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PUNATSANGCHHU-II HYDROELECTRIC PROJECT AUTHORITY



**BIDDING DOCUMENT
FOR
SUPPLY, ERECTION, TESTING & COMMISSIONING OF SUBMERSIBLE
DEWATERING PUMPS IN SUMP WELL OF DAM, PHPA-II**

Tender No. : PHPA-II/SE(P&C)/C1/2022/01 Dated 28.5.2022

MAY 2022



GENERAL INFORMATION

Name of work: Supply, erection, testing & commissioning of submersible dewatering pumps in sump well of dam, PHPA-II

(Tender no. PHPA-II/SE(P&C)/C1/2022/01 dated 28.5.2022)

1. Last date of receipt of Tender : 27.6.2022 at 1100 Hrs (Local Time)
2. Date for opening of Tender : 27.6.2022 at 1130 Hrs (Local Time)
3. Earnest Money : Nu. 0.17 Million
4. Place of Submission and Opening of Tender : Office of The Superintending Engineer (SE)
Procurement & Contracts Wing (P&C Wing)
Punatsangchhu-II Hydroelectric Project Authority
Block E-4, Bjimthangkha
Wangduephodrang, Bhutan.
5. Stipulated Period of Completion : **Nine Months**

Notes:

- a) The Employer reserves the right to reject any/all tenders without assigning any reason thereof.
- b) Conditions, if added by the bidder, which have bearing on the scope/nature and cost of tendered works shall make the tender liable for disqualification.



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SECTION I –NOTICE INVITING TENDER



NOTICE INVITING TENDER

Punatsangchhu-II Hydroelectric Project Authority (PHPA-II) Bjimthangkha, Wangdue, Bhutan		
Punatsangchhu-II Hydroelectric Project Authority (PHPA-II) is pleased to invite "Sealed Bids" from eligible & competent agencies for the work ' Supply, Erection, Testing & Commissioning of Submersible Dewatering Pumps in Sump Well of Dam, PHPA-II. '		
1.	Tender No.	PHPA-II/SE(P&C)/C1/2022/01 dated 28.5.2022
2.	Tender Document	Can be purchased from the Office of SE, P&C Wing, Wangdue after paying Nu. 2000/- in the form of Demand Draft/ Cash Warrant. For firms outside Bhutan, the bidding document can be downloaded from http://phpa2.gov.bt/tenders/ . However, the bidders must register at procncontracts@phpa2.gov.bt with contact details viz. Name of the Firm, Address, Contact Person & Phone Nos. & deposit Nu./ INR 2000/- in PHPA-II's account no. 32379019627 maintained at SBI, Jaigaon. The deposit slip must be submitted along with the bid.
3.	Eligibility Criteria	a. Successful experience of erection & commissioning of minimum 2 (two) numbers submersible dewatering pumps of capacity not less than 180 m ³ /hr in the last 5 (five) years (ending as on 30.4.2022). b. Experience of having successfully completed similar works during last 5 (five) years (ending as on 30.4.2022) as follows: i. 3 (three) similar works (erection & commissioning of submersible pumps) completed with each work costing not less than Nu./ INR. 34 (thirty four) lakhs; OR ii. 2 (two) similar works (erection & commissioning of submersible pumps) completed with each work costing not less than Nu./ INR. 42.4 (forty two point four) lakhs; OR iii. 1 (one) similar work (erection & commissioning of submersible pumps) completed costing not less than Nu./INR. 67.8 (sixty seven point eight) lakhs.
4.	Estimated Amt.	Nu./INR. 8.473 Million
5.	Earnest Money	Nu./INR. 0.170 Million
6.	Last date & time of submission	27.6.2022 at 1100 Hrs (Local Time)
7.	Place of Submission	Superintending Engineer (SE), Procurement & Contracts Wing (P&C Wing), Punatsangchhu-II Hydroelectric Project Authority, Block E4, Bjimthangkha, Wangduephodrang, Bhutan.
8.	Date & Time of Bid Opening	27.6.2022 at 1130 Hrs (Local Time)
PHPA-II reserves the right to suspend the tendering process or part of the process to accept or reject any or all bids at any stage of the process and / or to modify the process or any part thereof at any time without assigning any reason thereof.		
For any queries, parties may contact this office at +975-2-471709 (during office hours) or through email at secontracts@phpa2.gov.bt		

(Sd/-)

Superintending Engineer (Procurement & Contracts Wing),
 Punatsangchhu-II Hydroelectric Project Authority,
 Bjimthangkha, Wangdue, Bhutan



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A. INTRODUCTION

Sealed item rate tender is invited for and on behalf of the Punatsangchhu-II Hydroelectric Project Authority (PHPA-II) from reputed, experienced and financially sound Bhutanese/Indian firms fulfilling the eligibility qualification requirements specified in the Bidding Document for **'Supply, Erection, Testing and Commissioning of Submersible Dewatering Pumps in the Sump Well of Dam, PHPA-II,'** located in Wangdue Phodrang District of Bhutan, which is around 120 km from Thimphu, the capital of Bhutan.

