

**GUIDELINES,
POLICY AND PROCEDURE
FOR
PROCUREMENT
OF GOODS, WORKS AND
NON-CONSULTING SERVICES
FOR**



**Energy Efficiency Services Limited
19 November 2013**

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{Acronyms}

DPR	Detailed Project Report
CIF	Cost, Insurance, and Freight
CIP	Carriage and Insurance Paid (place of destination)
CPT	Carriage Paid To (named place of destination)
DDP	Delivered Duty Paid
EXW	Ex works, Ex factory, or Off the Shelf
FA	Framework Agreements
FCA	Free alongside Carrier (named place)
CB	Competitive Bidding
QR	Qualifying Requirement
NGO	Nongovernmental organization
OT	Open tender
SBDs	Standard Bidding Documents
LT	Limited Tender
ST	Single Tender
TC	Tender Committee
LOI	Letter of Intent
LOA	Letter of Award
FA	Financial Appraisal
QR	Qualifying Requirement
DOP	Delegation of Power
IGEA	Investment Grade Energy Audit

Section-I: Preamble, Applicability and Fraud Prevention etc.

A1.0 Purpose

The purpose of these Guidelines is to outline the policies that would govern the procurement of goods, works, and non-consulting services required by EESL. The intent of the document is to make the policies and procedures more systematic, well-documented, transparent and easy to administer. However no other party, including the contractor(s) shall derive any right from these guidelines. The respective rights and obligations of the EESL and the contractors of goods and works for the project shall be governed by the bidding¹ documents and by the contracts agreement signed by EESL with the providers of goods and works, and not by these Guidelines.

A2.0 General Considerations

A2.1 The primary principles and objectives that will guide the procurement activities would be generally as detailed below:

- (a) to make available the required goods, equipment, material, works and the non-consulting services in the right quality and quantity, at the right time and at the right price after giving fair and equal chance to all the tenderers / bidders, so as to obtain the optimum value for each unit of expenditure.
- (b) The need for economy and efficiency in the implementation of the projects, including the procurement of goods, works and services involved;
- (c) To provide all eligible bidders the same information and equal opportunity to compete in bidding process for goods, works and services;
- (d) To encourage the development of domestic energy efficiency market in the country; and

¹ For the purposes of these Guidelines, the words “bid” and “tender” shall have the same meaning.

(e) To ensure transparency, responsiveness, timeliness, fairness and accountability in the procurement process.

A2.2 All actions towards award of contracts and its implementation have to be fair, consistent, transparent and based on highest standards of ethics. Any failure to maintain highest standard of ethics by concerned officials of EESL will be viewed seriously. Similarly, bidders/supplier/contractors associated in the works and procurement, are expected to observe the highest standard of ethics during procurement and execution of contracts. In pursuance to above, EESL.

- a) May reject a bid for award, if it determines that the bidders, recommended for award, and /or its employees, sub-contractors, agents have engaged in corrupt or fraudulent practices in competing for the Contract in question:
- b) May cancel the Contract, in full or in part, if it is determined that corrupt or fraudulent practices were engaged by contractors and / or its employees, sub – contractors, agents for getting the contract or during the execution of the Contract;
- c) May declare a firm ineligible to bid, either indefinitely or for a stated period of time, if it, at any time, determines that the firm has engaged in corrupt or fraudulent practices in competing for or in executing a EESL Contract.

For the purpose of above provision, the terms, “Corrupt Practice” and “Fraudulent Practice”, mean the following:

- i) “corrupt practice” means offering, giving, receiving, or soliciting anything of value to influence the action of EESL officials in the procurement process or in the contract execution ; and
- ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contact (to the detriment of EESL and would include collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non – competitive levels and to deprive EESL of the benefits of competitive prices.

A2.3 Open competition, as far as possible and practicable, will be the basis for procurement and EESL shall strive to obtain goods, works and non-consulting services through Competitive Bidding open to all eligible suppliers and contractors. EESL will use the Standard Bidding Documents (SBD) to be evolved from time to time for this purpose.

A3.0 Applicability of Guidelines

A3.1 The principles, rules and procedures outlined in these Guidelines will apply to all contracts for goods, works and non-consulting services. EESL shall ensure that the procedures to be followed will fulfill the Company's obligations to cause the project to be carried out economically, timely, diligently and efficiently. The goods and works to be procured should:

- (a) be of satisfactory quality and compatible with the requirement of the project;
- (b) be delivered or completed in time; and
- (c) be priced so as not to affect adversely the economic and financial viability of the project.

These guidelines are subject to applicable laws within the country and promulgation of any other laws, rules and Govt. orders / notifications in future.

A 3.2 In case, a contradiction arises between provisions of these Guidelines with any other circular/order/DoP issued by the Management after these Guidelines come into force, the latter shall prevail. However, in case of contradiction between the provision of these Guidelines and that of any other circular/order/DoP issued prior to these Guidelines coming into force, the former shall prevail. Further, if at any time a contradiction arises between these Guidelines and any Statute/Statutory Order, the provisions contained in the latter shall prevail.

A4.0 Conflict of Interest

A4.1 EESL policy requires that a Bidder participating in a procurement process under any project shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be ineligible for award of a contract. A Bidder may be considered to have a conflict of interest in a bidding process if:

- (a) the bidder or any of its affiliates, who has been engaged by EESL to provide consulting services for the preparation or implementation of a project, and participates in a bidding to provide goods, works, or non-consulting services resulting from or directly related to such consulting services w.r.t. a particular project. However, consultants preparing DPR/Financial Appraisal report etc may participate directly or in consortium with other bidders in bidding process as per terms & conditions of bidding documents or
- (b) the bidder submits more than one bid in a bidding process, either individually or as a partner in a joint venture, except for permitted alternative bids. This will result in the disqualification of all bids in which the Bidder is involved. However, this does not limit the inclusion of an agency as a subcontractor in one bid and the participation of the agency as a main contractor in another bid in certain types of procurement, if permitted by the EESL's Bidding Documents for goods, works or services under a project; or
- (c) the bidder (including its personnel or sub-contractors) has a business or family relationship with a member of an EESL staff (or of the project implementing staff, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding documents

or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract, unless the conflict stemming from such relationship has been resolved in a manner acceptable to the EESL throughout the procurement process and execution of the contract; or

A5.0 Eligibility

A5.1 To foster competition, EESL permits all eligible firms to offer goods, works, and non-consulting services. The conditions for participation, if any, shall be limited to those that are essential to ensure the firm's capacity and capability to perform the contract in question.

A5.2 In connection with any contract to be financed in whole or in part by EESL, it will not deny participation in a procurement process or award to a firm for reasons unrelated to: (i) its capability and resources to successfully perform the contract; or (ii) the conflict of interest situations covered under paragraphs A4.1 above. In case a bidder is quoting for the first time, EESL may, at its discretion, assess the bidder's capacity and capability based on past Contracts executed by bidder, check performance of work executed by bidder before award and other parameters like Technical/Financial capabilities, and based on the assessment, EESL may decide whether to award the contract on a particular bidder or not. However, such assessment shall not in any way diminish the responsibility of bidder for successful execution of contract. Bidder shall not have any objection for visit to his premises by EESL representatives.

A6.0 Joint Ventures

Any firm may bid independently or in joint venture confirming joint and several liability and responsibility, either with domestic firms and/or with foreign firms or as mentioned in the bidding documents.

A7.0 Company Review

EESL will review the procurement procedures, documents, bid evaluation processes, etc from time to time and minor modification/amendments, as deemed necessary, shall be incorporated with the approval of MD. Details of such modifications/amendments made shall be put up to Board of Directors for information on quarterly basis. The document shall be reviewed after every two years to bring it in line with prevailing market conditions inter-alia including the financial limits mentioned at various places in these guidelines. A committee of representatives from Contracts, Finance and Technical departments shall process the proposal for approval of MD/Board of Directors.

A8.0 FRAUD PREVENTION POLICY

The Company has adopted a Fraud Prevention Policy, which is reproduced below: -

BACKGROUND :

The Fraud Prevention Policy has been designed to ensure that officials dealing and undertaking transactions for EESL conduct themselves in a transparent and consistent manner. These requirements, inter-alia, include “Whistle Blower Policy”. The policy puts in place a mechanism for employees to report to the Management about unethical behavior, actual or suspected fraud or violation of conduct or ethics in course of work.

The Statutory auditors of the company are required to comment on the Fraud Prevention Policy of the company in their report to the Comptroller and Auditor General of India (C&AG) and in the annual accounts of the company given in compliance of the provisions of Section 619(3) of the Companies Act, 1956.

POLICY OBJECTIVES :

The “Fraud Prevention Policy” has been framed to provide a system for detection

and prevention of fraud, reporting of any fraud that is detected or suspected and fair dealing of matters pertaining to fraud. The policy will ensure and provide for the following :-

- i. To ensure that management is aware of its responsibilities for detection and prevention of fraud and for establishing procedures for preventing fraud and/or detecting fraud when it occurs.
- ii. To provide a clear guidance to employees and others dealing with EESL forbidding them from involvement in any fraudulent activity and the action to be taken by them where they suspect any fraudulent activity.
- iii. To conduct investigations into fraudulent activities.
- iv. To provide assurances that any and all suspected fraudulent activity will be fully investigated.

SCOPE OF POLICY :

The policy applies to any fraud, or suspected fraud involving employees of EESL, manpower deployed on adhoc/temporary/contract/fixed tenure, representatives of vendors, suppliers, contractors, consultants, service providers or any outside agency (ies) doing any type of business with EESL .

DEFINITION OF FRAUD :

"Fraud" is a willful act intentionally committed by an individual(s) - by deception, suppression, cheating or any other fraudulent or any other illegal means, thereby, causing wrongful gain(s) to self or any other individual(s) and wrongful loss to other(s). Many a times such acts are undertaken with a view to deceive/mislead others leading them to do or prohibiting them from doing a bonafide act or take bonafide decision which is not based on material facts."

ACTIONS CONSTITUTING FRAUD :

While fraudulent activity could have a very wide range of coverage, the following

actions/activities constitute fraud which is illustrative and not exhaustive.

- i. Forgery or alteration of any document or account belonging to the Company
- ii. Forgery or alteration of cheque, bank draft or any other financial instrument etc.
- iii. Misappropriation of funds, securities, supplies or others assets by fraudulent means etc.
- iv. Falsifying records such as pay-rolls, removing the documents from files and /or replacing it by a fraudulent note etc.
- v. Willful suppression of facts/deception in matters of appointment, placements, submission of reports, tender committee recommendations etc. as a result of which a wrongful gain(s) is made to one and wrongful loss(es) is caused to the others.
- vi. Utilizing Company funds for personal purposes.
- vii. Authorizing or receiving payments for goods not supplied or services not rendered.
- viii. Destruction, disposition, removal of records or any other asset of the Company with an ulterior motive to manipulate and misrepresent the facts so as to create suspicion/suppression/cheating as a result of which objective assessment/decision would not be arrived at.
- ix. Any other act that falls under the gamut of fraudulent activity.

REPORTING OF FRAUD :

- i. Any employee of EESL, manpower deployed on adhoc/temporary/contract/fixed tenure, representatives of vendors, suppliers, contractors, consultants, service providers or any outside agency (ies) doing any type of business with EESL as soon as he / she comes to know of any fraud or suspected fraud or any other fraudulent activity must report such incident(s). Such reporting shall be made to the designated Nodal Officer(s), nominated by EESL. If, however, there is shortage of time such report should be made to the immediate controlling officer whose duty shall be to ensure that input received is immediately communicated to the Nodal Officer. The reporting of the fraud normally should be in writing. In

case the reporter is not willing to furnish a written statement of fraud but is in a position to give sequential and specific transaction of fraud/suspected fraud, then the officer receiving the information/Nodal Officer should record such details in writing as narrated by the reporter and also maintain the details about the identity of the official / employee / other person reporting such incident. Reports can be made in confidence and the person to whom the fraud or suspected fraud has been reported must maintain the confidentiality with respect to the reporter and such matter should under no circumstances be discussed with any unauthorized person.

- ii. All reports of fraud or suspected fraud shall be handled with utmost speed and shall be coordinated by Nodal Officer(s).
- iii. Officer receiving input about any suspected fraud/nodal officer(s) shall ensure that all relevant records documents and other evidence are being immediately taken into custody and being protected from being tampered with, destroyed or removed by suspected perpetrators of fraud or by any other official under his influence.

INVESTIGATION PROCEDURE :

- i. The "Nodal Officer" shall, refer the details of the Fraud/suspected fraud to the MD of EESL, for further appropriate investigation and needful action. MD will, in consultation with Senior Officers of EESL, institute an investigation on the reference by the Nodal Officer.
- ii. This input would be in addition to the intelligence information and investigation of cases of fraud being investigated by the Assigned Department on their own as part of their day to day functioning.
- iii. After completion of the investigation, due & appropriate action, which could include administrative action, disciplinary action, civil or criminal action, etc shall be undertaken.
- iv. Assigned Department shall apprise "Nodal Officer" of the results of the investigation undertaken by them. There shall be constant coordination

maintained between the two.

RESPONSIBILITY FOR FRAUD PREVENTION :

- i. Every employee of EESL, manpower deployed on adhoc/temporary/contract/fixed tenure, representatives of vendors, suppliers, contractors, consultants, service providers or any outside agency (ies) doing any type of business with EESL, is expected and shall be responsible to ensure that there is no fraudulent act being committed in their areas of responsibility/control. As soon as it is learnt that a fraud or suspected fraud has taken or is likely to take place they should immediately apprise the same to the concerned as per the procedure.
- ii. All controlling officers shall share the responsibility of prevention and detection of fraud and for implementing the Fraud Prevention Policy of the Company. It is the responsibility of all controlling officers to ensure that there are mechanisms in place within their area of control to:-
 - a. Familiarise each employee with the types of improprieties that might occur in their area.
 - b. Educate employees about fraud prevention and detection.
 - c. Create a culture whereby employees are encouraged to report any fraud or suspected fraud which comes to their knowledge, without any fear of victimization.
 - d. Promote employee awareness of ethical principles subscribed to by the Company through CDA Rules;
- iii. Due amendments shall be made in the general conditions of contracts of the organization wherein all bidders/service providers/vendors/consultants etc. shall be required to certify that they would adhere to the Fraud Prevention Policy of EESL and not indulge or allow anybody else working in their organization to indulge in fraudulent activities and would immediately apprise their organization



of the fraud/suspected fraud as soon as it comes to their notice.

These conditions shall form part of documents both at the time of submission of bid and agreement of execution of contract.

ADMINISTRATION AND REVIEW OF THE POLICY:

The MD shall be the competent authority for the administration, interpretation, application of this policy . The policy will be reviewed and revised as and when needed.

SECTION-II : PRE-AWARD ACTIVITIES (UPTO AWARD OF CONTRACT)

B1.0 Procurement Plan

The preparation of a realistic procurement plan for a project is critical for its successful monitoring and implementation. As part of the project preparation, EESL shall prepare a tentative preliminary procurement plan for the entire scope of the project, based on the Detailed Project Report (DPR)/ Investment Grade Energy Audit Report (IGEA) related to projects or such other document that is available in this regard. Financial Appraisal of the project will be done based on DPR either through empanelled agencies for the subject work or agencies specialized in that particular type of project assignment. Financial Appraisal may also be done in house at EESL. Approval of Financial Appraisal Report (FAR) and Investment Approval will be taken by EESL from its Board of Directors. The Approval for FAR and investment may be taken either before or at the time of approval of award recommendations for the project work execution.

B2.0 Cost Estimate (Budget)

B2.1 Preparation of a well-thought of and realistic cost estimate is essential if budgetary resources are to be earmarked realistically. The cost estimate shall be based on the Company's assessment of the resources needed to carry out the assignment e.g. bill of quantity for material, skilled and unskilled manpower required for execution of work, logistical support viz transportation, loading / unloading, transit insurance, storage, distribution (if involved) etc, monitoring & verification, laboratory equipment, contingencies etc. Taxes and duties, service tax component etc. should also be reflected in cost estimate. The cost of material and manpower shall be estimated on a realistic basis by ascertaining the prevalent market conditions and consulting other organizations engaged in similar activities, if deemed desirable. Cost estimate can also be prepared based on budgetary quotations received from organizations working in relevant

field, last purchase price of similar goods, works or services, market survey etc. duly updated for market escalation. The cost estimate prepared by the project/technical division will be approved by Competent Authority/MD after its vetting by the Finance Division.

B2.2 Approved Cost Estimate will not be generally revised once bids for the concerned package have been opened. However, under exceptional circumstances e.g. there being a substantial difference between the bidder's price and cost estimate, review of cost estimate may be undertaken at the request of Tender Committee. However, as presently there is no independent department to undertake the revision of cost estimate, the same may be done by Technical department with finance concurrence with the approval of MD. A summary of such cases may be put up to the Board of Directors on a quarterly basis, till an independent Cost Estimation department is established in the Company.

B3.0 Qualifying Requirement (QR)

B3.1 The purpose of QR is to identify the qualified bidders who are capable of delivering goods/ services as per the specifications. QR shall generally be drawn in such a manner that enables adequate participation of bidders so as to facilitate wider competition, to the extent possible. The QR shall normally include Technical Requirements (both specific to the package and general) and the Financial Requirements. Identification of the qualified bidders can be done through the following methodology:

- (i) Pre-qualification methodology
- (ii) Post qualification methodology

B3.2 In case of Pre-qualification methodology, before Invitation For Bids (IFB)/Notice Inviting Tenders (NIT) is issued, application shall be invited from the potential firms who are expected to meet the QR indicated in the Notice Inviting

Applications for Pre-Qualification. Qualified parties shall be short-listed after scrutinizing their application. In such case, Invitation For Bids would be extended only to such qualified parties.

Pre-qualification of firms may be resorted to in case of packages involving specialized, expensive or technically complex equipment/works/services. Pre qualification may also be resorted to in case of any other supplies/works/services which in the opinion of EESL, warrant such methodology. Prequalification shall be based entirely upon the capacity and capability of prospective eligible bidders to perform the particular contract satisfactorily, taking into account factors such as their (a) capacity and capability (b) general and specific experience, past performance and successful completion of similar contracts over a given period; and (c) financial position. Proposal for adopting this route shall be processed by indenting / technical department. for approval of competent authority/MD after concurrence of finance. If approved, QR shall be framed by a committee consisting of Indenting/Technical, Contracts and Finance department as nominated and approved by competent authority/MD. Co-ordination for preparation of QR shall be done by indenting/technical department. Qualifying requirements shall be put up by the committee for approval of the Competent Authority /MD

When the time elapsed between the EESL's decision with regard to the list of prequalified firms and the issuance of bid invitations is longer than 12 months, EESL reserves the right to update the list through re-advertisement. The verification of the information upon which bidders were prequalified, including their current commitments, shall be carried out at the time of award of contract, along with their capacity and capability with respect to personnel and equipment. The award may be denied to a bidder who has been found to be meeting the pre-qualification requirements earlier but no longer meets the required qualification criteria with respect to technical and financial capacity and

capability to successfully perform the contract with respect to re-advertisement. If none or very few applicants are found to be prequalified, which may result in a lack of competition, EESL may issue a revised prequalification invitation, subject to the approval by an authority competent to approve such proposals.

B3.3 In case of post-qualification methodology, the QR for bidders for a specific package shall be brought out explicitly in the Bidding Documents. In this procedure, the bidder will submit data and documents pertaining to his qualification, as per the criteria given in the bidding documents, along with its offer. Procedure for constitution of QR committee and approval of QR will be same as mentioned at para 3.2 above.

B3.4 The Qualifying Requirement will be finalized based on NIT cost estimate and Technical requirements. QR shall be framed keeping in view the overall time available before NIT is published.

B4.0 Type and Size of package

Packages shall be defined based on size and scope of work depending on the magnitude, nature and location of the project, for which cost estimate will be, inter-alia, taken as the basis. For Projects requiring large quantities of similar items, more than one package may be desirable for adherence to the project completion schedule and also to create wider competition. However change in package list, if any, can be made with the approval of MD.

B4.1 The bidding documents shall clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate thereto.

B4.2 The size and scope of individual contracts will depend on the magnitude, nature, and location of the project. There could be multiple back to back contract/contract agreements with different agencies for execution of one

project. For projects requiring a variety of goods and works, separate contracts for supply of materials, equipment & plant and installation may be awarded. All such contracts will be treated as interdependent, having a cross fall breach clause i.e. breach of one contract will be treated as breach of other contracts.

B4.3 In certain cases, the complexities of the project may necessitate acceptance of a single responsibility contract in which discrete items of equipment and works may be grouped into a single package. EESL may also accept a turnkey contract, in which one entity shall assume total responsibility to provide the facility fully-equipped and ready for operation (at the "turn of the key").

B5.0 Bidding Process

B5.1 As a matter of general policy, the following bidding processes will be adopted:

I. Preferably, single stage two envelopes bidding process shall be adopted for packages having estimated cost more than Rs. 5.0 lacs. In such a case, bidders shall be required to submit their bid in two separate envelopes, as following:

First Envelope shall contain, but not limited to, the following, as specified in the tender documents:

- (a) Tender Document fees/EMD/Bid Guarantee/Bid Security
- (b) Bidder's confirmation of acceptance of important conditions as identified in bidding documents
- (c) Bidder's acceptance of EESL Fraud Prevention Policy in EESL format
- (d) Power of Attorney to sign the bids
- (e) Data/Documents in support of meeting the specified Qualification Requirements & technical details

Second Envelope shall contain the Techno-Commercial and price bid.

Both the envelopes shall be submitted together before the specified deadline for submission of bid. Only first envelope shall be opened on the scheduled date of bid opening at the specified time in the presence of representative of such bidders who choose to attend. The second envelope of only those bidders shall be opened at a date and time to be specified, who are found to satisfy the requirements in respect of EMD/Bid Guarantee/Bid Security, Important Conditions and QR, based on the first envelope. Price bid of other bidders shall be returned in unopened condition. In case of poor response (less than three acceptable offers based on first envelope), EESL reserve the right to extend the bid opening date by giving time to complete the deficit documents of first envelope.

II. Single stage Single envelope bidding process shall be, preferably, adopted for all packages having estimated cost upto Rs. 5.0 lacs. In such case, bidders shall be required to submit techno-commercial and price bid together at the same time and post qualification methodology as specified in para B 3.3 would be adopted.

B5.2 Two Stage Bidding Process may be adopted under following circumstances:

- (i) Requirement of quantity and/or specifications of equipment, works/services under a particular package may vary substantially depending upon design and/or Technology that a prospective bidder may offer.
- (ii) For procurement of new items for which technology is fast changing and for which discussion between EESL and prospective bidders may be required to arrive at the scope and specification requirements.

Under the Two Stage Bidding process, at First stage, un-priced Techno-commercial bids shall be invited on the basis of conceptual/basic design and/or performance specifications given in the bidding documents. Based on technical as well as commercial clarifications and mutual agreement (through correspondence and/or holding meeting), amendment to the bidding documents shall be issued and compliance of the bidders to the amendments shall be obtained.

In the second stage, the price bid shall be invited from those bidders, whose first stage bid was found responsive/meeting EESL requirements.

