

Inland Waterways Authority Of India Jal Marg Vikas Project

RFP No: IN - IWAI - 281709 - CW-RFB

Amendment – 3 dated :- 28.06.2022

CPPP Tender ID : 2022_JMVP_688354_1 Dt. 11.05.2022

Assignment title :- Fairway Maintenance on performance-based dredging in Farakka - Tribeni (351 km) Stretch of National Waterway -1 (River Ganga)

File Reference : IWAI/WB/NW-1/ 14/ 05 /2021

Subsequent to the Pre-bid meeting following Amendment has been made to the original bidding document and will form an integral part of the Bid Document.

S. No.	Reference to Bid document	Existing Text	To be Read as
1	Bidding document Invitation for Bid (IFB) clause-10 & ITB Clause 10.2	A Pre-bid Meeting will take place at the following date, time and place Date :- 20.05.2022 03:00 PM India Join Zoom Meeting	On-line virtual meeting was held on 20.05.2022 and the pre-bid replies are attached at Appendix-A
2	Section-I ITB 1.2 Scope of Bid	The successful Bidder will be expected to complete the performance of the Services by the Intended Completion Date provided in the BDS.	1.2 Throughout this Bidding Document: (a) the term “in writing” means communicated in written form and delivered against receipt; (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; (c) “day” means calendar day; (d) “ES” is an acronym for environmental and social (including Sexual Exploitation, and Assault (SEA)); (e) “Sexual Exploitation and Assault” “(SEA)” stands for the following: (i) Sexual exploitation is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. In Bank financed operations/projects, sexual exploitation occurs when access to or benefit from a Bank financed Goods, Works, Non-consulting Services or Consulting Services is used to extract sexual gain. (ii) Sexual assault is further defined as sexual activity with another person who does not consent. It is a violation of bodily integrity and sexual autonomy and is broader than narrower conceptions of “rape”, especially because (a) it may be committed by other means than force or violence, and (b) it does not necessarily entail penetration; and (f) “Contractor’s Personnel” is as defined at 1.1 (o) of the General Conditions of Contract.

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			(g) Service Provider and Contractor are used interchangeably throughout this document.
3	Section-I ITB 20.2 Electronic Submission of Bids	The bid submitted by the bidder online at e-Procurement Portal shall comprise the following: 1. Scanned copy of filled in and signed Bid Form 2. Priced Activity Schedule	The bid submitted by the bidder online at e-Procurement Portal shall comprise the following: 1. Scanned copy of filled in and signed Bid Form 2. Priced Activity Schedule 3. Filled in format Schedule -G . Appendix to Technical Part. Sub- Contracting & JV Schedule of Subcontractors.
4	Section-I ITB 29.1 Currency for Bid Evaluation	The Employer will convert the amount in various currencies	Refer BDS 29.1 - -- <i>Bidders are requested to quote in ... INR only</i> Therefore Rate of Conversion are - NOT Applicable
5	Section-I ITB 30.5 Evaluation & Comparison of Bids	Only the qualifications of the Bidder shall be considered. In particular, the qualifications of a parent or other affiliated company that is not party to the Bidder under a JV in accordance with ITB 4.1 (or participating as a sub-contractor as per ITB 5.6) shall not be considered	Only the qualification of the bidders shall be considered
6	Section-II ITB 4.1 JV Details	JV Partners are allowed to maximum number of three (3)	Bids from Joint ventures. ... <i>Are Acceptable</i> (a) Maximum number of members in the Joint Venture (JV) shall be: <i>Three (3)</i> (b) Place where the agreement to form JV to be registered is <i>New Delhi India.</i> (c) A statement to the effect that all members of the joint venture shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms, shall be included in the authorization nominating a Representative or member in charge, as well as in the Bid and in the Agreement [<i>in case of a successful bid</i>]. (d) The joint venture agreement should define precisely the division of assignments to each member of JV. All members of JV should have active participation in the execution during the currency of the contract. This should not be varied/ modified subsequently without prior approval of the Employer.
7	Section-II ITB 40.2 Unbalanced Bids	In the event of Unbalanced, front loaded or substantially below the updated estimate in the opinion of employer is received. In such cases, the Employer may ask the bidder to deposit the additional Performance Security for the differential cost. For Such Bids Where,	Existing Text is deleted and replaced by following. If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced, front loaded or substantially below updated estimates in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses (with breakdown of unit rates) for any or all items of the Bill of Quantities, to demonstrate the internal

