

SECTION - III

(GENERAL CONDITION OF CONTRACT) 2007-2008

(Tender Notification : CSO/04/O & M materials)

Date: 31.03.2008

GENERAL CONDITION OF CONTRACT (GCC)

1.0 General Instructions

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

2.0 Definition of Terms

- 2.01 "Purchaser" shall mean NESCO.
- 2.02 "Bidder" shall mean the firm who quotes against this bid document issued by the Purchaser. "Contractor" or "Seller" shall mean the successful Bidder and/or Bidders whose bid has been accepted by the Purchaser and on whom the "Letter of intent" is placed by the Purchaser and shall include his heirs, legal representatives, successors and permitted assigns wherever the context so admits.
- 2.03 "Site" shall mean the Electricity Distribution Area of the Company.
- 2.04 "Specification" shall mean collectively all the terms and stipulations contained in those portions of this bid document known as Instruction to Bidder, Bid form and other forms as per Volume - III,

General Conditions of Contract, Specifications and the Amendments, Revisions, Deletions or Additions, as may be made by the Purchaser from time to time.

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

3.0 Contract Documents & Priority

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

4.0 Scope of Work

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

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

5.0 General Requirements

- 5.01 The contractor shall supply, deliver best quality goods.
- 5.02 The company also reserves the right to add from the scope of work or delete from the scope of work so assigned to the Supplier, if the circumstances so warrant.
- 5.03 The contractor shall be responsible for loading and unloading of all materials with proper material handling equipment.

6.0 Quality Assurance and Inspection

- 6.01 Immediately on award of contract, the bidder shall prepare detailed quality assurance plan / test procedure identifying the various stages of manufacture, quality checks performed at each stage, raw material inspection and the Customer hold points. The document shall also furnish details of method of checking, inspection and acceptance standards / values and get the approval of Purchaser before proceeding with manufacturing. However, Purchaser shall have the right to review the inspection reports, quality checks and results of contractors in house inspection department which are not Customer hold points and the contractor shall comply with the remarks made by purchaser or his representative on such reviews with regards to further testing, rectification or rejection, etc.
- 6.02 Witness and Hold points are critical steps in manufacturing, inspection and testing where the contractor is obliged to notify the Purchaser in advance so that it may be witnessed by the Purchaser. Final inspection is a mandatory hold point. The contractor has to proceed with the work past a hold point only after clearance by purchaser or a witness waiver letter from Purchaser.
- 6.03 The performance of waiver of QA activity by Purchaser at any stage of manufacturing does not relieve the contractor of any obligation to perform in accordance with and meet all the requirements of the procurement documents and also all the codes & reference documents mentioned in the procurement document nor shall it preclude subsequent rejection by the purchaser.
- 6.04 On completion of manufacturing the items can be dispatched only after issue of shipping release by the Purchaser.
- 6.05 All testing and inspection shall be done without any extra cost.
- 6.06 Purchaser reserves the right to send any material out of the supply to any recognized laboratory for testing. In case the material is found not in order with the technical requirement / specification, the charges of testing along with any other penalty which may be levied is to be borne by the bidder. To avoid any conflict the Seller is advised to send his representative to the stores to see that the material sent for testing is being sealed in the presence of bidder's representative.

7.0 Packing, Packing List & Marking

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

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

8.0 Price Basis

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

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

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

10.0 Terms of Payment

- 10.01 The Payment shall be made as under:

- a) 100% Payment with taxes & duties on Prorata basis within 30 days of receipt of goods in our specified stores in good condition subject to detailed verification thereof and approval of guarantee & test certificate.
- b) For claiming 100% payment a Bank Guarantee of 10% value of the value of the goods on prorate basis, is to be provided which shall remain valid for a period beyond 90 days from the warranty period as per clause no. 12.0. This BG is independent of the P.B.G prescribed in Clause-13.0

- 10.02 All Payments shall be made after certification from Purchaser's Engineer Incharge. All Payments are subject to receipt of correct Documents.