B5.3 A system of holding pre-bid conference with the prospective bidders may be adopted in case of two stage bidding for clarifications on details of scope, specifications and other relevant issues. The system of holding pre-bid conference may also be adopted for Single Stage and Single Stage Two Envelopes bidding based on the circumstances.

B 6.0 Basis for Selection and mode of tendering

The mode of tendering shall, inter-alia, be selected depending upon:

- (i) Total estimated cost of the goods, works and services.
- (ii) Type of goods, services and works.
- (iii) Availability of sufficient number of established vendors in the market to have adequate competition.
- (iv) Urgency of requirement of the goods, works and services
- (v) Availability of empanelled parties etc.

B 7.0 Mode of tendering

The following are the mode of tendering that can be adopted for the purpose of procurement:

B 7.1 Open Tender Invitation (OT):

- (a) Under the procedure of tender invitation, which shall normally be followed for procurement, the invitation for bids shall be extended to prospective bidders by advertisement through newspapers. Keeping in view the high cost of advertisement, this shall generally be adopted only for packages having estimated value more than Rs. 15 lakhs. In case of adopting Limited Tender for estimated value more than Rs. 15 lacs, reasons for LT in place of OT shall be recorded and the proposal shall be approved by MD.

In addition, a copy of NIT/IFB shall be mailed to the known prospective sources of procurement, traders/manufacturers/ service providers/ other organizations for wide publicity, an updated list of which shall be maintained with Contracts Department. The text of the NIT/IFB shall be concurrently uploaded on EESL's website and address of the website shall be given in the NIT published in newspapers.

- (b) Normally, a period upto 4 weeks shall be kept between commencement and close of sale of bidding documents. Bids shall be opened upto 2 weeks of close of sale of bidding documents. However, in exceptional cases, the time period for sale of bidding documents may be reduced with the approval of the competent authority having powers to approve the release of NIT.
- (c) In view of high cost of NIT, in open tender cases, its amendments, bid opening extension, etc may not be published in Newspapers with approval of MD. However these amendments/ bid extensions shall be uploaded on the Company's website. It shall be explicitly mentioned in the newspaper advertisement that bidders are advised to refer Company's website frequently to get further information / updates on amendments / bid extensions etc.

B 7.2 Empanelment of Manufacturers/Service Providers against Qualifying Requirements can be done through open advertisement.

Manufacturers/Service Providers meeting the QR as specified in the bidding documents may be empanelled for a period of two years. The empanelment may be extended for further one year after completion of two years period with the approval of MD. Invitation of bids from all empanelled parties shall be deemed as invitation of bids based on open tender.

The list of newspapers for publishing of NIT advertising shall be decided by HR department, which should be released in different newspapers published by different newspaper groups.

Contracts and HR shall ensure proper scrutiny of the text of NIT for overall presentation and brevity, to the extent feasible, to keep the advertising cost to a minimum.

B 7.3 Limited Tender Invitation (LT):

(a) Under this procedure, direct invitation to bid for particular goods, work and service shall be extended to certain firms/parties whose names shall be selected from the data base of bidders who had participated in bidding in the past or who had been pre-qualified/ empanelled for similar goods, work and services or otherwise well known parties. In case the data base of prospective bidders for a particular work is not available with EESL, names of parties may be obtained from other organizations with establishment in the vicinity/ other source of repute. As a last resort, a brief advertisement informing only the salient details of the tenders may be given in local newspapers, with the approval of appropriate authority.

(b) LT shall normally be followed where;

(i) The estimated cost of the goods, works and services is as per the limits mentioned in the DOP of the company.

- (ii) There are only limited number of contractors/ suppliers for the procurement in question or
 - (iii) Other reasons justifying departure from open tendering procedures including expediency.
- (c) In all cases where LT is resorted to, bids shall be invited from four or more firms. Depending upon the estimated cost of the goods, works and services, it should be ensured that the list of firms for LT is broad enough to ensure competitive prices. Higher the estimated cost, more should be the number of firms.
- (d) The list of firms for LT initiated by indenting department/technical department alongwith cost estimate, scope of work and specifications/drawings etc shall be approved as per DOP. The note for approval of tendering shall be initiated by Contracts through Indenting department & Finance for approval by Competent Authority.
- (e) Normally, in case of LT, the bidding documents shall be issued to the approved firms directly along with the NIT/IFB free of cost or at token cost. A period of 2-3 weeks or more from the date of issuance of NIT/IFB/Bidding documents shall be allowed for submission of bids and opened on the same date. However, period for bid opening may be reduced or increased due to valid reason(s) to be mentioned in the note and approved by competent authority.
- (f) In case there is single response to Limited Tender, then it shall be treated as a single tender for the purpose of DOP.

B 7.4 Single Tender Invitation:

- (a) Under this procedure, procurement from a single source is undertaken without competition by extending the tender invitation to a single firm.

- (b) Procurement through single tender invitation may be appropriate under following circumstances:
- (i) Requirement of compatibility with the existing equipment may justify additional purchase from the original supplier. For such purchases to be justified, there should not be a proposal to declare the original equipment out of use in the near future. A certificate to the above effect will have to be furnished by the indenter not below the level of Dy. Manager prior to procurement.
 - (ii) In case of source standardization, which shall normally be for limited period not exceeding three years and will require approval by MD, based on recommendations of a committee consisting of representatives from Indenting department, Contract Services (CS) and Finance Departments. The proposal for source standardization and nomination of the committee shall be initiated by the Indenting department for approval of MD as the case may be, through CS/Finance. The level of committee shall not be below Asstt. Manager.
 - (iii) The required item/equipment is proprietary and can be obtained from only one source. A certificate to this effect shall have to be furnished by the indenter not below the level as per DOP.
 - (iv) An existing contract for goods or works may be extended for additional goods or works of a similar nature. In such case, a certificate to this effect shall be furnished by the indenter establishing that no advantage could be obtained by further competition/bidding and that the prices on the extended contract are reasonable. Provisions for such an extension, if considered likely in advance, shall be included in the original tender documents and contract;
 - (iv) The goods, works and services are to be procured on grounds of urgency. An urgency certificate supported by adequate reasons and

justifications thereto shall be furnished by indenter, duly approved by the competent Authority as per DOP.

- (c) The name of party for single tender invitation, in case of (b) (ii), (iii) and (iv) above, shall be approved by the authority competent to approve the award of work of value equal to NIT cost estimate. The contracts department shall initiate the proposal through indenting and finance departments.
- (d) The bidding documents shall be issued to the approved firms directly along with the NIT/IFB free of cost. A period of 5- 10 days, from the date of issuance of NIT/IFB/Bidding Documents, shall be allowed for submission of bids which shall be opened on the same day.

B7.5 Empanelment: EESL can empanel parties/vendors for the various Goods, Supply, Works and Non–Consulting Services. For this purpose, EESL shall publish Notice Inviting Tenders (N.I.T) in leading National Newspapers and one/ two local Newspaper with details of empanelment against a qualifying requirement. The empanelment can be done for two years and extended for one more year. Performance of Empanelled parties may be reviewed every year and in case performance of any party is not satisfactory, then the party can be removed from the list with the approval of competent authority who has approved the empanelment.

EESL being a growing organization, it is expected that more and more parties/ vendors may come to know about EESL over a period of time. In view of this, EESL may at the time of first empanelment exercise, keep the process of empanelment open even during two years of empanelment and may accept the applications even after initial empanelment is completed. Scrutiny of these applications will be done by a committee of representatives from Technical, Contract and Finance department once in a month. All

applications received till 20th of each month shall be decided for empanelment by the end of the month. If the committee finds that such parties / vendors are meeting QR, then they will be empanelled for the balance period. Any enquiry floated amongst the empanelled parties will be treated as deemed open tender. However In case, a few parties are added to the empanelled list for enquiry issuance then the floating of enquiry will be considered as Limited Tender.

B 7.6 The note for approval of tendering shall be initiated by Contracts department through HODs of indenting and finance departments for approval by Competent Authority.

B 7.7 In case of funding of a project by a foreign financial institution/bank/other entities etc, mode of tendering/procurement procedures of such agencies shall be suitably taken into account for procurement of goods/works/services.

B 8.0 Local Purchase/Contracts:

- (a) Under this procedure, the procurement is made either by a single officer or a committee authorized to finalize the procurement, after surveying the market.
- (b) This procedure shall be resorted to in cases of urgent /common small value items, office consumables, off-the shelf branded items/ consumer durables, with differentiation in features and quality, but serving the same purpose or sundry nature items/contracts requirement.

The procurement may be made as per DOP by a single officer or a committee authorized for the purpose upto the financial limits as specified therein.

- (c) The procurement shall be commenced after authorization of the same by the Competent Authority as per DOP, for which the note shall be initiated by the indenting department bringing out reasons for the procurement by Local Purchase/Contracts.
- (d) As a matter of general guideline, procurement through this procedure shall be made by the authorized officer/the committee after determining the reasonableness of the price and taking into account other considerations like quality, after sales services, maintenance requirement etc. Normally, spot quotations, preferably from three or more parties, may be obtained and orders also placed on the spot after analyzing all the aspects.

B 9.0 Running and Rate Contracts

- (a) Running and Rate Contracts (RRC) is a long term agreement with suppliers, contractors and providers of non-consulting services which sets out terms and conditions under which specific procurements can be made throughout the term of the agreement. Rate Contracts are generally based on prices that are either pre-agreed, with or without provision for allowing price escalation based on a pre-defined escalation formula during the validity of contract.
- (b) Rate Contracts may be permitted as an alternative to the Local Purchase methods for:
 - (i) Goods that can be procured off-the-shelf, or are of common use with standard specifications and it is advantageous to have the supply at a steady pace/at a fixed rater over a period of time;
 - (ii) Non-consulting services that are of a simple and non-complex nature and may be required from time to time

- (c) Rate Contracts shall be limited to a maximum duration of 2 years extendable by further one year. Maximum aggregate amounts for the use of a Rate Contracts shall be specified in the rate contract as estimated in accordance with estimated requirement for rate contract period.
- (d) Rate Contracts shall be placed only on Open or Limited Tender basis.

B 10.0 Repeat Orders:

Normally, repeat orders are to be avoided. However, repeat orders may be placed against previous orders placed on the basis of open or limited tender invitation, without further going through normal procedures, subject to following:

- a) The date of repeat order will not be more than 3 months after the completion of earlier order.
- b) Quantity of repeat order should not be more than 50% of the original quantity.
- c) A reasonable assessment by the contract services/materials management along with Finance department should be made that there has been no downward trend in prices.
- d) The prices against earlier order were not escalated to compensate for earlier deliveries.

B 11.0 Time for Preparation of Bids

- (a) The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and complexity and nature of the works. In case

of open tender, at least 21-30 days shall be given to bidders to purchase the bidding documents. Further, at least 10-15 days from the date of closure of sale of bidding documents shall be given to prospective bidders to prepare and submit the bids. In case of LT/ST, 2-3 weeks shall be given from date of issuance of NIT/IFB/Bidding Documents.

- (b) Where large quantum of works or complex items/equipment are involved, the sale period of bidding documents shall generally be kept at least 4-6 weeks to enable prospective bidders to conduct investigations before submitting their bids and 10-15 days from the date of closure of sale of bidding documents for preparation and submission of bids. In such cases a pre-bid conference may be convened to advise the prospective bidders to visit the site to acquaint themselves with the site conditions. (c) Bidders shall be permitted to submit bids by courier, post, mail or by hand. The deadline and place for submission of bids shall be specified in the invitation for bids.
- (c) In case of E-Tendering, bidders may use electronic systems to submit their bids by electronic means. However, before adopting the process of e-tendering, it shall be ensured that a proper system is in place which inter-alia takes care of security, integrity, confidentiality and authenticity of the bids submitted.
- (d) Any change in the bidding program i.e. sale of bid documents , extension of bid opening etc from that specified in the IFB/NIT shall be approved by MD.

B 12.0 Finalization of Bidding Documents

B 12.1 General

The bidding documents shall contain the information necessary for a prospective bidder to prepare its bid for the goods, works and services to be procured by EESL. While the details and complexity of the bidding documents

may vary with the size and nature of the goods, works and services they generally shall comprise the following :

1. Invitation for Bids (IFB) – (Abridged and detailed)
2. Instructions to Bidders (ITB)
3. General Conditions of Contract (GCC)
4. Special Conditions of Contract (SCC)
5. Bid Form and Price Schedules/ Bid Proposal Sheets (BPS)
6. Technical Specifications (TS)
7. Technical Data Sheets/ Data Requirement Sheets (DRS)
8. Monitoring and Verification Procedure
9. Forms and Procedure

B 12.2 Responsibility Centre

- (a) For preparing technical portion of bidding documents viz. Technical Specifications, Bill of Quantity (to be incorporated in Bid Proposal Sheets), Data Requirement Sheets, Technical Conditions of Contract, Special Conditions of Contract, Back to back conditions from client agreement, Monitoring and Verification procedure, the responsibility center shall be Technical Department.
- (b) For preparing commercial portion of bidding documents viz. Invitation for Bids (IFB) / Notice Inviting tender (NIT), Instructions to Bidders (ITB), General Conditions of Contract (GCC), Special Conditions of Contract (SCC), Bid Form / Bid Proposal Sheets, including forwarding letter for issuing the Bidding Documents to parties, Forms and Procedure, the responsibility center shall be Contracts.
- (c) Preparation of Standard Documents for Commercial Portion of Bidding Documents:

(i) The standardization of ITB, GCC, SCC and BPS including schedules for packages shall be done expeditiously with the approval of MD for which necessary action shall be taken by Contracts in consultation with Finance.

(ii) These documents once approved shall be considered standardized. Any modification or addition to a standardized document shall be carried out with the approval of the MD for which proposal shall be processed by contract in consultation with Finance.

B 12.3 Approval of Bidding Documents

For a specific package, the bidding documents shall be finalized and approved as described below:

B12.3.1 Technical Portion of Bidding Documents:

- (a) Where standard documents are available, the documents for a specific package shall be finalized by the concerned Technical Coordinator by suitably incorporating package-specific provisions/details/clauses in the standardized documents. The documents so finalized shall be approved by an authority not below the concerned Head of Department.
- (b) Where standard documents are not available, the documents for a specific package shall be based on bidding documents for similar packages finalized earlier, wherever available, by suitably incorporating/ substituting package specific provisions/details/ clauses. The same shall be finalized by the concerned Technical Coordinator. The documents, so finalized, shall be approved by an authority not below MD.
- (c) For new packages, for which no previous reference is available, technical documents shall be finalized by Technical Coordinator. The documents so finalized shall be approved by MD.

The Technical Specifications, BOQ and DRS for the specific package after approval in Engg., as mentioned above, shall be forwarded to Contracts Department. by concerned Engg. Coordinator not below the level of Asstt. Manager.

B 12.3.2 Commercial Portion of Bidding Documents:

(a) Where standard documents are available, the documents for a specific package shall be finalized by the concerned Contracts Coordinator by suitably incorporating package specific provisions/details/ clauses in the standardized documents. The documents so finalized shall be approved by MD with concurrence of Finance.

(b) Where the standard documents are not available, the documents for a specific package shall be based on bidding documents for similar packages finalized earlier, wherever available, by suitably incorporating/substituting package specific provisions/details/ clauses. The same shall be finalized by the concerned Contracts coordinator. The documents, so finalized, shall be approved by MD with concurrence of Finance.

(c) For a new/fresh package, for which no previous reference is available, documents shall be finalized by Contracts coordinator. The documents so finalized shall be approved by MD with concurrence of Finance.

While finalizing the commercial portion of the bidding documents as described above, Contracts shall also incorporate the Bill of Quantity (BOQ) and Qualifying Requirements (QR), received from Engg., in BPS and SCC/BDS respectively. The Special Conditions of Contracts (SCC) and Bid Price Schedule (BPS) finalized by Contracts shall be got vetted by Technical and Finance departments.

Any amendment to the bidding documents, once put on sale, shall be issued only with the approval of MD.

However, for correcting any typographical / grammatical errors in specified formats etc. that may have occurred in the Bidding Documents, Fcorrigendum/errata to the Bidding Documents may be issued with the approval of HoD (Technical) & HoD (Contracts).

B 13.0 Validity of Bids and Earnest Money Deposit(EMD) / Bid Security

B 13.1 Bidders shall be required to submit bids valid for a period specified in the bidding documents which shall be sufficient to enable the EESL to complete the comparison and evaluation of bids, obtain all the necessary approvals so that the contract can be awarded within that period. Normally Bids shall be valid for a period of 180 days in case of open tender and 90 days in case of limited tender. The Bid Security shall be valid 45 days beyond the bid validity. However, validity period of Bid/Bid security can be changed specifying reasons with approval of MD.

B 13.2 The bid security shall be in the amount and form specified in the bidding documents and shall remain valid for a period (generally 45 days beyond the validity period for the bids) sufficient to provide reasonable time for the EESL to act, if the bid security is to be encashed. Bid securities shall be released to unsuccessful bidders once the contract has been signed with the successful bidder.

B 13.3 The bidders shall be required to sign a declaration that if they withdraw or modify their bids during its validity or they fail to sign the contract after placement of award or to submit a performance security before the deadline defined in the bidding documents, their bid security shall be forfeited. EMD/Bid Security and / or CPG requirement may be waived off with approval of MD by giving reasons.

B 14.0 Language

Bid prepared by the bidders and all correspondence and documents exchanged between bidder and EESL shall be in English and any printed literature furnished by the bidder written in another language shall be accompanied by translation of its pertinent passages in English language. In such case, for purpose of interpretation of bids, the translation will prevail.

B 15.0 Clarity of Bidding Documents

B 15.1 Bidding documents shall be so worded as to permit and encourage competition and shall set forth clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery/installation, the schedule for delivery/installation/completion, minimum performance requirements, the warranty and maintenance requirements, as well as any other pertinent terms and conditions. In addition, the bidding documents shall define the tests, standards, and methods that will be employed to judge the conformity of equipment as delivered/works performed with the specifications.

B 15.2 The bidding documents shall specify the complete scope of work,, criteria for treatment of taxes & duties, transportation cost, transit insurance etc., in addition to base price, which will be taken into account for evaluation of bids. If the bids based on alternative designs, materials, completion schedules, payment terms, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated in the bidding documents.

B 15.3 All prospective bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis. EESL shall help in providing access to project sites for visits by prospective bidders at their cost, if necessary and expedient. A pre-bid conference may be arranged wherever necessary, whereby potential bidders may meet with the EESL representatives to seek clarifications (in person or online). Minutes of the

pre-bid conference shall be provided to all prospective bidders. All modifications of bidding documents, including additional information, clarifications, corrections of errors, if any, or any other modifications shall be /informed to each recipient of the original bidding documents in sufficient time, preferably at least 7 days before the deadline for receipt of bids to enable bidders to take appropriate actions. Any modification to the bidding documents shall be issued in the form of a corrigendum/addendum/amendment. If necessary, the deadline shall also be extended.

B 16.0 Standards

Standards and technical specifications specified in the bidding documents shall be such that it helps in promoting the broadest possible competition, while assuring the critical performance and other requirements for the goods and/or works under procurement. To the extent possible, EESL shall specify nationally accepted standards issued by the BIS, BEE etc to which the equipment or materials or workmanship shall comply. Where such standards are unavailable or are inappropriate, internationally recognized standards may also be specified.

B 17.0 Uses of Brand Names

Specifications shall be based on relevant characteristics and/or performance requirements and references to particular brand names, catalog numbers, or similar classifications shall be avoided. However, if necessary, at least 4 brands' name shall be mentioned, otherwise reasons for purchasing specific brand shall be incorporated in technical/administrative approval from competent authority. The specifications shall allow the acceptance of offers for goods, which have similar characteristics and which provide performance at least substantially equivalent to those specified.

B 18.0 Calling of Tenders

B 18.1 On finalization of bidding documents and receipt of approved cost estimate, QR, technical and administrative approval, Contracts department will process the proposal for approval of competent authority as per D.O.P. for calling of tenders.

The proposal shall contain, mode of tendering, name of party(ies) in case of LT/ST, EMD/Bid Security amount, tender documents cost, NIT text etc.

B 18.2 The amount of EMD, to be included in the NIT/IFB also, shall be equal to 2% of NIT estimated cost rounded off to next higher thousand. However, in cases where the project cost is to be shared between the EESL and the implementing agency, the amount of bid security from implementing agency may be limited to 2% of investment ratio of the estimated cost to be shared by implementing agency i.e. $2\% \times \text{estimated cost of project} \times \text{share of implementing agency in the project}$, with approval of MD.

The bidder shall be required to submit EMD/Bid Security/Bid Guarantee in a separate sealed envelope (duly super scribed) along with the bid as detailed in the tender documents.

B 18.3 The cost of bidding documents shall be reasonable and generally reflect the cost of their preparation, printing and delivery to prospective bidders and shall not be so high as to discourage bidders. The cost of documents shall be as follows.

- i) Packages valuing upto Rs. 10 lacs : Rs. 2000.00
- ii) Packages valuing More than 10 lacs but upto Rs. 25 lacs : Rs. 4000.00
- ii) Packages valuing more than Rs.25 lacs but upto Rs. 50 lacs : Rs.6000.00
- iii) Packages valuing more than Rs.50 lacs but upto Rs. 1.0 Cr : Rs.10000.00
- iv) Packages valuing more than Rs.1.0 Cr but upto Rs. 2.0 Cr : Rs.15000.00
- v) Packages valuing more than Rs.2.0 Cr. but upto Rs.5.0 Cr. : Rs.20000.00
- vi) Packages valuing more than Rs.5.0 Cr. : Rs.25000.00

The foreign bidders shall pay in equivalent foreign currency as on the date of purchasing the bidding documents. Cost of tender documents shall be updated every three years.

B 19.0 Bidding Documents Additional Contents

Bidding Documents shall also elaborate about

B 20.0 Price Adjustments

B 20.1 Bidding documents shall clearly bring out whether the bid prices will be on firm price basis or price variation shall be applicable. In case of packages involving work completion period upto 12 months, the bid prices normally will be on firm price basis. In case of packages involving completion period more than 12 months, price variation shall be applicable to reflect the variation in cost of major components of the contract price such as labour, equipment, materials, fuel etc. However, the bids may be invited on firm price basis in case of packages involving completion period more than 12 months with the approval of MD.

B 20.2 The price variation formulae taking into account the weightage of various components and the base date for application of price variation shall be clearly defined in the bidding documents. If the currency of payment is different from the source of the input and corresponding index, a correction factor shall be applied in the formula, to avoid incorrect adjustment.

B 21.0 Change in BOQ

B 21.1 The BOQ shall be finalized by Technical department, exercising adequate care so as to avoid any subsequent changes in BOQ, particularly after bid opening.

B 21.2 In case, there are changes in BOQ before the bid opening, the proposal for the same shall be initiated by the Indenting Department and put up for approval through Finance specifying the cost implications. After the approval of MD, the approved note along with the amendment to be issued shall be forwarded by the Indenting Department. to Contracts department, for issuance of amendment to the bidding documents.

In case the cumulative cost implication on account of the changes is upto +/- 10% of the approved NIT Cost Estimate, revision of the NIT cost estimate shall not be

a pre-requisite for opening of the bids. However, the same shall be made available at the evaluation stage for the purpose of comparison with the bid prices. Further, in such a case the financial QR pertaining to turnover, liquid assets, etc. for firms shall remain unaltered. The value of the EMD/Bid Guarantee /Bid Security shall also remain unaltered.