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		<div><div><div><div><div><div></div><div>i. financial quote is up to ± 10% of the updated estimate in the opinion of the employer, no additional security deposit is required.</div><div>ii. financial quote is between ± 10% to ± 20% of the updated estimate in the opinion of the employer, the contractor is liable to provide additional PBG and</div><div>iii. the additional value of the PBG shall be equal to the difference between quoted amount and 95% of the updated estimate in the opinion of the employer in the form of BG or DD and same will be informed during the pre-award discussion.</div><div>iv. The additional PBG defined herein shall be over and above the performance security.. However, non-furnishing of additional BG within the stipulated time of LOA shall be treated as default and consequently, the tender shall be cancelled with forfeiture of EMD.</div><div>The additional PBG shall be over & above the Performance Security (PBG) shall be valid as per GCC Clause and shall be returned along with the Performance Security to the Contractor.</div></div></div></div></div></div>	<div><div>consistency and justification of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.</div></div>
8	<div><div>Section-III</div><div>Experience – 2.2.5</div><div>(New Clause added)</div></div>		<div><div><div><div><div><div><div><div><div><div></div><div>New Clause added</div><div>Declaration: Environmental, Social, Health, and Safety (ESHS) past performance</div><div>Declare any civil work contracts that have been suspended or terminated and/or performance security called by an employer for reasons related to the non-compliance of any environmental, or social, (including sexual exploitation and abuse (SEA) and gender based violence (GBV)), or health or safety requirements or safeguard in the past five years¹ (ending FY 2021-22).</div><div>Annexure – 1 (2.2.5)</div></div></div></div><div><div><div><div><div>2.4.2 C</div><div>Requirements</div><div>Single Entity</div><div><div><div>All Partners Combined</div><div>Each Partner</div><div>One Member</div></div></div></div><div><div>Form Exp 4.2 (.C)</div></div></div></div></div></div></div></div></div></div></div>

¹The Employer may use this information to seek further information or clarifications in carrying out its due diligence.

