation

22.1 Setting Out/Supervision

22.1.1 Benchmark

a) The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to benchmarks, reference marks, and lines provided to it in writing by or on behalf of the Employer.

b) If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level, or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.

22.1.2 Contractor's Supervision

The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

22.2 Labour

22.2.1 Engagement of Staff and Labour

a) Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding, and transport.

b) The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled, and unskilled labour as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labour that has the necessary skills.

c) The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labour and personnel to be employed on the Site into the country where the Site is located. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor's personnel.

d) The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.

22.2.2 Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.

22.2.3 Labour Laws

a) The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration, and emigration, and shall allow them all their legal rights.

b) The Contractor shall at all times during the progress of the Contract use its best endeavours to prevent any unlawful, riotous, or disorderly conduct or behaviour by or amongst its employees and the labour of its Subcon-

tractors.

c) The Contractor shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious, or other customs and all local laws and regulations pertaining to the employment of labour.

22.2.4 Rates of Wages and Conditions of Labour

a) The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

b) The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, and allowances as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

22.2.5 Working Hours

a) No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the SCC, unless

i) otherwise stated in the Contract;

ii) the Project Manager gives consent; or

iii the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Project Manager.

b) If and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager's consent thereto, the Project Manager shall not unreasonably withhold such consent.

c) This Subclause shall not apply to any work which is customarily carried out by rotary or double shifts.

22.2.6 Facilities for Staff and Labour

a) Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Per-

sonnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.

b) The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

22.2.7 Health and Safety

a) The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay, and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

b) The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

c) The Contractor shall send to the Project Manager, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety, and welfare of persons, and damage to property, as the Project Manager may reasonably require.

22.2.8 Funeral Arrangements

In the event of the death of any of the Contractor's personnel or accompanying members of their families, the Contractor shall be responsible for making the appropriate arrangements for their return or burial, unless otherwise specified in the SCC.

22.2.9 Records of Contractor's Personnel

The Contractor shall keep accurate records of the Contractor's personnel, including the number of each class of Contractor's Personnel on the Site and the names, ages, gender, hours worked, and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the Contractor has completed all work.

22.2.10 Supply of Foodstuff

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

22.2.11 Supply of Water

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

22.2.12 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

22.2.13 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give barter, or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter, or disposal by Contractor's Personnel.

22.2.14 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

22.2.15 Prohibition of All Forms of Forced or Compulsory Labour

The contractor shall not employ "forced or compulsory labour" in any form. "Forced or compulsory labour" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

22.2.16 Prohibition of Harmful Child Labour

The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

22.3 Contractor's Equipment

22.3.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.

22.3.2 Unless otherwise specified in the Contract, upon completion of

the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

22.3.3 The Employer will, if requested, use its best endeavours to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

22.4 Site Regulations and Safety

The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Project Manager, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.

22.5 Opportunities for Other Contractors

22.5.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Employer on or near the Site.

22.5.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.

22.5.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.

22.5.4 The Contractor shall notify the Project Manager promptly of any defects in the other Contractors' work that come to its notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the

Contractor.

22.6 Emergency Work

If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.

If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause such work to be done as the Employer may determine is necessary in order to prevent damage to the Facilities. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

22.7 Site Clearance

22.7.1 Site Clearance in Course of Performance

In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store, or remove any surplus materials, clear away any wreckage, rubbish, or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

22.7.2 Clearance of Site after Completion

After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish, and debris of any kind from the Site, and shall leave the Site and Facilities in a clean and safe condition.

22.8 Watching and Lighting

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

**23. Test and Inspection**

23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and any part of the Facilities as are specified in the Contract.

23.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection.

23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the Employer or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

23.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

23.6 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Subclause 23.3.

23.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Plant or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred to an Dispute Board for determination in accordance with GCC Subclause 45.3.

23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.

23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC Subclause 23.4, shall release the Contractor from any other responsibilities under the Contract.

23.10 No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable no-

tice to the Project Manager whenever any such parts of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.

23.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.

If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Subclause 23.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

## 24. Completion of the Facilities

24.1 As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Employer's Requirements, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.

24.2 Within 7 days after receipt of the notice from the Contractor under GCC Subclause 24.1, the Employer shall supply the operating and maintenance personnel specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement for Pre-commissioning of the Facilities or any part thereof.

Pursuant to the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement, the Employer shall also provide, within the said 7-day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services, and other matters required for Pre-commissioning of the Facilities or any part thereof.

24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services, and other matters have been provided by the Employer in accordance with GCC Subclause 24.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GCC Subclause 25.5.

24.4 As soon as all works in respect of Pre-commissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall so notify the Project Manager in writing.

24.5 The Project Manager shall, within 14 days after receipt of the Contractor's notice under GCC Subclause 24.4, either issue a Completion Certificate in the form specified in the Employer's Requirements (Forms and Procedures), stating that the Facilities or that part thereof

have reached Completion as of the date of the Contractor's notice under GCC Subclause 24.4, or notify the Contractor in writing of any defects and/or deficiencies.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC Subclause 24.4.

If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within 7 days after receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice.

If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within 7 days after receipt of the Contractor's repeated notice, and the above procedure shall be repeated.

24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within 14 days after receipt of the Contractor's notice under GCC Subclause 24.4 or within 7 days after receipt of the Contractor's repeated notice under GCC Subclause 24.5, or if the Employer makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Employer's use of the Facilities, as the case may be.

24.7 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.

24.8 Upon Completion, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

## 25. Commissioning and Operational Acceptance

25.1 Commissioning

25.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GCC Subclause 24.5, or immediately after the date of the deemed Completion, under GCC Subclause 24.6.

25.1.2 The Employer shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services, and other matters required for Commissioning.

25.1.3 In accordance with the requirements of the Contract, the Contractor's and Project Manager's advisory personnel shall attend

the Commissioning, including the Guarantee Test, and shall advise and assist the Employer.

25.2 Guarantee Test

25.2.1 Subject to GCC Subclause 25.5, the Guarantee Test and repeats thereof shall be conducted by the Contractor during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement. The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.

25.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion specified in the SCC or any other period agreed upon by the Employer and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCC Subclauses 28.2 and 28.3 shall not apply.

25.3 Operational Acceptance

25.3.1 Subject to GCC Subclause 25.4 below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when

a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or

b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor within the period from the date of Completion specified in the SCC, or any other agreed upon period as specified in GCC Subclause 25.2.2 above; or

c) the Contractor has paid the liquidated damages specified in GCC Subclause 28.3 hereof; and

d) any minor items mentioned in GCC Subclause 24.7 hereof relevant to the Facilities or that part thereof have been completed.

25.3.2 At any time after any of the events set out in GCC Subclause 25.3.1 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Employer's Requirements (Forms and Procedures)in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.

25.3.3 The Project Manager shall, after consultation with the Em-

ployer, and within 7 days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

25.3.4 If within 7 days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the Contractor's said notice.

25.4 Partial Acceptance

25.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

25.4.2 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.

25.5 Delayed Pre-Commissioning and/or Guarantee Test

25.5.1 In the event that the Contractor is unable to proceed with the Pre-commissioning of the Facilities pursuant to Subclause 24.3, or with the Guarantee Test pursuant to Subclause 25.2, for reasons attributable to the Employer either on account of non-availability of other facilities under the responsibilities of other contractor(s), or for reasons beyond the Employer's control, the provisions leading to "deemed" completion of activities such as Completion, pursuant to GCC Subclause 24.6, and Operational Acceptance, pursuant to GCC Subclause 25.3.4, and Contractor's obligations regarding Defect Liability Period, pursuant to GCC Subclause 27.2, Functional Guarantee, pursuant to GCC Clause 28, and Care of Facilities, pursuant to GCC Clause 32, and GCC Clause 41.1, Suspension, shall not apply. In this case, the following provisions shall apply.

25.5.2 When the Contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above Subclause 25.5.1, the Contractor shall be entitled to the following:

a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Subclause 26.2;

b) payments due to the Contractor in accordance with the provision specified in the Appendix (Terms and Proce-

dures of Payment) to the Contract Agreement, which would not have been payable in normal circumstances due to non-completion of the subject activities, shall be released to the Contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the Employer, and which shall become null and void when the Contractor will have complied with its obligations regarding those payments, subject to the provision of Subclause 25.5.3 below;

c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Employer;

d) the additional charges towards the care of the Facilities pursuant to GCC Subclause 32.1 shall be reimbursed to the Contractor by the Employer for the period between the notification mentioned above and the notification mentioned in Subclause 25.5.4 below. The provision of GCC Subclause 33.2 shall apply to the Facilities during the same period.

25.5.3 In the event that the period of suspension under above Subclause 25.5.1 actually exceeds 180 days, the Employer and Contractor shall mutually agree to any additional compensation payable to the Contractor.

25.5.4 When the Contractor is notified by the Project Manager that the plant is ready for Pre-commissioning, the Contractor shall proceed without delay in performing all the specified activities and obligations under the contract.

# F. Guarantees and Liabilities

**26. Completion Time Guarantee**

26.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified) within the Time for Completion specified in the SCC pursuant to GCC Subclause 8.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

26.2 If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under GCC Clause 40, the Contractor shall pay to the Employer liquidated damages in the amount specified in the SCC as a percentage rate of the Contract Price or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as "Maximum" in the SCC as a percentage rate of the Contract Price. Once the "Maximum" is reached, the Employer may consider termination of the Contract, pursuant to GCC Subclause 42.2.2.