In case the cumulative cost implication on account of the change is beyond +/- 10% of the approved NIT Cost Estimate, approval of the revised NIT cost estimate shall be concurrently processed and made available to Contracts Dept. at least one week before opening of the bids. Further, in such a case the financial QR pertaining to turnover, liquid assets, etc. for firms shall also be revised for which the proposal shall be put up by the Indenting Dept. for approval of MD through Finance. In the above case, the value of EMD/Bid Security/Bid Guarantee shall also be changed correspondingly.

In such cases, Publication of corrigendum to NIT for intimating revised financial criterion of QR and re-opening of sale of bidding documents may be required to enable those prospective bidders, who otherwise did not meet the QR for which approval shall be taken from MD. However waiver of NIT publication in these cases may be taken with approval of MD by mentioning reasons thereof including high cost of NIT publications. However in such cases, corrigendum shall be uploaded on EESL website.

The above guidelines shall also be applicable if there is a change in the NIT cost estimate for any other reason as well.

B 22.0 Works Contracts Tax

B22.1 Bidders shall be required to, inter-alia, include WCT for the works to be performed by them, as applicable, in their quoted bid price and EESL would not bear any liability on this account. EESL shall, however, effect TDS as per the rules/ statutory requirements and issue TDS certificates.

B 23.0 Taxes and Duties

B 23.1 All taxes and duties applicable on materials/equipments manufactured/supplied by the contractor directly to EESL shall be separately reimbursable against documentary evidence thereof. Accordingly, a bidder is required to quote taxes and duties on prices of all such items separately.

B23.2 The taxes and duties applicable on direct transaction between EESL and the Contractor are reimbursable. All custom duties, sale tax, excise duty and other taxes, duties & levies payable by the bidders in respect of the transaction between the bidders and their vendors/suppliers/sub-contractors etc. while procuring any components, raw materials and equipment and sub-assemblies, are required to be included by the bidders in their quoted bid prices and shall not be reimbursed separately.

B23.3 Since price of goods/materials/equipments manufactured and directly supplied by the contractor is exclusive of applicable taxes and duties, changes in rate of taxes/duties or imposition of a new tax/duty does not create any difficulty in contract administration. All changes in applicable taxes & duties & levying of a new tax shall be reimbursable at actual wherever taxes & duties have been asked for separately in the bid. However, if a bidder quotes its prices inclusive of taxes and duties then no change in tax or imposition of new tax will be considered for reimbursement. Sometimes, in case of small value, quotations of procurement of goods or services may be asked to be submitted inclusive of taxes and duties. In such cases also no change in tax or imposition of new tax will be considered for reimbursement. However, in cases where bidders had been asked to include the taxes and duties in the bid and bidders had mentioned the rates of taxes included in their quoted price, changes in the taxes shall be reimbursed at actual.

B 23.4 In view of the above, all applicable taxes, duties and other levies, till delivery at the destination station, on the finished goods envisaged by the bidders as bought-out items, i.e., the goods which are dispatched directly to EESL site by their sub-supplier/ sub vendors (sale-in –transit), are required to be included in their bid prices and therefore no separate reimbursement shall be available.

B 23.5 EESL shall reimburse octroi/entry tax, as applicable for destination site/State, for all items of supply including bought-out finished items (sale-in-transit).

B 24.0 Forwarding of Cheques/Draft/Bank Guarantee to Finance

All cheques/drafts/bank guarantee etc received towards EMD/bid security/bid guarantee shall be forwarded promptly to Finance by concerned Contracts Coordinator. The concerned officer in Finance shall acknowledge the receipt of the same. Further, Finance Dept. will be responsible for their safe custody and for ensuring their validity based on advice of the concerned Contracts Coordinators.

B 25.0 Transportation and Insurance

Bidding documents shall have provision to enable suppliers and contractors to arrange transportation and transit insurance and storage insurance etc from any eligible source. Bidding documents shall state the types and terms of insurance to be provided by the bidder. The indemnity payable under transportation insurance shall be at least 110 percent of the contract amount in the currency of the contract or in a freely convertible currency to enable prompt replacement of lost or damaged goods. For works, a contractor's All Risk form of policy usually shall be specified.

B 26.0 Terms and Methods of Payment

B 26.1 The Payment terms shall be in accordance with the requirement of the procurement of specific goods and works.

(a) Contracts for supply of goods shall provide for full payment (within 30 days) after the delivery, inspection and acceptance, if so required, of the contracted goods except for contracts involving installation and commissioning, in which case a portion of the payment may be made after the Supplier has complied with all its obligations under the contract. In major contracts for equipment and plant, provision shall be made for suitable advances against Bank Guarantee equal to amount of advance valid for 45 days beyond the contract completion period.

(b) Contracts for works may provide in appropriate cases for mobilization advances, advances on contractor's equipment and materials, and reasonable retention amounts to be released upon compliance with the Contractor's obligations under contract.

B 26.2 Amounts and timing of subsequent payments shall be linked with delivery of goods at site/ works done at site and accordingly be specified in the bidding documents.

B 26.3 Payment terms shall be clearly specified in tender documents especially in supply cases and loading on party's offer can be kept for deviation from standard payment terms on negative side (i.e. Payment terms favorable to bidder w.r.t. those specified by EESL) in the tender documents. In cases where the bidder seeks payment terms more favorable to him as compared to the specified payment terms, a cost compensation of 1% p.m. (i.e. 12% p.a) may be considered on amounts sought in advance by the bidder as compared to EESL terms and conditions may be considered for the purpose of calculation of evaluated price.

B 27.0 Alternative Bids

The bidding documents shall clearly indicate whether bidders are allowed to submit alternative bids, how alternative bids should be submitted, how bid prices should be offered and the basis on which alternative bids shall be evaluated.

B 28.0 Conditions of Contract

The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of the EESL, contractor or its investment partner(s). Further, the functions and authority of the EESL's Site engineer/Project engineer in supervision and administration of the contract shall also be clearly spelt out in the contract documents. The conditions specific to particular goods and services may also be included in the Conditions of Contract as special conditions separately.

B 29.0 Performance Securities

B 29.1 The Bidding documents shall have provisions for contract performance security in an amount sufficient to protect interest of EESL in case of breach of contract by the Contractor or its investment partner. This security shall be provided in an appropriate form and amount, as specified by EESL in the bidding documents. The amount of the security may vary depending on the nature and magnitude of the works. However generally it shall be kept as 10% of the total award value. Performance Security shall be extended from time to time sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period, up to final acceptance by EESL. Further, in case of routine contracts like vehicle hiring, building maintenance etc, 10% or agreed amount may be retained from contractor's R.A.(Running Account) Bill in lieu of performance security with the approval of competent authority for award of contract.

B 30.0 Liquidated Damages

Provisions for liquidated damages or similar provisions, in an appropriate amount, shall be included in the conditions of contract to ensure appropriate compensation for additional liabilities/cost and/or loss of revenue, loss of other consequential benefits due to delays in the delivery of goods, completion of works or failure of the goods or works to meet performance requirements. In general, LD shall be 0.5% per week of the unexecuted portion of work and supply subject to maximum of 5% of the award value.

B 31.0 Force Majeure

The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default if such failure is as a result of an event of force majeure as defined in the conditions of contract.

B 32.0 Governing Law and its Jurisdiction

The contract shall be governed by and interpreted in accordance with the laws of the Union of India and the courts of New Delhi shall have exclusive jurisdiction in all matters arising under the contracts. In case of Arbitration, it will be governed by Arbitration and Reconciliation Act 1996 and its subsequent amendments/relevant from BPE in case of dispute with other PSUs.

B 33.0 Sale of Bidding Documents

B 33.1 Sale of bidding documents shall be against payment of cost of documents (normally in the form of Demand Draft/Pay Order), wherever applicable. The documents shall be issued by an executive not below the level of Engineer. A package-wise record of firms/ parties, to whom the Documents are issued, shall be maintained by Contracts Dept in 'Document Sale Register'.

- B 33.2** Before bidding documents are put on sale, a master-set of the same, duly bound, shall be kept on record. Such set shall be signed on first and last page by the contract executive (for documents related to Contracts) and by engineering executive (for documents related to Engineering), not below the level of Engineer.
- B 33.3** All amendments/clarifications, issued before the bid opening, must be initialed, as above, on each and every page and filed with the master-set before issuance to the bidders.
- B 33.4** All bidding documents sold must bear initials of the concerned executive not below the level of Engineer on first and last page of every volume of the bidding documents and amendments thereto. In case of bidding documents being uploaded on EESL website, then cost of documents may be taken before or at the time of bid opening.
- B 33.5** The bidding documents shall be issued to the party who submits its request and pays the requisite cost of documents in the specified form. However, in case bidding documents are uploaded on website, the requisite cost of documents shall be collected from bidders who are submitting their bid. In case of use of bid documents downloaded from EESL's website, a DD/Pay order towards cost of bidding documents must be submitted before the bid opening and if later such DD/Pay orders are not honored by the bank due to any reason whatsoever, the bid shall be considered as null and void ab initio and shall not be considered for evaluation and award.

B 34.0 Nomination of Bid Opening Committee and Tender Committee

- B 34.1** The tenders/ bids received shall be opened by a committee (to be called Bid Opening Committee) comprising of representatives, not below the level of Asstt. Engineer/ Asstt. Officer of Contracts, Finance and Indenting Dept. The bids/ tenders opened shall be evaluated by another committee (called Tender Committee), comprising of representatives from Indenting Dept., Finance and Contract/MM Dept. as per DOP.
- B 34.2** The concerned Contracts coordinator shall accordingly initiate separate proposals for constitution of Bid Opening Committee and Tender Committee preferably at least a week before the scheduled date of bid opening, so as to ensure the formation of said committees prior to opening of bids. The proposal for constitution of Tender Committee shall also be accompanied with the schedule of activities, reckoned from the date of bid opening, leading to the award of the contract.
- B 34.3** The representatives in the Bid Opening Committee from the different Depts. shall be nominated by the concerned Head of Department (H.O.D.) in the respective departments. The nomination shall be approved by the concerned DGM in Contracts Department. There shall not be any objection to nominate an alternative representative to take care of any last minute exigencies. However, this fact should be clearly mentioned in the note that is put up for this purpose.
- B34.4** The nomination of representatives in Tender Committee from the different Depts. shall be of the level of officers as per the provisions of DOP. The Tender Committee so nominated shall be approved by the authority competent to approve the award (based on NIT cost estimate). However, for awards requiring approval of the Board of Directors or Sub-committee of the Board, the nomination shall be approved by MD.

B 34.5 Normally, once nominated, the members of the tender committee shall not be changed except in case of transfer, prolonged leave, medical exigencies or other justifiable reasons. In such a case, a note bringing out the circumstances for change of tender committee member shall be put up by Contracts through the concerned Dept. to the authority competent to approve the award, for nomination of an alternative member. The Tender Committee, once nominated, shall remain valid till finalization of the Contract or cancellation of tenders/annulment of bidding process.

B 34.6 Immediately after the approval as described above, the Standing Bid Opening Committee and the Tender Committee members shall be informed of their nomination by the concerned Contracts Coordinator. The schedule for award shall also be informed to the members of Tender Committee.

Alternatively, depending upon the volume of work, standing bid opening committee & standing tender committee may be nominated & approved by competent authority / MD.

B 35.0 Bid Receipt and Opening

B 35.1 The last date for submission of bids shall be approx. 10-15 days after the close of sale of bidding documents. The Bids shall normally be received upto 1100 Hours or 15:00 Hours on the specified day and shall be opened after a gap of half an hour, on the same day. Any deviation in the above time schedule can be allowed with the approval of competent authority/MD.

B 35.2 All bids should be submitted in a tender box. The tender box shall be kept at the office of the company. The bidders shall be required to deposit the bids in the tender box. Further, bids received by courier/speed post/registered post will be dropped in the tender box and an acknowledgement will be given by dispatch section. However, in case, bids are voluminous or bidder(s) insist for a written acknowledgement, the same shall be acknowledged in writing by the concerned Contracts Coordinator, stating clearly the number of envelopes/ packets/ boxes received. In case, as per the bidding documents for a particular package, the bidders are required to submit the EMD/ Bid Security/Bid Guarantee in a separate envelope but no such separate envelope is received, the said fact shall also be recorded in the acknowledgement.

B 35.3 Immediately after the close of the deadline for bid submission, the concerned Contracts coordinator shall record the name of the bidders, from whom the bids are received, in the Bid Opening Register maintained by contracts department. indicating the particulars of bid envelopes/ packets/ boxes received from each bidder.

B 35.4 A bid received after the deadline for bid submission shall be termed as 'Late Bid'. Bids received late will be rejected & returned to the bidder in unopened condition.

B 35.5 The opening of bids by the Bid Opening Committee shall commence at the stipulated time and shall take place in presence of bidder's representatives who choose to be present. Record shall be kept of the name of the bidder's representatives who are present and their signatures shall be taken thereon.

B 35.6 Whenever a bid is opened, in all cases bid documents shall be signed on all pages by bid opening committee. However, it shall not be necessary to sign all pages of bid volumes containing technical details/ literature/drawings and other historical documents viz. balance sheets/ Articles of Association etc, which will be signed on first pages. All cuttings/ over-writings/ erasures, if any, shall be encircled and authenticated by initials of the Bid Opening Committee members and the number of such cuttings/over-writings/erasures shall be specifically mentioned on each page of financial bid and terms and conditions. Even if there is no cutting and /or no overwriting, such fact shall be mentioned on each such page as “No cutting No overwriting”, however for the sake of brevity and time saving, “NCNO” may be written. Further, if it is observed that all pages of Bid Proposal Sheet (containing prices) including its schedules are not serially numbered, the same shall be numbered serially.

B 35.7 Whenever a bid will be opened, the relevant particulars, to the extent applicable, shall be read out/ informed during bid opening. These particulars shall generally include:

- (i) whether the EMD/ Bid Guarantee has been submitted or not;
- (ii) total amount as quoted by the bidder in the price schedule;
- (iii) Rebates/ discounts and conditions, if any, related thereto.

B 35.8 Immediately upon completion of bid opening, a bid opening statement shall be prepared by the Bid Opening Committee wherein following particulars, to the extent applicable depending upon the type of bidding, bidder wise, shall be brought-out:

- (i) Names of bidders’ representative present.
- (ii) Brief particulars of EMD/ Bid Guarantee/ Bid Security

- (iii) Total quoted price, including component wise break-up, wherever applicable, as indicated in the bid.
- (iv) Discount / rebate along with condition if any, related thereto, as indicated in the bid.
- (v) Total Price net of discount/ rebate, as indicated in the bid.
- (vi) Any other point considered relevant by the Bid Opening Committee.

B 35.9 Whenever a bid is opened, signatures of the bidders' representatives present shall be taken on the Bid Opening Statement evidencing the reading out of, inter-alia, the broad details contained therein. The Bid Opening Statement shall be signed by Bid Opening Committee.

B 35.10 The bid opening statement shall be put up through a covering note by the concerned contracts coordinator for information of the Management bringing out the additional following details:

- (i) Funding of the package and its NIT Cost Estimate.
- (ii) Actual bidding program followed.
- (iii) Bidding Response i.e., details with regard to purchase of bidding documents and submission of bids.
- (iv) Tentative schedule for award recommendations
- (v) Change of Committee member, if any, due to last minute exigency.

B 35.11 In case of single stage single envelope bidding, where it is specified in the bidding documents that EMD/ Bid Security/ Bid Guarantee has to be submitted along with the bid, in a separate sealed envelope duly super – scribed, failing which the bid shall not be opened and shall be returned unopened to the bidders, the following procedure shall be followed.

B 35.11.1 The said envelope shall be opened first. In case it is found that the envelope does not contain EMD/ Bid Security/ Bid Guarantee or the EMD/ Bid Security/ Bid Guarantee that has been furnished with material deviations from the specified form eg Name of the package, Name of Party, Major variations in value, validity period or any other major deviation affecting the intent of BG. The fact shall be recorded by the Bid Opening Committee in the Bid Opening Register. Thereafter, the Bid envelope shall be returned unopened to the Bidder and the receipt of the bidder's representative, if present, shall be taken on the Bid Opening Register.

B 35.11.2 If the said envelope has not been received from the bidder, the fact shall be recorded by the Bid Opening Committee in the Bid Opening Register. Thereafter, the bid envelope shall be returned unopened to the Bidder and the receipt of the bidder's representative, if present, shall be taken on the Bid Opening Register. However, if at that moment, the bidder/bidder's representative confirms in writing that by mistake they have enclosed the EMD/ Bid Security/Bid Guarantee in the Bid envelope, their bid shall be opened to verify the said confirmation and, thereafter, similar procedure as described in para 35.11.1 above shall be followed.

There may be cases where Earnest Money Deposit (EMD)/Bid Security has been deposited in the form of a bank guarantee, whose content are found deviating from that given in the bidding documents. A Bank Guarantee with value and/or validity lesser than those prescribed would not be acceptable. However, it would not be prudent to reject a Bank Guarantee with changed text but otherwise meeting the intent and purpose, as well as other important parameters such as value and validity etc. Accordingly, such cases need to be dealt with as described below.

The Bank Guarantee shall not be accepted and the bid shall be rejected (invited under single stage single envelope bidding process, the bid shall be returned unopened to the bidder during the bid opening itself), if:

(i) The name of the package mentioned in the BG is different from the package for which bids have been invited.

(ii) The firm/proprietor, on whose behalf the bank Guarantee has been furnished, is different from the bidder.

(iii) The Bank Guarantee is less than the prescribed value. However, in cases where the Bank Guarantee is in a currency other than in which the bid guarantee amount has been mentioned, the shortfall, if any, upto 1% of the prescribed value (either in Dollars or Indian Rupees) on account of discrepancy in exchange rate variation, shall be acceptable.

(iv) The validity of the Bank Guarantee is less than the stipulated period. However, the shortfall, if any, up to a period of 7 (seven) days, shall be acceptable. Further, an additional shortfall only in the following cases shall be acceptable:

(a) If the dead line for submission of bids and the date of bid opening has been extended once, with the period of extension being less than or equal to 15 days, a shortfall up to the period of extension shall be acceptable.

(b) If the dead line for submission of bids and the date of bid opening has been extended more than once, with the period of last extension being less than or equal to 15 days, a shortfall up to the period of last extension shall be acceptable.

B 35.12 If the text of the BG furnished by a bidder is at variance from that given in the bidding documents, the BG shall not be rejected merely on that ground. It shall be examined by the tender committee to ascertain whether it meets the required

intent and purpose of bid security. If the BG is not found acceptable, the bid shall be treated as non – responsive. If the BG is found to meet the intent and purpose of bid security, despite the variance in text, the tender committee shall obtain the approval of the competent authority for acceptance of the Bank Guarantee. The proposal for the acceptance of the Bank Guarantee shall be processed separately (when price bid and EMD are opened together), bringing out all the relevant aspects, through the Indenting, Contracts, Finance departments. The Competent Authority for approval shall be same as the authority competent to approve the award of contract. However, if the approval of award falls within the powers of sub-committee / Board of directors, the proposal shall be put up for approval of MD. In case of single stage two envelope bidding, the proposal in this regard shall be included in the recommendation of the tender committee based on the “Evaluation Report”.

B 35.13 Any change in the bidding program i.e., sale of documents, extension of bid opening etc. from that specified in the NIT, for reason whatsoever, shall require the approval of Head of Department (Contracts), in consultation with Head of the Indenting Department.

B 36.0 Evaluation of Bids and submission of Evaluation Report with Recommendations:

The examination and evaluation of bids shall be carried out in accordance with the evaluation criteria specified in the bidding documents. The general guidelines shall be as follows.

B 36.1 Preliminary Examinations of Bids:

During Preliminary Examination, Tender committee will determine whether each bid is of acceptable quality, complete and substantially responsive to the bidding documents. For the above purpose, a preliminary examination of each bid will be carried out to ascertain whether-

- (i) the bid is complete and has been properly signed,
- (ii) the bid is accompanied by the requisite EMD/ Bid Security/ Bid Guarantee,

- (iii) the bid does not contain major scope deficiencies, contradictions or ambiguities making it almost impossible to evaluate, and
- (iv) the bid is generally in order.

B 36.2 The bids shall also be checked for computational error, if any, to arrive at the computed price, as per provisions of bidding documents. Arithmetical errors, if any, will be rectified on the following basis:

- (a) If there is a discrepancy between the total price as quoted by the bidder and the total price arrived at by multiplying quantity and quoted unit price, total price arrived at by multiplying quantity and quoted unit price shall prevail.
- (b) If there is a discrepancy between words and figures, the amount in words will prevail.
- (c) Further, if there is a discrepancy between the quantity specified by EESL in the bidding document and that indicated by the bidder in his bid, the quantity specified in the bidding documents shall be taken to arrive at the computed price.
- (d) In case the unit rate of an item is not quoted but the total price is indicated, the same shall be taken to arrive at the total computed price. Further for the purpose of releasing payments after the award, unit price as computed based on the total price quoted for the item shall be used.

The total computed price arrived at, as above, shall be considered for the purpose of award also. If the bidder does not accept the correction of errors, its bid will be rejected.

B 36.3 For arriving at the computed price in a turnkey/ partly turnkey Contract, where items are indicated by EESL but quantity, unit rate and total price for

each item have to be indicated by the bidder, and it is observed from the bid submitted that there is discrepancy between the amount (which is obtained by multiplying the unit rate and quantity indicated by the bidder) and the total price as indicated, total price as indicated by the bidder will be taken to arrive at the computed price. The above methodology for arriving at the computed price shall also be applicable in case of any additional items that a bidder may indicate in his bid. In case the total price for an item is not indicated but the unit rate and quantity have been mentioned, the same shall be worked out by multiplying the unit rate and the quantity to arrive at the computed price.

B 36.4 For arriving at computed price in a turnkey/ partly turnkey contract where scope of the work only is indicated by EESL but item, quantity, unit rate, and price of each item and the total price for the complete scope have to be indicated by the bidder, and it is observed from the bid submitted that there is discrepancy between the amount (which is obtained by multiplying the unit rate and quantity indicated by the bidder) and the total price as indicated, total price as indicated by the bidder will be taken to arrive at the computed price. In case the total price for an item is not indicated but the unit rate and quantity have been mentioned, the same shall be worked out by multiplying the unit rate and the quantity to arrive at the computed price.

B 36.5 Invariably, in the bidding documents, critical provisions relating to certain clauses in the bidding conditions would be identified, from which the bidders are not permitted to take any deviations. It would be stipulated in the bidding documents under acceptance of important conditions (where there is no deviation is acceptable) that the Bids containing deviations from the same shall be considered as non-responsive. Such clauses would generally relate to 'Governing Law', 'Settlement of Disputes', 'Terms of Payment', Performance

Security', 'Taxes and Duties', 'Completion Time Guarantee', 'Defect liability', 'Functional Guarantees', 'patent Indemnity' and 'Limitation of Liability' etc.

During preliminary evaluation, it shall be examined whether any technical and/or commercial deviation has been taken in the deviation statement by the bidders. If the bidder has taken a deviation and has indicated a cost for withdrawal, the same shall be considered for the purpose of cost compensation during detailed evaluation stage only. If cost of withdrawal of deviation is not given than the same shall be computed by a committee as detailed below.