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					**	NA	***	NA	Form CON-3 ESHS Performance Declaration																											
			** Must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration. *** Each must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration.																																	
9	Section-III Experience – 2.4.1	Meaning of Similar Works Means	Meaning of Similar Works Means Experience under construction contracts for similar works such as those pertaining to General Dredging Experience in Ports / River / Lakes/ Canals/ Water Bodies, including Management of Vessel and Manning of Vessel or Vessel related Marine Works <ul style="list-style-type: none">• River Dredging and management of dredging materials.• Dredged material used in reclamation of port / harbour will also be considered. in the role of contractor, JV member, sub-contractor, or management contractor for at least the last seven [7] years ending last day of month previous to the one in which this tender is invited																																	
10	Section-III Experience – 2.4.3 (c) (New Clause added)		New Clause added For the contracts in 2.4.2 (a) above and/or any other contracts [substantially completed and under implementation] as prime contractor, joint venture member, or Subcontractor between 1st January [insert year] and Application submission deadline, experience in managing ES risks and impacts in the following aspects: [Based on the ES assessment, specify, as appropriate, specific experience requirements to manage ES aspects.]. Annexure – 1 (2.4.3 c) <table><tr><td>2.4.2 C</td><td>Requirements</td><td>Single Entity</td><td colspan="3">Joint Venture</td><td rowspan="2">Form Exp 4.2 (.C)</td></tr><tr><td></td><td></td><td></td><td>All Partners Combined</td><td>Each Partner</td><td>One Member</td></tr><tr><td></td><td></td><td>MMR</td><td>MMR</td><td>NA</td><td>NA</td><td></td></tr><tr><td colspan="7">MMR = Must Meet Requirement</td></tr></table> 2.4.2 (d) BID CAPACITY Bidders who meet the minimum qualification criteria will be qualified only if their available bid capacity for construction work is equal to or more than the total bid value of the work. The available bid capacity will be calculated as under: Assessed Available bid capacity = (A*N*1.5-B) Where.							2.4.2 C	Requirements	Single Entity	Joint Venture			Form Exp 4.2 (.C)				All Partners Combined	Each Partner	One Member			MMR	MMR	NA	NA		MMR = Must Meet Requirement						
2.4.2 C	Requirements	Single Entity	Joint Venture			Form Exp 4.2 (.C)																														
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			<p><i>A = Maximum value of civil engineering works executed in any one year during the last five years (updated to the price level of the financial year at the rate of 5% per year), taking into account the completed as well as works in progress).</i></p> <p><i>N = Number of years prescribed for completion of the works for which bids are invited (period up to 6 months to be taken as half-year and more than 6 months as one year).</i></p> <p><i>B = Value, at the current price level, of existing commitments on on-going works to be completed during the period of completion of the works for which bids are invited.</i></p> <p><i>Note: the statements in Section IV showing the value of existing commitments of on-going works as well as the stipulated period of completion remaining for each of the works listed should be countersigned by the Engineer in charge, not below the rank of an Executive Engineer or equivalent.</i></p>
11	Section-IV Bidding Forms. 2.5 Contractor Representatives & Key Personnel	Contract/Project Manager shall have a bachelor's degree in civil/mechanical engineering and an experience of minimum 10 years', out of which at least 7 years' shall be in managing projects of similar nature. Personnel must have experience in executing dredging projects. The desirable age of the personnel as on the date of bid submission shall not be more than 50 years	Contract/Project Manager shall have a bachelor's degree in civil/mechanical engineering and an experience of minimum 10 years', out of which at least 7 years' shall be in managing projects of similar nature. Personnel must have experience in executing dredging projects. The desirable age of the personnel as on the date of bid submission shall not be more than 50 years, however, if the personnel above 50 years is proposed, then the specific health fitness certificate shall be submitted with the bid.
12	Section-IV Bidding Forms. Appendix to Technical Part Form 2.3.1 to 2.3.3	1. Financial Data Type of Financial information in (INR)	SUMMARY OF FINANCIAL STATEMENTS Name of bidder/JV Member: Financial Information in Rupee equivalent with exchange rate at the end of concerned year
13	Letter to Bid Finance Part	Covering letter to Financial Part	Covering letter of 'Letter of Bid – Financial part' shall be submitted in modified format as per Annexure-3 attached with this amendment. . as per Annexure.. 2
14	Bid Security (Bank Guarantee)		Existing Format is deleted. Kindly Use the New Format as per Annexure - 3
15	Section-VIII GCC 1.1(e) Definitions	"Contract" means the document forming the tender & acceptance thereof to one another	Refer GCC 1.1(e) The following documents also form part of the Contract: Priority of Documents The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence: <ul style="list-style-type: none"> a. this Agreement b. the Letter of Acceptance / Notice to proceed with the work. c. the Contractor's Bid including completed schedules and priced bill of quantities,

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			<p>d. the Addenda No's <i>[insert addenda numbers if any]</i>.</p> <p>e. the Particular Conditions of contract</p> <p>f. the General Conditions of contract;</p> <p>g. the Specifications</p> <p>h. the Drawings; and</p> <p>i. Construction Program, Methodology, Quality Assurance Program, ESHS Management Strategies and Implementación Plans, and Code of Conduct (ESHS)</p> <p>j. Joint Venture Agreement [for JVs only]</p> <p>k. Post Bid Correspondences and Any other document listed in the contract data as forming part of the Contract</p> <p>If any ambiguity or discrepancy is found in the documents, the EMPLOYER / Employer's Engineer shall be the sole authority to issue any necessary clarification or instruction in this regard, the following is added after GCC 1.1 ('e)</p> <p>i. the Dredging Methodology</p> <p>ii. the ESHS Management Strategies and Implementation Plans and EMP (Environment Management Plan);</p> <p>iii. Labor Influx and Worker's Camp Management Plan including the process for mitigating construction related impacts on local community;</p> <p>iv. Code of Conduct (ESHS); and</p> <p>JV Agreement (wherever applicable).</p>
16	Section-VIII 1.1 (x) Added to GCC		Refer GCC 1.1(x) - The following is added as "ES" means environmental and social (including sexual exploitation and assault
17	Section-VIII 1.1 (y) Added to GCC		<p>Refer GCC 1.1(y)</p> <p>The following is added as</p> <p>"Sexual Exploitation and Assault" "(SEA)" stands for the following:</p> <p>Sexual exploitation is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. In Bank financed operations/projects, sexual exploitation occurs when access to or benefit from a Bank financed Goods, Works, Non-consulting Services or Consulting Services is used to extract sexual gain.</p> <p>Sexual assault is defined as sexual activity with another person who does not consent. It is a violation of bodily integrity and sexual autonomy and is broader than narrower conceptions of "rape", especially because (a) it may be committed by other means than force or violence, and (b) it does not necessarily entail penetration.</p>

