

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

The Employer is: **Pashchimanachal Vidyut Vitran Nigam Limited, Meerut (PVVNL)**

The Project Manager is: Chief Engineer (Distribution), Bulandshahr Zone, Bulandshahr.

The Bank is: Asian Development Bank

Country of Origin: Most recent list of eligible countries as specified in Article 1.1(d) of Contract Agreement.

5. Law and Language

5.1 The Contract shall be interpreted in accordance with the laws of: India.

5.2 The ruling language is: English

5.3 The language for communications is: English

6. Fraud and Corruption

6.4 The Contractor has the obligation to notify the Employer of any changes in connection with the matters described in paragraphs (f), (h), (i), (j), (k), (l), (m) and (n) of the Letter of Technical Bid.

6.5 If the Contractor is debarred or temporarily suspended by ADB, it shall inform the Employer of such debarment or suspension, and that the endorsement of ADB's Office of Anticorruption and Integrity is required for any variations, extensions or modifications to the Contract.

7. Scope of Facilities

7.3 The Contractor agrees to supply spare parts for a period of years: Not applicable.

8. Time for Commencement and Completion

- 8.1 The Contractor shall commence work on the Facilities within 15 days from the Effective Date for determining Time for Completion as specified in the Contract Agreement provided that access to and possession of the Site or any part thereof have been given under subclause 10.2, and shall then proceed with the work on the Facilities with due expedition and without delay.
- 8.2 The Time for Completion of the whole of the Facilities shall be 18 months from the Effective Date as described in the Contract Agreement.

9. Contractor's Responsibilities

- 9.6 To add the following paragraph at the end of GCC 9.6:

"ADB's right to inspect the Site and/or the Contractor's accounts and records relating to the performance of the Contract stated in Subclause 6.1 (e) and 9.6 shall survive termination and/ or expiration of this Contract."

- 9.8 Protection of the Environment

At the end of the sub-clause in 9.8 Protection of the Environment, add the following paragraphs:

"The Contractor shall comply with all applicable national, provincial, and local environmental laws and regulations.

The Contractor shall also comply with all reasonable requests of the national and local authorities responsible for enforcing environmental controls.

Within 28 days of the Commencement Date the Contractor shall submit a detailed Site Specific Environmental Management Plan (SSEMP), based on the Environmental Health and Safety Management Plan submitted in the technical proposal, for the Project Manager's no objection showing how the Contractor intends to comply with environmental laws and regulations and other specific requirements prescribed in the Contract, addressing all the monitoring and mitigation measures set forth in the Environmental Impact Assessment ("EIA") and the Environmental Management Plan ("EMP") of the project attached in Section 6- Employer's Requirements. Work shall not commence on the Site until the no objection of SSEMP has been obtained from the Project Manager and is being implemented.

The Contractor shall (a) establish an operational system for managing environmental impacts, (b) comply with the approved SSEMP and any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor the implementation of the project EMP through the SSEMP, (c) allocate the budget required to ensure that such measures, requirements and actions are carried out, (d) submit semi-annual reports on the compliance of such measures to the Employer.

Where unanticipated environmental risks or impacts become apparent during the Contract, the Contractor is required to update the SSEMP to outline the potential impacts to site works and associated mitigation measures for the Project Manager's

approval.”

10. Employer's Responsibilities

10.2 There shall be no work nor construction activities at the Site or any part thereof (as the case may be) unless the Employer has granted access to the Site or part thereof (as the case may be) in accordance with this Subclause 10.2.

10.3 The clause is replaced by the following :

On behalf of Employer, 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 (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.

The Employer shall reimburse the Contractor the payment made by them.

13. Securities

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 Contract Price.

13.3.2 The performance security shall be in the form of the Unconditional Bank Guarantee as per form included in Section 9 (Contract Forms).

13.3.3 The performance security shall not be reduced on the date of the Operational Acceptance.

18. Work Program

18.2 Add the following subparagraph:

The Contractor shall submit a detailed month wise programme of supply of various items of plant and completion of various activities of Installation work in the form of “BAR CHART” and “SUB BAR CHARTS” within 28 days after effective date.