Such payment shall completely satisfy the Contractor's obligation to

attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GCC Clause 40. The Contractor shall have no further liability whatsoever to the Employer in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.

Save for liquidated damages payable under this GCC Subclause 26.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in the Appendix (Time Schedule) to the Contract Agreement and/or other program of work prepared pursuant to GCC Subclause 18.2 shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.

26.3 If the Contractor attains Completion of the Facilities or any part thereof before the Time for Completion or any extension thereof under GCC Clause 40, the Employer shall pay to the Contractor a bonus in the amount specified in the SCC. The aggregate amount of such bonus shall in no event exceed the amount specified as "Maximum" in the SCC.

## 27. Defect Liability

27.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials, and workmanship of the Plant supplied and of the work executed.

27.2 The Defect Liability Period shall be 540 days from the date of Completion of the Facilities (or any part thereof) or 1 year from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the SCC pursuant to GCC Subclause 27.10.

If during the Defect Liability Period any defect should be found in the design, engineering, materials, and workmanship of the Plant supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace, or otherwise make good as the Contractor shall determine at its discretion, such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement, or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:

a) improper operation or maintenance of the Facilities by the Employer,

b) operation of the Facilities outside specifications provided in the Contract, or

c) normal wear and tear.

27.3 The Contractor's obligations under this GCC Clause 27 shall not apply to:

a) any materials that are supplied by the Employer under GCC

Subclause 21.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;

b) any designs, specifications or other data designed, supplied, or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein; or

c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC Subclause 27.7.

27.4 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.

27.5 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 27.

The Contractor may, with the consent of the Employer, remove from the Site any Plant or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

27.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.

If such part fails the tests, the Contractor shall carry out further repair, replacement or making good, as the case may be, until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Contractor.

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

27.8 If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Employer because of any of the aforesaid reasons.

27.9 Except as provided in GCC Clauses 27 and 33, the Contractor shall

be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant, design, or engineering, or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal, or wilful action of the Contractor.

27.10 In addition, any such component of the Facilities and during the period of time as may be specified in the SCC shall be subject to an extended Defect Liability Period. Such obligation of the Contractor shall be in addition to the Defect Liability Period specified under GCC Subclause 27.2.

## 28. Functional Guarantees

28.1 The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement, subject to, and upon the conditions therein specified.

28.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications, and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications, and/or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GCC Subclause 42.2.2.

28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Contract Agreement is met, the Contractor shall, at the Contractor's option, either

a) make such changes, modifications, and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test or

b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Appendix (Functional Guarantees) to the Contract Agreement.

28.4 The payment of liquidated damages under GCC Subclause 28.3, up to the limitation of liability specified in the Appendix (Functional Guarantees) to the Contract Agreement, shall completely satisfy the Contractor's guarantees under GCC Subclause 28.3, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Con-

tractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

**29. Patent Indemnity**

29.1 The Contractor shall, subject to the Employer's compliance with GCC Subclause 29.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions, or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of(a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the Site is located, and (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Contractor, pursuant to the Contract Agreement.

29.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GCC Subclause 29.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within 28 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the 28-day period, the Employer shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

29.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or de-

signed by or on behalf of the Employer.

**30. Limitation of Liability**

30.1 Except in cases of criminal negligence or wilful misconduct,

a) the Contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer, and

b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed a multiple of the Contract Price specified in the SCC or, if a multiple is not so specified, the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

# G. Risk Distribution

**31. Transfer of Ownership**

31.1 Ownership of the Plant (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant from the country of origin to that country.

31.2 Ownership of the Plant (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant are brought on to the Site.

31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.

31.4 Ownership of any Plant in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Employer and the Contractor agree that the Plant in question are no longer required for the Facilities.

31.5 Notwithstanding the transfer of ownership of the Plant, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant are incorporated.

**32. Care of Facilities**

32.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GCC Clause 24 or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof

from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 27. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Subclauses 32.2 and 38.1.

32.2 If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of

a) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 hereof; or

b) any use or occupation by the Employer or any third party other than a Subcontractor, authorized by the Employer of any part of the Facilities; or

c) any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein,

the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed, or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed, or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GCC Clause 39. If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer shall terminate the Contract pursuant to GCC Subclause 42.1 hereof.

32.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GCC Subclause 32.2 with respect to the Contractor's temporary facilities, and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Subclauses 32.2 (b) and (c) and

38.1.

32.4 With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GCC Subclause 38.1, the provisions of GCC Subclause 38.3 shall apply.

**33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification**

33.1 Subject to GCC Subclause 33.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions, or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property other than the Facilities whether accepted or not, arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers, or agents, except any injury, death, or property damage caused by the negligence of the Employer, its contractors, employees, officers, or agents.

33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GCC Subclause 33.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within 28 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the 28-day period, the Employer shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers, and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34, provided that such fire, explosion, or other perils were not caused by any act or failure of the Contractor.

33.4 The party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

## 34. Insurance

34.1 To the extent specified in the Appendix (Insurance Requirements) to the Contract Agreement, 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 in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

a) Cargo Insurance During Transport

Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Plant (including spare parts therefor) and to the Contractor's Equipment.

b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion 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.

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 occurring in connection with the supply and installation of the Facilities.

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 execution of the Contract.

e) Workers' Compensation

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

f) Employer's Liability

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

g) Other Insurances

Such other insurances as may be specifically agreed upon by the parties hereto as listed in the Appendix (Insurance Requirements) to the Contract Agreement.

34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Subclause 34.1, except for the Third Party Liability, 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 GCC Subclause 34.1 except for the Cargo Insurance During Transport, 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.

34.3 The Contractor shall, in accordance with the provisions of the Appendix (Insurance Requirements) to the Contract Agreement, deliver to the Employer certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than 21 days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.

34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.

34.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the Appendix (Insurance Requirements) to the Contract Agreement, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insureds under all such policies. All insurers' 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. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than 21 days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GCC Subclause 34.5.

34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Subclause 34.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor.If the Employer fails to take out and/or maintain in effect the insurances referred to in GCC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.

34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 34, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

## 35. Unforeseen Conditions

35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities including any data as to boring tests, provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant or Contractor's Equipment, notify the Project Manager in writing of

a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;

b) the additional work and/or Plant and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;

c) the extent of the anticipated delay; and

d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GCC Subclause 35.1, the Project Manager shall promptly consult with the Employer and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Subclause 35.1 shall be paid by the Employer to the Contractor as an

addition to the Contract Price.

35.3 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Subclause 35.1, the Time for Completion shall be extended in accordance with GCC Clause 40.

**36. Change in Laws and Regulations**

36.1 If, after the date 28 days prior to the date of Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated, or changed, which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the SCC, pursuant to GCC Subclause 11.2.

**37. Force Majeure**

37.1 "Force Majeure" shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:

a) war, hostilities, or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war;

b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts;

c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;

d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;

e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear, and pressure waves or other natural or physical disaster; and

f) shortage of labour, materials, or utilities where caused by circumstances that are themselves Force Majeure.

37.2 If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within 14 days after the occur-

rence of such event.

37.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The Time for Completion shall be extended in accordance with GCC Clause 40.

37.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GCC Subclauses 37.6 and 38.5.

37.5 No delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall

a) constitute a default or breach of the Contract; or

b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GCC Subclauses 32.2, 38.3 and 38.4

if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.

37.6 If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than 60 days or an aggregate period of more than 120 days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under GCC Subclause 38.5.

37.7 In the event of termination pursuant to GCC Subclause 37.6, the rights and obligations of the Employer and the Contractor shall be as specified in GCC Subclauses 42.1.2 and 42.1.3.

37.8 Notwithstanding GCC Subclause 37.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

## 38. War Risks

38.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of GCC Subclause 37.1 and any explosion or impact of any mine, bomb, shell, grenade, or other projectile, missile, munitions or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.

38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to

a) destruction of or damage to Facilities, Plant, or any part thereof;

b) destruction of or damage to property of the Employer or any third party; or

c) injury or loss of life

if such destruction, damage, injury or loss of life is caused by any war risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges, or expenses arising in consequence of or in connection with the same.

38.3 If the Facilities or any Plant or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any war risks, the Employer shall pay the Contractor for

a) any part of the Facilities or the Plant so destroyed or damaged to the extent not already paid for by the Employer and so far as may be required by the Employer, and as may be necessary for completion of the Facilities;

b) replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged; and

c) replacing or making good any such destruction or damage to the Facilities or the Plant or any part thereof.

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction, or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GCC Subclause 42.1.

If the Employer requires the Contractor to replace or make good on any such destruction or damage to the Facilities, the Time for Completion shall be extended in accordance with GCC 40.

38.4 Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any war risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.

38.5 If during the performance of the Contract any war risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any war risks, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other.

38.6 In the event of termination pursuant to GCC Subclauses 38.3 or 38.5, the rights and obligations of the Employer and the Contractor shall be specified in GCC Subclauses 42.1.2 and 42.1.3.

# H. Change in Contract Elements

## 39. Change in the Facilities

39.1 Introducing a Change

39.1.1 Subject to GCC Subclauses 39.2.5 and 39.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition, or deletion to, in or from the Facilities hereinafter called "Change," provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.

39.1.2 The Contractor may from time to time during its performance of the Contract propose to the Employer with a copy to the Project Manager, any Change that the Contractor considers necessary or desirable to improve the quality, efficiency, or safety of the Facilities. The Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer shall approve any Change proposed by the Contractor to ensure the safety of the Facilities.