B 36.6 Wherever, as per the bidding documents, any shortfall in the rating and performance requirement of equipment/ material/ systems attracts consideration of differential price factor and the value of differential loss for evaluation, the same shall be worked out as per the methodology given in the bidding documents, for adding the same to the computed price of the bidders.

B 36.7 Further, if it is observed that any bidder has erroneously included price for some items/ components not covered in the scope of the Bidder as per bidding documents, the price as quoted by the bidder for such extra scope shall be worked out for off-loading the same from computed price of the bidder. However, where such scope has not been priced separately by the bidder, the off-loading/ reduction will not be considered.

B 36.8 The value of the differential loss will be added to the computed price of each bidder and the price quoted by the Bidder for extra Scope of Work will be deducted, as discussed above, to arrive at the preliminary evaluated bid price. The same shall be considered for short-listing of bidders as mentioned in subsequent paras.

B 36.9 Short-listing of Bidders:

Initial ranking of the bidders shall be determined on the basis of prices arrived at as described above. Based on the initial ranking, 2 to 4 bids, which are likely to come under the zone of consideration for award, shall be short-listed for detailed evaluation. The number of such bids which shall be considered for detailed evaluation may be decided by Tender Committee based on the factors like total number of bids, differences between the computed prices as calculated at para 36.8 above etc.

B 37.0 Detailed Evaluations of Short-listed Bids:

B 37.1 Technical and Commercial examination of bids short-listed for detailed evaluation shall be carried out thoroughly by the tender committee to bring out (i) technical deviations/ exceptions and additional conditions/ stipulations, (ii) commercial deviations/ exceptions and additional conditions/ stipulations, (iii) observation, if any, on the price schedule and prices of the bidders, and (iv) any other details considered relevant by the tender committee.

B 37.2 For the above purpose, the tender committee will be assisted by the concerned groups in Technical, Finance and Contracts who shall prepare/ check the statements/ schedules pertaining to various facts/aspects. The statements/ schedules pertaining to their respective areas shall be prepared by the Contracts, Technical and Finance group. The said statements/ schedules shall be signed by all the executives involved in the process and finally by the tender committee.

B 37.3 All deviations/exceptions, observed anywhere in the short-listed bids, which can be quantified in monetary terms of liability, shall be considered for cost

compensation provided the bid remains responsive in spite of the deviation/ exception.

B 37.4 For arriving at the amount of loading/ cost compensation on account of deviations or scope deficiencies, the following methodology shall be adopted in case of item rate Contracts, i.e. where EESL has provided the BOQ with description of items along with quantities and bidders are required to quote unit rate for each item and indicate the amount:

(i) If a bidder has indicated BOQ item (both description and the quantity) but has not quoted (left blank or indicated ‘-’) its unit rate and amount, the price of such item(s) will be deemed to be included in the price of other items. While evaluating the bids, no loading/ cost compensation will, therefore, be done on this account. However, during post-bid discussions, it shall be informed to the bidder that the Contractor has to execute such item(s), up to the quantity provided in BOQ, without any payment against the said item separately. This fact shall be recorded in the minutes/ record notes of post bid discussions.

In case, during actual execution, the quantity of such item(s) exceeds the quantity originally provided in the BOQ, payment for such additional quantity shall be made as per rate to be decided in terms of provision of the contract, treating it as a new item. In case the final quantity as per actual execution remains within the quantity originally provided in the BOQ, no adjustment in Contract Price shall be effected on account of the same.

(ii) If a bidder, who is required to quote his price conforming to specification requirements/terms and conditions, has taken a deviation and indicated price for withdrawal of the same in its bid, the withdrawal price shall be taken to arrive at the amount of cost compensation/ loading for the purpose of evaluation. Further, if the deviation taken by the bidder is not acceptable to EESL and it is decided to award the contract on such bidder, the said amount

shall be included in the recommended award price and considered for the purpose of award also. However, such deviations shall be suitably tied up during post bid discussion.

- (iii) If a bidder, who is required to quote his price conforming to specification requirements/terms and conditions, has quoted his price for an item(s)/sub-item(s), deviating from specification requirements//terms and conditions without indicating the withdrawal price, the amount of cost compensation/loading will be arrived at in the following manner:
- a) The cost compensation/loading amount for that item shall be derived from the bid itself.
 - b) If (a) is not possible, average of rates of other bidders, who have quoted for that item conforming to technical specification, shall form the basis for cost compensation/ loading. While working out the average of rates, as above, if any of the bidder has mentioned 'NIL'/'Free of Cost'/'-' or left blank against the item in question, the same shall not be taken into account.
 - c) If none of bidders has quoted rate for that item conforming to specification, the rate as per NIT cost estimate shall form the basis for cost compensation/loading.
 - d) In case the rate of that item is not available in the NIT cost estimate, the amount of cost compensation/ loading shall be assessed by the tender committee taking into account all such data as is considered relevant for reasonable assessment.

If it is decided to award the contract on such bidder, the amount of cost compensation/ loading worked out as above shall not be included in the recommended award price. Such deviations will be resolved with the bidder during the post-bid discussions and adjustments, if any, on account of such resolution will be made in the recommended award price. However, such

adjustment shall not be higher than the price considered for cost compensation/ loading during evaluation.

- (iv) If a bidder has not included, in his bid, an item of BOQ or has indicated only its description without the quantity and/or rate/amount, cost compensation/ loading shall be done as per methodology detailed in para(iii) above.
- (v) If the deviation taken by the bidder involves interest liability on the owner, in such cases, the cost compensation shall be arrived at based on the prevailing Base Rate of SBI.

If a bidder has indicated the item description as provided by EESL and quoted its total price without indicating its quantity and unit rate, no cost compensation/loading shall be done. In such a case, in the event of award, the methodology for running payment shall be tied up during post bid discussion.

If a bidder, in his bid, has not included an item(s) as provided by EESL or has mentioned that the same is not required or has mentioned “Nil” against quantity and price, whereas in the opinion of EESL the said item(s) is technically essential, cost compensation/loading shall be done to arrive at the evaluated bid price. The amount of cost compensation shall be arrived at in the manner described in Para B 37.4 (iv).

B 37.5 Based on the detailed evaluation, the evaluated price of the short-listed bidders shall be arrived at. Further, it shall be ascertained that the lowest evaluated bid price is not exceeding the computed price of the bids not shortlisted for detailed evaluation. If it exceeds, such other bids shall also be taken up for detailed evaluation.

Based on the evaluated price of the bidders, as mentioned above, as per bidding documents, the lowest evaluated responsive bid shall be determined.

B 37.6 QR Analysis

A detailed QR analysis in respect of the bidder whose bid is found to be the lowest evaluated and responsive shall be carried out for ascertaining whether the bidder meets the stipulated QR. The analysis will be based upon an examination of the details/documents furnished by the bidder in his bid as well as such other information that may be available with EESL or the information that EESL may have obtained from other published sources / other sources in public domain. If the bidder is observed to meet the QR, the bid of the said bidder will be considered further. If not, the bid of the said bidder shall be rejected and the above exercise shall be carried out in respect of the bidder whose bid is next lowest evaluated, responsive bid.

- B 37.6.1** Now-a-days, the bidders include such incorporated companies which are subsidiaries of other companies or member of a large group of companies, particularly in case of multinationals. In such a case, the turnover of the company, which has submitted its bid shall only be taken. However, if the bidder company is engaged in more than one business, its total turnover accruing from different business streams shall be considered for the purpose of QR analysis.
- B 37.6.2** There are cases where the bidder, who is a subsidiary company, has furnished the Audited Financial Statements of its holding/ parent company in support of its turnover. Further, in case of the bidder being a holding company, the turnover mentioned in the Audited Financial Statements, may include the turnover of various group companies/ subsidiary companies. In both aforesaid cases, it may be very difficult to ascertain separate turnover and other financial figures of the particular bidder company from the statements of the group holding/ parent company. It is also claimed by various foreign bidders that the laws in their countries do not require publication of Audited Financial Statements of subsidiary companies.
- B 37.6.3** In view of above, if the bidder (either a group holding/ parent company or a subsidiary company) is not able to furnish separate Audited Financial Statements of its own in respect of its financial performance, the bidder company shall be required to furnish its own separate balance sheet, income statements and other

requisite information, duly certified by its statutory auditor or by a certified public accountant, as the case may be, which shall be acceptable for the purpose of analysis of financial QR.

Suitable provisions in this regard may be made in the bidding documents/QR.

B 37.6.4 One of the financial criteria included in the QR pertains to annual turnover achieved by the bidders in the recent past, generally extending up to 5 years. Different bidders may have followed different accounting years for the purpose of their financial statements viz. Balance Sheet, Profit and Loss Account etc. For ascertaining the annual turnover of a particular bidder, the accounting year followed by the bidder for the purpose of his financial statements shall be considered by EESL for QR purpose.

Minor non-conformity to QR may be waived if adequate response is not received and re-tendering may adversely affect the project schedule with the approval of MD. Such cases shall be put up to the Board of Directors for intimation on quarterly basis..

B37.7 ASSESSMENT COMMITTEE

B 37.7.1 However, there may be a necessity to visit the works/premises of the bidder or such other locations deemed necessary, to verify QR compliance status of the bidder, in exceptional circumstances such as:

- (e) Contradiction in the documents submitted by the bidder.
- (f) Difficulty in interpreting the documents.
- (g) EESL do not have any previous experience of work execution with such bidder

The Committee shall comprise of senior level members from Contracts, Engineering and Finance. The nomination of the committee shall be approved by the authority competent to award the contract. However, in case the Competent Authority to approve the award is Sub-Committee of the Board or the Board or in the case of a foreign bidder, the MD shall be the Competent Authority to approve such nomination.

B 37.7.2 Assessment Committee shall comprise of members from Contracts, Engineering/Technical, Finance, not below the rank of Deputy Manager. The contracts member of the assessment committee shall be its coordinator. Based on the proposal for constitution of assessment committee to be put up by the tender committee, the different Depts. shall nominate their respective members for approval of the Competent authority. The nomination of the assessment committee shall be approved by the authority competent to award the contract. However, in case the Competent Authority to approve the award is Sub-Committee of the Board or the Board , than MD can approve the assessment committee.

Immediately after approval of the nomination, the same shall be communicated to the members of the Assessment Committee by the concerned Contracts coordinator.

B.37.7.3 The Assessment Committee, during assessment of a bidder, shall examine the following aspects:

a) Organization

- Promoter of the Company
- Equity Structure & Majority Stake Holder
- Management of the Company/ Constitution of the Board
- Organisational Set-up

b) Past Experience

- Work of similar nature executed in the past
- Work performance & Certification by the User
- Value of a single largest contract of similar nature executed

c) Financial Capability of the Firm

(To be analysed from the view point whether the firm can meet the financial obligations commensurate with the requirements of the contract execution)

- Annual Turnover
 - Overall Profitability & Cash Profit
 - Analysis of Annual Accounts & significant observations of Auditors, if any
 - Cash Credit Limits, LC Limits and Bank Guarantee Limits and their Utilisation
 - Ratio Analysis including Debt-equity ratio & Current ratio
 - Overall Cash Flow Projection of the Firm
- d) Manpower & Equipment Availability
- e) Manufacturing Capacity
- Qualified & Experienced Manpower Availability
 - Plant & Equipment along with their capacity
 - Manufacturing Capacity (Installed Capacity, Capacity as assessed by the Committee, Capacity achieved in the past)
- f) Project Execution Capacity
- Equipment & Tools available
 - Qualified & Experienced Manpower Availability
- g) Quality Aspects
- h) Current Commitment
- Works in hand (both for supply and erection) and anticipated completion period
 - Commitment likely to be entered in next six months
- i) Analysis of Spare Capacity to execute the Contract (Net of Current Commitment)
- Spare Manufacturing Capacity/ Project Execution Capacity

- Unutilised Bank Guarantee/ LC/ Cash Credit Limits
- Cash Flow projections of the subject contract
- Undertaking from the Banker for furnishing Contract Performance Guarantee and Advance Bank Guarantee

j)Any other aspect considered relevant by the Assessment Committee

B 37.7.4 The Assessment Report containing recommendation, after analyzing the spare capacity, financial soundness, unutilized financial limits like LC, Cash Credit, Bank Guarantee limits and Quality Aspects etc. with suggestion for improvement, if any, shall be submitted to the Tender Committee by the Assessment Committee within two weeks of its nomination.

B 37.7.5 In case of tower package, if the bidder is observed to meet the stipulated qualifying requirements on the basis of credentials of a tower manufacturer, through 'assured access' or 'joint venture' route or any other specified route, the assessment of such associate manufacturer shall also be done, in case EESL do not have any experience with the associate manufacturer.

B 37.7.6 In case of line material package or other packages, for which bidders have the option to quote as a licensee of a qualified manufacturer/licensor meeting the specified Qualifying Requirement, and the bidder gets qualified through this route, the assessment of licensor shall also be done, in case EESL do not have any experience with the licensor.

B 38.0 Final Evaluation of Bids and submission of Evaluation Report with Recommendations

- B 38.1** The tender Committee will take into account the assessment report and if the bidder is considered to have the capacity and capability to perform the Contract, the bid will be considered further towards finalization of award as discussed in subsequent paras. In case, the bidder is not considered to have the capacity and capability to perform the Contract, the bid shall be rejected and the above exercise including QR analysis shall be carried out for the bidder whose bid is next lowest evaluated and responsive.
- B 38.2** The qualified bidder, whose bid is determined as the lowest evaluated, techno-commercially responsive and, who is considered to have the capacity and capability to perform the Contract based on the assessment, if carried out, will be recommended for award and the recommended price shall be compared with the approved cost estimate. The comparison shall be done only between total recommended price and the total Cost estimate. Price of individual items will not be compared for the above purpose.
- (i) If the recommended award price of the Bidder is not higher than the approved cost estimate by more than 10% or is lower than the cost estimate, the award shall be recommended on the said bidder.
- (ii) If the recommended award price is higher than the approved estimated cost by more than 10%, the cost estimate shall be reviewed by Technical deptt and Finance Deptt , on receipt of communication from the concerned Contracts Coordinator, based on the advice of tender committee. The reviewed Cost estimate will be forwarded to MD thro, concerned HODs for those packages for which approval of award falls in the powers of Chairman/ Sub-Committee/ Board of Directors. For other packages, the reviewed cost estimate will be forwarded to concerned Contracts Coordinator after approval of MD.
- B 38.3** In case, the change in the value of cost estimate upon review is only on account of updation to the current level by way of price-adjustment/ variation

or due to change in the quantity of items for which rate is already available in the approved cost estimate, no financial concurrence shall be required for approval of the reviewed cost estimate. In other cases, financial concurrence shall be required for approval of the reviewed cost estimate.

- (iii) If, on comparison, the recommended award price is not higher than 10% of the reviewed cost estimate, the award shall be recommended on the bidder.
- (iv) If the recommended award price is higher than the reviewed estimated cost by more than 10%, award shall be recommended on the bidder subject to satisfactory negotiations. In case the project is funded by an agency and If the funding agency does not allow negotiation, the matter shall again be taken up with them reiterating EESL viewpoint. If the funding agency does not agree even then, the matter shall be reviewed by EESL to explore different options to award the package. Only in exceptional circumstances, the package shall be taken out of the funding provided it does not adversely affect the funding of the overall project.

B 38.4 The evaluation report, containing recommendations, shall be put up to the Competent Authority by the Tender Committee through the hierarchy in Contracts, Indenting and Finance Depts., for approval. The examination and evaluation of bids shall be carried out in accordance with the provisions of bidding documents

B 38.5 For single stage single envelope , evaluation process is already clear. However, the evaluation of packages for which single stage two-envelope bidding process has been adopted, shall be carried out in the manner explained hereunder:

B 38.5.1 The EMD/ Bid Guarantee/ Bid Security, QR Data/documents and confirmation of acceptance of Important terms and Conditions etc, as submitted by the bidders in the 'First Envelope' of their bid, which has been opened on the

scheduled date and time of bid opening, shall be taken up by the tender committee for examination.

B 38.5.2 It shall be first examined whether requisite EMD in the prescribed form has been furnished by the bidder or not. If requisite EMD, as per the bidding documents and the provisions/ guidelines is not available, no further examination shall be done and the bid shall be rejected.

B 38.5.2.1 All bids, which are found to contain requisite EMD, shall thereafter be examined for Bidder's acceptance of important/critical terms and conditions. Bids, not containing unequivocal acceptance of important/critical terms and conditions as per bidding documents, shall be rejected.

B 38.5.2.2 All the bids, acceptable after the above two steps, shall further be examined and evaluated towards QR compliance status of bidders. All the data and documents submitted by the bidder in this regard shall be examined. In case any clarifications or additional data/ documents from the bidders are considered necessary, the same shall be sought, as discussed in para B 38.9 below. The bidders shall be allowed a period not exceeding 15 days for furnishing the clarifications/ additional data/ documents. In case the bidders do not furnish clarifications / additional data/ documents within the specified time, it shall be presumed that they have nothing further to say.

B 38.6 Based on all data/documents as above, the bidders meeting the QR shall be finalised. In this regard, the recommendation of the tender committee, covering all relevant aspects including examination of EMD/bid security/ bid guarantee, acceptance of Important Terms and Conditions by the bidders and QR of bidders, shall be put up to the competent authority for approval to open the 'Second Envelope' containing Techno-Commercial and Price Bid of the bidders meeting the QR. The competent authority shall be the award approving authority, except in cases where approval of award lies in the

power of Board/sub-committee, for which the competent authority shall be the Chairman.

- B 38.7** Upon approval of the Competent Authority as explained above, the time date and venue of opening of the ‘Second Envelope’ of qualified bidders shall be decided by the concerned Executive in Contracts and intimated to the concerned bidders preferably in advance. The ‘Second Envelope’ of qualified bidders shall then be opened as scheduled by the same bid opening committee who had opened the ‘First Envelope’ of the bidders. Further evaluation of such bids shall be carried out to ascertain the lowest evaluated bidder. The ‘Second Envelope’ of bidders who were found not qualified, as per the procedure described above, shall be expeditiously returned to the bidders unopened only after the award is approved.

In cases where single stage two envelope bidding process has been adopted, the tender committee shall, after seeking clarifications/ data/ documents from the bidders, as may be required in respect of QR, submit its recommendation for approval to open the ‘Second Envelope’, within 5 weeks from the date of opening of 1st envelope. The approval will be obtained within 1 week thereafter. The 2nd envelope in respect of qualified bidders shall be opened within 7-10 days after approval.

- B 38.8** Further evaluation of bids of qualified bidders will be completed and the tender committee will put up recommendation for award within 4 weeks from the date of opening of ‘Second Envelope’, in cases not requiring assessment. In cases requiring assessment the process shall be completed within 6 weeks. The approval of the Competent Authority shall be obtained within in 2 weeks thereafter.

- B 38.9** Non-submission of documents pertaining to historical data/ fact with regard to general compliance with the bidding requirements would not, in the normal course, be sufficient ground to consider a bid as non-responsive or to reject

the same. In so far as the same is merely a matter of record or publicized information or does not in any way decrease the bidders liability and obligations, the same may be obtained by EESL through its own sources or from its other records, and considered. Such information may also be asked from the bidders by way of clarifications by tender committee. In this regard, the tender committee, through the Indenting and the Finance Dept, shall put up necessary recommendations

B 38.10 It shall be ensured by the tender committee and the concerned coordinator that all activities related to or connected with examination/ evaluation of bids is completed and the evaluation report with recommendations is put up to the Competent Authority well within the initial validity period of the bids taking into account the time required for subsequent activities before the contract can be awarded. Extensions beyond the initial period of bid validity should be avoided to the extent possible. However, extension of bid validity, if required, shall be requested by the concerned Contracts coordinator, in writing, from all bidders well before the expiry of validity.

B 39.0 Post Bid Discussions

The Tender Committee may hold post bid discussion after approval of award recommendation.

B 39.1 Immediately upon the approval of award recommendations by Competent Authority (for packages under domestic funding) and receipt of concurrence/ no objection from the funding agencies (for packages funded by multi-lateral funding agencies), wherever required, the concerned contracts coordinator will invite the bidder, approved for award, for post-bid discussions.

B 39.2 All post -bid discussions with the successful bidder shall be conducted in the presence of the contract coordinator. The post bids discussions on Commercial Issues shall be undertaken by Tender Committee consisting of Contracts, Technical and the Finance Dept.; on Technical Issues, by the Indenting Dept.; on QA&I issues, by Tech./QA&I Dept. and; on Work Schedule aspects, by Tech./Contracts. During post bid discussions, all the issues for resolution, as brought out in the evaluation report and/or indicated in the bid of the recommended bidder, shall be discussed and resolved; and other relevant issues including those related to QA&I and Work schedule shall be suitably tied up. Joint discussions involving the representatives of all concerned departments shall be held to sort out common issues.

Common minutes of meeting incorporating the agreements reached with all departments shall be signed with the bidder at the designated venue and time.

B 39.3 During post bid discussions, efforts shall be made to finalize sub-vendors for different items of supply, Sub-contractors for erection/installation works shall be finalized during post award stage, unless the names of sub-contractors are proposed by the bidder in its bid.

B 39.3.1 If it is not possible to approve a sub-vendor/ sub-contractor, without carrying out the assessment, the same shall be dealt with during post-award stage.

B 39.3.2 The list of sub-vendors/ sub-contractor, finalized during post-bid discussions, shall be included in the minutes of post bid discussions appropriately in the portions pertaining to technical/QA&I issues etc., as the case may be.

- B 39.3.3** A detailed network for submission/ approval of design/drawing, finalization of sub-vendor & quality plans, manufacturing, supply and installation/construction, testing and commissioning or other relevant activities, important for project completion to be incorporated as a part of each contract, will be finalized with the bidder during post bid discussions by Tech. and contracts.
- B 39.3.4** The discussions shall be duly recorded and signatures of the authorized representative of the bidder shall be obtained. It shall be specifically brought out in the minutes of post bid discussions that except for the specific deviations recorded therein, all other deviations/ exceptions to the terms and conditions of bidding documents, taken by the bidder in its bid or any other communication, whether implicit or explicit, shall be deemed as withdrawn. It shall also be recorded that the signatures of the bidder on the minutes of meeting will signify the bidder's unequivocal acceptance of the same and any subsequent communication/ clarifications from the bidder, except sought by EESL in writing, shall be treated as unsolicited and shall not be given any cognizance.
- B 39.3.5** It should be ensured by the tender committee that during post bid discussions, no agreement should be reached or commitments given to the successful bidder, by which the bidders get financial advantages beyond the provisions of bidding documents or beyond the deviations permissible as per the approved evaluation report.
- B 39.3.6** The tender committee shall put up the proposal/recommendation, based on the minutes of post bid discussions, immediately after the same are signed by the bidder, for approval of the Competent Authority as per DOP. However, for cases falling in the award approving powers of Sub-committee of the

Board / Board of Directors, the approval of MD shall be taken, as may be authorized while approving the award. Salient points including those resulting in extra financial liability, over and above brought out in the evaluation report, shall be indicated in the note put up by the tender committee.

B 39.3.7 Normally, the value of award, except where some rebates / discounts have been offered by the bidder, after post bid discussions shall be the same as per the approved evaluation report/ resolution of the Board or Sub-committee. However, if there is a difference, the reasons for the same shall be specifically brought out by the tender committee in the proposal for approval of post bid discussions.