1. Scope of Works

The main scope of the Work is to Supply, Erect, Test and Commission Submersible Dewatering Pumps in Sump Well of Dam to dewater seepage water.

(i) CONTRACTOR'S SCOPE:-

- A. The following detailed services are to be carried out in order to complete the Work:

Item No. 1.

Supply, Erection, Testing and Commissioning of submersible dewatering pump sets of KSB/ Aqua/ Calama/ Johnston/ Crompton/ BS/ SABAR/ Oswal/ Kirloskar/ Mather & Platt make conforming to latest relevant BIS Code 8034:1975 or as specified in the technical specifications. Discharge to be handled by each pump = 50LPS, Gross Head = 60mt INR

Item No. 2.

Supply, Erection, Testing and Commissioning of control panel having complete Automation System for all the submersible pumps consisting of all the features specified in the technical specification.

Item No. 3.

Supply, Erection, Testing and Commissioning of electric rope hoist monorail with 3-ton capacity having complete system fitted with all accessories required for installation of pumps.

Item No. 4.

Providing and Fixing GI Delivery Pipe of 300mm dia with flange joint @ 3000mm C/C with double welding at joints with MS strip.

Item No. 5.

Supply of mandatory spares.

- B. Tools & Tackles, Equipment and Consumables for the work:

- All tools and tackles.
- All equipment's/lifting arrangement etc.
- All consumables.



C. Manpower:

- Contractor shall deploy manpower as stipulated in Clause-14 Contractor's Employees of the General Conditions of Contract.

The equipment/ materials are to be supplied FOR Jaigaon (India)/ Phuentsholing (Bhutan) including transit insurance.

(ii) PHPA-II's Scope: -

- PHPA-II will arrange custom clearances on both Indian and Bhutanese sides.
- PHPA-II will transport the materials from Phuentsholing to Project site including loading, unloading, insurance, etc.
- PHPA-II will provide access for the material/ resources up to the respective sites.
- PHPA-II will provide a 440V AC supply at one point as per the requirement of the contractor.
- PHPA-II will provide assistance in obtaining approvals in mobilization/deployment of manpower/ materials required for the site.

2. Period of Completion

The works under the Contract shall have to be completed in a period of **9 (nine) months** reckoned from the 30th day from the date of issue of Letter of Award of the Bid.

3. Eligible Bidders

The minimum qualifying requirement for the eligible bidders is as under:

- a. Successful experience of erection & commissioning of minimum 2 (two) numbers submersible dewatering pumps of capacity not less than 180 m³/hr in the last 5 (five) years (ending as on 30.4.2022).
- b. Experience of having successfully completed similar works during last 5 (five) years (ending as on 30.4.2022) as follows:
 - i. 3 (three) similar works (erection & commissioning of submersible pumps) completed with each work costing not less than Nu./ INR34 (Thirty Four) lakhs;
OR
 - ii. 2 (two) similar works (erection & commissioning of submersible pumps) completed with each work costing not less than Nu./ INR42.4 (Forty Two point Four) lakhs;
OR
 - iii. 1 (one) similar work (erection & commissioning of submersible pumps) completed costing not less than Nu./ INR67.8 (Sixty Seven point Eight) lakhs.



4. Number of Bid per Bidder

The eligible Bidders shall submit only one (1) bid. A bidder who submits more than one bid will be disqualified.

5. Signatory Authority of Application for Submission of Bid

Signatory Authority of the submission of Bids shall be as follows:

- i. In case of an individual, the Applicant shall sign the application above his full name and address.
- ii. In case of proprietary firm, the Application shall be signed by the Proprietor above full name and name of the firm with his current address.
- iii. In case of a limited Company or Corporation, an authorized person holding the Power of Attorney for signing the Application shall sign the Application. A certified copy of the Power of Attorney shall accompany the Application.
- iv. Bid document is not transferable.