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18	Section-VIII GCC 1.8 Taxes & Duties	The Service Provider shall pay such taxes, duties , fees	Refer GCC 1.8 Following shall be added: The amount of GST, which will be payable extra by the Employer as legally applicable, in INR
19	Section-VIII GCC 2.5 Force Majeure	For the purpose of this contract “ Force Majeure” means an event which is beyond the reasonable control of a party	Refer GCC 2.5 Details of the Force Majeure is added in this amendment as per Annexure-4
20	Section-VIII GCC 3.4 Insurance to be taken out by the Service Provider	The Service Provider shall take out and maintain As the case may be own cost but on terms & conditions approved by the Employer	Refer GCC 3.4.1 Following is added after GCC 3.4 For complete details, refer this amendment as per Annexure-6
21	Section-VIII GCC 3.9 Performance Security	The Service Provider shall provide the Performance Security to the Employer from the completion date of the Contract in case of a Performance Bond	GCC3.9 is replaced with the following The Performance Security and an Environmental, Social, Safety and Health (ESHS) Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in the amounts specified in the PCC (for GCC 3.9.1), and shall be issued by a Nationalized or Scheduled bank in India. The Performance Security including additional security for unbalanced bids, and the ESHS Performance Security, shall be valid until a date 28 days from the date of issue of the Certificate of Completion.
22	Section-VIII GCC 6.2 Contact Price	b. The Price Payable in foreign currency is set forth in the SCC	6.2 (b) Deleted
23	Section-VIII GCC 6.4 Terms & conditions of Payments	Payment will be made to the service provider according to the payment schedule the Advance payment ... shall be made against the provision	Refer GCC 6.4 The amount of the Advance Payment is ten (10) percent of Contract Price. The Advance payment will be made after successful verification of the submitted Advance Bank Guarantee. The total advance shall be recovered within 24 months from the monthly Running Account bills in equal instalments from 6th RA Bill onwards from the Date of Commencement, irrespective of the RA bill amount. In case, the monthly RA bill for any month is less than the advance amount to be recovered, then the same shall be recovered from the subsequent RA bill along with the recovery of advance for that month. If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination of the Contract, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer. Running Account (RA) Bills shall be prepared in 3 copies and submitted along with the Engineer-in-charge’s Inspection Report and approved charts generated during Joint Survey

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24	Section-VIII GCC 8.2.5 Appointment of Adjudicator	The Designated Appointing Authority for a new Adjudicator is Chairman , Inland Waterways Authority of India	Appointing Authority for the Adjudicator: Indian Council of Arbitration The Procedure for appointment of Arbitrator is as per Annexure-5
25	Section-VIII GCC 9.2.1 Securities (New Clause added)		New Clause added An Environmental, Social, Safety and Health (ESHS) Performance Security “The Performance Security and an Environmental, Social, Safety and Health (ESHS) Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in the amounts specified in the PCC (for GCC 50.1), and shall be issued by a Nationalized or Scheduled bank in India. The Performance Security including additional security for unbalanced bids, and the ESHS Performance Security, shall be valid until a date 28 days from the date of issue of the Certificate of Completion.”
26	Section-VIII GCC 9. 4 (New Clause added)		New Clause added 9.4 Compliance with Labour Regulation During continuance of the Contract, the Contractor and his Sub-Contractors shall abide at all times by all existing labour enactments and rules made there under, regulations, notifications and bye laws of the State or Central Government or local authority and any other labour laws (including rules), regulations, bye laws that may be passed or notification that may be issued under any labour law prevailing on the Base Date either by the State or the Central Government or the local authority. The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contraventions including amendments. If the Employer is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the notifications/bye laws/Acts/Rules/regulations including amendments, if any, on the part of the Contractor, the Project Manager/ Employer shall have the right to deduct any money due to the Contractor including his amount of performance security and if applicable, the Environmental, Social, Health and Safety (ESHS) Performance Security. The Employer/ Project Manager shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer
27	Section-VIII GCC 10 (New Clause added)		New Clause Added 10. Contractor to Construct the Works including protection of environment, and assurance of public health and safety 10.1The Contractor shall construct and install the Works in accordance with the Specifications and Drawings and as per instructions of Project Manager.