39.1.3 Notwithstanding GCC Subclauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

39.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Subclauses 39.2 and 39.3, and further details and forms are provided in the Employer's Requirements (Forms and Procedures).

39.2 Changes Originating from Employer

39.2.1 If the Employer proposes a Change pursuant to GCC Subclause 39.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

a) brief description of the Change,

b) effect on the Time for Completion,

c) estimated cost of the Change,

d) effect on Functional Guarantees (if any),

e) effect on the Facilities, and

f) effect on any other provisions of the Contract.

39.2.2 Prior to preparing and submitting the "Change Proposal," the Contractor shall submit to the Project Manager an "Estimate for Change Proposal," which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor's Estimate for Change Proposal, the Employer shall do one of the following:

a) accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal,

b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate

c) advise the Contractor that the Employer does not intend to proceed with the Change.

39.2.3 Upon receipt of the Employer's instruction to proceed under GCC Subclause 39.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Subclause 39.2.1.

39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.

39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than 15%, the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

39.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within 14 days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Employer is unable to reach a decision within 14 days, it shall notify the Contractor with details of when the Contractor

can expect a decision.

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of 14 days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GCC Subclause 39.2.2.

39.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

If the parties cannot reach agreement within 60 days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Dispute Board in accordance with the provisions of GCC Subclause 45.3.

39.3 Changes Originating from Contractor

39.3.1 If the Contractor proposes a Change pursuant to GCC Subclause 39.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Subclause 39.2.1.

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Subclauses 39.2.6 and 39.2.7. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

## 40. Extension of Time for Completion

40.1 The Time(s) for Completion specified in the SCC shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

a) any Change in the Facilities as provided in GCC Clause 39;

b) any occurrence of Force Majeure as provided in GCC Clause 37, unforeseen conditions as provided in GCC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Subclause 32.2;

c) any suspension order given by the Employer under GCC Clause 41 hereof or reduction in the rate of progress pursuant to GCC Subclause 41.2; or

d) any changes in laws and regulations as provided in GCC Clause 36; or

e) any default or breach of the Contract by the Employer, or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer; or

f) any other matter specifically mentioned in the Contract; or

g) any delay on the part of a sub-contractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this Subclause

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to a Dispute Board, pursuant to GCC Subclause 45.3.

40.3 The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

In all cases where the Contractor has given a notice of a claim for an extension of time under GCC 40.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions, which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GCC 40.1, the amount of such extra costs shall be added to the Contract Price.

## 41. Suspension

41.1 The Employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an

aggregate period of more than 90 days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within 28 days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 39, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 or, where it affects the whole of the Facilities, as termination of the Contract under GCC Subclause 42.1.

41.2 If

a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix (Terms and Procedures of Payment) to the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Subclause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within 14 days after receipt of the Contractor's notice; or

b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GCC Subclause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,

then the Contractor may by 14 days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

41.3 If the Contractor's performance of its obligations is suspended, or the rate of progress is reduced pursuant to this GCC Clause 41, then the Time for Completion shall be extended in accordance with GCC Subclause 40.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

41.4 During the period of suspension, the Contractor shall not remove from the Site any Plant, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Employer.

## 42. Termination

42.1 Termination for Employer's Convenience

42.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GCC Subclause 42.1.

42.1.2 Upon receipt of the notice of termination under GCC Subclause 42.1.1, the Contractor shall, either immediately or upon the date specified in the notice of termination,

a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition;

b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below;

c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition; and

d) subject to the payment specified in GCC Subclause 42.1.3,

i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination;

ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and

iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.

42.1.3 In the event of termination of the Contract under GCC Subclause 42.1.1, the Employer shall pay to the Contractor the following amounts:

a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination;

b) the costs reasonably incurred by the Contractor in the

removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel;

c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;

d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Subclause 42.1.2; and

e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

42.2 Termination for Contractor's Default

42.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this GCC Subclause 42.2:

a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up, other than a voluntary liquidation for the purposes of amalgamation or reconstruction, a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt;

b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 43; and

c) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices, as defined in GCC Clause 6, in competing for or in executing the Contract.

42.2.2 If the Contractor

a) has abandoned or repudiated the Contract;

b) has without valid reason failed to commence work on the Facilities promptly or has suspended, other than pursuant to GCC Subclause 41.2, the progress of Contract performance for more than 28 days after receiving a written instruction from the Employer to proceed;

c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its

obligations under the Contract without just cause;

d) refuses or is unable to provide sufficient materials, services or labour to execute and complete the Facilities in the manner specified in the program furnished under GCC Subclause 18.2 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the Time for Completion as extended;

then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor, stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within 14 days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GCC Subclause 42.2.

42.2.3 Upon receipt of the notice of termination under GCC Subclauses 42.2.1 or 42.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition;

b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below;

c) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination;

d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and

e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equip-

ment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Employer considers expedient for the supply and installation of the Facilities.

Upon completion of the Facilities or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

42.2.5 Subject to GCC Subclause 42.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Plant on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Subclause 42.2.3. Any sums due the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

42.2.6 If the Employer completes the Facilities, the cost of completing the Facilities by the Employer shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to GCC Subclause 42.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under GCC Subclause 42.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GCC Subclause 42.2.5, the Employer shall pay the balance to the Contractor.

The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

42.3 Termination by Contractor

42.3.1 If

a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix (Terms and Procedures of Payment) to the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Subclause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and

requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within 14 days after receipt of the Contractor's notice; or

b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities;

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within 28 days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within 28 days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Subclause 42.3.1, forthwith terminate the Contract.

42.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GCC Subclause 42.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

42.3.3 If the Contract is terminated under GCC Subclauses 42.3.1 or 42.3.2, then the Contractor shall immediately

a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition;

b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii);

c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site; and

d) subject to the payment specified in GCC Subclause 42.3.4,

i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of ter-

mination;

ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and

iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.3.4 If the Contract is terminated under GCC Subclauses 42.3.1 or 42.3.2, the Employer shall pay to the Contractor all payments specified in GCC Subclause42.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

42.3.5 Termination by the Contractor pursuant to this GCC Subclause 42.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Subclause 42.3.

42.4 In this GCC Clause 42, the expression "Facilities executed" shall include all work executed, Installation Services provided, and all Plant acquired, or subject to a legally binding obligation to purchase, by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

42.5 In this GCC Clause 42, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Appendix (Terms and Procedures of Payment) to the Contract Agreement.

## 43. Assignment

43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other party which consent shall not be unreasonably withheld, assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

# I. Claims, Disputes, and Arbitration

**44. Contractor's Claims**

44.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall submit a notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Subclause shall apply.

The Contractor shall also submit any other notices, which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Employer's liability, the Project Manager may, after receiving any notice under this Subclause, monitor the record keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim, which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect,

a. this fully detailed claim shall be considered as interim;

b. the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and

c. the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the

Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each payment certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Project Manager shall agree with the Contractor or estimate: (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GCC Clause 40, and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Subclause are in addition to those of any other Subclause, which may apply to a claim. If the Contractor fails to comply with this or another Subclause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Subclause.

In the event that the Contractor and the Employer cannot agree on any matter relating to a claim, either party may refer the matter to the Dispute Board pursuant to GCC 45 hereof.

## 45. Disputes and Arbitration

45.1 Appointment of the Dispute Board

Disputes shall be referred to a Dispute Board for decision in accordance with GCC Subclause 45.3. The Parties shall appoint a Dispute Board by the date stated in the SCC.

The Dispute Board shall comprise, as stated in the SCC, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of activities involved in the performance of the Contract and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the Dispute Board shall comprise three persons, one of whom shall serve as chairman.

If the Parties have not jointly appointed the Dispute Board 21 days before the date stated in the SCC and the Dispute Board is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members is included in the SCC, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the Dispute Board.

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the Dispute Board consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Subclause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the Dispute Board (including each member) shall expire when the Operational Acceptance Certificate has been issued in accordance with GCC Clause 25.3.

45.2 Failure to Agree Dispute Board

If any of the following conditions apply, namely:

a. the Parties fail to agree upon the appointment of the sole member of the Dispute Board by the date stated in the first paragraph of GCC Subclause 45.1;

b. either Party fails to nominate a member (for approval by the other Party) of a Dispute Board of three persons by such date;

c. the Parties fail to agree upon the appointment of the third member (to act as chairman) of the Dispute Board by such date; or

d. the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation, or termination of appointment;

then the appointing entity or official named in the SCC shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the Dispute Board. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

45.3 Obtaining Dispute Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with the performance of the Contract, including any dis-

pute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute in writing to the Dispute Board for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this Subclause.

For a Dispute Board of three persons, the Dispute Board shall be deemed to have received such reference on the date when it is received by the chairman of the Dispute Board.

Both Parties shall promptly make available to the Dispute Board all such additional information, further access to the Site, and appropriate facilities, as the Dispute Board may require for the purposes of making a decision on such dispute. The Dispute Board shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the Dispute Board and approved by both Parties, the Dispute Board shall give its decision, which shall be reasoned and shall state that it is given under this Subclause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the performance of the Facilities in accordance with the Contract.

If either Party is dissatisfied with the Dispute Board's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the Dispute Board fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

In either event, this notice of dissatisfaction shall state that it is given under this Subclause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in GCC Subclauses 45.6 and 45.7, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Subclause.