6. Cost of Bidding

The Bidder shall bear all costs associated with the preparation and submission of his Bid and the PHPA-II in no case will be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding process.

7. Site Visit

The Bidder, at his own interest, responsibility and risk, must visit and examine the Site of Work and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for the Works. The costs of visiting the Site shall be at the Bidder's own expense.

The bidder or his representative will be granted permission to enter the site of work only upon the condition that the Employer or his personnel or agent will not be responsible for death or personal injury or loss or damage to property and other loss, damage, cost or expenses incurred as a result of inspection/visit.

B. BIDDING DOCUMENTS**8. Contents of Bidding Documents**

The bidding documents are those as stated below and should be read in conjunction with any corrigendum/modification issued on these documents:

- i) Notice Inviting Tender (NIT)
- ii) Instructions to Bidders
- iii) General Conditions of the Contract
- iv) General Technical Specifications
- v) Forms
- vi) Price Schedule
- vii) Drawings



- viii) Any other document as forming part of the Contract.

The bidder is expected to examine carefully the contents of all the above documents. Failure to comply with the requirement of bid submission will be at bidders own risk. Bids, which are not substantially responsive to the requirement of the bidding document, will be rejected. Prior to lastdate of submission of tender the Employer, for any reason whatsoever, may modify the tender by issuing corrigendum, which will become a part of tender document. No modification of bid shall be permissible after last date of submission, whatever may be the reason.

The PHPA-II at its discretion may extend as necessary the deadline for submission of tender, if considered necessary.

9. Clarification of Bidding Documents

A prospective bidder requiring any clarification of the Bidding Documents may notify the Superintending Engineer (SE), P&C Wing, PHPA-II, Bjimthangkha, Wangduephodrang, Bhutan in writing through email at secontracts@phpa2.gov.bt who will respond in writing to any request for clarification/or discuss during pre-bid meeting, if necessary.

Written copies of the SE P&C Wing's response (including a description of the enquiry but without identifying its source) will be sent to all prospective bidders who have purchased the Bidding Documents.

10. Amendment of Bidding Documents

At any time prior to the deadline for submission of bids, the PHPA-II may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective bidder, modify the Bidding Documents by the issuance of a Corrigendum/Addendum.

The corrigendum/addendum will be sent in writing to all prospective bidders who have purchased the Bidding Documents and will be binding upon them. Prospective bidders shall promptly acknowledge receipt thereof to the PHPA-II.

In order to afford prospective bidders reasonable time required to consider a corrigendum/addendum in preparing their bids, the PHPA-II at its discretion may extend the deadline for the submission of bids.

C. PREPARATION OF BIDS

11. Language of Bid

The bid prepared by the bidder; and all correspondence and documents relating to the bid exchanged by the bidder and the PHPA-II shall be written in the English language only.



12. Documents Comprising the Bid

The tender to be prepared and submitted by the bidder for consideration shall comprise of the following: -

- i) Completed bidding document, forms, schedules and appendices used thereto duly filled in and signed wherever required without altering the formats.
- ii) Earnest money amounting to **Nu./INR. 0.170 Million** (Nu./ INR Zero point One Seven million only) in the form of crossed Bank draft payable on Bank of Bhutan, Wangdue or State Bank of India, Hasimara (West Bengal) India or an irrevocable Bank Guarantee for an amount of **Nu./ INR. 0.170 million** only. The Bank Guarantee shall be issued by a Nationalized / Scheduled Bhutanese or Indian Banks in the format provided in this document. **Any changes / deviation in the format for Bank Guarantee attached in Section V shall not be accepted and envelope/ file containing bid shall not be opened on discretion of PHPA-II.**
- iii) The bids, which **do not contain specified earnest money**, will be **summarily rejected** and the Envelope/ File marked as **"Techno-commercial"** shall not be opened.
- iv) The techno-commercial bid shall comprise copies of past work orders along with completion certificates in accordance with Clause 3.
- v) Any other relevant material/information.

13. Bid Prices

- i) The bidder shall indicate on the Price schedules, Section VI of the bidding Documents, the unit prices and total bid prices of the goods/ services to be supplied/ performed under the Contract. The format of the Price schedules (Section VI of Bidding Document) shall be strictly adhered to by the bidder.
- ii) The Royal Government of Bhutan shall exempt taxes, levies/duties for plant, construction materials & equipment, machineries and services imported for direct use in the construction of the Project. Any procurement made under tax exemption basis shall be liable for tax payment as per the Tax Act of the Kingdom of Bhutan if disposed off in Bhutan.