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			<p>10.2.The Contractor shall take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other cause arising as a consequence of his methods of operation.</p> <p>10.2.1During continuance of the contract, the contractor and his sub-contractors shall abide at all times by all existing enactments on environmental protection and rules made thereunder, regulations, notifications and by-laws of the State or Central Government, or local authorities and other law, bye-law, regulations that may be passed or notification that may be issued in this respect in future by the State or Central Government or the local authority. Salient features of the major laws are given in Appendix 1 to the General Conditions of Contract.</p>
28	<p>Section-VIII GCC11- Discoveries New Clause added</p>		<p>New Clause added</p> <p>11.1 Material of any Kind obtained from excavation on the site shall remain the property of the Authority and shall be disposed off as directed by the Engineer-in-Charge. However If any of the materials thus obtained from excavation on the site is such as can be used in the execution of work under the contract, the contractor will be allowed to use the same free of cost (except that any amount of royalty paid for in this regard by the Authority shall be recoverable from the contractor) for the aforesaid purpose provide the same is found suitable and is approved by the Engineer-in-Charge. Fossils, coins, articles of value, structures and other remains of things of geological or archaeological interest discovered on the site shall be the absolute property of the Authority. The contractor shall take reasonable precautions to prevent is labor or any other person from removing or damaging any such article or things and shall acquaint the Engineer-in-Charge with such discovery and carryout the Engineer-in-Charge's directions as to the disposal of the same at the expense of the Authority.</p>
29		<p>It is understood that India and Bangladesh have historically entered a treaty under which India has to release water from Farakka Barrage into the river branch flowing through Bangladesh periodically. We envisage that in event of such release of water to Bangladesh branch would lead to sudden drop of water level in the Farakka – Tribeni Stretch, leading to non-achievement of LAD. Such event is totally beyond Contractor's control and would require some time to rectify. Hence, it is prudent that the Contractor should not get penalized if LAD is not achieved in wake of release of water to Bangladesh.</p>	<p>It is clarified that during the water sharing period (March-May), in the event water level falling below 17.75 m recorded at CWC gauge station at Farakka down-stream, then in that particular week default will not be considered and payment will be based on the achieved LAD during previous week joint survey.</p> <p>Further during water sharing period, the LAD at Baghmari syphon shall not be considered as default.</p>

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30	Appendix -I	Salient Features of Labour & Environment Protection Laws	No Change – added at the end of SCC
31	Appendix -II	Salient Features for Protection of Environment.	No Change – added at the end of SCC
32	Appendix -III	Appointment of Adjudicator	No Change – added at the end of SCC
33	<i>All other terms & Conditions of the Tender documents remains Un-altered</i>		

OFFICER INVITING BIDS :-

Project Director (JMVP)

Inland Waterways Authority of India,

A – 13, Sector – 1, Noida – 201301, Uttar Pradesh – INDIA

Telephone No. : (91) 0120-2424544 Email. : vc.iwai@nic.in ;

Annexure - 1

Eligibility and Qualification Criteria			Compliance Requirements				
		Requirement	Bidder				Documentation Submission Requirements
			Single Entity	Joint Venture (existing or intended)			
				All partners combined	Each partner	One Member	
2.2.5	Declaration: Environmental, Social, Health, and Safety (ESHS) past performance	Declare any civil work contracts that have been suspended or terminated and/or performance security called by an employer for reasons related to the non-compliance of any environmental, or social, (including sexual exploitation and abuse (SEA) and gender based violence (GBV)), or health or safety requirements or safeguard in the past five years ² (ending FY 2021-22).	Must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration.	N/A	Each must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration.	N/A	Form CON-3 ESHS Performance Declaration
2.4.2 (c)	Specific Experience in managing ES aspects	For the contracts in 2.4.2 (a) above and/or any other contracts [substantially completed and under implementation] as prime contractor, joint venture member, or Subcontractor between 1st January 2016-17] and Application submission deadline, experience in managing ES risks and impacts in the following aspects:	Must meet requirements	Must meet requirement	NA	NA	Form EXP – 4.2 (c)

²The Employer may use this information to seek further information or clarifications in carrying out its due diligence.