18.3 Add the following as a new sub-para :

(c) The Contractor shall provide the Employer with quarterly reports of its activities, including each of its obligations in Sub-Clauses 21.1, 22.1.1, 22.2.3 (d), 22.2.7 (d), 22.2.15, 22.2.16, 46 and 47..

18.4 Add the following subparagraph:

Progress of Performance would be reviewed through a periodical review meeting between Contractor and Employer. The periodical review meeting shall be held every month before the 10th of the succeeding month to analyze the scheduled and actual progress, targets for the next quarter and to sort out bottlenecks, if any, to ensure completion of work within the Time schedule specified in the contract. The Contractor will attend the above meetings along with necessary information in respect of supply and installation activities.

19. Subcontracting

19.6 The Contractor shall not subcontract

20. Design and Engineering

20.3 Approval/Review of Technical Documents by Project Manager.

20.3.2 Within 21 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 21 days, then the said document shall be deemed to have been approved by the Project Manager.

21.1 Materials

Add the following at the end of Sub-Clause 21.1 of the GCC.

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

22.1.1 Add the following at the end of Sub-Clause 22.1.1 (end of paragraph a):

"The Contractor shall comply with (i) the measures and requirements relevant to the Contractor which are set forth in the Resettlement Plan ("RP")/Due diligence report (DDR) to the extent it concerns 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.

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

The Contractor shall comply with the measures and requirements relevant to the Contractor set forth in the Safeguards Assessment and Review Framework (SARF), Initial Environmental Examination (IEE), Environmental Management Plan (EMP), and the Resettlement Plan (RP), and the Social Due Diligence Report (SDDR) (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

22.2 Labor

22.2.3 (d) Labor Laws

Add the following at the end of Sub-Clause 22.2.3 (d)

The Contractor shall not make employment decisions based upon personal characteristics unrelated to job requirements. The Contractor shall base the

employment relationship upon equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment or retirement, and discipline.

The Contractor shall provide equal wages and benefits to men and women for work of equal value or type.

During continuance of the contract, the Contractor and his sub-contractors shall abide at all times by all applicable existing labour enactments and rules made there under, regulations notifications and byelaws of the State or Central Government or local authority and any other labour law (including rules), regulations bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority

22.2.5 Working Hours

- (a) Normal working hours shall be as per Governing Act of Employer Country

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 labor (including all the Contractor's employees, all Subcontractors 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 under Subclause 18.2 an alleviation program for Site staff and labor and their families in respect of STI and 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 Subclause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related subcontracting 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.

After the existing paragraph in GCC 22.2.7 (a), add the following:

“The Contractor is responsible for establishment of preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks of the construction site work to the health and safety of local communities.

Within 28 days of the Effective Date the Contractor shall submit a detailed Site Specific Health and Safety Management Plan (SSHSM), based on the Environmental Health and Safety Management Plan submitted in the technical proposal, for the Project Manager 's no objection showing how he/she intends to comply with the local Health and Safety laws and regulations and other specific requirements prescribed in the Contract, taking into account the Supplementary Information in Section 6- Employer's Requirements. Work shall not commence on the Site until the confirmation of no objection of the SSHSM has been obtained from the Project Manager and is being implemented.

Where unanticipated health and safety hazards or risks become apparent during the Contract, the Contractor is required to update the SSHSM to outline the potential impacts to site works and associated mitigation measures for the Project Manager's no objection.

The Contractor shall comply with the approved SSHSM and any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor the implementation of the project EMP through the SSHSM.

In particular, the Contractor is required to provide all personnel on site including Employer's Personnel and visitors with personal protective equipment, including protection for feet (safety boots), head, eyes, ears (safety helmets) and hands, etc., in accordance with the Contractor's SSHSM. The Contractor should ensure that his Subcontractors comply with the SSHSM and provide all such necessary equipment to their personnel.