B 39.3.8 The post bid discussions would be completed by concerned Depts. and approval of the same shall be obtained within 4 weeks, for domestic funded packages, and 6 weeks for packages funded by multilateral funding agencies, reckoned from the date of approval of award.

B 40.0 Issuance of Letter of Award (LOA)/ Notification of Award (NOA)

The format for LOA/NOA/Contract Agreement shall be standardized and shall form a part of bidding documents. All the LOAs shall be issued in accordance with these formats. In case the formats for LOA/NOA are yet to be standardized, necessary action shall be taken by contracts department to do the same and until the formats are standardized, the LOA/NOA may be issued by taking past references.

After issuance of NOA/LOA, the Contract Agreement shall be signed within the period specified in the bidding documents. Efforts shall be made to ensure that the Contract Agreement is signed within one month of issuance of NOA/LOA.

The LOA/NOA and the Contract Agreement shall be issued after vetting by Technical/indenter and Finance departments.

In case of any major deviations from the “standard” NOA/LOA are necessitated due to special circumstances, Contracts may, if required, send the draft of the same for Legal vetting, highlighting the areas of difference.

The concerned Contracts Coordinator (not below the level of Asstt. Manager) and other officers in the hierarchy, shall ensure that the LOA/ NOA and Contract Agreement being put up for signature of the authorized officers, are properly checked and are in accordance with the drafts vetted by various departments. Further, the office copy of such documents must be initialed by the concerned Contracts Coordinator and other officers in the hierarchy, before they are put up to the authorized officer for signature and issue.

The LOA/ NOA shall be issued within 2 weeks after approval of award by the Competent Authority.

Contracts Dept. shall follow up with the Contractor towards timely receipt of acknowledgement, by the authorized signatory of the bidder, of LOA/ NOA. On receipt of the same, copies of NOA/LOA shall be distributed to all concerned.

B 41.0 Return of EMD/Bid Security/Bid Guarantee of unsuccessful Bidders:

B 41.1 After the recommendations for award of a particular package are approved by Competent Authority, the EMD/ Bid Security/Bid Guarantee of all the bidders

except the successful bidder to whom award has been recommended shall be returned to them within 15 days.

B 41.2 The EMD/Bid Security /Bid Guarantee of the successful bidder shall be returned by associated Finance/ Contracts Coordinator within 15 days of acceptance of CPG submitted by the bidder to whom the Contract is awarded.

B 41.3 Notwithstanding the provisions under para B 35.11.1 and B35.11.2 above, if the validity of the bid expires and /or the bidder does not agree to extend the same on the same prices, terms and conditions, unless otherwise provided in the bidding documents, the EMD/Bid Security/Bank Guarantee of the bidder shall be returned forthwith by associated Finance, based on the advice to that effect from the concerned Contracts Coordinator.

SECTION III POST AWARD

C 1.0 Signing of contract Agreement / LOA/NOA/P.O & receipt of CPG. :

C.1.1 Subsequent to the approval of Award Recommendation, a contract can be awarded either by issuing Notice of Award (NOA)/Letter of Award (LOA)/Purchase Order (PO) or directly signing a Contract Agreement. Once the NOA/LOA/PO is issued and its acknowledgement is received, it shall be ensured by the concerned Contract Department. that formal Contract Agreement, appending therewith all the documents forming part of the Contract, is signed between EESL and the contractor in two originals, within the time specified. One original of the signed Contract Agreement along with relevant documents shall be bound, sealed and kept in the safe custody of the concerned Contracts Department. Wherever Contract Agreement is not being signed, the NOA/LOA acknowledged by the contractor along with relevant documents shall be bound, sealed and kept in the safe custody of the concerned Contracts Department. While one copy of the same shall be retained in the Contracts Department for day to day reference, the copies of the same shall be distributed to Corporate Finance, Technical, Stores, Marketing, Sites Offices etc. The contracts / Award Letter / Agreements /PO shall be signed by concerned executive as per D.O.P. Signing of Contract Agreement shall, however, not be mandatory for Contracts having Contract value less than 15 lakhs. Contract agreement shall be signed on stamp paper of relevant value and duly acknowledged by the bidder.

C1.1.1 Contract Department shall obtain Contract Performance Guarantee from contractor as per format and submit it to Finance Department for verification and safe custody. Normally any change in CPG format from the one specified in the bidding documents will not be permitted. However any minor changes/variations, which do not affect intent and spirit or may be necessitated due to any particular requirement of the contract in question, may be accepted by Head of Contracts in consultation with finance. The concerned finance department will maintain proper record of all BGs in its custody.

C 1.2 Mere addition of a limitation clause by the issuing bank in the Bank Guarantee whereby the Bank reiterates the limits of its liability with regard to value and / or validity of the BG shall not be considered as change in format and will be acceptable to EESL.

C 1.3 CPG from a bank other than those specified in the Bidding Documents shall be accepted only under exceptional circumstances with the approval of Managing Director. In such case, the concerned Contracts Coordinator shall put up the recommendation note for approval of MD through finance, bringing out the relevant details and justifications.

C 1.3.1 For release of initial advance (supply), the contractor shall generally be required to complete the following formalities.

- I. Unconditional acknowledgement of the letter of award/Notification of award/work Order.
- II. Submission of Contract Performance Guarantee, as per format.
- III. Submission of Invoice, for advance.
- IV. Submission of BG of equivalent advance amount as per format.
- V. Finalization of L2 Network, where ever applicable.
- VI. The procedure for acceptance of BG for advance would be same as that for acceptance for CPG.

C 1.4 Manufacturing Quality Plan/ Factory Acceptance Tests and Pre dispatch Inspection:

Wherever manufacturing quality plan and / or Factory acceptance tests are required, same would be mentioned in tender documents. During or after Award, Quality Plan and/or Factory acceptance tests may be required to be submitted by bidder. The same shall be checked by Technical department and approved at Customer Hold Point (CHP). Pre Dispatch Inspection (PDI) & Dispatch

Clearance criterion would be mentioned in tender documents. Pre dispatch inspection & dispatch clearance is to be carried out by technical department, however, in case it is desired that the PDI and dispatch clearance should be carried out by a committee, the same shall be done with the approval of MD.

C 1.4.1 Work execution at site and Project Monitoring:

Engineer in charge of Technical Department shall monitor work execution of project as per contract. Technical department shall maintain a progress report of the work with all major milestones. Wherever required, L2 and L3 network shall also be drawn in addition to L1 network and shall be approved by Technical department.

L1 network defines major milestones along with critical activities and expected timeline of project, L2 network shows details of each major milestones and L3 network will be the basis for day to day review and monitoring of the progress. Apart from kick off meeting at the time of start of work, project review meeting (PRM) may be carried out from time to time. Progress report shall be taken from contractor on monthly basis or as mentioned in tender documents /contracts. A clause should be inserted for advancement/postponement of activities from contractual schedule.

"During finalization of L2 network, in case some advancement/postponement from the schedule provided in the contract is required, the same shall be done only with the approval of M.D."

Once L2 network has been finalized, no revision shall normally be permitted therein as long as the basic scope of work remains unchanged. However any changes that is required due to additional scope, delay in

commencement/execution of work on account of non-fulfillment of obligation by EESL or any other reason non-attributable to the contractor, L2 network may be suitable revised with the approval of M.D.

Attempts shall be made to finalise sub-vendor/sub contractor for supply items, as far as possible, before award of contract. The finalization of sub-vendor/sub-contractor not decided during pre-award stage or additionally proposed after the award, shall be taken up during post award stage within the time limit tied up during post bid discussions. The sub-contractor proposed by the main contractor for erection/civil portion of the packages, except where already approved during pre-award stage, shall also be finalized based on documents in support of sub-contractor by the main contractor, for EESL review.

C 2.0 TECHNICAL APPROVALS FOR QUANTITY VARIATION INCLUDING NEW ITEM, SUBSTITUTED ITEMS AND CHANGES IN OTHER CONTRACT CLAUSES

C 2.1 Variations/deviations in the contract may be encountered during its implementation stage, necessitating revision in contract price, as the items and quantities thereof in the BOQ/Price Schedule attached with the LOA/Contract Agreement are based on estimates made while finalizing BOQ for NIT. In Some cases change in scope vis-a vis that originally envisaged in the Contract may take place, causing variation/deviation. Such variations/ deviations in the contract may be in the form of (a) variation in quantities of different items available in the BOQ/Price Schedule attached with the LOA/Contract Agreement (such items to be termed as contract items hereinafter); (b) requirement of some items which are not available in the BOQ/Price Schedule attached with the LOA/Contract Agreement or there is a change in specification/make/model of existing/available items. All such items, generated in the manner described in (b) above, will be termed as new items. A new item may be required either for

substituting, fully or partly, a contract item (generally referred to as substituted items) or for supplementing contract items to successfully complete the scope under the contract (referred to as supplementary or additional items).

C 2.2 It should, however, be the endeavor of EESL to minimize post award variations / deviations to the Contract and necessary controls in respect of it shall be exercised by concerned responsibility centers in their respective areas.

C 2.3 In order to exercise proper control in this regard, all such variations in a contract will be processed in two stages: first Technical Approval for variations will be obtained and thereafter Administrative Approval for issue of Change Order/Amendment will be processed. While the processing of technical approval has been dealt with in subsequent paras hereunder, the processing of administrative approval has been dealt with under para C 3.0.

C 2.3.1 The cost implications in such cases shall be worked out by the concerned group of Technical Department.

C 2.3.2 The contractor shall be required to submit to the execution site its request for approval of such variations along with all relevant details such as the anticipated quantity, the proposed rate in case of new items and estimated financial implication, either for variation in quantity in respect of items available in the contract and/or for requirement of any new item without the basic scope of the contract undergoing a change. The same shall be examined by the execution site and a proposal containing details of variations, estimated financial implication, reasons thereof, shall be initiated by the concerned technical department for obtaining the approval of the Competent Authority as per DOP. Upon approval by the Competent Authority, Contracts will take further action towards administrative approval for issuance of change order/amendment. However, if any design or drawing is required to be developed to execute such

variation of work, the same shall be finalized and approved by Technical department.

- C 2.3.3** All proposals of technical approval shall interalia contain estimated financial implication of the variation proposed for approval in the proposal in question, along with the cumulative estimated financial implication, taking into account the variation so far processed for technical approval/ approved already. The estimated price for new items, if any, shall invariably be indicated. The level of the Competent Authority shall be decided as per DOP based on the cumulative value only.
- C 2.3.4** The estimated financial implications in all cases shall be worked out on the basis of unit rates available in the contract for contract items and estimated rate for new/substituted items.
- C 2.3.5** The estimated rate/financial implications indicated for the purpose of technical approval shall, however, not form the basis of negotiation for deciding the rate of new item. The rate of new item shall be decided as per methodology described under para C3.0.
- C 2.4** Since processing of the proposal for Technical Approval indicating financial implications may be time taking in some of the cases, clearance to proceed with the work can be accorded on case to case basis to avoid delay in the progress of work, pending formal Technical Approval for which proposal without indicating any financial implication will be initiated by technical department with detailed reasons, as the case may be. Technical clearance as above can be given by the MD. However, appropriate Technical Approval indicating financial implications of the same shall follow, as soon as possible, in all such cases.
- C 2.5** The proposal for Technical Approval shall not be required to be routed through Finance.

C 3.0 Administrative Approval for Issue of Change Order (Amendment to the Contract)

C 3.1 On receipt of Technical Approval, further action shall be taken by the Contracts for obtaining Administrative Approval for issue of Change Order/ Amendment.

C 3.2 Efforts shall be made to expeditiously process the proposal for administrative approval for issue of change order/amendment to the Contract on account of variation. In case the technical approval covers variation in contract items including requirement of new items, efforts shall be made to process the proposal for administrative approval in two parts, if practicable. The first part shall cover variation in quantity of contract items where finalization of new rate is not required. The same shall be processed for approval of competent authority by contracts through concerned finance. The second part shall cover new items as well as contracts items requiring finalization of new rate, for which contracts shall initiate a proposal for constitution of a committee to negotiate and finalize rates with the Contractor. The committee shall comprise of representatives, not below the level of Asstt. Managers from Contracts, Technical and Finance and nomination shall be approved by MD.

The committee shall forward its recommendations indicating the rate finalized with the Contractor to Contracts department which shall, based on the rate of new items finalized by the committee, process the proposal for obtaining administrative approval from competent authority as per DOP for issue of change order. The proposal for administrative approval, containing committee's recommendation for rates, shall be routed through all concerned Head of departments that are represented in the committee.

C 3.3 The rate of new item(s) shall be finalized in the manner as provided in the contract. In case the contract does not stipulate any specific methodology, the rate shall be finalized in the following manner.

- (a) If possible the rate shall be arrived at on the basis of similar items available in the contract. Such rate shall be subject to further adjustment as per the Price Variation Formula, if any, applicable to the contract item based on which the new rate has been arrived at.

- (b) In case similar item is not available in the LOA, the rate shall be mutually discussed and decided. In order to ascertain the reasonability of rate, market rate analysis may be carried out, wherever possible, if market rate analysis cannot be carried out, reasonability of the same shall be kept in view based on the rates of that item available in other LOAs. For this purpose average of rates of that item available in other awards placed during last 02 years, after suitable extrapolation and escalation, wherever required, to bring it to current level and after effecting price adjustment, if any, required on account of mismatch of specifications may be used.

- (c) In case the same is not possible, lowest budgetary quotation from various manufacturers/suppliers can also be used as basis. 15% shall be taken to cover Contractor's profit and overhead wherever required.

C 3.4 In many cases, finalization of new rate may be based on combination of more than one of the guidelines described in para C 3.3 above.

C 3.5 The rates of new items finalized on the basis of market rate shall not be subject to any further adjustment as per the Price Variation Formula.

C 3.6 All proposals for issuance of change order, on the basis of Technical Approval, to be processed as explained above, shall inter-alia contain the cost implications of the proposal in question and the cumulative cost implications taking into account all previous change orders, processed/ issued. Further, the total cumulative cost

implications will be broken up under the head of contract items and new items separately so as to provide clarity in regard to nature of variations. The total variations in contract items will be further broken up indicating variation within contract's limit and variation beyond contract's limit. All such proposals shall be routed through finance department before obtaining approval of the Competent Authority as per DOP.

C 3.7 It shall be ensured that the final amendment to the contract, if required, is issued within six weeks after physical completion of supplies/works.

C 3.8 All changes to the original LOA/Contract will be notified by Contracts department, at a level not below Asstt Manager by way of amendment/change order, to be serially numbered for each contract. The amendment will be vetted by Finance, in line with the administrative approval, before issuance. It shall be ensured that the amendment/ change order is issued within a week from receipt of administrative approval.

C 4.0 Time Extension and Liquidated Damages (LD)

C 4.1 The time remains the essence of contracts awarded by EESL and all works / supply under a contract needs to be completed within the stipulated time schedule. Therefore, a provision should be kept in the contract that in case of delay in completion, for the reasons attributable to the contractor, he is required to pay to the owner, a sum, as LD, calculated at a specified rate generally for each week of delay but limited to the ceiling mentioned in the Contract. The ceiling limit in the contract would be 5% of the contract price or higher as may be decided by M.D.

C 4.2 Notwithstanding the fact that time is the essence of the contract, a number of cases of delay in completion of projects are encountered. Though the reasons for delay are diverse, the contracts finally get completed beyond the contract completion period on several occasions. In order to keep the contract alive, it is necessary that extension of time is granted to the contractor for the extended

period of completion. While communicating the approval of extension of time, a decision on imposition/waiver of LD, fully or partly, on account of delay in completion of work is also required to be indicated. Since the reasons for delay may be generally mixed i.e., attributable to both EESL & contractor, the issue of time extension with imposition / waiver of LD needs to be dealt with meticulously taking into account all the relevant aspects. The relevant aspects to be considered include the reasons for delay, the period of delay attributable to either parties and the loss or damages, if any, suffered by EESL.

- C 4.3** Since the above exercise can normally be taken up only after physical completion of works, Provisional time extension will be granted with the approval of competent authority as per DOP so that the contract remains alive and delayed supplies/works can be accepted by EESL. A written communication in this regard, the standardized proforma for which will be finalized by Contracts, will be issued. Such Provisional time extension will be without prejudice to all the obligations of the contractor under the contract and further without prejudice to EESL's right to levy LD and other rights under the Contract. Above facts will be clearly indicated in the proforma of provisional time extension letter, finalized by Contracts.
- C 4.4** In normal course, the proposal for Provisional/Interim time extension or Final extension of time along with settlement of LD shall be initiated upon receipt of request from the Contractor to that effect.
- C 4.5** In case of Interim / Provisional time extension, the recommendation shall be put up by the concerned technical department for execution of the contract to the competent authority through contracts and finance. This exercise will be started at least 01 month before the expiry of scheduled completion period so that provisional extension letter is issued before expiry of the contract period.

C 4.6 While finalizing the final time extension, if LD is levied in each and every contract undergoing delay in completion period, without examining the merit of the case and the taking relevant aspects into account, such a decision will not only be against the spirit of the contract but may not ultimately be in the interest of EESL also. At the same time, cases involving loss/ damages to EESL due to delays by Contractor should not be dealt with leniently. Hence, in order to safeguard the long term and larger interest of EESL, the cases for imposition of LD need to be dealt with logically and rationally, maintaining consistency in approach. Accordingly, in the normal course, the cases of time extension/LD will be dealt with as per guidelines given hereunder.

C 4.6.1 The loss/ damages suffered by EESL due to delays by the contractor is the basic criteria for deciding a case for imposition of LD. Damages, with reference to a contract, in the context of LD, can be defined as the amount adjudged to be paid by Contractor to the Owner as compensation for the loss sustained by the latter in consequence of the breach of contractual obligations pertaining to time schedule. The fundamental principle underlying the theory of damages is not punishment but compensation.

C 4.6.2 Contracts have a provision for recovering compensation as LD from the Contractor for delays attributable to him in performance of the Contract, in the form of a predetermined sum for each unit of time delay subject to an overall limit. In fact, the spirit of LD clause is that recovery towards loss, if any, suffered by EESL, on account of reasons attributable to the contractor, can be effected from the contractor upto the extent of actual loss or upto the limit of the predetermined sum as mentioned in the contract, whichever is lower. In this connection, it may be relevant to point out that Indian Courts have, in some cases, insisted upon for the evidence / estimate of the loss / damages incurred / suffered, as a prerequisite for implementing this clause. Therefore, recovery towards

compensation under the clause should take place when loss/ damage has actually taken place on account of delay caused by the Contractor. Even if there is a delay in execution of the contract and reasons for delay are attributable to the contractor but EESL has not suffered any loss specifically due to delay in performance of the contract, no sum as LD is recoverable from the contractor. However, in such cases, a token LD, the amount of which will be determined in the manner as elaborated in subsequent paras, will be recovered.

C 4.7 In Contracts awarded by EESL, delay in performance of the Contract may be on account of one or more of the following:

- (i) Reasons attributable to the owner viz., delay in providing the work front, approval of drawings/ sub-vendors, issue of owner supplied material and/or fulfillment of EESL's other obligations as provided in the Contract, etc.
- (ii) Reasons attributable to "Force Majeure" conditions as defined in the Contract.
- (iii) Reasons attributable to the Contractor viz, delay in mobilization, submission of drawings, finalisation of sub-vendors, supply of material/ equipment, fulfillment of the Contractor's other obligations under the Contract, etc.

C 4.10 The proposal for time extension and decision on LD shall, accordingly, contain a detailed analysis indicating reasons & period of delay on each account along with documentary evidence thereof to the extent feasible and relevant. Based on the analysis, the period of delay due to 'Force Majeure' and for reasons attributable to EESL shall be identified. The aim of the exercise is to find out the net delay, which is attributable to the contractor. Experience of LD cases dealt with in the past tells that all the three types of delay mentioned above are so much mixed up/intermingled, with one running concurrently with another, at intermittent stages, that it becomes extremely difficult to directly identify the delay attributable

to the contractor. As such, a practicable approach for working out the net delay attributable to the contractor, as described below, shall be adopted:

- (i) Total delay that has occurred in a Contract =A
- (ii) Cumulative period of delay on account of “Force Majeure” =B
- (iii) Cumulative period of delay on account of EESL = C
- (iv) Concurrent cumulative period in(ii) &(iii) = X
- (v) Cumulative period of delay on account of “Force Majeure” and EESL = B+C-X
- (vi) Net period of delay attributable to the contractor, Z= A-(B+C-X)

C 4.11 While calculating the period of delay, which should be considered for extending the contract completion period, for the reasons attributable to EESL or due to Force Majeure, all efforts will be made to objectively work out/analyse whether a delay in a particular activity has really contributed in extending the completion period of the contract. This is important in view of the fact that a number of activities of a contract undergoing delay may not have impact on overall delay as subsequent site activities are not entirely dependent upon them. All such delays, which are not found to be directly contributing in extension of completion period, will therefore be ignored. Moreover, there may be a situation in which the impact of some of delays in intermediate activities may not be feasible to be objectively determined. In all such cases, a practical view will be taken and a judicious assessment of overall impact will be made on the basis of normal prudence.

C 4.12 In case the period Z, arrived at as per para C 4.10 above, is not positive, the time extension, till the actual completion of the works/ supplies, shall be allowed without any LD.

C 4.13 In case the period Z, arrived at as per para C4.10 above, is positive, action will be taken as described hereunder.

C 4.14 It will, thereafter, be examined whether EESL, on account of the delay Z, has suffered loss i.e., extra payment to other contractors/agencies on account of delay; cost of transportation for diversion of material required in order to continue

progress in the event of delay in supply; payment of additional insurance premium on account of the delay; loss on account of delay in return on investment net extra financial burden to EESL because of fluctuation of exchange rate in a foreign currency contract, wherever applicable, after taking into account the impact of negative price variation as on contractual schedule vis- a- vis actual delivery; loss, if any,.

C 4.15 If no loss has occurred, the time extension, till the actual completion of the works/ supplies shall be allowed but with a token LD to cover incidental expenses that EESL may have incurred because of the delay but are not exactly quantifiable.

C 5.0 CONTRACT CLOSING

C 5.1 Responsibility Center: -

- Proposal is to be initiated by Technical department where the work has been executed viz supply and installation/commissioning.
- Contracts Department. will act as the coordinator, for all Packages.

C 5.2 Contract closing is a milestone, which symbolizes that liabilities of either parties stand settled i.e. works/supplies have been completed in terms of the provisions of the contract and all the due payments have been released. No guarantee/claim is outstanding with/against either party. A contract is said to be completed in all respects only after successful completion of the Warranty Period. A contract shall therefore be considered to be closed only after the Warranty Period is successfully completed and CPG/Security Deposit of the contractor is returned/discharged.

C 5.3 It is clear from foregoing that all efforts need to be made to ensure timely closing of various contracts under a project. As a matter of policy, while all the contracts

under a project shall be closed immediately after the expiry of defect liability period/warranty period of respective contracts, various activities pertaining to contract closing shall generally be completed within 06(Six) months of the completion of the respective contracts, except release of Contract Performance Guarantee/Security Deposit, which shall be released after defect liability period/warranty period.. The contract closing activities should preferably be initiated one month before the schedule completion of the contract.