Letter of Bid – Financial Part

To,

Date

Invitation for Bid No.....

Subject: - Fairway Maintenance on performance-based dredging in Farakka – Tribeni (351 km) Stretch of National Waterway -1 (River Ganga) including River Conservancy and Channel marking

We, the undersigned, hereby submit the second part of our Bid, the Bid Price and Bill of Quantities. This accompanies the Letter of Technical Part, In submitting our Bid, we make the following additional declarations

- (a) Our bid shall be valid for a period of _____ ***[insert validity period as specified in ITB 18.1.]*** days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (b) The total price of our Bid, excluding any discounts offered in item (c) below is:
- In case of only one lot, total price of the Bid ***[insert the total price of the bid in words and figures];***
 -In case of multiple lots, total price of each lot ***[insert the total price of each lot in words and figures];***
 -In case of multiple lots, total price of all lots (sum of all lots) ***[insert the total price of all lots in words and figures];***
- (c) The discounts offered and the methodology for their application are:
- (i) The discounts offered are: ***[Specify in detail each discount offered.]***
- (ii) The exact method of calculations to determine the net price after application of discounts is shown below: ***[Specify in detail the method that shall be used to apply the discounts];***
- (d) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:³ ***[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount of each such commission or gratuity]***

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate “none.”)

- (e) ***Binding Contract: We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed.***

Name of the Bidder* ***[insert complete name of person signing the Bid]***

Name of the person duly authorized to sign the Bid on behalf of the Bidder** ***[insert complete name of person duly authorized to sign the Bid]***

Title of the person signing the Bid ***[insert complete title of the person signing the Bid]***

Signature of the person named above ***[insert signature of person whose name and capacity are shown above]***

Date signed ***[insert date of signing]*** day of ***[insert month]***, ***[insert year]***

*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

**: Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid Schedules.

³If none has been paid or is to be paid, indicate “none”.

Form of Bid Security - Bank Guarantee**Annexure - 3**

Form of Bid Security - Bank Guarantee

[Guarantor letterhead or SWIFT identifier code]

Bid Guarantee No.....[insert guarantee reference number]

Date.....[insert date of issue of the guarantee]

WHEREAS, _____ [name of Bidder]⁴ (hereinafter called "the Bidder") has submitted his Bid dated _____ [date] or will submit his Bid for the construction of

_____ [name of Contract] (hereinafter called "the Bid") under Invitations for Bids No.....[insert number] (hereinafter called "the IFB")

KNOW ALL PEOPLE by these presents that We _____ [name of bank] of

_____ [name of country] having our registered office at

_____ (hereinafter called "the Bank") are bound unto

_____ [name of Employer] (hereinafter called "the Employer") in the sum of

_____ ⁵ for which payment well and truly to be made to the said Employer the Bank binds itself, his successors and assigns by these presents.

SEALED with the Common Seal of the said Bank this _____ day of _____ 20____.

THE CONDITIONS of this obligation are:

(1) If after Bid opening the Bidder (a) withdraws his bid during the period of Bid validity specified in the Letter of Bid; or (b) does not accept the correction of the Bid Price pursuant to ITB 36;

or

(2) If the Bidder having been notified of the acceptance of his bid by the Employer during the period of Bid validity:

(a) fails or refuses to execute the Contract Agreement in accordance with the Instructions to Bidders, if required;

or

(b) fails or refuses to furnish the Performance Security, and if required, the Environmental, Social, Health and Safety (ESHS) Performance Security, in accordance with the Instruction to Bidders.

we undertake to pay to the Employer upto the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of one or any of the four conditions, specifying the occurred condition or conditions.

This Guarantee will remain in force upto and including the date _____ ⁶ days after the deadline for submission of Bids as such deadline is stated in the Instructions to Bidders or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this guarantee should reach the Bank not later than the above date.

DATE _____ SIGNATURE OF THE BANK _____

WITNESS _____ SEAL _____

[signature, name, and address]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

⁴ Insert name of the Bidder, which in the case of a joint venture shall be (a) the name of the joint venture that submits the bid if the JV has been constituted into a legally enforceable JV, or (b) the names of all future members of the JV as named in the letter of intent to execute the JV Agreement submitted by the bidder alongwith its bid.