14. Currencies of Bid and Payment

The payment shall be made in Indian Rupees/Bhutanese Ngultrum.
(One Ngultrum = One Indian Rupee)

15. Bid Validity Period

Bids shall remain valid for acceptance for a period of **120 days** (One hundred twenty days) from the date of opening of bids.

In exceptional circumstances, prior to expiry of the original bid validity period, the PHPA-II may request the bidder for a specified extension in the period of validity along with validity of Bid Security. The request and the responses thereto shall be made in writing or by fax. A bidder may refuse the request without forfeiting his bid security. A bidder agreeing to the request will not be required/ nor permitted to modify his bid, but will be required to extend the validity of his bid security



correspondingly. The provision of ITB Para 16 regarding discharge and forfeiture of bid security shall continue to apply during the extended period of bid validity.

16. Bid Security / Earnest Money

Bidder shall furnish as part of his bid an Earnest Money for the amount stipulated in ITB clause 12 (ii). Earnest Money of unsuccessful bidders will be returned not later than 30 (thirty) days after the expiry of bid validity. The Earnest Money will be returned to the tenderer without any interest if his tender is not accepted. The Earnest Money of successful bidder will be discharged after signing of the Agreement.

Earnest money is liable to be forfeited if: -

- a) Bid is withdrawn during the period of its validity, after opening of bids.
- b) The bidder pursuant to ITB clause 29 does not accept correction of bid price.
- c) Successful bidder fails to sign contract agreement and furnish Performance Bond within the Specified time limit.
- d) Successful bidder fails to commence work within the time specified in Letter of Award.

17. Bidding Condition

The bidder shall submit offers which comply fully with the requirements of the Bidding Documents. Any deviation in submitted bid for the bidding documents shall be liable for rejection.

18. Format for Submittal

Format for submittal of related information for Bid shall be as per Section-V Forms, and shall be strictly adhered to.

19. Signing of Bids

The original bid, typed or written in indelible ink shall be signed by a person or persons duly authorized to bind the bidder to the Contract. Proof of authorization shall be furnished in the form of a written Power of Attorney which shall accompany the bid. The person or persons signing the bid shall initial all pages of the bid and entries where amendments have been made.

The complete bid shall be without alternations or erasures, except those to accord with instructions issued by the PHPA-II, or as necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the bid.

D. SUBMISSION OF BIDS

20. Sealing and Marking of Bids

Bidders shall have the option of submitting the bids in hard copies (offline) or in soft copies (online).



20.1 Offline bid submission

The Bidder shall seal the Techno-commercial part and Price part in **two inner envelopes and one outer envelope**, duly marking the inner envelopes as **“TECHNO-COMMERCIAL PART”** and **“PRICE PART.”**

The Bidder in a separate sealed Third Inner envelope shall submit the Bid Security.

The inner and outer envelopes shall:

(a) be addressed to the PHPA-II at following address:

Superintending Engineer,
Procurement & Contracts Wing,
Punatsangchhu-II Hydroelectric Project Authority,
Block E4, Bjimthangkha,
Wangduephodrang, Bhutan
Ph. No. +975-2-471709

(b) Bid Ref. No. “ PHPA-II/SE(P&C)/C1/2022/01 Dated 28.5.2022”

(c) Provide a warning not to open **before 27.6.2022 at 1130 hrs (BST)**

In addition to the above identifications, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to ITB Clause 22.

If the outer envelope is not sealed and marked as above, the PHPA-II shall assume no responsibility for the misplacement or premature opening of the Bid.

20.2 Online Bid Submission

The bidder shall prepare one original document comprising the bid as described in Clause 12 and email the scanned copy in three separate password protected files to secontracts@phpa2.gov.bt.

The attachments shall clearly identify the file numbers detailed as under:

a) File number – 1

The first password protected file marked as file No. 1 shall contain the Techno-Commercial part, copy of past work orders along with completion certificates in accordance with Clause 3 and any other relevant document in accordance with the instructions to bidders. **This file shall contain no information giving any indication about the prices.**

b) File number -2

The second password protected part shall contain only the Proforma of Letter of Tender duly filled with Bid Price and the Bill of Quantities.

c) File number – 3



The third password protected part shall contain Bid Security as per Clause 12 (ii). However, the original Bid Security shall be submitted on or before the deadline of opening of the Bids to the address provided in Clause 20.1 a). The bids without original Bid Security will be returned unopened.

