

Section-8

Special Condition of Contract - Package-I (REVISED)

1. Definitions	
	<p>The Employer is: Odisha Power Transmission Corporation Limited, Bhubaneswar, Odisha, INDIA</p> <p>The Project Manager is: To be appointed and will be notified during Pre-bid.</p> <p>The Bank is: Asian Development Bank</p> <p>Country of Origin: Eligible ADB Member Country listed in Section 5 of the Bid Documents.</p>
5. Law and Language	
5.1	The Contract shall be governed by and interpreted in accordance with the Laws of India
5.2	The ruling language of the contract shall be English.
5.3	The language of communication shall be English.
8. Time for Commencement and Completion	
8.1	The Contractor shall commence work on the Facilities within 03 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 for Lot-1 shall be 15 months & for Lot-2 shall be 18 Months from the Effective Date as specified in the Contract Agreement.
10. Employer's Responsibilities	
10.3	The Employer shall assist to the Contractor 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.
13. Securities	
13.3.1	The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security for 10% of the contract price for the due performance of the Contract.
13.3.2	The performance security shall be in the form of the Bank Guarantee as per form included in Section 6 (Employer's Requirements, Bank Guarantees and Certificates).
13.3.3	The performance Security shall be reduced to ten percent (10%) of the value of the component covered by the extended Defects Liability to cover the Contractor's extended defect liability in accordance with the provision in the SCC, pursuant to GCC Sub-Clause- 27.10.

Clause-18 Work Program

Sub-Clause 18.3. c) Monitoring of the obligations in Sub-Clauses 21.1, 22.1.1, 22.2.3(d), 22.2.7(d), 22.2.15, 22.2.16 and 47.

21. Procurement

21.1 Materials:

The Contractor shall adequately record the condition of roads, agricultural land and other infrastructure prior to the start of transporting materials, goods and equipment, and construction.

22. Installation

22.1 Setting Out/Supervision

22.1.1 Bench Mark:

The Contractor shall comply with (i) the measures and requirements set forth in the resettlement plan and indigenous peoples plan attached hereto as Appendixes [8] and [10], to the extent they concern impacts on affected people during construction; and (ii) any corrective or preventive actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor implementation of the resettlement plan and indigenous peoples plan. The Contractor shall allocate a budget for compliance with these measures, requirements and actions.

22.2 Labor

New Sub-Clause 22.2.3 (d) Labor Laws

The contractor shall follow all applicable labor laws of India and the State and (i) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; and (ii) follow and implement all statutory provisions on labor (including not employing or using children as labor, equal pay for equal work), health, safety, welfare, sanitation, and working conditions. The contract may be terminated by the Employer in case of any breach of these provisions by the Contractor.

22.2.7 Health and Safety

New Sub-Clause (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 labor (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 behavior 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 labor as appropriate; and
- (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labor.

The Contractor shall include in the program to be submitted for the execution of the Facilities

	<p>under Sub-Clause 18.2 an alleviation program for Site staff and labor 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 preparation and implementation this program shall not exceed the Provisional Sum dedicated for this purpose.</p>
	<p>22.2.16 Prohibition of Harmful Child Labor</p> <p>The Contractor shall not employ any child to perform any work, including 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. "Child" means a child below the statutory minimum age specified under applicable national, provincial or local law.</p>
24. Completion of the Facilities	
	<p>New Sub-Clause: 24.9 Completion of Facilities</p> <p>Upon the completion of construction, the Contractor shall fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition as recorded by the Contractor in consonance with its obligation in Clause 21.1</p>
25. Commissioning and Operational Acceptance	
	<p>25.2 Guarantee Test</p> <p>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 i.e. 15 days from the date of Completion or any other period agreed upon by the Employer and the Contractor, the Contractor shall carry out the Guarantee tests himself and furnish the results in writing to the Project Manager or person designated by him. The Contractor shall be deemed to have fulfilled its obligations with respect to the functional guarantee.</p>
26. Completion Time Guarantee	
	<p>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 @0.5% of the Contract Price or the relevant part thereof for each completed week of delay. The aggregate amount of such liquidated damages shall in no event exceed 5% of the Contract Price.</p> <p>26.3 If the Contractor attains Completion of the Facilities before the time for Completion or any extension thereof under GCC Clause 40, the Employer shall pay to the Contractor Bonus @0.5% of the Contract Price per each completed week of early completion. The aggregate amount of such bonus shall in no event exceed 5% of the Contract Price.</p>
27. Defect Liability	
	<p>27.10 The defect liability period shall be a time span of five hundred and forty (540) days from the date of Completion of the Facilities (or any part thereof) for the equipment viz; Transformers, Switch gears, Relays, VCBs, CT & PT, AAA Conductor, XLPE Cables. The defect liability for other component of plant and services shall be one year from the date of Operational</p>

	Acceptance of the Facilities.
30.	Limitation of Liability
30.1	(b) The aggregate liability of the Contractor to the Employer, whether under the contract, in tort or otherwise, shall not exceed 100% of the Contract Price.
35.	Unforeseen Conditions
	<p>Addition to the Sub-Clause 35.3</p> <p>In addition to notice of any Unforeseeable physical conditions, the Contractor shall provide the Project Manager with a written notice of any unanticipated environmental or resettlement risks or impacts that arise during construction, implementation or operation of the Plant or Permanent Works, which were not considered in the Initial Environmental Examination ("IEE"), Environmental Management Plan ("EMP"), the environmental management and monitoring plan ("EMMP"), the resettlement plan or the indigenous peoples plan attached hereto as Appendix [9] through Appendix [10].</p>
39.	Change in the Facilities
	<p>New Sub-Clause: 39.1.5</p> <p>At any time during the execution of the contract, OPTCL reserve the right to increase/decrease the quantity of any item with reference to the BOQ to an extent of (+/-) 25%. However, overall variation in the contract price will be limited to 15% of the contract price.</p>
45.	Disputes and Arbitration
45.1	<p>Appointment of the Dispute Board</p> <p>The Dispute Board(DB) shall be appointed within 28 days after the Effective Date.</p> <p>The Dispute Board (DB) shall be of Three Members</p> <p>List of potential Dispute Board(DB) members is: None</p>
45.2	<p>Failure to Agree Dispute Board</p> <p>Appointment (if not agreed) to be made by: Delhi High Court Arbitration Centre. New Delhi, India.</p>
45.5	<p>Arbitration</p> <p>Rules of procedure for arbitration proceedings:</p> <p>Contracts with foreign contractors: Any dispute, controversy or claim arising out of or relating to this contract, or breach, termination or invalidity thereof, shall be settled by Arbitration in accordance with UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules as at present in force. The place of arbitration shall be New Delhi, India.</p> <p>Contracts with contractors being nationals of the Employer's country: Any dispute, controversy or claim arising out of or relating to this contract, or breach, termination or invalidity thereof, shall be settled by Arbitration in accordance with the Indian Arbitration and Conciliation Act of 1996 as amended from time to time and rule made thereunder. The place of arbitration shall be Bhubaneswar, Odisha, India.</p>
New Clause: 46. Indemnity	

46.1 The contractor is liable to furnish indemnity bond as per the attached format 5.5 in section-6, duly indemnifying the Employer for the Equipment supplied and under the custody of contractor after supply of material for Installation and services.

New Clause 47 Environment Laws& Regulation

Sub-Clause 47.1 The Contractor shall comply with all applicable national, provincial, and local environmental laws and regulations. The Contractor shall (a) establish an operational system for managing environmental impacts, (b) carry out all of the monitoring and mitigation measures set forth in the IEE, EMP and EMMP, and (c) allocate the budget required to ensure that such measures are carried out. The Contractor shall submit semi-annual reports on the carrying out of such measures to the Employer. More particularly, the Contractor shall comply with (i) the measures and requirements set forth in the IEE, EMP and EMMP; and (ii) any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor implementation of the initial environmental examination and the environmental management plan.

The Contractor shall allocate a budget for compliance with these measures, requirements and actions.