C 5.4 The closing of a particular contract shall be said to have taken place in time if the contract performance guarantee is released immediately after successful completion of warranty period. The associated activities, including release of CPG, required to be completed for closing of the contract are outlined below:

- (i) Receipt of drawings, QA documents and O&M manuals
- (ii) Pre-commissioning checks
- (iii) Physical Completion of scope of work
- (iv) Commissioning & Taking over certificate
- (v) Material Reconciliation
- (vi) Performance Guarantee Test
- (vii) Processing of scope variation covering quantity variation, extra items/claims & Issuance of final amendment
- (viii) Final Time extension& Settlement of LD
- (ix) Finalization of Extra claims and settlement of disputes
- (x) Processing & release of final bill
- (xi) Successful completion of warranty
- (xii) No demand certificate from contractor
- (xiii) Release of CPG

C 6.0 Contract Closing Proforma (CCPs)

C 6.1 In order to ensure that entire scope under the contract is completed and obligations/liabilities of either parties are properly settled before a particular contract is declared as closed, confirmation from concerned authorities in respect of satisfactory completion of respective activities shall be taken in the form of issuance of Contract Closing Proforma (CCPs). The contract closing Proforma (CCPs) are devised in a manner so as to cover all aspects of a contract. These CCPs, which are enclosed as Annexures, are outlined below, indicating the responsibility center for the respective proforma:

Sl. No.	Description	Responsibility
CCP01	Final Amendment to Contract	Contracts
CCP02	Receipt of Drawings from Contractor	Technical
CCP03	Receipt of QA Documents	Technical
CCP04	Receipt of O&M manuals	Technical
CCP05	Confirmation of Scope completion	Technical
CCP06	Settlement of LD	Contracts
CCP07	Performance Guarantee test	Technical
CCP08	Material Reconciliation	Technical
CCP09	Payment Reconciliation	Finance
CCP010	Fulfillment of statutory requirements	Contractor
CCP011	No Demand Certificate	Contractor

CCP012	Warranty completion	Technical
CCP013	Release of CPG	Accounts

C 6.2 It is possible that some of the above mentioned CCPs may not be relevant to a particular contract. Hence , once a particular contract comes under the zone of consideration for monitoring of Contract Closing, the responsibility center identified as Overall Coordinator shall propose and obtain approval of the competent authority as to which CCPs will be applicable to that contract. On approval, the same shall be informed to execution site and finance,

C 6.3 CCPs 1-10, to the extent applicable, shall be obtained before release of final payment by Accounts. While the overall responsibility for coordination shall be with responsibility center mentioned at Para C 6.1, the concerned responsibility center as mentioned in Para C 6.1 shall ensure that they issue these certificates in time. The issuance of CCP10 and CCP11, both to be given by contractor, shall be coordinated by execution site and accounts respectively. As a matter of procedure, the concerned responsibility center shall issue respective certificates within 10 days of completion of a particular activity.

C 6.4 From contractor’s side, a representative, duly authorized by the company to sign such documents, shall sign CCPs. From EESL side, it shall be signed by an authority not less than Asstt Manager.

C 6.5 Once all the contract closing activities are completed and the required certificates are obtained, the concerned contracts dept. shall put up a note confirming the same and declare closing of a particular contract for information and approval of MD.

C 7.0 PERFORMANCE CERTIFICATE TO THE CONTRACTORS

- C 7.1** On completion/foreclosure/termination of a contract, the technical department will forward performance report of the contractor in respect of the contract in question to Contracts for all packages. In case of supply cum erection contract, such performance report will be required to be sent subsequently after completion of defects liability period.
- C 7.2** Contracts will maintain a data bank of all the performance reports received for future reference and record.
- C7.3** In case of any contractor requests for issuance of performance certificate in case of any contract executed by him, the same shall be issued by an executive of contracts department not below the rank of Asstt Manager based on the above data bank with approval of MD.
- C7.4** Against the request of the contractor or other clients,' Performance Certificate' will normally be issued in case of contracts which have been completed and 'Works' have been taken over. However, also in case where 'Works' have been physically completed but not taken over by EESL because of delay due to reasons not attributable to the contractor, 'Performance Certificate' will be issued.
- C7.5** In case the contractor is a Joint Venture, the fact shall be clearly brought out in the performance report where the name of the contractor is written. Irrespective of as to which partner of JV requests for the performance certificate, the same shall always be issued to the lead partner in whose name the letter of award has been placed. However, a copy will be given to the partner requesting for performance report in case he is not the lead partner.

C7.6 Wherever feasible, breakup of scope of work/ quantities, along with price thereof, actually executed by each partner will be shown in the performance report. The performance report Proforma is enclosed at annexure II

C8.0 INSURANCE

C 8.1 In order to cover different risks in contracts awarded by EESL, the following types of Insurance coverage are to be generally arranged by the contractor for the goods/ materials supplied by him, as well as by owner and works executed by him

- (i) Transit/ Marine Insurance during supply of materials for Supply/Supply portion of Supply Cum Erection/Turnkey Contracts
- (ii) Storage Cum Erection (SCE)/Installation All Risks coverage for Supply Cum Erection/Turnkey Contracts

C8.2 So far as Transit/Marine Policy is concerned, the concerned supplier shall take the same and documentary evidence in support thereof shall be furnished by him along with dispatch documents. Such a policy shall cover different risks during transit of materials and will generally be valid beyond 60(sixty) days of receipt of materials at Owner's store or store of the erection contractor as the case may be. The cost towards insurance coverage in respect of materials and works supplied by the erection/turnkey contractor shall be included in the contract price.

C 8.3 In case of Erection/Supply Cum Erection/Turnkey contracts, Erection Contractor shall be required to insure all equipments and materials being supplied by Owner as well as those supplied by the contractor from the point of receipt at site to commissioning including handling, storage, erection, testing, etc. The premium towards such insurance coverage for materials and equipments

supplied by owner would be reimbursable to the contractor against documentary evidence on actual basis, in addition to the Contract Price.

C 9.0 CANCELLATION OF CONTRACT

C 9.1 Cancellation of any Contract shall normally be resorted to only after all efforts to explore and act upon reasonable options, keeping the interest of the Project/ EESL in view, for salvaging the situation, are exhausted. However, if the contractor is found to have indulged in Corrupt and Fraudulent practice(s), cancellation of contract would be resorted to without exploring such options, though in such a case too the interest of project completion shall be kept in view. While taking the decision, though the interest of Project/ EESL has to be uppermost, it is imperative to consider and keep in mind the associated legal, commercial and other relevant aspects so that the possibility of complications at a subsequent stage is obviated. In this context it is essential that all concerned Departments. / Responsibility Centers maintain the documents and the details/ data pertaining to the Contract, in line with the policy and procedures outlined in this document and other policies and procedures in place. Further, the concerned head of the technical department shall make sure that the 'Notice of Default' and/ or such other notice (s) required to be issued as per the Contract, prior to cancellation, have been properly issued and communicated to the Contractor.

C 9.2 Action for cancellation of a Contract, in full or in part, shall normally be initiated under compelling circumstances such as the following:

- (i) The contractor fails to submit CPG within the specified period or extension thereof, despite repeated reminder(s).
- (ii) The Contractor fails to commence the work with due diligence or fails to perform the work in accordance with the specified time schedule or as per specified quality parameters/ specification, for reasons generally attributable to him alone,

despite repeated reminders and warnings issued by EESL, or deserts the site without EESL's prior permission and does not respond in a positive manner to EESL's repeated communications.

- (iii) The contractor is found to be engaged in corrupt and fraudulent practices.

C 9.3 Delay in submission of CPG

C 9.3.1 The submission of CPG is the first and most important signal from the contractor towards his earnestness for performing the contract. Therefore, the submission of CPG by the contractor needs to be religiously monitored. However, suitable extension, to the extent considered appropriate and reasonable, taking into account overall completion of the project as well as looking into various aspects especially whether the contractor has taken reasonable action towards commencement of the works earnestly, can be given with the approval of HOD contracts. In all such situations, it shall be ensured that the bid guarantee remains valid until CPG is received from the contractor and authenticity is verified. If the extension of the validity of the bid guarantee is not received from the contractor at least 7(seven) days before its expiry, conditional claim for encashment of bid guarantee shall be lodged by the concerned Contracts coordinator. For encashment of bid guarantee, wherever necessary, proposal shall be initiated by concerned contracts coordinator and approval of competent authority, as per above, shall be taken through the finance department.

C 9.3.2 In case Contract Performance Guarantee is not received from the contractor within the specified time (including extensions), annulment of award and forfeiture of bid security may be considered in terms of provisions of the bidding documents, depending upon associated aspects including progress of site activities. In case of annulment of award, fresh bids will be invited for finalizing the contract. However , contracts having short completion period of upto six

months, in case, party do not submit CPG, then 10% of contract value in lieu of CPG may be retained from contractor's bill as CPG.

The status of site activities of the Contractor shall be sought by the concerned contracts department. After receipt of the same, proposal shall be processed by the concerned contracts department either for extension of period of submission of CPG or for cancellation of the contract, as the case may be, depending upon the facts and circumstances.

C 9.3.3 In order to avoid repetition of procedure towards issuance of Notice of Default to the contractor, so that expeditious decision could be taken, it shall be clearly brought out in the letter advising submission of CPG within specified period including extensions, if any, that any failure on Contractor's part to comply within the time schedule shall lead to cancellation of the contract in terms of provisions of the document (quoting the clause/para no).

C10.0 Poor Performance of Contractor

C 10.1 After award of the contract, contractor is required to mobilize and commence the work within a specified period in the right earnest so as to complete the entire scope of work in time. Therefore, immediately after the award is placed, the mobilization/commencement of work by the contractor and the progress of work vis-à-vis the schedule is to be closely monitored by EESL so that corrective action could be timely taken and salvaging, to the extent possible, could be done.

C 10.2 In order to effectively achieve the above objective, the performance of a Contractor, shall be judged against the specified time schedule developed for the purpose of initiating action for cancellation of the Contract adopting the methodology as discussed hereunder.

- (i) The targets, which would be set both for the Contractor and EESL, shall specify the quantum of different project activities to be generally completed by the end of a quarter (3 months period) after award of the Contract. These targets, shall be finalized keeping in view the targets/ actual achievements under other connected/ associated contracts and the targeted/ anticipated completion of the Project and shall be for the specific purpose to facilitate the decision on whether or not to initiate action for termination of the Contract.
- (ii) The targets shall be objective and measurable (in percentage or absolute terms) in respect of various milestones, such as submission and approval of drawings, completion of type tests, manufacture/ production, inspection/ dispatch clearances, receipts at site, physical progress of installation activities at site including testing/ commissioning, etc.
- (iii) The targets so finalized shall be circulated internally within EESL, to all concerned departments, for the purpose of monitoring progress of the Contractor and EESL in respect of their respective scope against the set targets. The respective coordinators shall take necessary action in this regard.
- (iv) If on review, it is found that the set targets for the quarter under review have not been met, the areas of slippages and reasons thereof shall be identified and analyzed (keeping in view all related aspects including the targets/ actual achievements under other connected/ associated contracts and the targeted/ anticipated completion of the Project) and plan for further action shall be finalized based on a realistic assessment of the overall progress of the project. Such plan may include one or more of the following points depending on the assessment of the situation:
- Review meeting with the Contractor at the level of Project manager to be coordinated by the concerned incharge of the execution site

- Review meeting with the Contractor at the level of MD/ Director to be coordinated jointly by HODs of contracts and technical departments.
 - Issuance of the Notice of Default to the Contractor. Such notice shall be issued by HOD Technical, for which the 'Draft' shall be put up by the DGM of the execution site taking into account the details/ documents to be made available. If required, a lawyer may also be consulted for the purpose.
 - Actions to be taken by the concerned Depts. within EESL and the time frame for the same wherever the slippage is attributable to EESL/ Force Majeure conditions. The action plan so prepared shall be monitored on regular basis. Further, in such a case the time period of delays attributable to EESL/ Force Majeure shall be acknowledged and fresh 'Targets to measure Defaults under Contract' for the next quarter shall be set.
 - Grant of provisional time extension (if the scheduled completion period is nearing completion), period of such extension and revised targets for achieving completion within the provisional extension.
- (v) A record note of deliberations as above shall be prepared by contracts and circulated by HOD (contracts) to concerned HODs (for information), concerned coordinators of Technical, execution site, etc.(for necessary action). The compiled information shall then be furnished by contracts to all concerned ahead of the next review.
- (vi) Once a 'Notice of Default' is issued, at the end of the period specified therein, comments on the contractor's response along with connected details/ documents, wherever required, shall be sought from the concerned Depts. The

comments, as above, shall be forwarded (within a week) after obtaining approval of HOD. Once the comments are received, the matter discussed to decide on further course of action which may include the following:

- To proceed ahead with cancellation of the contract.
- To send a suitable reply to the Contractor.
- Not to pursue the cancellation of the Contract and to tie -up up revised targets with the Contractor.

(vii) In case opinion firms up to proceed ahead with cancellation of Contract, further action shall be taken as under:

- A comprehensive note, bringing out the relevant details leading to the proposal for cancellation of the Contract shall be put by the execution site, enclosing therewith the draft Notification for Contract Cancellation for approval of the competent authority as per DOP. The proposal shall be inter-alia be routed through the Law Dept. who shall vet the same as well as the Notification for Contract Cancellation.
- Upon approval of the proposal, Head of Contracts Dept., not below the level of Chief Manager, shall issue the Notification of Cancellation of Contract.

C 11.0 Cancellation of Contract for Fraudulent/Corrupt Practices

C 11.1 If the contractor is found to be engaged in corrupt and fraudulent practice already defined in the document, EESL may consider various options such as cancellation of the contract or banning of business or both. However, in case of ongoing contracts, in the interest of timely completion of the projects, cancellation of contract on this account shall normally not be considered unless the fraudulent practice/corrupt practice by the contractor is of such a serious

nature, which forthwith prohibits any further association with the contractor. In case of instance being of very minor nature, having come to notice for the first time and the performance of the contractor is otherwise found to be good, a warning letter may simply be issued.

C11.2 wherever future business is proposed to be suspended/banned on this account, the same will be done as per procedure described under para C 14.0

C11.3 In cases where, because of the gravity of the offence committed by the contractor, the contract is required to be cancelled midway, the same will be done with the approval of MD. In all such cases approval shall be sought in two stages; in the first stage approval will be sought for issuing a show cause notice and in the 2nd stage, approval will be taken for cancellation of contract or otherwise, as may be considered appropriate, in the manner described hereunder.

- I. In such a case, the proposal duly cleared by the HOD (technical department) will be forwarded by contracts department for approval of MD through finance and law. Based on the said approval, a show cause notice, the draft of which will also be got approved along with above proposal, shall be served on the contractor by the contracts.
- II. On receipt of the reply or after a lapse of 30 days whichever is earlier, the case, after obtaining the comments of the department recommending cancellation wherever required, shall be further processed by the Contracts for obtaining approval towards cancellation of the contract or otherwise, as deemed fit. Such a proposal will be routed through Finance & Law for obtaining approval of MD.

C11.4 If cancellation of the contract is approved as above, the Notification of Contract Cancellation shall be issued by the contracts department .

- C11.5** In case the Contractor chooses to respond to the Notification for Contract Cancellation, the same shall be replied by the Contracts Dept. (not below the level of Manager), after obtaining comments, if required, from concerned Depts. including the Law Dept. The reply shall be finalized in consultation with the Head of Contracts Dept..
- C11.6** All Notices of Default/So Cause Notice and the Notification for Contract Cancellation shall be issued to the Contractor at the address given in the Contract and sent by Regd Post/Speed Post. The same shall also be faxed to the Contractor. Further, a copy of such notices and notification shall also be sent to site office / Local/ Regional office of the Contractor, if existing.
- C11.7** In case the Contractor is a Joint Venture, the notices/ notifications as above shall be addressed and sent to all the members of Joint venture except if otherwise advised by the Law Dept.
- C11.8** Once the termination of a Contract comes under active consideration, the site incharge of technical department shall immediately advise the Law Dept. to apply with the appropriate courts for caveat against grant of stay on encashment of Contract Performance Guarantee/ Other BGs of the Contractor. It shall be the responsibility of the Head of the Law Dept. to immediately obtain the caveat. Simultaneously, Finance Dept. shall be advised to take immediate action for encashment of the Contract Performance Guarantee/ Other BGs of the Contractor for which the necessary communication shall be sent by HOD (Finance) .
- C11.9** While the cancellation is under active consideration (at the stage discussed under para , the execution site shall initiate advance action for execution/ procurement of balance works/ supplies at the risk and cost of the

Contractor. As a first step in this direction, the execution site shall work out the estimated cost of balance works as per the rates given in the contract under cancellation, details of total payments (including the amount reimbursed towards taxes and duties and paid towards price variation) made to the Contractor, details of additional amount payable to the Contractor but not paid (considering 100% of the amount towards the work actually executed/ supplies actually made as payable), amount towards leviable LD and the securities/ monies of the contractor available with EESL. It shall be put for approval through site incharge & Finance to MD.

C11.10 Procurement at risk and cost shall be undertaken generally in line with the same specifications and terms and conditions as were applicable to the cancelled contract. However, the time period for completion of the contract, to be awarded at risk and cost, will be judiciously decided by EESL keeping completion of overall project and quantum of works in view.

C11.11 The process for award of Contracts shall be in line with the policies and procedures for pre-award activities.

C12.0 CHANGE OF NAME OF CONTRACTOR/BIDDER

C12.1 It has been observed that sometimes contractor/bidder, during pre award or post award stage, requests EESL to effect the change of its name in the concerned contract/bid arising out of situations discussed hereunder.

C12.2 The contractor/bidder has changed its name without any other change in the constitution of the company or otherwise. Such a change of name, which does not affect the legal entity of the contractor/bidder and rights and obligations of the contractor under EESL's contracts, shall be accepted subject to furnishing of documents prescribed under the law where contractor/bidder is registered.

C12.3 The change of name may also arise out of the merger or acquisition of the firm, which is EESL's bidder/contractor, with/by another firm. As a result of which, the bidder's/contractor's name may change to that of transferee firm or altogether a new name as decided consequent upon such merger. In such cases also, change of name may be accepted by EESL provided the new firm is the lawful successor of EESL's bidder/contractor firm and subject to the furnishing of requisite documents by the contractor/bidder and/or transferee company, as may be required under the law and after execution of deed of adherence under the common seal by the new company/firm.

C12.4 It also sometimes happens that Contractor/bidder Company, which comprises several divisions, sells the concerned division, on the basis of which the firm was considered, qualified for EESL's contract. In absence of the said division, if the contractor/bidder company expresses its inability to continue with the tender/contract in its name and at the same time the new company, which has acquired the said division, approaches EESL for being considered as contractor/bidder in the instant case furnishing sufficient justification thereof alongwith relevant documents, the same shall be examined and decided on the basis of the merits of individual case. If sufficient justification does not exist, recourse to any action as provided in the contract/ bidding documents may be resorted to.

However, if such a request for change of name is found to be justified taking into account facts and circumstances of the case based on the various documents furnished including those protecting EESL's interest, the same can be accepted. In such a case the deed of adherence, duly executed under the common seal by the company acquiring the said division, shall interalia be furnished.

C12.5 Apart from situations discussed above, there could be other instances of amalgamations or mergers of contractor/bidder companies or dissolution or winding up of companies or any other change of companies registered in India or outside India necessitating change of name of bidder's/contractor's firm. All such situations cannot be envisaged and covered here for a generalized solution and shall be required to be dealt with on case-to-case basis. Moreover, laws in different countries may govern such cases differently. Therefore, such unique cases shall be dealt with individually supported by request letter and in house and independent legal opinion furnished by the contractor/bidder indicating the purpose of the change, the prescribed legal provision pursuant to which such a change is made and the compliance made thereof enclosing therewith the duly executed documents by the contractor/bidder and impact of such change on EESL's contracts. The case shall further be dealt with in the same manner as outlined under para 12.4

C12.6 In all cases of change of name, request letter from contractor/bidder indicating the reason and justification for change of name, the existing legal provisions, and its impact on EESL's contract, along with certified copies of the requisite documents duly executed in support of the said change of name, shall be obtained by Contracts Department. The request letter along with relevant documents shall be examined and processed by Contracts department through law and finance for approval of the competent authority towards change of name. The authority competent to approve the award of the contract shall be the competent authority to approve such proposal, except in cases where awarding authority is Board/Subcommittee in which case the approval of MD shall be taken.

C13.0 RETENTION PERIOD OF CONTRACT DOCUMENTS

C13.1 As per the Companies Act, every company is required to keep proper books of account with respect to, inter alia, (a) all sums of money received and expended

by the company and the matters in respect of which the receipt and expenditure takes place, and (b) all sales and purchases of goods by the company. Further, the books of accounts of every company relating to a period of not less than eight years immediately preceding the current year [together with the vouchers relevant to any entry in such books of account] is required to be preserved in good order. The said books of account and other books and papers of every company will be open to inspection, inter alia, by such officer of the Government as may be authorized by the Central Government on its behalf.

C13.2 In line with the above requirement, all documents related to and connected with award of any Contract and post award execution of the Contract will, as a matter of policy, be preserved in good order and retained by EESL for a period of eight financial years following the financial year in which the Contract is closed. In case formal closure of the Contract is not applicable for any particular contract, the period of retention of the said documents will be eight financial years following the year of completion of the Contract in all respects including return of Security Deposit/Contract Performance Guarantee to the contractor, if applicable.

C13.3 The above period for retention and destruction will also be applicable for all the documents connected with award and execution of contracts including those related with payments for all works and procurements. However, all documents regarding policy decisions, as built drawings including O&M manuals and the circulars issued from time to time in regard to above, will be retained permanently.

C13.4 Upon expiry of the retention period as mentioned above, the said document would be destroyed by the concerned Depts. by tearing off/shredding the same.

However, before destroying the documents, contracts department will take approval of MD and route the file through concerned department and finance.

C14.0 BLACK-LISTING OF FIRMS/ BANNING OF BUSINESS

C14.1 Notwithstanding any other provision of this document, EESL may decide to black-list firms or ban business with them, for specified time or indefinitely, based on facts and circumstances of the particular case generally on the following grounds:

- (i) Corrupt or Fraudulent practices resorted to by Contractor including misrepresentation of facts.
- (ii) Willful indulgence by the Contractor in supplying sub-standard material irrespective of whether pre-despatch inspection conducted by EESL or not.
- (iii) Repeated use of delaying tactic(s) in fulfilling contractual obligations.
- (iv) Established litigant nature of the contractor to derive undue benefit.
- (v) Continued poor performance in more than one contract.

C14.2 Depending upon the nature of problem as outlined above excepting at sl no(v), the proposal for suspension of business relations with a contractor/supplier shall originate from concerned department eg. Technical etc. Such a proposal shall be initiated by the concerned executive at a level, not below than Assistant Manager, giving full details and justifications thereof. The proposal, which will interalia contain the proposed period of banning/business suspension, shall be routed through the concerned HOD and forwarded to Contracts. In case of problem, as outlined at sl. No. v above , the proposal will be initiated by Contracts based on the data bank of performance reports maintained by it and relevant inputs from technical departments.