21. Deadline for Submission of Bids

Bids shall be delivered by hand, courier, registered post or through email to the Employer at the address specified under ITB Clause 20 and no later than **27.6.2022 at 1100 hrs (BST)**.

The PHPA-II may, at its discretion, extend the deadline for submission of bids by issuing an amendment, in which case all rights and obligations of the PHPA-II and the bidders previously subject to the original deadline shall thereafter be subject to the new deadline as extended.

22. Late Submission of Bids

Any bid received by the PHPA-II after the deadline for submission of bids prescribed by the PHPA-II in ITB clause 21 will be considered as rejected and returned unopened to the bidder.

23. Modification and Withdrawal of Bids

The bidder may modify or withdraw his bid prior to deadline for submission of bid by giving modification or withdrawal notice in writing to PHPA-II.

The bidder's modifications or notice of withdrawal shall be prepared, sealed and clearly marked as **"Modification"** or **"Withdrawal"** as appropriate and delivered prior to deadline for submission of bid in accordance with ITB clause 21.

No bid will be modified after the deadline for submission of the bid. Withdrawal of bid between deadline for submission and expiry of bid validity will result in forfeiture of earnest money pursuant to ITB clause 16.

24. Bidding Documents

Entire set of documents, as purchased or downloaded from website, shall be submitted after filling it wherever required & signing each page as a token of acceptance of all terms & conditions of the bid. The bidder shall retain no portion of issued document.

E. BID OPENING AND EVALUATION

25. Bid Opening and Determination of Responsiveness

The PHPA-II shall open the bids, including modifications made pursuant to ITB Clause 23, in the presence of the bidder's authorized representatives who choose to attend on **27.6.2022 at 1130 hrs (BST) in the Office of the Superintending Engineer, P&C Wing, PHPA-II, Block E4, Bjimthangkha.**



Envelopes marked “**WITHDRAWAL**” shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 23 shall not be opened.

The bidder’s name, modifications, withdrawals, presence or absence of earnest money and other such details as considered appropriate will be announced at the time of opening tenders.

The record of the bid opening including information disclosed will be preserved for office record.

26. Confidentiality of Bids

After the public opening of bids, information relating to the examination, clarification, evaluation and comparison of bids and recommendations concerning the Award of Contract shall not be disclosed to bidders or other persons not officially concerned with such process.

Any effort by a bidder to influence the PHPA-II in the process of examination, clarification, evaluation and comparison of bids, and in decisions concerning Award of Contract, may result in the rejection of his bid.

27. Clarification of Bids

To assist in the examination, comparison and evaluation of bid the PHPA-II may ask bidders for clarification of the bids, if any. But no change in price or substances of bid will be sought, agreed or permitted. The request for clarification and its response shall invariably be in writing.

28. Determination of Responsiveness

Prior to the detailed evaluation of bids, the PHPA-II will determine whether each technical bid is meeting the specified qualifying criteria as well as techno-commercially substantially responsive to the requirements of the Bidding Documents.

For the purpose of this Clause, a substantially responsive bid is one that conforms to all the terms and conditions of the Bidding Documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, or performance of the Works, or which limits in any substantial way, inconsistent with the Bidding Documents, the PHPA-II rights or the bidder’s obligations under the Contract, and the rectification of which deviation or reservation would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

The price bids of only those bidders will be opened who meets the specified qualifying criteria and whose Techno-Commercial bids have been found to be substantially responsive to the requirements of the Bidding Documents. The price bids of the bidders, whose Techno-Commercial bids have been declared non-



responsive, shall be returned unopened to the bidders. The price bids of the technically qualified bidders shall be opened on a date to be notified separately, in the presence of the intending bidders or their authorized representatives who wish to be present.

29. Corrections of Errors in Bids

Bids will be checked for any arithmetical error and will be corrected by the PHPA-II irrespective of concurrence of the bidder. The amount stated in the form of bid will be adjusted in accordance to procedure as mentioned below and shall be binding upon the bidder:

- i) Where there is a discrepancy between the amount in figures and words, the amount in words will prevail.
- ii) When there is a difference between the rates in figures and in words, the rate, which corresponds to, the amount worked out by the bidder, shall be taken as correct.
- iii) When the amount of an item is not worked out by the bidder or it does not correspond with the rate written either in figures or in words, then the rate quoted by the bidder in words shall be taken as correct.
- iv) When the rate quoted by the bidder in figures and in words tallies but the amount is not worked out correctly, the rate quoted by the bidder shall be taken as correct and not the amount.
- v) Where there is discrepancy between the total bid amount and sum of total costs the sum of total costs will govern.
- vi) If the bidder does not quote for any Item, it is presumed that he will execute the quantity mentioned in the BoQ free of cost and will be assumed that he has covered the price of this item in rate of other items quoted by him.

If the bidder does not accept the corrected amount of bid, his bid will be rejected and the bid security will be forfeited.

30. Evaluation and Comparison of Bids

The PHPA-II shall evaluate the bids determined to be substantially responsive. In evaluating bids, the PHPA-II shall determine for each bid, the Evaluated Bid Price by adjusting the Bid Price as follows:

- i. Making any correction for errors as per ITB Clause 29; and
- ii. Making an appropriate adjustment for any discount offered by bidder.

F. AWARD OF CONTRACT

31. Award Criteria

The PHPA-II will award the Contract to the bidder whose bid has been determined to be substantially responsive to the Bidding Documents and who has offered the lowest Evaluated Bid Price.



32. PHPA-II's Right to accept any Bid and to reject any or all Bids

The PHPA-II reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the PHPA-II's action.

33. Notification of Award

Prior to the expiry of the period of bid validity prescribed by the PHPA-II or any extension thereof, the PHPA-II will notify the successful bidder by "Letter of Award" (LOA) that his bid has been accepted.

This Letter of Award shall contain the contract price payable to the successful bidder in consideration of the execution, completion and maintenance of the Works by the successful bidders prescribed in the Contract (hereinafter and in the Conditions of Contract called "the Contract Price").

The letter of award will constitute part of the Contract agreement.

34. Signing of the Contract

Within 30 (Thirty) days of receipt of the Letter of Award, on a date and time mutually agreed upon, or as specified in the letter of award the successful bidder or his authorized representative shall attend the office of the **Superintending Engineer, P&C Wing, PHPA-II, Bjimthangkha, Bhutan** for signing of the Contract Agreement.

Failure on the part of the successful bidder to comply with the above requirements will constitute sufficient grounds for the annulment of the award and forfeiture of the bid security.

35. Performance / Security Deposit

Within 30 (thirty) days of receipt of the notification of award from the PHPA-II, but not later than the date of the signing of the Agreement, the successful bidder shall furnish to the PHPA-II, a Performance Security an amount of 10%(Ten percent) of the Contract Price in accordance with the Conditions of the Contract. The Performance Security shall be provided in any one of the following forms:

- i. Bank Guarantee; or
- ii. Bankers certified cheque/cash warrant; or
- iii. Demand Draft.

The Performance Security provided by the successful bidder in the form of a Bank Guarantee, shall be in favour of Punatshangchu-II Hydroelectric Project Authority issued by the Bank of Bhutan or any scheduled Bank in Bhutan/India and shall be valid until a date thirty (30) days from the date of expiry of warranty of last commissioned equipment. The Bank Guarantee shall be as per Form No. 3, Section V- Forms.

Failure of the successful bidder to comply with this requirement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security.



36. Pre-Contract Integrity Pact

As per the norms of the Anti-Corruption Commission, a constitutional body of the Royal Govt. of Bhutan, the Supplier shall have to sign a Pre-Contract Integrity Pact as per format enclosed as **Form V, Section V**.



SECTION III – GENERAL CONDITIONS OF CONTRACT



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Clause-1 Definitions

In the Contract, as hereinafter defined, the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

- i) “PHPA-II”/ “Purchaser”/ “Project Authority” means the Punatsangchhu-II Hydroelectric Project Authority and the legal successor in title to the PHPA-II who will employ the Contractor.
- ii) “RGoB” means the Royal Government of Bhutan.
- iii) “Tender/Bid, tenderer/bidders” means synonymous throughout this contract document.
- iv) “Contractor”/ “Supplier” means the person or persons, firm or company, group of firms or Joint Venture, whose bid has been accepted by the PHPA-II and includes the Contractor’s personal representatives, successors and permitted assigns.
- v) “Employer/Department/Authority” shall mean Punatsangchhu-II Hydroelectric Project Authority and include duly authorized representative or any other person empowered on behalf of PHPA-II to discharge all or any of its function.
- vi) “Engineer-in-Charge”(EIC) means the Engineer-in-Charge appointed from time to time by the PHPA-II and notified in writing to the Contractor to act as the Engineer-in-Charge for the purposes of the Contract.
- vii) “Engineer-in-Charge’s Representative” means any Resident Engineer or assistant of the Engineer-in-Charge appointed from time to time by the PHPA-II or the Engineer-in-Charge to perform the duties set forth in Clause-2 hereof, whose authority shall be notified in writing to the Contractor by the Engineer-in-Charge.
- viii) “Works” shall include both Permanent Works and Temporary Works.
- ix) “Contract” means the Conditions Governing the Contract, Technical Specifications, Drawings, priced Bill of Quantities, Letter of Award and the Contract Agreement.
- x) “Contract Price” or “Contract value” means is the price stated in the Letter of Award.
- xi) “Specifications” means the Technical Specifications and other Specifications referred to in the Bidding Documents and any modification thereof or addition thereto or deletion there from as may, from time to time, be furnished/decided by PHPA-II and/or submitted by the Contractor and approved in writing by the Engineer-in-Charge.
- xii) “Drawings” means the drawings referred to in the Specifications and any modification of such drawings approved in writing by the Engineer-in-Charge and such drawings, as may, from time to time, be furnished by PHPA-II and/or submitted by the Contractor and approved in writing by the Engineer-in-Charge.

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- xiii) "Schedule" referred to in these conditions shall mean relevant schedule(s) annexed to these tender documents or the standard schedule mentioned in Section V with amendments thereto, if any.
- xiv) "Site" means the land and other places on, under, in or through which the Permanent Works or Temporary Works, designed by the Engineer-in-Charge are to be executed and any other lands and places provided by the PHPA-II for the purposes of working space or any other purpose as may be specifically designated in the Contract or subsequently approved as forming part of site.
- xv) "Approved" means approved in writing, including subsequent written confirmation of previous verbal approval and "approval" means approval in writing, including as afore said.
- xvi) "GoI" means Government of India.
- xvii) "Letter of Award" means the letter from the PHPA-II conveying acceptance of the bid subject to such reservations as may have been stated therein.
- xviii) "Day" means a day from midnight to midnight.
- xix) "Month" means from the beginning of a given date of a calendar month to the end of the preceding date of the next calendar month.
- xx) "Week" means seven consecutive days.
- xxi) "Rupees" means Rupees in Indian Currency.
- xxii) "Ngultrum" means Ngultrum in Bhutanese Currency.
- xxiii) Words in singular number shall include the plural number and vice-versa where the context so requires. "He" shall include "She" and vice-versa.
- xxiv) "Cost" mean all expenditure properly incurred or to be incurred whether on or off the site including overhead and other charges allocable thereto but does not include any allowance for profit.
- xxv) The "Goods" means all the equipment, machinery all their accessories and/or other materials, etc. which the Contractor is required to supply to PHPA-II under the scope of Contract, for execution of all works in totality.
- xxvi) "Services" means services ancillary to the supply of Goods such as transportation and insurance and any other incidental services such as installation, performance of on-site erection, testing, painting, commissioning for the supplied goods, training and other such obligations of the Contractor covered under the Contract.

The headings in these conditions of the Contract shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract.



Clause-2 Duties and Powers of Engineer-in-Charge and Engineer-in-Charge's Representative(s)

- i) The Engineer-in-Charge shall carry out such duties in issuing decisions, certificates and orders as are specified in the Contract.
- ii) The Engineer-in-Charge's representative(s) shall be responsible to the Engineer-in-Charge, and his duties are to watch and supervise the works and to test and examine any materials to be used or workmen employed in connection with the Works. He shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract nor except as expressly provided hereunder or elsewhere in the Contract, to order any Work involving delay or any extra payment by the Engineer-in-Charge, nor to make any variation of or in the Works.
- iii) The Engineer-in-Charge may, from time to time in writing, delegate to the Engineer-in-Charge's Representative(s) any of the powers and authorities vested in the Engineer-in-Charge and shall furnish to the Contractor a copy of all such written delegations of Powers and authorities. Any written instructions or approval given by the Engineer-in-Charge's Representative(s) to the Contractor within the terms of such delegation, but not otherwise, shall bind the Contractor as though it had been given by the Engineer-in-Charge. Provided always as follows:
 - a) Failure of the Engineer-in-Charge's Representative(s) to disapprove any Work or materials shall not prejudice the powers of the Engineer-in-Charge thereafter to disapprove such Work or materials and to order the pulling down, removal or breaking up thereof.
 - b) If the Contractor is dissatisfied by reason of any decision of the Engineer-in-Charge's Representative(s), he shall be entitled to refer the matter to the Engineer-in-Charge, who shall thereupon confirm, reverse or vary such decision.