If the Dispute Board has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the Dispute Board's decision, then the decision shall become final and binding upon both Parties.

45.4 Amicable Settlement

Where notice of dissatisfaction has been given under GCC Subclause 45.3 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction

and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.

45.5 Arbitration

Unless settled amicably, any dispute in respect of which the Dispute Board's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties,

a) arbitration proceedings shall be conducted as stated in the Special Conditions;

b) if no arbitration proceedings is so stated, the dispute shall be finally settled by institutional arbitration under the Rules of Arbitration of the International Chamber of Commerce;

c) the dispute shall be settled by three arbitrators; and

d) the arbitration shall be conducted in the language for communications defined in GCC Subclause 5.3.

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, and any decision of the Dispute Board, relevant to the dispute. Nothing shall disqualify the Project Manager from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the Dispute Board to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the Dispute Board shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Project Manager and the Dispute Board shall not be altered by reason of any arbitration being conducted during the progress of the Works.

45.6 Failure to Comply with Dispute Board's Decision

In the event that a Party fails to comply with a Dispute Board decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under GCC Subclause 45.5. GCC Subclauses 45.3 and 45.4 shall not apply to this reference.

45.7 Expiry of Dispute Board's Appointment

If a dispute arises between the Parties in connection with the performance of the Contract, and there is no Dispute Board in place, whether by reason of the expiry of the Dispute Board's appointment or otherwise,

a) GCC Subclauses 45.3 and 45.4 shall not apply, and

b) the dispute may be referred directly to arbitration under GCC Subclause 45.5.

# 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" 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 "Dispute Board" 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 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 GCC Subclause 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 Dispute Board'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'sPersonnel shall not request advice from or consultation with the Member regarding theContract, otherwise than in the normal course of the Dispute Board'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 Dispute Board under GCC Subclause 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 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 Taking-Over Certificate is issued for the whole of the Works.

   With effect from the first day of the calendar month following the month in which Taking-Over Certificate is issued for the whole of the Works, 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 2 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, facsimiles, and telexes, and use of the internet: a receipt shall be required for each item in excess of 5% 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 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 SCC shall determine the amount of the fees to be used.

   The Member shall submit invoices for payment of the monthly retainer and airfares 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 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 Dispute Board; 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 GCC Subclause 12.3.

If the Member does not receive payment of the amount due within 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 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 Dispute Board 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. If no other arbitration institute is agreed, 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 Dispute Board shall visit the site at intervals of not more than 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 Dispute Board, the period between consecutive visits shall not be less than 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 Dispute Board, the Employer, and the Contractor, or in the absence of agreement, shall be decided by the Dispute Board. The purpose of site visits is to enable the Dispute Board to become and remain acquainted with the progress of the Works 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 coordinated by the Employer in cooperation 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 Dispute Board 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 Dispute Board one copy of all documents which the Dispute Board may request, including Contract documents, progress reports, variation instructions, certificates, and other documents pertinent to the performance of the Contract. All communications between the Dispute Board and the Employer or the Contractor shall be copied to the other Party. If the Dispute Board 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 Dispute Board in accordance with GCCSubclause 45.3, the Dispute Board shall proceed in accordance with GCC Subclause 45.3 and these Guidelines. Subject to the time allowed to give notice of a decision and other relevant factors, the Dispute Board 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 Dispute Board 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 Dispute Board 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 the Dispute Board is satisfied 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 Dispute Board, among other things, to

   a) establish the procedure to be applied in deciding a dispute;

   b) decide upon the Dispute Board'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 Dispute Board 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 Dispute Board shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the Dispute Board shall make and give its decision in accordance with GCCSubclause 45.3, or as otherwise agreed by the Employer and the Contractor in writing. If the Dispute Board 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 8

## Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The clause number of the SCC is the corresponding clause number of the GCC.

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# 1. Definitions

Following definitions are supplemented as below:

The Employer is:

**Power Grid Company of Bangladesh Limited (PGCB)**

Registered Office:

**Avenue-3, Jahurul Islam City, Aftabnagar, Badda, Dhaka-1212, Bangladesh**
**Phone: +88 02 55046731-35,**
**Fax: Fax: +88 02 55406722;**

Head Office:

**Avenue-3, Jahurul Islam City, Aftabnagar, Badda, Dhaka-1212, Bangladesh**
**Phone: +88 02 55046731-35,**
**Fax: Fax: +88 02 55406722;**

The Project Manager is:

**Superintending Engineer of Project, Power Grid Company of Bangladesh Limited**
**Tel: +88 (2) +88-02-55046731, +88-02-55046732, +88-02-55046733, +88-02-55046734, +88-02-55046735**
**Fax: +88 (2)5504 6722**

The Bank is: Not Applicable.

Country of Origin:

**All countries as indicated in Section 5 - Eligible Countries.**

"Completion", "Tight and clear condition":

"Completion" means that the Facilities (or a specific part thereof where specific parts are specified in the Contract) have been completed operationally and structurally and put in a **"tight and clean condition" (meaning that all wastes and equipment have been removed from construction sites and camp areas, all areas which have been temporarily used by the project have been restored to the original conditions, all payments for compensation of all damages have been completed, all potential soil and water contaminations have been cleaned to the satisfaction of the authorities and the bank, generally potential environmental liabilities have to be transferred to the operator),** that all work in respect of Pre-commissioning of the Facilities or such specific part thereof has been completed, and that the Facilities or specific part thereof are ready for Commissioning as provided in GCC Clause 24 (Completion) hereof.

"Guarantee Test(s)" means the testing and commissioning of the Facilities.

# 5. Law and Language

5.1 The Contract shall be interpreted in accordance with the laws of:

**The Peoples Republic of Bangladesh**

5.2 The ruling language is:

**English**

5.3 The language for communications is:

**English**

# 7. Scope of Facilities

7.3 The Contractor agrees to supply spare parts for a period of years: **5 (five) years**

The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components shall be supplied as promptly as possible, but at the most within 6 months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, 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.

# 8. Time for Commencement and Completion

8.1 The Contractor shall commence work on the Facilities within **07 (seven) days** from the effective date for determining time for completion as specified in the contract agreement.

8.2 The Time for Completion of the whole of the Facilities as well as each individual section/part shall be 720 (seven hundred twenty) days from the Effective Date as described in the Contract Agreement. However, Location wise Completion of each individual substation works will be considered as Completion of that individual part/section only.

# 9. Contractor's Responsibilities

**A New Clause GC 9.9 is added**

The Contractor shall supply any raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters in an amount sufficient to carry out the pre-commissioning, commissioning and guarantee tests as prescribed and required in the Scope of Works under the Contract.

**A new Clause 9.10 is added:**

. The Contractor, immediately after notification of award, shall provide the Employer free of charge with 8 (eight) hardcopies of all engineering data, drawings and descriptive materials submitted with the bid, which will form part of the contract.

**A new Clause GC 9.11 is added**

The contract shall be signed in three originals.

The Contractor will receive one signed original while the Employer will keep the other two originals.

**A new Clause GC 9.12 is added**

The Contractor, at his own cost, at within 30 (thirty) days after contract signature, shall provide the Employer with ten (10) hard copies of the contract document.

# 10. Employer's Responsibilities

**Clause 10.2 is replaced by the following:**

10.2. The Employer shall give administrative support to accord all rights of access for transmission line thereto on or before the date(s) specified in that appendix at the cost of the Contractor.

Such cost is deemed to be included in the contract price.

The Contractor shall be responsible for acquiring and providing legal and physical possession of the transmission line sites and access thereto, and for acquiring possession of and access to all other areas reasonably required for the proper execution of the contract, including all requisite rights of way as specified in the appendix (scope of works and supply by the employer) to the contract agreement.

**Clause 10.3 is replaced by the following:**

10.3. The Employer shall give administrative support to accord permits, approvals and/or licenses from local, state or national government authorities or public service undertakings in the country where the Site is located.

The Contractor shall acquire and pay for all permits, approvals and/or licenses from local, state or national government authorities or public service undertakings in the country where the site is located which

(a) such authorities or undertakings require to be obtained in the Employer's name,
(b) are necessary for execution of the contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the contract, and
(c) are specified in the appendix (scope of works and supply by the employer) to the contract agreement.

The cost of acquiring such permits, approvals and/or licenses are deemed to be included in the contract price.

**Clause 10.5 is replaced by the following:**

10.5. The Employer shall provide sufficient, properly qualified operating and maintenance personnel for pre-commissioning, commissioning and guarantee tests.

The Contractor shall supply any raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters for pre-commissioning, commissioning and guarantee tests.

The Contractor shall perform pre-commissioning, commissioning and guarantee tests in accordance with the terms and conditions of the contract.

The representatives of the Employer will witness the tests and certify them accordingly.

**Clause 10.6 is replaced by the following:**

10.6. The Employer shall be responsible for the continued operation of the facilities after taking over in accordance with 24.7.5.

However, the Contractor shall not be relieved from his other obligation/responsibilities as specified in the contract.

# 11. Contract Price

11.2 The Contract Price shall be adjusted in accordance with the provisions of Appendix 2 (Price Adjustment) to the Contract Agreement, and on the actual quantity of Plant and Installation Services completed by the Contractor during the Contract Execution Stage.

Payment will be made on the actual quantity of Plant and Installation Services that will be completed by the Contractor during the Contract Execution Stage.

# 13. Securities

**Clause 13.2.1 is amended as follows:**

The expression "notification of contract award" shall be replaced by "contract signature".