- C14.3** The proposal shall be processed by Contracts for the approval of competent authority in association with Law department (wherever available) and Finance in two stages. MD shall be the competent authority to approve all such proposals.
- C14.4** In the first stage the approval for issuing show cause notice (to be replied within one month by the contractor) shall be sought. On receipt of such approval, Contracts shall issue the 'Show Cause' notice to be replied by the contractor within 30 days.
- C14.5** The reply received from the contractor shall be forwarded to the concerned department who had originated the proposal. The concerned department/region shall analyse the reply and send its clear opinion, in regard to action to be taken against the concerned agency, through the concerned HOD within 15 days.
- C14.6** Based on the above, further processing will be carried out by Contracts department for approval of the competent authority through Law (wherever available) and finance for final action on the matter.
- C14.7** In case no reply is received from the Contractor within 2 months of the date of issue of show cause notice (which shall be served by fax with post confirmation copy to be dispatched by Regd. A/D/speed post), suo-moto action for second stage approval shall be initiated.
- C14.8** On receipt of the approval, the final decision shall be duly communicated to the firm and appropriate circular shall be issued within the organization.



(On Non-Judicial Stamp Paper of appropriate value)

Appendix I : PROFORMA OF BANK GUARANTEE IN LIEU OF EARNEST MONEY DEPOSIT

(To be stamped in accordance with Stamp Act, if any, of the Country of the issuing Bank)

Bank Guarantee No. Date.....

Ref :

To:

Energy Efficiency Services Ltd.
Hall no. 2, 3rd Floor
15, NBCC Tower
Bhikaji Cama Place, New Delhi -110066

Dear Sirs

I accordance with invitation for bids under Your bidding Document/Package No. EESL/

_____,
M/s _____ having its Registered/Head office at

_____ (here in after called bidder) wish to participate in the said bid for (name of package)

As an irrevocable bank guarantee against Bid Security for an amount of Rs. _____ valid for 225 days from date of bid opening i.e. from _____ to _____ required to be submitted by the bidder as a condition precedent for participation in the said bid which amount is liable to be forfeited on the happening of any contingencies mentioned in the bidding documents.

We, the _____
(Name and address of the bank) , having our head office at _____
_____ guarantee
and undertake to pay immediately on demand by Energy Efficiency services Limited ,



the amount of Rs. _____ Without any reservation, protest, recourse. Any such demand made by the employer shall be conclusive and binding on us irrespective of any dispute or difference raised by the bidder.

The Guarantee shall be irrevocable and shall remain valid upto _____. If any further extension of guarantee is required , the same shall be extended to such period (not exceeding one year) on receiving instructions from _____ (bidder's Name)_____, on whose behalf guarantee is issued.

In witness whereof the bank , through its authorized officer, has set its hand and stamp on this _____ day of _____ 20_____ at _____.

Witness:

Signature :

Signature:

Name :

Name :

Official address:

Designation with Bank Stamp
Authorized vide Power of Attorney
no.

Date

NOTE : 1. Bid Security amount shall be as specified in the IFB/ITB.
Complete mailing address of the Head Office of the Bank to be given.
The bank guarantee validity date shall be forty five (45) days after the last date for which the bid is valid.

2. The Stamp Paper of appropriate value shall be purchased in the name of

guarantee issuing Bank.

The Bank Guarantee shall be issued on a stamp paper of value as applicable in the State of the issuing bank in India or the State of Delhi in India or the State of India from where the BG shall be operated, whichever is higher.

3. While getting the Bank Guarantee issued, Bidders are required to ensure compliance to the Bank Guarantee Verification Check List. Further, Bidders are required to fill up this Form 16 and enclose the same with the Bank Guarantee.

(On Non – Judicial Stamp Paper of appropriate value and purchased in the name of executing Bank)



APPENDIX II: PROFORMA OF BANK GUARANTEE FOR CONTRACT PERFORMANCE

Ref. :
No.....

Bank Guarantee

Date

To
Energy Efficiency Services Limited (EESL)
* 4th floor, Sewa Bhavan
R.K.Puram, Sector 1
New Delhi – 110 066.

Dear Sirs,

In consideration of the EESL, (hereinafter referred to as the 'Owner,' which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s.....with its

Registered / Head Office at(hereinafter referred to

As the 'Contractor', which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators and assigns), a Contract by issue of Owner's Letter of Intent No.....datedand the same having been unequivocally accepted by the Contractor resulting in a 'Contract' bearing No.....dated.....valued atforand the contractor (Scope of Contract) having agreed to provide a Contract Performance Guarantee for the faithful performance of the entire Contract equivalent to * % (percent) of the said value of the Contract to the Owner.

We(Name & address) having its Head Office at(hereinafter referred to as the 'Bank', which expression shall, unless repugnant to the context or meaning thereof, include its successors administrators, executors and assigns) do hereby guarantee and undertake to pay the Owner, on demand any all money payable by the Contractor to the extent ofas aforesaid at any time up to(days / months / year) without any demur, reservation, contest, recourse or protest and / or without any reference to the



Contractor. Any such demand made by the Owner on the bank shall be conclusive and binding notwithstanding any difference between the owner and Contractor or any dispute pending before any court, tribunal or any other authority. The Bank undertakes not to revoke this guarantee during its currency without previous consent of other Owner and further agrees that the guarantee herein contained shall continue to be enforceable till the owner discharges this guarantee.

The owner shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee from time to time to extent the time for performance of the Contract by the Contractor. The owner shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the owner and Contractor or any other course of or remedy or security available to the owner. The Bank shall not be released of its obligations under these presents by any exercise by the owner of its liberty with reference to the matters aforesaid on any of other indulgence shown by the owner or by any other matter or thing whatsoever which under law would, but for this provision, have the effect of relieving the Bank.

The Bank also agree that the Owner at its option shall be entitled to enforce this Guarantee against the Bank as a Principal debtor, in the first instance without proceeding against the Contractor and not withstanding any security or other guarantee that the owner may have in relation to the Contractor's liabilities.

Notwithstanding anything contained herein above our liability under this guarantee is restricted to _____ and it shall remain in force up to and including** _____

And shall be extended from time to time for such period (not exceeding one year), as may be desired by M/s. _____ on whose behalf this guarantee has been given.

Witness

Dated this _____ day of _____ 19_____ at _____

Witness

Signature

Signature



Name

Bank's Rubber Stamp

Official Address

Name

Designation with Bank Stamp

Attorney as per power of Attorney

No. _____ Dated _____

Note : *This sum shall be ten percent (10%) of the Contract Price

**Validity of the Bank Guarantee should be 90 days in excess of the period for which it is required

*** The address will be that of the project / office where the B.G.is to be executed.



APPENDIX III PROFORMA OF BANK GUARANTEE FOR ADVANCE PAYMENT

(To be stamped in accordance with Stamp Act If any, of the Country of the issuing Bank)

To,
Energy Efficiency Services Limited
.....

Dear Sir,

In consideration of (Employer’s Name).... (here in after referred to as the ‘Employer’, which expression shall, unless repugnant to the context of meaning thereof include its successors, administrators and assigns) having awarded to M/s.....(Contractor’s Name)....with its Registered /Head Office at.....(hereinafter referred to as the ‘Contractor’ which expression in shall unless repugnant to the context or meaning thereof , include its successors, administrators, executors and assigns), a Contract, by issue of Employer’s Letter of Award No.....dated.....and the same having been unequivocally accepted by the Contractor, resulting into a Contract bearing No.....dated.....valued atfor..... (Name of Contract).....(hereinafter called the ‘Contact’) and the Employer having agreed to make an interest bearing advance (‘said Advance’) to the Contractor amounting to (in words and figures).....in terms of the said Contract for performance of the above Contract against Bank Guarantee to be furnished by the Contractor.

We.....(Name and address of the Bank).....having its Head Office at (hereinafter referred to as the ‘Bank’, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the Employer, immediately on demand any or, all monies payable by the Contractor to the extent of(advance amount).....as aforesaid along with intrest @12% per annum calculated from date of release of the said advance by the employer to the contractor, at any time upto.....(#).....without any demur, reservation, contest, recourse or protest and/ or without any reference to the Contractor. Any such demand made by the Employer on the Bank shall be conclusive and binding as to the amount claimed by the Employer under this guarantee notwithstanding any difference between the Employer and the contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. The Bank undertakes not to revoke this guarantee during its currency without previous consent of the employer and further agrees that the guarantee herein contained shall be enforceable till ninety (90) days after expiry of its validity.

The Employer shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee, from time to time to vary the advance or to extend the time for performance of the Contract by the Contractor. The Employer shall have the fullest liberty



without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor, and to exercise the same at any time in any manner, in the Contract between the Employer and the contractor or any other course or remedy or security available to the Employer. The Bank shall not be released of its obligations under these presents by any exercise by the Employer of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Employer or any other indulgence shown by the Employer or by any other matter or thing whatsoever which under law would but for this provision, have the effect of relieving the Bank.

The Bank also agrees that the Employer at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Employer may have in relation to the Contractor's liabilities.

Notwithstanding anything contained hereinabove our liability under this guarantee is limited to(advance amount)..... and it shall remain in force up to and including.....(#)..... and shall be extended from time to time for such period (not exceeding ne year). As may be desired by M/s.....(Contractor's Name).....on whose behalf this guarantee has been given.

Dated thisday of20.....at.....

WITNESS:

(Name).....

(Signature).....

(Name).....

(Signature)

(Designation with Bank Stamp)

Attorney as per Power Of Attorney No.....

Dated.....

Notes:

1. (#) this date shall be ninety (90) days beyond the date of Completion of the Facilities.
2. The stamp papers of appropriate value shall be purchased in the name of guarantee issuing Bank.

NOTE:

Complete mailing address of the Head Office of the Bank to be given.

The bank guarantee validity date shall be forty five (45) days after the last date for which the bid is valid.

The Stamp Paper of appropriate value shall be purchased in the name of guarantee issuing Bank.

The Bank Guarantee shall be issued on a stamp paper of value as applicable in the State of the issuing bank in India or the State of Delhi in India or the State of India from where the BG shall be operated, whichever is higher.

While getting the Bank Guarantee issued, Bidders are required to ensure compliance to the Bank Guarantee Verification Check List.

BANK GUARANTEE CHECK LIST

1	Bank Guarantee No.	
2	Issuing Bank	
4	Nature of BG & No. of Pages	
5	Validity of BG	
6	Package Description	
7	Party & Contracts ref.	Name, Address, Tel, Fax, E—mail
8	Bank Reference	

CHECK LIST

S.No	Details of Checks	YES / NO
a)	Is the BG on non-judicial Stamp Paper of appropriate value, as per Stamp Act ?	
b)	Whether date, purpose of purchase of stamp paper and name of the purchaser are indicated on the back of Stamp paper under the Signature of Stamp vendor ? (The date of purchase of stamp paper should be not later than the date of execution of BG and the stamp paper should be purchased either in the name of the executing Bank or the party on whose behalf the BG has been issued. Also the Stamp Paper should not be older than six months from the date of execution of BG)	
c)	In case the BG has been executed on Letter Head of the Bank , whether adhesive Stamp of appropriate value has been affixed thereon?	
d)	Has the executing Officer of BG indicated the name, designation and Power of Attorney No. / Signing Power no. etc., on the BG ?	
e)	Is each page of BG duly signed / initiated by executants and whether stamp of Bank is affixed thereon? Whether the last page is signed with full particulars including two witnesses under seal of Bank as required in the prescribed Performa?	
f)	Does the Bank Guarantees compare verbatim with the Performa prescribed in the Bid Documents ?	
g)	In case of any changes in contents of text, whether changes are of minor / clerical nature (which in no way limits the right of EESL in any manner) ?	
h)	Incase of deviations in text of BG, which materially affect the right of EESL, whether the changes have been agreed based on the opinion by Legal Department or BG I considered acceptable on the basis of opinion of law Department already	

	available on the similar issue.	
i)	Are the factual details such as Bid Document No. NOA/LOA / Contact No., Contract Price, Percentage of Advance, Amount of BG and Validity of BG correctly mentioned in the BG ?	
j)	Whether overwriting / cutting if any on the BG have been properly authenticated under signature and seal of executants?	
k)	Whether the BG has been issued by a Bank in line with the provisions of Bid /Contract documents?	
l)	In case BG has been issued by a Bank other than those specified of Bid / Contract Documents, is the BG confirmed by a Bank in India acceptable as per Bid / Contract documents?	



Appendix IV Letter of Award (LoA) Template for Supply Contract and Service Contract

LoA No:.....

Date:

M/s.....

Mr/Ms.....

.....

(M):

.....

Tel:

Fax:

Sub. : Letter of Award for Supply Contract./Service Contractagainst bid document no..... dated.....

Dear Sir/Madam,

Shared Investment Projects shall have the standard below para in LoA/NoA.

“The basis of the contract between Energy Efficiency Services Limited (EESL) and towards, is purely an investment contract with investment flowing from both the parties separately or jointly as the case may be and as envisaged in all the correspondence and the documents exchanged and agreed between the parties. The investment can be in the form of payment of money by EESL to or expenditure incurred directly or through the other party, but should be towards the implementation of the subject contract. Similarly the returns will also be shared between EESL and as envisaged in the above mentioned correspondence and documents”

Projects other than Shared Investment Projects will do not have above referred para.

1.0 This has reference to the following, which shall forms the part of this Letter of Award.

- I. Our Invitation for Bid for vide package ref. No dated.....
- II. Bid document downloaded from EESL website i.e. www.eesl.co.in and submission of bid document fee vide DD no dated

- III. Bid Documents for the subject package comprising of the following:
 - a. Section I : Invitation for Bids (IFB) / Notice Inviting Tender (NIT)
 - b. Section II : Instructions to Bidders
 - c. Section III : General Conditions of Contract
 - d. Section IV : Technical & Commercial bid including technical specifications/drawings, special conditions of contract and price bid.
 - e. Section V : Monitoring & Verification Protocol
 - f. Section VI : Forms & Procedure
- IV Clarifications furnished to you on bidding documents , if any , against your letter no.....
- IV. Pre bid conference held on
- V. Techno-commercial offer no dated and bid opening on
- VI. Clarifications/Amendments issued subsequent to pre bid conference
- VII. Price bid opening on and your price bid offer nodated.....
- VIII. Post bid discussions and meetings on all issue related to i) Commercial issues ii) Technical issues iii) Work Schedule iv) Quality Assurance Aspets V) Monitoring and Verification and minutes shall be brought out clearly and annexed with LOA as part of LOA/NOA

2.0 SCOPE OF AWARD

“For Insertion in Supply Contract – Below Clause 2.1”

2.1 We confirm having accepted your proposal (techno commercial offer) bearing ref. no.opened on.....and price bid no.dated.....submitted on.....and opened on..... read in conjunction with all the Specifications; Terms & Conditions of the Bid documents, Amendments/Clarifications issued by us, your subsequent letters referred to in para 1.0 above and award on you the First Contract of Supply Contract includes supply of as per technical specifications in bid documents including all applicable taxes as per bidding documents; together with all accessories and auxiliaries for associated equipments in a fully operational condition and successful completion including performance guarantee test as per bid documents with complete services including project management, supervision, inspection, including insurance during storage/operation, spares(if any) etc and provide these services as set forth in specifications and documents as per as per Bid Documents No.dated.....; hereinafter called the **“Supply Contract”**,subject to the limit provided in this letter of award.

“For Insertion in Service Contract – Below Clause 2.1”

2.1 We confirm having accepted your proposal (techno commercial offer) bearing ref. no.dated.....opened on.....and price bid no..... dated..... submitted on.....and opened on.....read in conjunction with all the Specifications; Terms & Conditions of the Bid documents, Amendments/Clarifications issued by us, your subsequent letters referred to in para

1.0 above and award on you the Second Contract of Service Contract which includesas per technical specifications including all applicable taxes as per bidding documents; together with all accessories and auxiliaries for associated equipments.....in a fully operational condition and successful completion including performance guarantee test as per bid documents with complete services including project management, supervision, inspection, including insurance during storage/operation, spares(if any) etc and provide these services as set forth in specifications and documents as perdated.....hereinafter called the “**Service Contract**”, subject to the limit provided in this Letter of Award

2.2 The scope of your work under this Contract as briefly outlined above shall also include all such equipment and material & services which are not specifically mentioned in the bid documents read in conjunction with your proposal, letters referred to in para 1.0 above but are required to complete the system/equipment/ services as well as for the successful, efficient, safe and reliable operation of the system/ equipment/services as per specification under this Contract. All such equipments, materials shall be supplied by you & services to be completed by you under this contract without any extra cost to EESL.

3.0 **CONDITIONS OF AWARD**

3.1 This award is being issued to you on the mutually agreed terms & conditions detailed herein read in conjunction with all the Specifications, Terms & Conditions of the Bid Documents referred to in para 1.0 above.

3.2 The entire aforesaid scope of work shall be completed by you strictly in accordance with all the Specifications, Terms & Conditions of the Bid Documents read in conjunction with amendments / clarifications issued, specific confirmations/resolutions to provisions of the Bid Documents as mentioned at para 1.0 above. All other conditions, exceptions or deviation, whether explicit or implicit, contained in your subsequent communications referred to in para 1.0 above which have not been specifically agreed by us and accordingly not incorporated in this Letter of Award, stands automatically withdrawn without any cost implication to EESL.

“For Insertion in Supply Contract – Below Clause 3.3”

3.3 As mutually agreed, we have also placed on you another Contract vide our Letter of Award No..... dated..... (hereinafter called the ‘**Service Contract**’ for the service portion of interalia which includesand other accessories as per technical specifications including all applicable taxes as per bidding documents; together with all accessories and auxiliaries for associated equipments viz in a fully operational condition and successful completion including performance guarantee test as per bid documents with complete services including



project management, supervision, inspection, including insurance during operation, spares(if any) etc including all the applicable taxes on it & any other expenses for supplying material FOR site to as per Bid Documents No.dated.....; hereinafter called the **“Service Contract”**.

You shall also be fully responsible for the works to be executed under the **‘Service Contract’** and it is expressly understood and agreed by you that any breach under the **‘Service Contract’** shall automatically be deemed as a breach of this **‘Supply Contract’** and vice-versa and any such breach or occurrence or default giving us a right to terminate the **‘Service Contract’** and /or recover damages there under, shall give us an absolute right to terminate this Contract and /or recover damages under this **‘Supply Contract’** as well and vice-versa. However, such breach or default or occurrence in the **‘Service Contract’** shall not automatically relieve you of any of your responsibility/obligations under this **‘Supply Contract’**.

It is also expressly understood and agreed that the systems /materials/equipment supplied by you under this **‘Supply Contract’** when installed and commissioned under the **‘Service Contract’** shall give satisfactory performance in accordance with the provisions of the Contract.

“For Insertion in Service Contract – Clause 3.3”

- 3.3 As mutually agreed, we have also placed on you another Contract vide our Letter of Award No.....dated.....(hereinafter called the **‘Supply Contract’** for the supply portion of.....interalia which includes Design, Engineering, Manufacturing, Testing & Inspection at Manufacturer’s Works and/ or Inspection Certificates by Govt. approved laboratory, Packing, Forwarding & Dispatch from Manufacturing Works of Equipment, Materials, Special Tools and Tackles and Mandatory Spares, if any as per Bid Documents, Spares to be replaced during warranty period which includes sales tax including transportation of equipment & materials and warranty spares etc. from manufacturer’s works/place of dispatch in India to all project site including ,freight, unloading, handling at site, storage and preservation at site including all the applicable taxes on it & any other expenses for supplying material FOR siteas per Bid Specification no:dated.....hereinafter called the **“Supply Contract**.

You shall also be fully responsible for the works to be executed under the **‘Supply Contract’** and it is expressly understood and agreed by you that any breach under the **‘Supply Contract’** shall automatically be deemed as a breach of this **‘Service Contract’** and vice-versa and any such breach or occurrence or default giving us a right to terminate the **‘Supply Contract’** and/or recover damages there under, shall give us an absolute right to terminate this Contract and/or recover damages under this **‘Service Contract’** as well and vice-versa. However, such breach or default or occurrence in the **‘Supply Contract’** shall not automatically relieve you of any of your responsibility/ obligations under this **‘Service Contract’**.

It is also expressly understood and agreed that the materials/equipment supplied by you under the '**Supply Contract**' when installed and commissioned under this '**Service Contract**' shall give satisfactory performance in accordance with the provisions of the Contract.

4.0 **SUPPLY CONTRACT PRICE/SERVICE CONTRACT PRICE**

4.1 The total project cost for the entire scope of work under the Supply Contract / Service Contract shall be.....and this will be supply contract price /service contract price as per the following.

4.3 **TAXES, DUTIES & LEVIES**

4.3.1 The above Contract Price is inclusive of all taxes, duties and any levies (if applicable) and no claim on this account shall be entertained by EESL, whatsoever.

4.3.2 EESL will not provide any concessional tax form & no road permit shall be issued by EESL.

4.3.3 All applicable taxes and duties including income tax shall be applicable as per the law.

4.3.4 (Successful Bidder Name) has confirmed that they shall submit the required Bank Guarantees towards the project/assignment within 21 days from the date of Letter of Award, as per terms and conditions and format prescribed in this regard.

5.0 **TRANSFER OF TITLE**

5.1 For executing this 'Supply Contract' / "Service Contract", you shall take over all such equipments/materials and shall take full responsibility for the safe custody, transportation to project site, handling at project site, storage, installation, testing and successful commissioning of equipment/materials and for their exclusive use for the purpose specified in this Contract. Your liability under this Contract shall not be discharged till the project is successfully commissioned and finally accepted save all the provisions of warranty/guarantee mentioned in the Bid Documents. EESL's responsibility shall be limited to endorsement of despatch documents in your favour to enable you to carry out services under this 'Supply Contract' in case it is required. The

equipment/materials for work under this contract shall be fully covered by you under a comprehensive insurance cover at your cost as envisaged in the Bid documents

6.0 **TERMS & PROCEDURES OF PAYMENT**

To be defined on case to case basis

7.0 **TIME-THE ESSENCE OF CONTRACT**

7.1 It is clearly understood and agreed that time is the essence of this Contract and shall be strictly adhered to by you. The work under this Contract shall be performed within from the date of this LoA.

7.2 You have agreed to submit implementation schedule for review and approval of EESL, within one (01) weeks from the date of issue of this Letter of Award conforming to successful completion of the work.

8.0 **LIQUIDATED DAMAGES FOR DELAY IN COMPLETION**

8.1 The Liquidated Damages for Delay in Completion shall be in accordance with the provisions of clause no. 2.24 of Instruction to bidders, section 2 and various GCC clauses in section 3 and clause no. 6 in Special Conditions of Contract (SCC) section 4a) under technical and commercial bid of the Bid Documents.

8.2 The liquidated damages for delay, if any, will be recovered at EESL's sole discretion from the payments due under either from the 'Supply Contract' or from the 'Service Contract' or from both and/or by invoking the Contract Performance Guarantee and/or any other means as deemed fit by EESL.

9.0 **CONTRACT PERFORMANCE GUARANTEE/SECURITY**

9.1 Towards the successful performance of the entire project implementation covered under this Letter of Award and in line with the requirements laid down under Clause 5.12 of instructions to bidders in section 2 of tender documents and other clauses of GCC of the Bid Documents, you will provide us an unconditional and irrevocable bank guarantee for 10% of the award contract price (Including both supply contract & service contract) forfrom any Bank as listed under Annexure to Special Conditions of Contract (SCC) in the format prescribed in the Bid Documents. You shall provide us a Contract Performance Guarantee for project including supply contract and service contract as below.