11.0 Price Validity

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

12.0 Warranty / Guarantee

- 12.01 The bidder shall guarantee for the equipments/workmanship for a minimum period of 24 months from the date of commissioning or 30 months from the date of last receipt goods at stores, whichever is earlier. The manufacturer shall guarantee to replace or repair to the satisfaction of the purchaser the defective parts at site free of cost within the above period. Should however, the manufacturer fails to do so within a reasonable time, the purchaser reserves the right to effect repair or replacement and recover such charges for repair or replacement from the contractor. Contractor shall submit a performance Guarantee of 10% of the order value valid for a period of 90 days beyond the expiry of the warranty period.
- 12.02 If during the defect liability period any services performed found to be defective, these shall be promptly rectified by contract its own cost (including the cost of dismantling and reinstallation) on the instruction of Purchaser.

13.0 Contract Performance Bank Guarantee

- 13.01 Within Fifteen (15) days from the date of the Award notice, Seller shall submit a Performance Bank Guarantee (PBG) in favour of Purchaser equivalent to Ten percent (10%) of the total price of the Contract (the "Performance Bank Guarantees"). The PBG shall be valid for a period of 60 days from the completion of delivery.
- 13.02 The Performance Bank Guarantee established under Clause 13.01 shall be forfeited without recourse to the seller and payable against the presentation by Purchaser to the bank with a claim that the seller has failed to comply with any term or condition set forth in the Contract.
- 13.03 The Performance Bank Guarantee established under will be automatically and unconditionally forfeited without recourse if Purchaser in its sole discretion determines that Seller has failed to comply with any Terms or Condition set forth in the contract.
- 13.04 The Performance Bank Guarantees will be released without interest within thirty (30) days from the last date up to which the Performance Bank Guarantee has to be kept valid (as defined in Clause 13.01).

14.0 Technical information / data.

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

information, drawing etc. shall be returned to the company with all approved copies and duplicates. In the event of any breach of this contract, the contractor shall indemnify the company against any loss, cost of damages or claim by any party in respect of such breach

15.0 Effective Date of Commencement of Contract:

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

16.0 Taxes & Duties :

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

17.0 Time – The Essence of Contract

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

18.0 Liquidated Damages (LD)

- 18.01 If supply of items / equipments is delayed beyond the supply schedule as stipulated in purchase order/LOI, then the Contractor shall be liable to pay to the Purchaser as LD for such delay, a sum of 1% of the contract price for every week delay or part thereof. The LD shall be computed on the undelivered value of goods as per the delivery schedule.
- 18.02 The total amount of LD for delay under the contract will be subject to a maximum of ten percent (10%) of the contract price
- 18.03 The Purchaser may, without prejudice to any method of recovery, deduct the amount for such damages from any amount due or which may become due to the Contractor or from the Performance Bank Guarantee or file a claim against the contractor.

19.0 The Laws and Jurisdiction of Contract:

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

20.0 Events of Default

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

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

21.0 Consequences of Default.

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

22.0 Force Majeure

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

Force Majeure shall not include occurrences as follows:

- (a) Late delivery of materials caused by congestion at Seller's facilities or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.

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

Unless the delay arises out of a Force Majeure occurrence and is beyond both Seller's and Sub-Seller's or Seller's control and an alternate acceptable source of services, equipment or material is unavailable. Additionally, Force Majeure shall not include financial distress of Seller or any Sub-Seller.

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

23.0 Transfer and Sub-Letting

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

24.0 Third party insurance

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

25.0 Recoveries

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

26.0 Waiver

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

27.0 Indemnification

27.01 Notwithstanding contrary to anything contained in this Tender, Contractor shall at his costs and risks make good any loss or damage to the property of the Purchaser and/or the other Contractor engaged by the Purchaser and/or the employees of the Purchaser and/or employees of the other Contractor engaged by the Purchaser whatsoever arising out of the negligence of the Contractor while performing the obligations under this contract.

27.02 Subject to this Clause 23.0 Purchaser shall, at its sole cost and expense, defend, indemnify and hold harmless Contractor and his assignees /or the employees of the Contractor whatsoever arising out of the negligence or willful act or omission or from the default of the Purchaser in the performance of the Contractor.