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 the contract price**

13.3.2 The performance security shall be in the form of the **unconditional bank guarantee** as per form included in Section 6 (Employer's Requirements).

**The following shall be added at the end of Sub-Clause 13.3.2:**

The performance security shall be denominated in the types and proportions of the currencies in which the contract price is payable, or in a freely convertible currency acceptable to the Employer.

The performance security shall be issued from a scheduled bank located in Employer's country.

**Sub-Clauses 13.3.3 is replaced by the following:**

13.3.3 The performance security shall not be reduced on the date of the operational acceptance.

However, if the Defects Liability Period has been extended on any part of the Facilities pursuant to Sub-Clause 27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part.

The security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor pursuant to Sub-Clause 27.10, is liable for an extended warranty obligation, the performance security shall be extended for the period and up to the amount specified in the clause 26.

# 14. Taxes and Duties

**The following paragraphs are added at the end of the Sub-Clause 14.1:**

While making payment to the Contractor or instructing the respective bank to effect the payment to the Contractor, the Employer is entitled to deduct income tax at source at applicable rate(s), which is required as per law of the Employer's country from Schedule 2, 3 & 4. In the event of withholding of income tax, the same shall be withheld and deposited to the govt. ex-

chequer in the credit of Contractor by the Employer as per prevailing law of the Employer's country and evidence thereof shall be furnished to the Contractor.

The Contractor shall be entirely responsible for payment of all taxes including sales tax or VAT, stamp duties, licence fees and other such levies imposed inside the Employer's country, for purchasing any goods or services by them from any supplier(s), which may be required in the course of supply of all items and services mentioned in this contract.

**Sub-Clause 14.2 is replaced with the following:**

a. Any material import from abroad under price schedule No.1 shall be considered as the direct import of the PGCB and PGCB's Business Identification Number (BIN) will be used for the import. PGCB shall bear and promptly pay all relevant customs and import duties as well as other local taxes, e.g., a value added tax (VAT), advance income tax (AIT) and other charges, which imposed by the law of the country, that are to be incorporated into the facilities. Accordingly, The items under-price schedule No.1 shall be quoted exclusive of customs duties, VAT, AIT and other relevant duties and taxes.

Applicable VAT at the time of making payment to the Contractor as VDS (VAT deduction at source) for any or all of the items under the price schedule of this contract shall bear by the Employer and deposit the same to the govt. exchequer as per prevailing law of the Employer's Country. The Bidder shall quote bid-prices of all items of the price schedules under this contract exclusive of VDS.

The Contractor shall be entirely responsible for payment of all taxes including sales tax or VAT, stamp duties, licence fees and other such levies imposed outside the Employer's country.

b. The Employer shall not be responsible for the payment of Customs Duties and VAT at Customs Clearing stage for the items specified in Price Schedule No.4 .The Contractor shall be responsible for the payment of customs duties and VAT, income tax, other charges and levies for the items imported for civil works material specified in Price Schedule No.4.

c. The Contractor shall, at his cost and expense, secure any work permit, labour permit, tax clearance, tax exemption certificate and any other authorization, which may be required by the Government of Bangladesh to permit imported personnel of Contractor and his Subcontractors to perform their work at site.

d. The Contractor shall be liable to the Employer for customs duties and taxes paid by the Employer, and for other lawful taxes which may be or may become payable on the Contractor's equipment, tools and supplies imported for the works and subsequently sold in Bangladesh. The Contractor has to obtain the permission of the Employer prior to any sale.

e. To obtain the necessary import permits and satisfy the requirements of the customs authorities, the Employer requires the following documentation:

Within 60 days of contract signature, the Contractor shall submit a detailed delivery schedule of plant he is to provide under the contract, indicating the type of equipment, name of the Manufacturer and country of origin. Six copies of the schedule have to be submitted to the Employer.

On behalf of the Government of Bangladesh, the Ministry of Commerce annually issues a schedule of import-protected items. The Contractor shall be responsible for advising the

Project Manager of any plant he intends to ship under the contract, which is import-protected. The Project Manager has to receive this advice at least four months before the plant reaches Bangladesh in order to permit the Employer to obtain the necessary import permits.

For the shipment of plant, shipping documents need to be distributed as follows:

(i) To the Project Director, Power Grid Company of Bangladesh Ltd, Aftabnagar, Badda, Dhaka 1212, Bangladesh:

1 original plus 10 copies of the invoices endorsed by the Contractor
1 negotiable plus 10 copies of the bill of lading endorsed by the Contractor
1 original plus 10 copies of the insurance certificate
10 copies of packing lists
10 copies of the freight memo
1 original plus 10 copies of the certificate of origin
10 copies of the insurance invoice
10 copies of the application for payment
10 copies of the pre-shipment inspection certificate or waiver thereof

(ii) To the Project Manager:

2 copies of the above documentation

(iii) To the Representative of Project Manager:

2 copies of the above documentation.

f. Import licenses and permits for the plant shall be obtained by the Employer at no cost to the Contractor. No import and export customs duties levied on food of any sort or personal effects imported for consumption by the Contractor's imported personnel shall be paid by the Employer.

g. If, however, after payment of customs and import duties by the Employer, goods are discovered to have arrived in Bangladesh in such a badly damaged condition due to the Contractor's negligence that they have to be replaced by the contractor, the Contractor will be responsible for the payment of the customs and import duties levied on all of the replacement of the imported plant and machinery.

h. The Contractor will be responsible for payment of all costs, with the exception of those costs that are specifically to the account of the Employer as described in SCC 14.2(a), related to clearances of plant and Contractor's equipment at the port of entry. The Contractor shall perform all necessary customs formalities for clearance of materials from the port in consultation with PGCB.

i. It is the Contractor's responsibility to ensure that all negotiable shipping documentation and all necessary import information are forwarded to the Employer so the Employer receives them in Bangladesh at least 14 days prior to the arrival of the ship in the Bangladesh port. Demurrage and any other charges resulting from the lack of documents or incorrect documentation received in Bangladesh shall be to the Contractor's account.

# 15. License/Use of Technical Information

**Clause 15.2 is replaced by the following:**

15.2. The Employer shall be vested with the copyright for all drawings, documents and other materials containing data and information prepared exclusively for the project and directly related to the project (such as single line diagrams, layouts, line routes, etc.) furnished to the Employer by the Contractor.

# 18. Work Program

**The following text is added at the end of Sub-Clause 18.3:**

"(c) monitoring of the obligations in Sub-Clauses 22.2.1, 22.2.3, 22.2.4, 22.2.7(a), 22.2.15, 22.2.16 "

# 19. Subcontracting

**The following Sub-Clause 19.6.is added:**

19.6 The Contractor shall not subcontract the whole of the facility.

# 20. Design and Engineering

GC 20.3.2 The text “fourteen (14) days” is replaced by “twenty one (21) days” in first para.

Second para of Sub-clause GC 20.3.2 stands deleted.

**The following Sub-Clauses are added after Sub-Clause 20.3.7**

20.3.8 Drawings are to be submitted for approval as printouts folded to A4 size, with the project title block and drawing numbers fully visible.

20.3.9 The Contractor shall mention the Employer's drawing numbers on all drawings prior to submission. Following award of the contract, the Employer and Contractor will review the numbering system, familiarize each other with the requirements and agree on the numbering system to be applied.

Comprehensive cross-references are to be included on drawings, and the Contractor shall include the Employer's drawing numbers in the cross-references. At each and every issue of a drawing, the revision shall be shown and details given in revision boxes on the drawing. Comprehensive details of revisions must be given; phrases

such as "revised", "updated", "modified" or similar are not acceptable. Reference to any drawing in communications shall include the Employer's drawing number.

20.3.10 The Contractor shall submit to the Employer four (4) copies of drawings of the plant and works for formal approval. A program of "drawing submission" shall be agreed with the Contractor following contract award. Drawings issued in accordance with this program shall take account of the time periods necessary for postage and approval by the Employer, to ensure that approved drawings are available prior to manufacture. For site construction works, 4 copies of "construction issue" drawings have to be submitted and made available on site at least 21 days prior to the commencement of the works.

Where appropriate, the drawings shall be accompanied by supporting calculations. The Contractor shall ensure that drawings of a specific aspect of the works are fully co-ordinated and submitted together in a logical sequence.

Should the Contractor revise a drawing for any reason after the approval by the Employer, the revised drawing has to be resubmitted for re-approval by the Employer, the original approval automatically being void.

20.3.11 During the construction works on the site, the Contractor shall ensure that all departures, modifications and corrections to the approved drawings are recorded. All such changes to the drawings have to be marked in red to show the "as-built" state. One set of "as-built" drawings have to be available on the site at all times.

On completion of construction and commissioning, the Contractor shall provide four (4) copies of any drawing that has been amended to show the "as-built" state to the Employer's Representative. These drawings shall be issued by the Contractor prior to the issue of the completion certificate.

Following examination of the "as-built" drawings, the Employer's Representative shall return one copy to the Contractor indicating his approval of the construction modifications or further modifications required to satisfy the requirements of the specifications.

# 21. Procurement

**Clauses 21.1 and 21.4 are amended as follows:**

The text "Sub-Clause-14.2" is replaced by "Sub-Clause-14".

# 22. Installation

**The following text is added at the end of Sub-Clause 22.2.4:**

c) The Contractor shall:
   (i) comply with all applicable labour laws and related international treaty obligations of the Employer and shall not employ child labour, as defined under Bangladeshi law;
   (ii) provide safe working conditions for male and female workers;

(iii) carry out HIV/AIDS and human trafficking prevention and awareness campaigns in the campsites and corridors of influence;
(iv) engage women workers as wage labourers depending on their skill; and
(iv) provide equal wages for equal work between men and women.