⁵ The Bidder should insert the amount of the guarantee in words and figures denominated in Indian Rupees. This figure should be the same as shown in Clause 19.1 of the Instructions to Bidders.

⁶ 45 days after the end of the validity period of the Bid.

GCC 2.5 Force Majeure .

Annexure - 4

“Force Majeure” shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, insofar as they directly affect the execution of the Services and Works included in this Contract and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:

- (a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy and civil war;
 - (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts;
 - (c) confiscation, nationalization, mobilization, commandeering, requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
 - (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague;
 - (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster;
 - (f) Shortage of labour, materials or utilities were caused by circumstances that are themselves Force Majeure.
 - (g) In the event of Water level falling below the ‘minimum of last 30years’ from the Central Water Commission (CWC) gauge situated at Farakka downstream.
2. If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.
- 3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party’s performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GC Clause 64.
- 4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its or their obligations under the Contract, but without prejudice to either party’s right to terminate the Contract under GC Sub-Clause 38.6.
- 5 No delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall
- (a) constitute a default or breach of the Contract;
 - (b) give rise to any claim for damages or additional cost or expense occasioned thereby; if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.
- 6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party’s right to terminate the Contract under GC Clause 59.
- 7 In the event of termination pursuant to GC Sub-Clause 38.6, the rights and obligations of the Employer and the Contractor shall be as specified in GC Sub-Clauses 59.1.2 and 59.1.3.
- 8 Notwithstanding GC Sub-Clause 38.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

Appointing Authority for the Adjudicator: **Indian Council of Arbitration**

Existing GCC to be replaced by

The procedure for adhoc arbitration will be as under:

- a) In case of Dispute or difference arising between the Employer and a Contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitral tribunal shall consist of 3 Arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding Arbitrator. In case of failure of the two Arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Indian Council of Arbitration
- b) If one of the parties fails to appoint its Arbitrator in pursuance of sub-clause (a) above within 30 days after receipt of the notice of the appointment of its Arbitrator by the other party, then the Indian Council of Arbitration, shall appoint the Arbitrator. A certified copy of the order of the Indian Council of Arbitration, making such an appointment shall be furnished to each of the parties.
- c) Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of the Employer, the Project Manager, the Contractor and the Adjudicator shall not be altered by reason of the arbitration being conducted during the progress of the Works.
- d) Arbitration proceedings shall be held at New Delhi and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.
- e) The decision of the majority of Arbitrators shall be final and binding upon both parties. The cost and expenses of Arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also the fees and expenses paid to the Arbitrator appointed by such party or on its behalf shall be borne by each party itself.
- f) Deleted.
- g) The Arbitrator should give final award within 180 days of starting of the proceedings
Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the Employer shall not be withheld, unless they are the subject matter of the arbitration proceedings.

1. Insurance of Works

Contractor is required to take Contractor's All Risk Policy or erection all risk policy (as the case may be) from an approved insurance company in the joint name with the Employer and bear all costs towards the same for the full period of execution of works including the defect liability period for the full amount of contract against all loss of damage from whatever cause arising other than excepted risks for which he is responsible under the terms of the contract and in such manner that the Employer and the contractor are covered during the period of construction of works and/or also covered during the period of defect liability for loss or damage

The work and the temporary works to the full value of such works.

The materials, construction plant, centring, shuttering and scaffolding materials and other things brought to the site for their full value.

Whenever required by the Employer, the contractor shall produce the policy or the policies of insurance and the receipts for payment of the current premium.

2. Insurance under Workmen Compensation Act

Contractor is required to take insurance cover under the Workman Compensation Act, 1923 as amended from time to time from an approved insurance company and pay premium charges thereof. Wherever required by the Employer the contractor shall produce the policy or the policies of Insurance and the receipt of payment of the current premiums.