The Contractor shall bear the costs to ensure that such measures, requirements and actions are carried out.

The Contractor shall submit semi-annual reports on the compliance of such measures to the Employer."

Add after the existing paragraph in GCC 22.2.7 (c) the following:

"In the event of a significant injury involving medical treatment or hospitalization and fatal accident the Contractor shall notify the Project Manager immediately by verbal communication and submit a formal report as soon as practicable after its occurrence. For all accidents, whether fatal or not, the Contractor shall also notify the appropriate local authorities in accordance with the Laws of the Country."

22.2.8 Funeral Arrangements

The funeral arrangements in the unfortunate event of the death of any of the staff engaged by the Contractor shall be the sole responsibility of the Contractor during the entire implementation as well as operation & maintenance period.

22.2.16 Please add at the end of the clause: 'Child' means a child below the statutory minimum age specified under applicable national, provincial or local law of India

22.2.17 Respectful Work Environment

The Contractor shall ensure that its employees and Subcontractors observe the highest ethical standards and refrain from any form of bullying, discrimination, misconduct, and harassment, including sexual harassment and shall, at all times, behave in a manner that creates an environment free of unethical behavior, bullying, misconduct, and harassment, including sexual harassment. The Contractor shall take appropriate action against any employees or Subcontractors, including suspension or termination of employment or subcontract, if any form of unethical or inappropriate behavior is identified.

The Contractor shall conduct training programs for its employees and Subcontractors to raise awareness on and prevent any form of bullying, discrimination, misconduct,

and harassment including sexual harassment, and to promote a respectful work environment. The Contractor shall keep an up to date record of its employees and subcontractors who have attended and completed such training programs and provide such records to the Employer or the Engineer at their first written request.

23.1.2. Add the following sub paragraph :

The contractor shall ensure that pre-dispatch inspection for materials are intimated only when the material is completely ready for inspection. On due date of inspection, if it is found that materials are not ready in required quantities or the inspection could not be carried out due to non-availability of requisite calibrated certificate of instruments with manufacturer, closing of works on scheduled date of inspection, non-availability of sufficient testing/material handling staff at manufacturer works etc, all expenditures incurred on deployment of various inspecting officials along with a fine of Rs. 50,000/- shall be recovered from the bills of the agency. 2nd such situation at same manufacturer/supplier shall result in rejection of name of manufacturer from list of approved vendors/sub-vendors. In case sub-standard materials (old component, re-cycled materials, re-used core material, re-used transformer coil materials etc) offered for inspection and are noticed during the inspection, materials shall be rejected and approval of sub-vendor shall also be cancelled.

24. Completion of the facilities

24.1 Replace with:

Upon Completion of the work at each designated site, the Contractor shall notify the Employer in writing.

24.2 Replace with:

Upon such notification, the Employer / Employer's Representative shall carry out joint inspection along with the Contractor to verify the quantities and quality of work as per the employer's requirement in Section 6, technical specifications.

24.3 Replace with:

Following Joint inspection, any defects and/or deficiencies will be recorded in a snag list (defects list) and jointly signed. These defects/snags shall be rectified by the Contractor before the Operational Acceptance.

24.5 Not applicable

24.6 Not applicable

24.7 Not applicable

24.8 Not applicable

24.9 Completion of Facilities 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.

25.2.2 Not applicable

25. Commissioning and Operational Acceptance

25.1 Not applicable

25.2 Not applicable

25.4 The operational acceptance shall occur in respect of the facilities or any part thereof when the defect list mentioned in SCC 24.3 has been rectified to the satisfaction of the Employer.

25.5 Not applicable.

25.6 Not applicable.

26. Completion Time Guarantee

26.2 Applicable rate for liquidated damages: @ 0.5% of Contract Price per week or part thereof

Maximum deduction for liquidated damages: 10% of the Contract Price.

26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.