**The following text is added at the end of Sub-Clause 22.2.5:**

d) Normal working hours are from 9:00 am to 5:00 pm.

22.2.7 Health and Safety

(d) The Contractor shall throughout the contract (including the Defect Liability Period):

(i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labour (including all the Contractor's employees, all Sub-Contractors and Employer's and Project Manager's employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behaviour with respect to of Sexually Transmitted Diseases (STD) - or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular;
(ii) provide male or female condoms for all Site staff and labour as appropriate; and
(iii) provide for STI and HIV/AIDS screening, diagnosis, counselling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labour.

The Contractor shall include in the program to be submitted for the execution of the Facilities under Sub-clause 18.2 an alleviation program for Site staff and labour and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-clause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for the preparation and implementation this program shall not exceed the amount dedicated for this purpose.

**Sub-Clause 22.6.is amended as follows:**

In the last sentence of the second paragraph, the word "Otherwise" is replaced by "In case such work is not in the scope of the Contractor".

**The following Sub-Clause 22.9.is added at the end of Sub-Clause 22:**

22.9 The Contractor shall:

(a) comply with the measures and requirements relevant to the Contractor set forth in the IEE, the EMP, the present national resettlement policy and any small ethnic community peoples plan (to the extent they concern impacts on affected people

during construction), and any corrective or preventative actions set out in a safe-guards monitoring report;

(b) make available a budget for all such environmental and social measures;

(c) provide the Employer with a written notice of any unanticipated environmental, re-settlement or small ethnic community peoples risks or impacts that arise during construction, implementation or operation of the project that were not considered in the IEE, the EMP, the present national resettlement policy or any small ethnic community peoples plan;

(d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and

(e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

# 23. Test and Inspection

**The following sentence is added at the end of Sub-Clause 23.3:**

The advance notification period for testing is four weeks.

# 24. Completion of the Facilities

**Sub-Clause 24.2**

The second paragraph of GC Sub-clause 24.2 is deleted.

**Sub-Clause 24.3 is replaced by the following:**

As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer in accordance with GC Sub-Clause 24.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GC Sub-Clause 25.

# 25.Commissioning and Operational Accept-ance

**Sub-clause 25.1.2 is replaced by the following:**

The Employer shall deploy the operating and maintenance personnel pursuant to GC Sub-clause 10.5 and the Contractor shall provide all materials and support services pur-suant to GC Sub-clause 9.9 as required for Commissioning.

**The following paragraph is added at the end of Sub-Clause 25.1.3:**

Immediately after the Commissioning, the Contractor shall so notify the Project Manager in writing.

**Sub-Clause GC 25.3.3 is replaced by the following:**

The Project Manager shall, after consultation with the Employer, and within twenty one (21) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

After the Operational Acceptance Certificate has been issued, the Contractor and the Employer shall remain liable for the fulfilment of any obligation, which remains unperformed at that time. For the purposes of determining the nature and extent of any such obligation, the contract is deemed to remain in force.

**Sub-Clause 25.3.4 is replaced by the following:**

If within twenty one (21) days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the facilities or the relevant part thereof are deemed to have been accepted as at the date of the Contractor's said notice

# 26. Completion Time Guarantee

26.2 Applicable rate for liquidated damages: **0.5% (zero point five percent) of the contract price or the relevant part thereof per week for each lot separately**.

Maximum deduction for liquidated damages: **10% (ten percent) of the contract price**

26.3 No bonus will be given for earlier completion of the facilities or part thereof.

# 27. Defect Liability

**The first paragraph of Sub-Clause 27.2 is replaced by the following:**

The Defect Liability Period shall be twelve (12) months from the date of Operational Acceptance of facilities for all equipment/materials.

**Sub-Clause 27.9**

Replace "completion of facilities" with "commissioning" in line 5.

# 34. Insurance

**A new Sub-Clause is added at the end of Clause 34:**

34.8 The Contractor shall follow the existing import act including insurance act and related acts of the Government of Bangladesh.

As per the Insurance Corporation Act (Amendment) 1990, all insurance coverage (100%) required for this contract shall be done with Sadharan Bima Corporation, Bangladesh, who are the sole public sector general insurance organization in the country.

# 37. Force Majeure

**Sub-Clause 37.1.d) is replaced by following:**

d) Embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague'

**Sub-Clause 37.1.f) is deleted.**

**A new Sub-Clause 37.1.g) is added as follows.**

g) In case of occurrence of strike, sabotage, lockout, shortage of labour, material or utility, such event will be treated as "special risk" and shall be discussed and resolved mutually."

# 39. Change in the Facilities

**A new Sub-Clause is added at the end of Clause 39:**

39.4 The following provisions shall supplement the provisions of Sub-Clauses 39.1, 39.2 and 39.3:

The contract price for:

(i) the items for which quantities have been indicated as lump sum or lot or set and/or
(ii) quantities that are to be estimated by the Contractor

shall remain constant unless the Employer makes a change in the scope of works.

The quantities and unit prices:

(i) subsequently arrived at while approving the BoQ / billing breakdown of lump sum quantities / lot / set and/or
(ii) estimated by the Contractor

shall be for on-account payment purposes only.

In case additional quantities over and above the quantities in BoQ / billing breakdown and / or estimated by the Contractor are required for successful completion of the scope of work as per the technical specifications, the Contractor shall execute additional quantities of these items for which no additional payment shall be made over and above the lump sum contract price.

In case quantities of these items supplied at site are in excess of those required for the successful completion of the scope of work, such additional quantities shall be the property of the Employer.

Furthermore, in case the actual requirement of quantities for the successful completion of scope of works is less than the quantities identified in the approved BoQ / billing breakdown and/or estimated by the Contractor, the lump sum contract price shall remain unchanged, and no deduction shall be made from the lump sum price due to such reduction of quantities.

It shall be the responsibility of the Contractor to pay all statutory taxes, duties and levies to the concerned authorities for such surplus material which would otherwise have been lawfully payable in case of non-deemed export contracts. The Contractor shall submit an indemnity bond to keep the Employer harmless from any liability prior to the release of such material to the Contractor by Employer.
Sets / lots / lump sums shall be governed by the requirements of the corresponding item description read in conjunction with relevant provisions of the technical specifications.

# 45. Disputes and Arbitration

45.1 The Dispute Board shall be appointed within **30 (thirty) days**. after the effective date.

The Dispute Board shall consists of **3 (three) members**. The list of potential dispute board members is:

(i) The President of the Institution of Engineers, Bangladesh (IEB)
(ii) The President of the Institute of Chartered Accountants of Bangladesh (ICAB)
(iii) The President of the Institute of Project Management Bangladesh (IPMB)

45.2 Appointment (if not agreed) to be made by:

Head, Department of Electrical & Electronics Engineering, Bangladesh University of Engineering & Technology, Bangladesh

45.5 Arbitration proceedings shall be conducted by the following rules:

Arbitration shall be conducted in accordance with the “Bangladesh Arbitration Act 2001”.

The place of arbitration shall be Dhaka, Bangladesh

# Section 9- Contract Forms

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# 1. Notification of Award

*[Employer's letterhead]*

To,

(*Name and Address of the Contractor)*

Ref: Invitation for Bids No……..….dated ……. and Bid Proposal of the Bidder ……..……dated ……

Dear Sirs,

With reference to the bidding document for the above contract and your bid proposal submitted on (***Date of Bid Submission***) as well as the subsequent clarifications (***if any***), letter of discount on Price on the proposal (***if any***) submitted by you, **Power Grid Company of Bangladesh Ltd. (PGCB)** intends to award you the Contract No. ……..for ..... (***Project Name***) with the following terms and conditions:

1. Contract Price

   The contract price shall be .....(***amount in foreign currency plus local currency***) (in words……).

2. Completion Period

   Time for completion of whole facilities shall be …….months from the effective date as described in the Volume 1, Section 8 - Special Conditions of Contract, Sub-Clause8.2of the bidding documents.

3. Tax & VAT

   Tax and VAT shall be payable as per Clause 14: Taxes and Duties, Volume 1, Section 7 - General Conditions of Contract and Section 8 - Special Conditions of Contract of the bidding documents.

4. Performance Security

   A performance security amounting to ……. percent of the contract price has to be submitted by you within twenty eight (28) days of the receipt of this Notification of Award in accordance with Sub-clause ITB 45.1 and GCC 13.3, Volume 1 of the bidding documents.

5. The execution of the contract agreement shall be in accordance with the terms and conditions laid down in the bidding documents and subsequent addendum & clarification.

You are, therefore, requested to convey your written and unconditional acceptance of this Notification

of Award until……..(***deadline***) and submit …….. sets of the Draft Contract Documents until .....(***date***).

You are also requested to send your authorized representative(s) until .....(***date***) for finalization of the contract documents.

A copy of the unsigned Contract Agreement is enclosed for your necessary actions as per Volume 1, Section 1, Instructions to Bidders, ITB 44 of the Bidding Documents.

Thanking you, we remain.