3. Third Party Insurance

Contractor is required to take third party insurance cover for an amount of 5% (five percent) of contract value from an approved insurance company for insurance against any damage, injury or loss which may occur to any person or property including that of the Employer, arising out of the execution of the works or temporary works. Wherever required by the Employer the contractor shall produce the policy or the policies of Insurance and the receipt of payment of the current premiums. In case of failure of the contractor to obtain contractors all risk policy, insurance under workman compensation act and third party insurance as described above within one month from the date of commencement of work, running account payments of the contractor shall be withheld till such time the aforesaid insurance covers are obtained by the contractor. If the Contractor could not effect a comprehensive insurance cover against risks which he may be required to effect under the terms of the contract, then he shall give his attention to get the best insurance cover available and even in case of effecting a wider insurance cover than the one which the subsidiary of the General Insurance Company could offer, such an insurance is ought to be done after the Employers approval, by or through the subsidiary of the General Insurance Company.

4. Indemnify the Employer

The Contractor shall at all times indemnify the Employer against all claims, damages or compensation under the provision of Payment of Wages Act-1936, Minimum Wages Act-1948, Employer's liability Act-1938, the Workmen's Compensation Act-1947, Industrial Disputes Act-1947 and Maternity Benefit Act-1961 or any modifications thereof or any other law in force or as consequence of any accident or injury to any workman or other persons in or about the works, whether in the employment of the contractor or not, against all costs, charges and expenses of any suit, action or proceedings arising out of such incident or injury and against all sum or sums which may with the consent of the contractor be paid to compromise or compound any such claim. Without limiting his obligations and liabilities as above provided, the contractor shall insure against all claims, damages or compensation payable under the Workmen's Compensation Act 1923 or any modification thereof or any other law relating thereto."

5. Damage to Persons and Property

The Contractor shall, except if and so far as the Contract provides otherwise, indemnify the Employer against all losses and claims in respect of:

- (a) death of or injury to any person, or

(b) loss of or damage to any property (other than the Works), which may arise out of or in consequence of the execution and completion of the Works and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, subject to the exceptions defined in Sub-Clause 6.

6.Exceptions

The “exceptions” referred to in Sub-Clause 5 are:

- (a) the permanent use or occupation of land by the Works, or any part thereof,
- (b) the right of the Employer to execute the Works, or any part thereof, on, over, under, in or through any land,
- (c) damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any defects therein, in accordance with the Contract, and
- (d) death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Employer, his agents, servants or other contractors, not being employed by the Contractor, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto or, where the injury or damage was contributed to by the Contractor, his servants or agents, such part of the said injury or damage as may be just and equitable having regard to the extent of the responsibility of the Employer, his servants or agents or other contractors for the injury or damage.

7.Indemnity by Employer

The Employer shall indemnify the Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of the matters referred to in the exceptions defined in Sub-Clause.6.

8.Cross Liabilities

The insurance policy shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Employer as separate insured.

9.Accident or Injury to Workmen

The Employer shall not be liable for in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or any Subcontractor, other than death or injury resulting from any act or default of the Employer, his agents or servants. The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, other than those for which the Employer is liable as aforesaid, and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

10.Evidence and Terms of Insurances

The Contractor shall provide evidence to the Employer as soon as practicable after the respective insurances have been taken out but in any case prior to the start of work at the Site that the insurances required under the Contract have been effected and shall, within 84 days of the Commencement Date, provide the insurance policies to the Employer. When providing such evidence and such policies to the Employer, the Contractor shall notify the Engineer of so doing. Such insurance policies shall be consistent with the general terms agreed prior to the issue of the Letter of Award. The Contractor shall effect all insurances for which he is responsible with insurers and in terms approved by the Employer.

11.Adequacy of Insurances

The Contractor shall notify the insurers of changes in the nature, extent or programme for the execution of the Works and ensure the adequacy of the insurances at all times in accordance with the terms of the Contract and shall, when required, produce to the Employer the insurance policies in force and the receipts for payment of the current premiums.

12.Remedy on Contractor's Failure to Insure

If the Contractor fails to effect and keep in force any of the insurances required under the Contract, or fails to provide the policies to the Employer within the period required by Sub-Clause 21.10, then and in any such case the Employer may effect and keep in force any such insurances and pay any premium as

may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or to become due to the Contractor, or recover the same as a debt due from the Contractor.

13.Compliance with Policy Conditions

In the event that the Contractor or the Employer fails to comply with conditions imposed by the insurance policies effected pursuant to the Contract, each shall indemnify the other against all losses and claims arising from such failure.

14.Source of Insurance

The Contractor shall place all insurance relating to the Contract (including, but not limited to, the insurance referred to 13.2 with insurers from India.