Description	CPG Value (In Rs)	Validity period
.....

The CPG of will have a validity ofand additional 3 months from the date of LoA. The BG as above covers both supply & service contracts. You shall also keep the bid guarantee, already furnished by you to us, valid and operative till such time the Contract Performance Guarantee is furnished by you and is accepted by us. The contract performance guarantee / security is to be providedas per clause 2.0 “performance guarantee “ under special condition of contracts (SCC) section 4a., SCC prevails upon GCC and instruction to bidders.

The warranty period is for from the completion date as accepted by EESL under this Letter of Award.

10.0 INSURANCE

10.1 The terms and conditions of the insurance of the equipment and materials under the Contract shall be governed by the provisions of Clause 34.0 of Section GCC of Conditions of Contract of the Bid Documents. The safety of manpower deployed at the project site has to be ensured by (Successful Bidder Name)..... and any obligations w.r.t. safety including legal aspects and compensation shall be the responsibility of (Successful Bidder Name).....

11.0 QUALITY REQUIREMENTS

11.1 You will prepare and submit for EESL’s approval, the Quality Plans for various field activities describing the quality procedures, practices and inspection checks to be followed by you/your sub-contractors for transportation, storage/preservation, installation (including all associated works), testing and commissioning activities. In the above Quality Plans, we will identify hold points beyond which the work will not progress without our consent in writing. All the field activities shall be performed by you and your sub-contractors as per the above Quality Plans. Any change in the Quality Plans shall be made only with EESL’s prior approval in writing.

11.2 You shall submit to EESL all the quality assurance documents relevant to field activities within the specified time schedule in line with stipulations laid down in the Bid Documents.

12.0 CONTRACT COORDINATION PROCEDURE

12.1 You shall prepare and finalise in consultation with EESL, a detailed Contract Coordination Procedure within thirty (30) days from the date of issue of this Letter of Award.

13.0 **CORRESPONDENCE:**

13.1 For the purpose of correspondence the addresses of various departments Energy Efficiency Services Ltd, are given below:

a) **Contracts Department. /Technical Department**

Energy Efficiency services Limited (EESL) office address.

Attn:

b) Finance Department.

Energy Efficiency services Limited (EESL) office address.

For the purpose of correspondence, the addresses of various departments provided by (Successful Bidder Name) are as below:

a) **Technical Department**

(Successful Bidder Name & Address)

b) **Contracts & Finance Department.**

(Successful Bidder Name & Address)

13.2 All correspondence on Technical matters like technical approvals, and drawings etc. shall be addressed to in triplicate. One copy of above correspondence shall be marked each towithout enclosures.

13.3 All correspondence on Commercial / Financial matters shall be addressed to..... One copy each of above correspondence shall be marked to.....without enclosures.

13.4 All correspondence related to Quality Assurance and related activities/inspection shall be addressed to..... One copy each of above correspondence shall be marked to.....without enclosures.

13.5 All correspondence related to Site activities shall be addressed to.....
One (1) copy each of above correspondence shall be marked to.....without enclosures.

13.6 All correspondence on implementation schedule and related activities shall be addressed toOne (1) copy each of above correspondence shall be marked to.....without enclosures.

14.0 **PROJECT ORGANISATION AND COORDINATION**

14.1 You shall define your project organisation for execution of work under this contract within 15 days from the date of this LOA.

14.2 You shall nominate your coordinators for each of the following functions within one (1) month from the date of issue of this Letter of Award :

- i) Engineering and Manufacturing activities
- ii) Contract Quality Assurance
- iii) Contract operation schedules.

You shall also nominate alternate coordinators to facilitate uninterrupted working.

15.0 **PROGRESS REPORTS**

15.1 You shall submit monthly progress reports including status/progress achieved during the month for all activities as agreed with. The progress report shall be as per the format to be mutually agreed, covering the status of work/services to be performed by you under the scope of this Contract as at the end of every calendar month and shall be furnished to EESL so as to reach EESL latest by 10th of succeeding month. You shall also furnish any other information as may be necessary to ascertain the progress of work whenever called for by EESL.

15.2 The above progress report shall be addressed by you as follows :-

- a) Contracts Department. New Delhi 1 copy
- b) Technical Department. , New Delhi 1 copy

15.3 You shall also submit by FAX monthly exception/hold-up report directly addressed to.....



16.0 CONTRACT AGREEMENT

16.1 You shall prepare and finalise in consultation with EESL the Contract Documents for signing of the formal Contract Agreement in line with the Bid Documents and this Letter of Award and shall enter into a formal Agreement with us on non-judicial stamp paper of appropriate value within sixty (60) days from the date of this Letter of Award.

17.0 SETTLEMENT OF DISPUTES AND ARBITRATION

17.1 It is specifically agreed that all disputes or differences whatsoever, arising out of this Contract between the parties whether during the progress of the work or after its completion, shall be settled by process of settlement and arbitration as specified in clause 6.0 of Section GCC, Conditions of Contract, of the Bid Documents.

17.2 For the purposes of clause entitled "Settlement of Disputes" appearing in the Bid Documents and this Letter of Award, the shall act as the 'Engineer' for this Contract.

18.0 EFFECTIVE DATE OF CONTRACT

18.1 This contract becomes effective from the date of issue of this Letter of Award, i.e. w.e.f for all purposes and intents.

19.0 GOVERNING LAWS AND JURISDICTION

19.1 This Contract shall be governed by the Indian Laws and Rules as amended from time to time. The Delhi Courts alone shall have exclusive jurisdiction in all matters arising under the Contract.

20.0 You shall ensure submission of all the Bank Guarantee (s) directly from the concerned Bank(s).

21.0 This letter of Award is being issued to you in duplicate. We request you to return the duplicate copy of this Letter of Award duly signed and stamped on each page including all the enclosed Annexures/Appendices, by the authorised signatory of your company as a proof of your acknowledgement and confirmation.

22.0 Please take the necessary action to commence the wok and confirm action.

Yours faithfully,
For and on behalf of EESL,

(Name).....
(Designation).....



APPENDIX V Form of Contract Agreement

THIS CONTRACT AGREEMENT is made the.....day of.....20.....

BETWEEN

(1) *[Name of Employer]* , a corporation incorporated under the laws of *[country of Employer]* and having its principal place of business at *[address of Employer]* (hereinafter called “the Employer”), and (2) *[name of Contractor/consortium]*, a corporation incorporated under the laws of *[country of Contractor]* and having its principal place of business at *[address of Contractor]* (hereinafter called “the Contractor”)

WHEREAS the Employer desires to engage the Contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, viz. *[list of facilities]* (“the Facilities”) and the Contractor have agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

Article Documents 1.

1.1 Contract.

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 Contract Agreement and the Appendices hereto |
| (b) | Notification of Award |
| (c) | Special Conditions of Contract |
| (d) | General Conditions of Contract |
| (e) | Technical Specifications and Drawings |
| (f) | The Bid and Price Schedules submitted by the Contractor |
| (g) | Procedures (as listed) |

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 of Contract.

Article 2. Contract Price and 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: *[amount of foreign currency in words]*, *[amount in figures]*, and *[amount of local currency in words]*, *[amount 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.

Article 3 Effective Date for Determining Time for Completion

3.1 Effective Date (Reference GCC Clause 1)

The Time of Completion of the Facilities shall be determined from the date of Notification of Award provided all of the following conditions have been fulfilled within a period of two (2) months from the date of said Notification of Award:

- (a) This Contract Agreement has been duly executed for and on behalf of the Employer and the Contractor;
- (b) The Contractor has submitted to the Employer the performance security, security towards faithful performance of the Deed(s) of Joint Undertaking (if applicable) and the advance payment security;
- (c) The Employer has paid the Contractor the Advance Payment.

Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of Notification of Award because of reasons attributable to the Employer, the Contract would become effective only from the date of fulfillment of all the above mentioned conditions and, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Completion and/or other relevant conditions of the Contract.

3.3 However, if any of the conditions listed under 3.1 above are not fulfilled within two (2) months from the date of Notification of Award because of reasons attributable to the Contractor, the Contract will be effective from the date of Notification of Award. In this case, Contract price and/or time for completion shall not be adjusted.

Article 4.

It is expressly understood and agreed by and between the Contractor and the Employer that the Employer is entering into this agreement solely on its own behalf and not on behalf of any other person or entity. In particular it is expressly understood and agreed that the Government of India is not a party to this agreement and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that the Employer is an Independent legal entity with power and authority to enter into contracts solely on its own behalf under the applicable laws of India and the general principles of Contract Law. The Contractor expressly agrees, acknowledges and understands that the Employer is not an Agent, Representative or Delegate of the Govt. of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the Contract. Accordingly, the Contractor expressly waives releases and foregoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Government of India arising out of this Contract and covenants not to sue the Government of India as to any manner, claim, and cause of action or thing whatsoever arising of or under this Agreement.

Article 5.

Appendices

The Appendices listed in the attached list of Appendices shall be deemed to form an integral part of this Contract Agreement.

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 writ-ten.

Signed by for and on behalf of the Employer

[Signature]

[Title]

in the presence of _____

Signed by for and on behalf of the Contractor

[Signature]

[Title]

in the presence of _____

CONTRACT AGREEMENT

dated the _____ day of _____, 20_____

BETWEEN

["the Employer"]

and

["the Contractor"]

APPENDICES

Appendix 1 Term and Procedures of Payment –As per tender documents

Appendix 2 Price Adjustment –NOT APPLICABLE

Appendix 3 Insurance Requirements – 100% insurance for materials

Appendix 4 Time Schedule – As per tender documents

Appendix 5 List of Approved Subcontractors , if any

Appendix 6 Scope of Works and Supply by the Employer –As per tender documents

Appendix 7 List of Documents for Approval or Review – TO BE DISCUSSED WITH WINNING BIDDER

Appendix 8 Functional Guarantees –NOT APPLICABLE



**PROFORMA OF CERTIFICATE OF FINAL AMENDMENT TO THE
CONTRACT**

(TO BE ISSUED BY CONTRACT SERVICES)

CERTIFICATE NO. CCP – 01

NAME OF PACKAGE:

NAME OF CONTRACTOR:

LETTER OF AWARD / CONTRACT NO.

DATED:

This is to certify that amendments have been issued to the aforesaid contract as per the details mentioned below:

Amendment No Date

This is to certify further that Amendment No. -----
dated _____ is the last amendment issued.

Date:

(Signature)

Place:

(Name)

(Designation)



PROFORMA FOR DRAWINGS RECEIPT CERTIFICATE

(TO BE ISSUED BY ENGINEERING/TECHNICAL)

CERTIFICATE NO. CCP-02

Name of Package:

Name of Contractor:

Letter of Award / Contract No.:

Dated:

Project:

This is to certify that we have received all the drawings, which were to be submitted by the Contractor in requisite number along with the reproducible as detailed in Annexure enclosed herewith, as per provisions stipulated in the above mentioned LOA / Contract.

Date:

(Signature)

Place:

(Name)

(Designation)



PROFORMA FOR QA DOCUMENTS RECEIPT CERTIFICATE

(TO BE ISSUED BY CQA & I/TECH)

CERTIFICATE NO. CCP-03

Name of Package:

Name of Contractor:

Letter of Award / Contract No.:

Dated:

Project:

This is to certify that the QA documents as per the list enclosed, in respect of the above mentioned LOA / Contract has been received in line with the provisions of the contract.

Date:

(Signature)

Place:

(Name)

(Designation)



PROFORMA FOR O&M MANUALS RECEIPT CERTIFICATE

_(TO BE ISSUED BY ENGINEERING/TECHNICAL)

CERTIFICATE NO. CCP-04

Name of Package:

Name of Contractor:

Letter of Award / Contract No.:

Dated:

Project:

This is to certify that we have received from the Contractor all the necessary O&M Manuals in requisite number including the list of spare parts along with the names of vendors in respect of the above LOA / Contract. The consolidated list of such manuals received is enclosed along with the distribution as marked on the list.

Date:

(Signature)

Place:

(Name)

(Designation)



PROFORMA FOR SCOPE OF COMPLETION CERTIFICATE

(TO BE ISSUED BY SITE/ ERECTION)

CERTIFICATE NO. CCP-05

Name of Package:

Name of Contractor:

Letter of Award / Contract No.:

Dated:

Project:

This is to certify the scope of the above Contract has been completed in line with the contract read in conjunction with the following documents:

1. Final Amendment No. _____ (As per CCP-01)
 1. Approved drawings including site run piping schemes, if any.
 2. Approved Bill of Materials.
 3. MDCCS
 4. Measurement Book
 5. As Built Drawings.
 6. Any other documents (Specify)

It is further certified that the following have been supplied, as per the details given in the contract documents and the same have been taken over by EESL.

1. Mandatory Spares.
2. Recommended Spares.
3. Special Tools & Tackles.

Date:

(Signature)

Place:

(Name)

(Designation)



PROFORMA FOR LIQUIDATED DAMAGES FOR DELAY CERTIFICATE

(TO BE ISSUED BY SITE ERECTION OR BY CONTRACTS)

CERTIFICATE NO. CCP-06

Name of Package:

Name of Contractor:

Letter of Award / Contract No.:

Dated:

Project:

This is to certify that the issue regarding liquidated damages for delay as per the provisions of clause _____ of the above Contract/LOA has been resolved with the approval of the Competent Authority vide reference No. _____(copy enclosed).

Date:

(Signature)

Place:

(Name)

(Designation)



PROFORMA OF SHORTFALLS IN EQUIPMENT PERFORMANCE

CERTIFICATE

(TO BE ISSUED BY COS FOR SITE PERFORMANCE TEST BY CQA & I FOR
SHOP TEST) **CERTIFICATE NO. CCP-07**

Name of Package:

Name of Contractor:

Letter of Award / Contract No.:

Dated:

Project:

This is to certify that the following shortfalls in equipment performance as compared to the guaranteed parameters have been assessed and agreed to with the contractor in respect of the above mentioned LOA / Contract.

<u>Sl.No.</u>	<u>Guarantee Parameters</u>	<u>Guaranteed Value</u>	<u>Assessed Value</u>	<u>Shortfalls if any</u>
1	2	3	4	5

Further, it is also confirmed that liquidated damages for shortfall in equipment performance in respect of above items, have been recovered fully from the contractor and no other dues are outstanding for shortfall in equipment performance.

Date:

(Signature)

Place:

(Name)

(Designation)



To be countersigned by Site Accounts

Date:

(Signature)

Place:

(Name)

(Designation)



PROFORMA OF “MATERIAL RECONCILIATION” CERTIFICATE

(TO BE ISSUED BY SITE MATERIALS MANAGEMENT & ERECTION)

CERTIFICATE NO. CCP-08

Name of Package:

Name of Contractor:

Letter of Award / Contract No.:

Dated:

Project:

This is to certify that the materials issued to the contractor in respect of the above mentioned LOA / Contract have been reconciled with the stipulations under the contract documents and no other recovery of material is pending with the contractor.

Date:

(Signature)

Place:

(Name)

(Designation)

To be countersigned by Materials Management

Date:

(Signature)

Place:

(Name)

(Designation)



PROFORMA OF “PAYMENT RECONCILIATION” CERTIFICATE

(TO BE ISSUED BY SITE ACCOUNTS)

CERTIFICATE NO. CCP-09

Name of Package:

Name of Contractor:

Letter of Award / Contract No.:

Dated:

Project:

This is to certify that the payments released to the contractor in respect of the above mentioned LOA / Contract has been reconciled with the provisions of the contract documents and statement of Accounts and or other Certificates of Contractor. It is observed that there are no recoveries pending under any of the items noticed and listed overleaf.

Date:

(Signature)

Place:

(Name)

(Designation)



**PROFORMA OF CERTIFICATE REGARDING LABOUR PAYMENTS AND
STATUTORY**

REQUIREMENTS TO BE FURNISHED BY CONTRACTOR

(TO BE ISSUED BY THE CONTRACTOR)

CERTIFICATE NO. CCP-10

Name of Package:

Name of Contractor:

Letter of Award / Contract No.:

Dated:

Project:

This is to certify that we have made all labour payments including PF liabilities in respect of the above mentioned LOA / Contract and no other payments in this regard is pending from us. Further, we confirm that all statutory requirements have been complied with by us and in case any default is reported against us, we shall be solely responsible for the same.

Date:

(Signature)

Place:

(Name)

(Designation)

(Company Seal)



PROFORMA OF “NO DEMAND CERTIFICATE” BY CONTRACTOR

(TO BE ISSUED BY THE CONTRACTOR)

CERTIFICATE NO. CCP-11

Name of Package:

Name of Contractor:

Letter of Award / Contract No.:

Dated:

Project:

We M/s _____, (Contractor) do hereby acknowledge and confirm that we have received the full and final payment due to and payable to us from EESL in respect of our aforesaid LOA / Contract No. _____ Dated _____ including amendments, if any, issued by EESL Ltd. to our entire satisfaction and we further confirm that we have no claim whatsoever pending with EESL Ltd., under the said contract.

Notwithstanding any protest recorded by us in any correspondence, documents, measurement books, and or final bills, etc. we wave all our rights to lodge any claim or protest in future under this contract.

We are issuing the “NO OBJECTION CERTIFICATE” in favour of EESL Ltd. with acknowledge and with out free consent with out any undue influence, misrepresentation, coercion, etc.

Date:

(Signature)

Place:

(Name)

(Designation)

(Company Seal)



PROFORMA OF CERTIFICATE FOR COMPLETION OF WARRANTY
PERIOD
(TO BE ISSUED BY SITE ERECTION)

CERTIFICATE NO. CCP-12

Name of Package:

Letter of Award/Contract No.:

Dated:

Name of Contractor:

Project:

This is to certify that the warranty period for the above mentioned LOA/Contract has been completed in line with the provisions of the contract.

Date:

(Signature)

Place:

(Name)

(Designation)



PROFORMA OF “CERTIFICATE FOR RETURN OF B.G.’S / INDEMNITY BONDS ETC.

(TO BE ISSUED BY SITE ACCOUNTS)

CERTIFICATE NO. CCP-13

Name of Package:

Name of Contractor:

Letter of Award / Contract No.:

Dated:

Project:

This is to certify that all the *Bank Guarantee / Indemnity bonds / Insurance Policies / Collaborator’s or associate’s guarantee received for the above mentioned LOA/Contract have been returned in original to the contractor.

Date:

(Signature)

Place:

(Name)

(Designation)

*Delete whichever is not applicable.



Appendix VI
ENERGY EFFICIENCY SERVICES LIMITED
 15, BHIKAJICAMA PLACE, 3RD FLOOR NBCC TOWER
 NEW DEHLI -110066

Sub: Format for refund of Final / Balance Security Deposit

1. Name of Agency: _____
2. LOI No. and Date: _____
3. Name of work: _____
4. Actual date of completion: _____
5. Date on which defect liability period ends: _____
6. Date on which final bill was paid: _____
7. Amount of Security Deposit to be paid: _____
 - a) Amount deducted : _____
 - b) Amount refunded earlier: _____
 - c) Balance outstanding : _____

8. Certificates

Certified that no defects appeared during the defects liability period and no amount was spent by eesl on their removal Or Contractor failed to make good / rectify the following defects which had to be made good / rectified departmentally / by deploying other agency involving expenditure mentioned below, which is recoverable from the contractor.

Nature of defects	Made good/rectified	Amount Spent
_____	_____	_____

9. Reasonable amount of Security Deposit To be released.

10.M.B. No. _____ Page No. _____

ENGINEER-IN-CHARGE
 SR. ENGINEER/MANAGER/SR.MANAGER

**Appendix VII PROFORMA FOR PERFORMANCE REPORT IN RESPECT OF
ERECTION/ SUPPLY-CUM-ERECTION/TURKNEY CONTRACTS**

PERFORMANCE REPROT IN RESPECT OF

..... (Name of Contract)
EXECUTED BY (Name of Contract)

01	CONTRACT NO. & DATE	
02	TOTAL VALUE OF THE CONTRACT	
03	NAME(S) OF WORK	
04	SCHEDULED DATE OF COMMENCEMENT OF WORK I. Establishment of site office II. Supplies III. Site activities (Civil and Erection work)	
05	ACTUAL DATE OF COMMENCEMENT OF WORK I. Establishment of site office II. Supplies III. Site activities (Civil and Erection work)	
06	SCHEDULED DATE OF COMPLETION OF WORK I. Supplies II. Testing & Commissioning	
07	ACTUAL DATE OF COMPLETION OF WORK I. Supplies II. Testing & Commissioning (Physical Completion of Works if Commissioning held up for reasons not attributable to the contractor)	
08	PERFORMANCE OF THE CONTRACT	SATISFACTORY*/ NON SATISFACTORY*
09	PERFORMANCE OF MATERIAL SUPPLIED AND INSTALLED AFTER COMMISSIONING	SATISFACTORY*/ NON SATISFACTORY*
10	PERFORMANCE OF CONSULTANCY WORK	

- Strike out whichever is not applicable



**Appendix VIII/Attachment 4
DEVIATION STATEMENT**

Name of work

BIDDING DOCUMENT NO.

(Deviations)

Bidder's Name and Address :

To

Contract Services

EESL Limited,

New Delhi - 110066.

Dear Sirs,

The following are the deviations and variations from and exceptions to the terms, conditions and specification of the bidding documents for... (Name of Work). These deviations and variations are exhaustive. We are furnishing below the cost of withdrawal for the deviations and variations stated in this Attachment-4. We shall withdraw the deviations proposed by us in this Attachment at the cost of withdrawal indicated herein, failing which our bid may be rejected and bid security forfeited. We confirm that except for these deviations and variations, the entire work shall be performed as per your specifications and conditions of bidding documents. Further, we agree that additional conditions, variations, deviations if any, found in the proposal documents other than those stated in this Attachment-4, save those pertaining to any rebates offered, shall not be given effect to :

Section/ Part/ Chapter	Clause No.	Page No.	Statement of Deviations/ Variations	Cost of withdrawal
------------------------------	---------------	-------------	---	-----------------------

A. COMMERCIAL DEVIATIONS :

B. TECHNICAL DEVIATIONS :



Date : (Signature).....

Place : (Printed Name)
.....

(Designation).....

(Common Seal)

Note : Continuations sheets of like size and format may be used as per Bidder's

Appendix IX
FORM OF ACCEPTANCE OF FRAUD PREVENTION POLICY
(On the letter head)

To:

The AGM (Tech & Contracts)
Energy Efficiency Services Limited (EESL),
Hall No. 2, 3rd Floor, 15-NBCC Tower,
Bhikaji Cama Place, New Delhi – 110066.

Sub: Letter of Acceptance of EESL Fraud Policy
Ref: NIT No.

Dear Sir/Madam,

We have read the contents of the Fraud Prevention Policy of EESL and undertake that we along with our associate / collaborator /sub contractors / sub-vendors / bidders/ service providers shall strictly abide by the provisions of the Fraud Prevention Policy of EESL.

Thanking You,

Yours faithfully,

Signature

Printed Name

.....

Designation.....

.....

Common

Seal.....

....

Date:
Place: