

**Reply to the queries raised by the bidders in respect of Request for Proposal (RFP) for Engineering, Procurement & Construction package of 4.5MW Mawar-I, 10MW Mawar-II, 10MW Kahmil, 10MW Dringla-Karnah & 9.5MW Sewa-I Small Hydro Electric Projects (Round-II).**

Sl. No	Volume/ Section/ Part / clause	Clause	Bidder's Query/Suggestion ( <i>Commercial Clarification</i> )	Reply/ Clarification
1.	Section-5, GCC	29. Extent of General Liability	<p>In sub-clause 29.1 after the words “loss of profit” insert the text “loss of revenue, loss of generation”.</p> <p>Add the following text as 29.5</p> <p>“Contractor’s aggregate liability for and all claims of any kind, for any loss, damage or expense arising out of or connected with the Works or this Contract or breach thereof, together with the cost of performing make good obligations to pass performance tests shall in no event exceed 100% of the Contract Price. The limitations and exclusions of liability set forth in this clause shall take precedence over any other provision of this Contract and shall apply whether the claim for liability is based on contract, tort (including negligence) or otherwise.”</p>	No change proposed. Bid Provision shall prevail.
2.	Section-5, GCC	22. Order to Commence	<p>Request you to replace the existing clause with the following: Commencement Date of Contract is the date on which all the following conditions have been fulfilled:</p> <ul style="list-style-type: none"> <li>(i) The Contract has been signed by both Parties.</li> <li>(ii) The Contractor has received the irrevocable and operable at sight letter of credit for the Total Contract Price less advance payment in the form and substance acceptable to the Contractor.</li> <li>(iii) The Contractor has submitted advance bank guarantee amounting to 5 % of the Total Contract Price.</li> </ul>	No change proposed. Bid Provision shall prevail.

			<p>(iv) The Contractor has submitted performance bank guarantee amounting to 5% of the Total Contract Price.</p> <p>(v) The Contractor has received the 5% advance payment onto his account.</p> <p>If the above conditions are not fulfilled within the 30 days from the signing date of Contract Agreement, Parties shall discuss &amp; mutually agree and re-negotiate the Total Contract Price and/or all other relevant terms of Contract and shall also fix a date within which above conditions will be fulfilled. If above conditions are even not fulfilled within specified fixed date then the Contract, unless agreed otherwise by the Parties, will be null and void and Employer shall return all the bank guarantees provided by the Contractor.</p> <p>“Letter of Credit” (L/C, LC) means an irrevocable and operable letter of credit, payable at sight, based on UCP 600 and issued by a Nationalized/scheduled bank acceptable to the Contractor It shall be the obligation of the Employer to have the Letter of Credit opened, maintained and amended as may be required by the Contractor from time to time.</p>	
3.	Section-6, SCC	5.Terms of Payment	<ul style="list-style-type: none"> <li>- Request you to delete the requirement of BG for progress payment due on 6months, 12months and 18 months.</li> <li>- All payments shall be through L/C, L/C shall contain wordings against each payment that “in case of delays not attributable to the Contractor, the payment shall be made the latest __ months after the Commencement Date.”</li> </ul>	No change proposed. Bid shall prevail.
4.	Section-6, SCC	2.2 Scope of work	<p>Request you to change 2<sup>nd</sup> para as follows:  “For any change in design parameters, scope the Contractor shall be eligible for extra time and cost. The same shall be treated as variations and a change order shall be issues. The Employer shall</p>	No change proposed. Bid shall prevail.

			instruct the Employer's bank to issue an amendment to the Letter of Credit within 14 days from change order. ”	
5.	Section-5, GCC	9.1 Sufficiency of Tender.	In sub-clause 9.1 Request you to change last line as follows: The Contractor shall be eligible for additional time and costs in case of unforeseen difficulties.	No change proposed. Bid Provision shall prevail.
6.	Section-5, GCC	9.2 Sufficiency of Tender	Please add the following at the end of 9.2 “The Contractor shall be eligible for additional time and costs in case of changes in sub-surface conditions and other local conditions, the hydrological, geological and climatic conditions.”	No change proposed. Bid Provision shall prevail.
7.	Section-5, GCC	GCC 24.2 Extension of Time	In 24.2 add the following text at the end: a) extra or additional work ordered by the Employer b) adverse weather conditions, c) physical obstructions or conditions which could not reasonably have been foreseen by the Contractor, including all seismic, hydrological, geological and other sub-surface conditions or concealed conditions on site d) Employer's failure to fulfill any of his obligations under the Contract. e) delay by any other contractor engaged by the Employer. f) Force Majeure. g) any suspension of the Works, except when due to the Contractor's default. The Contractor has right to an extension of the Time for Completion plus the reimbursement of additional costs, if he is delayed in completing the Works by any of the above causes.” In 24.3 replace the text “ the likely effect on the Time for Completion of the Works specified in Article 23 and, the extension in Time for Completion required with justification therefor “ with the text “the likely effect on the Time for Completion of the Works and additional costs as specified in Article 23 and, the extension in Time for	No change proposed. Bid Provision shall prevail.

			<p>Completion and additional cost required with justification therefor.”</p> <p>Replace the 3<sup>rd</sup> sentence with the following:  “On receipt of such notice, the Engineer-in-charge may grant such extension of time and additional cost.”</p>	
8.	SCC, New Clause	Liquidated Damage for Delay	<p>Any delay in commissioning of the Unit(s) beyond its respective Time for Completion , for reasons solely attributable to the Contractor, would attract liquidated damages payable to Employer @ 0.03 % (three hundredth percent) of the Total Contract Price per Unit per day of delay subject to maximum of 10% (ten percent) of the Total Contract Price. The right to request liquidated damages for delay shall constitute the Employer’s sole and exclusive remedy Employer shall consider termination of the Contract in case of delay only after the maximum LD cap have been reached.</p>	No change proposed. Bid Provision shall prevail.
9.	SCC, New Clause	Suspension & Termination by Contractor.	<p>We request suspension and termination rights for the Contractor as below.</p> <p><b>Suspension by Contractor:</b></p> <p>The Contractor may suspend performance of all or any part of his obligations for such period of time that the Employer is in delay with any of his obligations in connection with the Contract including, amongst others, payment of any due amount or opening, amendment, and extension of L/C as required by the Contractor. Additionally, the Contractor shall have the right to extend such suspension for the time the Contractor reasonably may need to resume his obligations (e.g. for reason of machine utilization, remobilization of workforce, etc.). Upon such suspension, the Contractor shall be entitled to an adequate extension of the Time for Completion and to reimbursement of any costs, damages and losses incurred by him due to such suspension.</p>	No change proposed. Bid Provision shall prevail.

			<p><b>Termination By Contractor</b></p> <p>(i) The Contractor may terminate the Contract if (i) the Employer does not remedy the default of delay in payment 7 or issuance, amendment or maintenance of payment security within 30 (thirty) days after having received the notice of suspension of the Contract by the Contractor or (ii) if the Employer substantially fails to perform his obligations under the Contract or (iii) if the execution of delivery or the inception or continuation of Works is made impossible for reasons within the responsibility of the Employer and if the delay is extended beyond a grace period of 30 (thirty) days.</p> <p>(ii) The Contractor shall further be entitled to receive from the Employer the agreed Contract Price deducting the costs saved by reason of termination prior to completion of the Contract.</p> <p>(iii) Any such termination shall be without prejudice to any other rights of the Contractor under the Contract or the Law. On such termination, the Contractor shall be entitled to stop any Works related to the Contract and to remove immediately all Contractors' equipment which is on site.</p>	
10.	Section-5, GCC	Force Majeure	<p>Please add the following text at the end of sl.no. III in sub-clause 36.2 "terrorist strike, militancy." Contractor shall be entitled to additional costs in case of Force Majeure.</p>	No change proposed. Bid Provision shall prevail.
11.	SCC, New Clause	SCC 10. Performance Guarantee	<p>The Contractor's liability for liquidated damages is limited to a maximum of 10% of the Contract Price. The Contractor's liability for liquidated damages is related only to Delay and Performance.</p>	No change proposed. Bid Provision shall prevail.