Yours sincerely,

Company Secretary

Copy to:

1. Managing Director, Power Grid Company of Bangladesh Ltd.
   Head Office (2nd Floor), Aftabnagar, Badda, Dhaka-1212.
2. Director (P&D) / (Finance), Power Grid Company of Bangladesh Ltd., Dhaka,
   Head Office (2nd Floor), Aftabnagar, Badda, Dhaka-1212.
3. CE (P&D)/(Projects Monitoring), Power Grid Company of Bangladesh Ltd.
   Head Office (2nd Floor), Aftabnagar, Badda, Dhaka-1212.
4. SE (Contract/TLD), Power Grid Company of Bangladesh Ltd., Dhaka,
   Head Office (2nd Floor), Aftabnagar, Badda, Dhaka-1212.
5. Project Director, PGCB, Dhaka.

Attachment: Contract Agreement

# 2. Contract Agreement

THIS AGREEMENT made at Dhaka on this the …….day of ……., 201

BETWEEN

**Power Grid Company of Bangladesh LTD. (PGCB)**,
an Enterprise of Bangladesh Power Development Board, duly incorporated under the Company's Act, 1994 of Bangladesh, having its principal place of business at Head Office, Avenue-03, Jahurul Islam City, Aftabnagar, Badda, Dhaka-1212, Bangladesh represented by its ……, Mr. ……., hereinafter referred to as the "Employer" (which expression shall unless excluded by or repugnant to the context, mean and include its legal representatives, successors-in-interests, administrators, and assignees of the FIRST PART)

AND

**M/s. .....,**
a company limited by shares duly incorporated under the relevant laws of …… and having its registered office at …….represented by its …….. Mr……., Passport No…….., Nationality…….. hereinafter referred to as the "Contractor" (which expression shall unless excluded by or repugnant to the context, mean and include its legal representatives, successors-in-interests, administrators, and assignees of the SECOND PART).

WHEREAS, the Employer has invited tenders for **……. (Contract No. ……..)** ("the Facilities").

AND WHEREAS, the Contractor became the lowest responsive bidder for providing the aforesaid Facilities.

AND WHEREAS, the Contractor has presented to the Employer that he has the required professional skills, personnel and technical resources as per the requirements of the Employer.

AND WHEREAS, relying upon the presentation made by the Contractor, the Employer has decided to engage the Contractor to provide the aforesaid facilities in accordance with terms and conditions set out below.

NOW IT IS HEREBY AGREED as follows:

**Article 1 Contract Documents**

1.1 **Contract Documents** (Reference GCC 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 Deed of Agreement and the Appendices hereto

(b) Power of Attorney issued by Contractor for signing the Contract.

(c) Performance Security

(d) Minutes of Pre-Contract Meeting(s)

(e) Vetting from relevant departments (if required)

(f) Price Schedules including arithmetic correction and/or discount (if any)

(g) Letter of written and Unconditional Acceptance of the Notification of Award

(h) Notification of Award

(i) Letter of price bid and Price Schedules submitted by the Contractor

(j) Letter of Technical Bid.

(k) All Addenda and Clarifications

(l) Special Conditions of Contract

(m) General Conditions of Contract

(n) Volume 2 of the Bidding Document

(o) Remaining portion of Volume 1 of the Bidding Document

(p) Replies against PGCB's Clarification (if any).

(q) Clarification sought by the Employer (if any).

(r) Bid Proposal of Bidder (Contractor).

1.2 **Order of Precedence** (Reference GCC 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 GCC 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 GCC 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: *[amounts of foreign currency in words][amounts in figures]* as specified in Price Schedule No. 5 (Grand Summary), *[amounts of local currency in words], [amounts in 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 GCC Clause 12)

The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in Appendix 1 (Terms and Procedures of Payment) hereto.

The Employer shall instruct its bank to issue an irrevocable letter of credit made available to the Contractor in a bank in the country of the Contractor.

The credit shall be for an amount of (----------) only ; and shall be subject to the Uniform Customs and Practice for Documentary Credits latest Revision and ICC Publication.

In the event that the amount payable under Schedule No. 1 and/or Schedule No. 2 is adjusted in accordance with GCC 11.2 or with any of the other terms of the Contract, the Employer shall arrange for the letter of credit to be amended accordingly.

**Article 3**
**Effective Date**

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

The Effective Date upon which the period until the Time for Completion of the Facilities shall be counted from is the date when all of the following conditions have been fulfilled:

(1) Signing of the Contract and
(2) Site Handover to Contractor by Employer

After contract signing if the Contractor make delay for accepting the site handover, then the Contract will be effective after seven days i.e. from 8th day after issuing the site handover letter by Employer to the Contractor

**Article 4**
**Communications**

4.1 The address of the Employer for notice purposes, pursuant to GCC 4.1 is: Project Director, Power Grid Company of Bangladesh Limited.

4.2 The address of the Contractor for notice purposes, pursuant to GCC 4.1 is:…..

**Article 5**
**Appendices**

5.1 The Appendices listed in the attached List of Appendices are 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<br>M/s. Power Grid Company of Bangladesh Limited | Signed by, for and on behalf of the<br>M/s. …….. |
| …… | …… |
| in the presence of | in the presence of |
| …… | …… |

…… ……

## List of Appendices

Appendix 1 - Terms and Procedures of Payment
Appendix 2 - Price Escalation
Appendix 3 - Insurance Requirements
Appendix 4 -Time Schedule
Appendix 5 - List of Major Items of Plant and 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
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# Appendix 1 - Terms and Procedures of Payment

In accordance with the provisions of GCC Clause 12 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, based on 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. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

If the bidder quotes its price in EXW column but the proposed local manufacturer found technically non-responsive and foreign manufacturer found technically responsive then such equipment/plant/item will be supplied from technically responsive outside Employers country manufacturer. But, as there will be no price quoted in CIP column for such equipment/plant/item hence the CIP price for such item will be the quoted EXW price and it will be presumed that there was no EXW quoted price and the payment will be done accordingly. If the proposed manufactures from outside the Employer's country and within the Employer's country are found technically responsive and if the price is quoted as EXW, but need to be supplied as CIP, then the Custom Duties & Value Added Tax (CD & VAT) and associated other taxes for such plant/equipment shall be paid by the Contractor.

On the other hand, in case, such bidder quotes price in price schedule of outside Employer's country (CIP price) but the proposed foreign manufacturer found technically non-responsive and local manufacturer found technically responsive, then such equipment/plant/item will be supplied from technically responsive local manufacturer. But, as there would be no price quoted in EXW column for such equipment/plant/item, hence EXW price for such item will be the quoted CIP price and payment will be done accordingly. If the proposed manufactures from outside the Employer's country and within the Employer's country are found technically responsive and if the price is quoted as CIP, but need to be supplied as EXW, then Tax Deductible at Source (TDS) for such plant/equipment shall be deducted from the Contractor.

## A. 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 CIP amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favour of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment shipped FOB or delivered to the site, as evidenced by shipping and delivery documents.
- Sixty Five percent (65%) of the total or pro rata CIP or amount upon Incoterm "CIP," upon delivery to Site, as evidenced by Post Landing Inspection (PLI) Report and within forty-five (45) days after receipt of invoice.

- Fifteen percent (15%) of the total or pro rata CIP or amount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.
- Ten percent (10%) of the total or pro rata CIP or 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 against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favour 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.
- Sixty Five percent (65%) of the total or pro rata EXW amount upon Incoterm "Ex-Works," upon delivery to the Site, as evidenced by Post Landing Inspection (PLI) Report and within forty-five (45) days after receipt of invoice.
- Fifteen percent (15%) of the total or pro rata EXW amount upon issue of Completion Certificate within forty-five (45) days after receipt of invoice.
- Ten percent (10%) 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 against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favour of the Employer.
- Ninety percent (90%) of the total or pro rata design services amount upon acceptance of design by the Project Manager within forty-five (45) days after receipt of invoice.

### Schedule No. 4 - Installation and other 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 and other services amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favour 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.
- Sixty Five percent (65%) 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 quarterly within forty-five (45) days after receipt of invoice.
- Fifteen percent (15%) 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.
- Ten percent (10%) 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.

## B. Payment Procedures

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

**Foreign Currency Portion:**

Foreign currency portion of the Contract Price shall be made through an irrevocable commercial letter of credit to be opened by the Employer in favor of the Contractor as appropriate. All costs in connection with Letter of Credit within Bangladesh shall be borne by the Employer and outside Bangladesh shall be borne by the Contractor.

**Local Currency Portion:**

The Employer will pay the Contractor against Interim Payment Certificate issued by the Engineer/Employer for the cost of all local Works value of the Contract for EXW, local handling, and storage, transportation to site, insurance and erection including local construction materials. The Taka payments will be as per the Power Grid Company Financial and Accounts Rules or any other Accounts Rules in force and adopted by the Employer.