27. Defect Liability

27.2 Defect liability period shall be 365 days from the date of operational acceptance.

27.10 Defect liability period shall be 5 years for distribution transformers.

28. Functional Guarantees

Not Applicable

30. Limitation of Liability

30.1.1 (b) The multiplier of the Contract Price is: 1 (one)

35.3 Unforeseen conditions

Add at the end of Sub-Clause 35.3

In addition to notice of any unforeseeable physical conditions, the Contractor shall provide the Engineer with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project, which were not considered in the Environmental Management Plan (EMP), the Resettlement Plan (RP) and Social Due Diligence Report (SDDR) attached hereto as Appendix () to Appendix ()

39. Change in the Facilities

39.1.5 : Add following sub-clause:

The quantities of individual items and services covered under the Contract are provisional and may vary up to the limit of works requirement, subject to approval for variation in quantities up to (+/-) 30% from Project Manager. For the quantities varying beyond (+/-) 30%, approval should be sought from competent authority of the Employer.

Prices of individual items and services will remain same throughout the period of contract. Payment will be based on the actual quantities executed and the actual work done at the quoted unit rates. The total variation in contract price shall be restricted to 15% of the contract price.

42. Termination

42.1 Termination for Employer's Convenience

42.1.3 (f) a reasonable amount of profit for the parts of the Works not executed by the Contractor as at the date of termination.

45. Disputes and Arbitration

45.1 The Dispute Board of three members shall be appointed within 28 days after the Effective Date.

45.2 (Appointment to be made by). – The indicated appointing authority is a Director Indian Institute of Technology Kanpur. Please ensure that the appointing authority is a neutral and not connected with the Employer with the power and authority to exercise the designation given to it under this Sub-Clause.

45.3 This sentence shall be added as last paragraph in GCC Subclause 45.3:

If the decision of the Dispute Board requires a payment by one Party to the other Party, the Dispute Board may require the payee to provide an appropriate security in respect of such payment.

45.5 Rules of procedure for arbitration proceedings:

(a) Contracts with foreign contractors:

International arbitration shall be conducted in accordance with the rules of Singapore International Arbitration Centre (SIAC).

Arbitration shall be administered by SIAC.

The place of arbitration shall be Singapore.

- (b) Contracts with contractors being nationals of the Employer's country will be referred to the Indian Arbitration and Conciliation Act of 1996.

Place of Arbitration shall be Allahabad.

45.6 GCC Subclause 45.6 shall be replaced with the following sentence:

In the event that a Party fails to comply with a Dispute Board decision which has become either binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Subclause 45.5 [Arbitration] for summary or other expedited relief, as may be appropriate. Subclause 45.3 [Obtaining Dispute Board's Decision] and Subclause 45.4 [Amicable Settlement] shall not apply to this reference.

46. Eligibility

- 46.1 The Contractor shall have the nationality of an ADB member. The Contractor shall be deemed to have the nationality of a country if the Contractor is a citizen 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.
- 46.2 The materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, the Contractor may be required to provide evidence of the origin of materials, equipment and services.
- 46.3 For purposes of SCC 46.2, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.
- 47.1 In line with the covenants stipulated under Schedule 4 of the Loan Agreement, please add a new Clause 47:

The Contractor shall comply with (a) all applicable laws and regulations of the Employer relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the Safeguards Assessment and Review Framework (SARF); and (d) all measures and requirements set forth in the Initial Environmental Examination (IEE) and Environmental Management Plan (EMP) and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

The Contractor shall (a) submit semi-annual Safeguards Monitoring reports in respect of environmental matters until the completion of construction and annually thereafter, and semi-annual Safeguards Monitoring Reports in respect of land acquisition and resettlement matters and disclose relevant information from such reports to affected persons promptly upon submission; (b) establish an operational system for managing environmental impacts, (c) carry out all of the monitoring and mitigation measures set forth in the IEE, EMP, the RP and

the SDDRs; and (d) allocate a budget for compliance with these measures, requirements and actions.

*More particularly, the Contractor shall comply with (i) the measures and requirements set forth in the initial environmental examination and the environmental management plan attached hereto as Appendix []; 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.