12.	Section-5, GCC	Defect Liability Period	<p>Please replace 1<sup>st</sup> para of sub-clause 27.1 with below text :</p> <p>“In these General Conditions the expression "Defects Liability Period" shall mean the period of 24 (twenty four) months following the Date of Completion as per Article 26 hereof or 30 (thirty ) months from the date of despatch of last substantial consignment whichever is earlier. The “last substantial consignment” is defined as the consignment which completes delivery of all cognizable assemblies (excluding spares) and Contractor certifies that the delivery of balance items will in no way hinder erection/commissioning schedule drawn mutually between Contractor and Employer.”</p> <p>Replace sub-clause 27.6 with the following:</p> <p>If during the Defects Liability Period any part of the Works is found defective or deficient in any manner and is repaired/rectified/replaced pursuant to the defects liability provisions of the Contract, the Defects Liability Period for such part, notwithstanding anything to the contrary contained herein, be operative for a further period of 24 months from the date of such repair/rectification/replacement but shall not in any case be operative for more than 48 months from the Date of Completion stated in the corresponding Certificate of Completion or 54 months from the date of despatch of last substantial consignment.</p> <p>Please add the following as 27.8:</p> <p>“Contractor’s defects liability shall expressly exclude availability of the Works, erosion and corrosion, wear and tear, improper operation and/or maintenance, as well as third party repairs or modifications. The express defects liability in this Article is the only liability of the Contractor for defects that shall apply. No other liabilities for defects or warranties, whether statutory, oral, expressed or implied shall apply. Repairing, modification or replacement of defective goods shall be the sole remedy against defective equipment.”</p>	No change proposed. Bid Provision shall prevail.
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13.	Section-5, GCC	45.2 Warranty of Spares	Request you to delete sub-clause 45.2 since the Defect Liability of spares shall be the same of Main equipment.	No change proposed. Bid Provision shall prevail.
14.	New Clause	Employers Responsibilities	<p>Please add the following new clause: The Employer shall be responsible for:</p> <ul style="list-style-type: none"> <li>(i) procurement and providing of any other equipment out of the scope of Works of the Contractor required for the power plant such as, but no limited to : civil works, penstock, gates, mobile crane, etc.;</li> <li>(ii) coordination of the work performed by all the parties involved in the construction of the power plant, during engineering, construction, site installation, commissioning,</li> <li>(iii) construction and maintenance of the site access roads and the roads inside the site to ensure the Contractor's proper and riskless transportation possibilities of the Equipment at any time,</li> <li>(iv) providing necessary support to the Contractor in getting the permission of authorities as and when necessary;</li> <li>(v) unloading, handling and providing adequate storage and preservation at the site;</li> <li>(vi) providing safety on site by providing (non-exhaustive list) fencing, lightening, guarding, footways, clearance of the site, etc., during site installation, commissioning, and defects liability period;</li> <li>(vii) setting up and maintenance of services on Site: including but not limited to housing and office facilities, water, gas, electricity, heating, ventilation, telephone, telefax, wireless and wired internet connections during site installation, commissioning, and defects liability period;</li> <li>(viii) arranging all statutory clearances from Government bodies, local agencies such as Irrigation Department, Forest Department or any other agency / statutory authorities/ regulatory authority for satisfactory performance of the Works and also during Defects</li> </ul>	No change proposed. Bid Provision shall prevail.

			<p>Liability Period;</p> <p>(ix) payment of all applicable taxes &amp; duties, local levies, cess,; and</p> <p>(x) Providing correct, true and error-free data/information to the Contractor.</p>	
15.	Section-5, GCC	51.4 to 51.6	<p>Request you to kindly change this clause so that the E&amp;M Contractor shall be free to despatch or store the goods in Warehouse for a maximum period of 6 months at the cost of the Employer. The Contractor shall be entitled to the payment on shipments against the submission of warehouse receipts. Upon completion of storage period of 12 months the condition of stored goods shall be reassessed and if the need arises Contractor shall be eligible for additional cost and time. The date of storage shall be considered for arriving at the date of last substantial consignment for Defect Liability Period.</p>	<p>No change proposed. Bid Provision shall prevail.</p>
16.	Annexure 6.3.2	Proforma of Undertaking for Spares	<p>Please confirm that the proforma shall be applicable only for spares which are proprietary in nature.</p>	<p>Yes it pertains to the spares which are of proprietary in nature and applicable for all Electro mechanical, Hydro Mechanical and other Project maintenance related spares.</p>
			<p>Also confirm that the rates and commercial conditions of such spares shall be mutually agreed before the placement of supply order for such spares.</p>	<p>The cost will be part of the bid.</p>



17.	Section-5, GCC	26.3 Completion of Works	Please replace the last sentence with the following in sub-clause 26.4. “In such case, any remaining tests shall be performed by the Contractor thereafter at the first available opportunity, within 6 months of the Certificate of Completion. In case the tests are not performed within 6 months of the Certificate of Completion due to reasons not attributable to the Contractor, such tests shall be deemed to be done and the Contractor shall be relieved of all his obligations with respect to such tests.”	No change proposed. Bid Provision shall prevail.
18.	Section-5, GCC	20. Taxes/D uties/Levies etc	Request you to replace sub-clause 33.1 with below text: “ The Employer shall be responsible for payment of all Taxes/ GST/duties/levies/cess e.t.c. The Contractor’s prices are exclusive of all such taxes/ duties/ levies e.t.c	No change proposed. Bid Provision shall prevail.

No:-ST/EDA/SHP-RFP/60/2017/3762

Dt:-04.12.2017

Sd/-  
Chief Executive Officer  
JAKEDA