**The Employer will not allow the contractor to ship plant items when civil infrastructure is not ready at the project site. Upon certification of the Employer/Engineer for the civil infrastructure and fulfilment of all other relevant issues, the plant items will be shipped. The contractor will obtain the clearance a reasonable time before the completion of the civil works so that the plant items reach the sites immediately after completion of the relevant civil works.**

# Appendix 2 - Price Adjustment/Escalation

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 labour and material components, in accordance with the following formula:

(1) Transformer

The formula for calculating the price adjustment to be applied to the Contract price component of the power transformer is as follows:-

$$P_1 = [P_0 x(a + b\frac{L_1}{L_0} + c\frac{M_{11}}{M_{01}} + d\frac{M_{12}}{M_{02}} + e\frac{M_{13}}{M_{03}} + f\frac{M_{14}}{M_{05}}) - P_0] \times \frac{Z_1}{Z_0}$$

Where,

$P_1$ = Price Adjustment amount of power transformer, payable to the Contractor

$P_o$ = Contract price (base price)

*a* = percentage of fixed element in Contract price (*a* = 30%)

*b* = percentage of labour component in Contract price (*b* = 16%)

*c* = percentage of material Core (Si steel) component in Contract price (*c* = 18%)

*d* = percentage of materials (Copper) component in Contract price (*d* = 22%)

*e* = percentage of materials (Steel) component in Contract price (*e* = 12%)

*f* = percentage of materials (Zinc) component in Contract price (*f* = 2%)

$L_0$, $L_1$ = labour indices applicable to the appropriate industry in the country of origin of the base date and the date for adjustment, respectively

$M_{01}$, $M_{11}$ = material (Core, Si steel) indices applicable of the base date and the date for adjustment, respectively

$M_{02}$, $M_{12}$ = material (Copper) indices applicable of the base date and the date for adjustment, respectively

$M_{03}$, $M_{13}$ = material (Steel) indices applicable of the base date and the date for adjustment, respectively

$M_{04}$, $M_{14}$ = material (Zinc) indices applicable of the base date and the date for adjustment, respectively

Z = number of units of currency of Contract Price equal to one unit of currency of respective Index

Where, $Z_0$ is for base date and $Z_1$ is for Adjustment date

**CONDITIONS APPLICABLE TO PRICE ADJUSTMENT**

| Item | Country of Origin; Currency of index | Source of Indices Used Title/definition | Base Date Indices Value Date |
|---|---|---|---|

**(1) Power Transformer**

| | | | |
|---|---|---|---|
| L (Labour) | | Manufacturer's own Country's Government authorized agency | |
| $M_{01}$, $M_{11}$ (Si steel) | | Manufacturer's own Country's Government authorized agency | |
| $M_{02}$, $M_{12}$ (Copper) | | London Metal Exchange | |
| $M_{03}$, $M_{13}$ (Steel) | | London Metal Exchange | |
| $M_{04}$, $M_{14}$ (Zinc) | | London Metal Exchange | |

The following conditions shall apply:

a. The base date shall be the date 28 days prior to the deadline for submission of the Bid.

b. The date of adjustment shall be the mid-point of the period of manufacture of the component or Plant. The mid-point shall be determined by considering the start date of manufacture to be 30 days after Contract Effective Date. The end date of manufacture is considered to be 30 days prior to the shipping date.

c. 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.

d. If the currency in which the Contract price, P0, is expressed is different from the currency of the country of origin of the labour and/or materials indexes, 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.

e. No price adjustment shall be payable on the portion of the Contract price paid to the Contractor as an advance payment.

f. If no data is entered for one item in the above table, the price adjustment does not apply to this item.

g. Any payments resulting from price adjustments will be settled at the end of contract.

# Appendix 3 - Insurance Requirements

## 1. Insurances to be taken out by the Contractor

In accordance with the provisions of GCC 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.

100% of the insurances in the Employer's country shall be made by the **Sadharan Bima Corporation, Bangladesh**.

The Contract has to follow the existing insurance act and related acts of the Government of Bangladesh.

### a) Cargo Insurance

The cargo insurance covers losses or damages occurring to the facilities (including spare parts therefore) and to the construction equipment to be provided by the Contractor or its Subcontractors while in transit from the Supplier's or Manufacturer's works or stores until arrival at the site.

| Amount [in Currency(ies)] | Deductible Limits [in Currency(ies)] | Parties Insured [Names] | From [Place] | To [Place] |
|---|---|---|---|---|
| 110% of the contract price (CIP) | - | Power Grid Company of Bangladesh Limited and Contractor | Supplier's or Manufacturer's works or stores | The site |

### b) Installation All Risks Insurance

The Installation All Risks Insurance covers physical losses or damages to the facilities at the site, occurring prior to completion 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.

| Amount [in Currency(ies)] | Deductible Limits [in Currency(ies)] | Parties Insured [Names] |
|---|---|---|
| 100% of the contract price | - | Power Grid Company of Bangladesh Limited and Contractor / Subcontractor |

### c) Third Party Liability Insurance

The Third Party Liability Insurance covers 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.

| Amount [in Currency(ies)] | Deductible Limits [in Currency(ies)] | Parties Insured [Names] | From [Place] | To [Place] |
|---|---|---|---|---|
| USD 2.0 million | - | Power Grid Company of Bangladesh Limited and Contractor / Subcontractor | - | - |

### d) Automobile Liability Insurance

The Automobile Liability Insurance covers the use of all vehicles used by the Contractor or his Subcontractors (whether or not owned by them) in connection with the supply and installation of the facilities. It shall be a comprehensive insurance in accordance with the statutory requirements.

### e) Workers' Compensation

It shall be in accordance with the statutory requirements applicable in any country where the facilities or any part thereof are executed.

### f) Employer's Liability

It shall be in accordance with the statutory requirements applicable in any country where the facilities or any part thereof are executed.

### g) Other Insurances

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

Details:

| Amount [in Currency(ies)] | Deductible Limits [in Currency(ies)] | Parties Insured [Names] | From [Place] | To [Place] |
|---|---|---|---|---|
| - | - | - | - | - |

In all insurance policies taken out by the Contractor pursuant to GCC Sub-Cause 34.1, the Employer shall be named as co-insured, except the third party liability, workers' compensation and employer's liability insurances. In all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause

34.1, the Contractor's Subcontractors shall be named as co-insured, except the cargo, workers' compensation and employer's liability insurances. In these policies, all insurer's rights of subrogation against such co-insured for losses or claims arising from the performance of the contract shall be waived.

## 2. Insurances to be taken out by the Employer

The Employer shall at his expense take out and maintain in effect during the performance of the contract the following insurances.

None.

# Appendix 4 - Time Schedule

The Time for Completion of the whole of the Facilities as well as each individual section/part shall be 720 (seven hundred twenty) days from the Effective Date as described in Volume 1, Section 8 - Special Conditions of Contract, Sub-Clause 8.2 and as per Article 3 of this contract agreement.

# Appendix 5 - List of Major Items of Plant and Services and List of Approved Subcontractors

A list of major items of plant and services is provided below.

The following Subcontractors and/or Manufacturers are approved for carrying out the indicated items of the facilities. Where more than one Subcontractor is listed, the Contractor is free to choose between them.

In accordance with GCC Sub-Clause 19.1, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. However, no subcontracts shall be placed with any Subcontractor for additional items until the Subcontractor has been approved in writing by the Employer and the Subcontractor's name has been added to this list of approved Subcontractors.

| Sl No | Major Items of Plant and Services | Approved Subcontractors/Manufacturers | Nationality |
|---|---|---|---|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |
| 9. | | | |
| 10. | | | |
| 11. | | | |
| 12. | | | |

# 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 GCC 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 GCC Sub-Clause 18.2.

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

| Personnel | Charge to Contractor (if any) |
|---|---|
| Employer's personnel will be engaged to supervise and certify the works and tests. Names of personnel will be communicated later. | No charge to Contractor. |

| Facilities | Charge to Contractor (if any) |
|---|---|
| - | - |

| Works | Charge to Contractor (if any) |
|---|---|
| Employer will not do any works. In case the Contractor does not re-instate the Employer's existing facilities (civil, fencing etc.), the Employer will complete it. | Will be deducted from Contractor's payment. |

| Supplies | Charge to Contractor (if any) |
|---|---|
| The Employer will not generally supply any machinery / equipment and materials to the Contractor. In the event of any such requirement and subject to availability, the Employer may extend the facilities to use such machinery and materials by the Contractor on rental charge/cost under normal terms and conditions. | The Contractor will be required to pay the amount to be determined by the Employer for such facilities. |

# Appendix 7 - List of Documents for Approval or Review

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

## (A) Approval

1. CESMP
2. Weekly and Monthly H&S Reports
3. Site Survey Elaborate
4. Geotechnical Elaborate
5. General design & Fire protection design
6. Electrical Final Design
7. Civil Final Design
8. Mechanical Final Design
9. Detail Electrical Design
10. Detail Civil Design
11. As-build design
12. Manufacturers
13. Detail description of the equipment, drawings, characteristics, type tests, etc.
14. Plan and program of Training
15. Plan and program for Factory Acceptance Test
16. Routine Test Reports
17. Plan and program of deliveries
18. Delivery documentation
19. Subcontractors
20. Plan and program for Site Test
21. Site Test Reports
22. Plan and program for Commissioning
23. Final Testing & Commissioning Report
24. Other

## (B) Review

1. Plan and Program of Works and Services
2. Organization Schedule
3. Site Organization
4. Monthly Progress Reports
5. Final Report
6. Other

# Appendix 8. Functional Guarantees

1. General

This Appendix sets out

(a) the functional guarantees referred to in GCC 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
(d) the formula for calculating 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:

2.1 The Employer's advisory personnel shall attend the commissioning, including the guarantee test, and shall advise and assist the Contractor.

2.2 The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the guarantee test and any repetitions thereof.

3. Functional Guarantees

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

3.1 Testing & commissioning of all the equipment & materials performed and test results in the standard limits
3.2 Plant & equipment and making ready for commercial operation of the facilities.

4. Failure in Guarantees and Liquidated Damages

4.1 Failure to Attain Guaranteed Capacity

Not used.

4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level

Not Applicable

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 GCC Sub-clause 28.2:

(a) Commissioning of the Facilities attained in the guarantee test: **100 % (one hundred percent)** of the facility