Clause-3 Assignment

The Contractor shall not assign the Contract or any part thereof, or any benefit or interest therein or there under, otherwise than by a charge in favour of the Contractor's bankers of any money due or to become due under this Contract, without the prior written consent of the PHPA-II.

Clause-4 Sub-letting

The Contractor shall not sub-let any part or whole of the Works.

Clause-5 Language and Law

- i. The Contract documents shall be drawn up in English. All correspondence and documents relating to the bid, exchanged by the bidder and the PHPA-II, shall be submitted in the prescribed form in English. All supporting documents and printed literature in connection with the bid shall be preferably in English.

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- ii. The law to which the Contract is to be subject and according to which the Contract is to be construed shall be of the Kingdom of Bhutan.
- iii. Documents Mutually Explanatory
Several documents forming the Contract are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies, the documents shall take precedence in the order in which they are set out in the Proforma of Agreement (Form No. 2, Section V-Forms).

Clause-6 Drawings

- i. Custody of Drawings

The drawings shall remain in the sole custody of the Engineer-in-Charge, but two copies thereof shall be furnished to the Contractor free of charge. The Contractor shall provide and make, at his own expense, any further copies required by him. At the completion of the Contract, the Contractor shall return to the Engineer-in-Charge all drawings provided under the Contract.

- ii. One copy of drawings to be kept at site

One copy of the drawings, furnished to the Contractor as aforesaid, shall be kept by the Contractor at the Site and the same shall, at all reasonable times be available for inspection and use by the Engineer-in-Charge and the Engineer-in-Charge's Representative and by any other person authorized by the Engineer-in-Charge in writing.

- iii. Further drawings and instructions

The Engineer-in-Charge shall have full power and authority to supply to the Contractor from time to time, during the progress of the Works, such further drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and maintenance of the Works. The Contractor shall carry out and be bound by the same.

Clause-7 Contractor's General Responsibilities

- i) The Contractor shall, in accordance with the Contract and with due care and diligence, design, manufacture, assemble, test at manufacturer's Works before dispatch, transport to Jaigaon/ Phuentsholing, insure, assemble and erect, test and commission the equipment and carry out the Works within the Time for Completion. The Contractor shall also provide all necessary equipment and machinery, superintendence, labour and all necessary facilities required for completion of works.
- ii) The Contractor shall take full responsibility for the adequacy, stability and safety of all site operations and methods of execution, notwithstanding any approval by the Engineer-in-Charge.
- iii) The Contractor shall promptly inform the Engineer-in-Charge of any error, omission, fault and other defect in the specifications for the Works, which are discovered



when reviewing the Bidding Documents, or in the process of execution of the Works.

- iv) Where no specifications have been laid down, the materials used and the Work done shall conform to the relevant Specifications of I.S. Codes or as directed by the Engineer-in-Charge.
- v) All instructions and orders given by the Engineer-in-Charge at Site are to be maintained in the Site Instruction Book and shall be taken to have been conveyed to the Contractor for his compliance.
- vi) The Contractor shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to the final destination as indicated in the Contract.
- vii) The Contractor in accordance with the terms specified in the Contract shall make delivery of the Goods. The Contractor shall warrant that the goods supplied under the Contract are new, unused, of most recent or current models and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

Clause-8 Contract Agreement

The Contractor shall, when called upon so to do, enter into and execute a Contract Agreement, to be prepared and completed at the cost of the PHPA-II in the Proforma annexed, with such modification as may be necessary.

Clause-9 Performance Security

- i) For the due and faithful performance of the Contract, the Contractor shall furnish to the PHPA-II a Performance Security in one of the following forms:
 - i. Bank Guarantee, or
 - ii. Bankers certified cheque/cash warrant, or
 - iii. Demand Draft.

The amount of the bank guarantee shall be **10%(ten percent)** of the Contract Price. The bank guarantee shall be issued by the Bank of Bhutan or any Scheduled Bank in Bhutan/ India. The cost of complying with the requirements of this Clause shall be borne by the Contractor unless the Contract otherwise provides.

- ii) The proceeds of the Performance Security shall be payable to PHPA-II as compensation for any loss, resulting from Contractor's failure to complete his obligation under the Contract.
- iii) The Performance Security shall be valid until 30 days after the date of expiry of warranty of last commissioned equipment.
- iv) Should the Contract period, for whatever reasons be extended, the Contractor, on receipt of written request from the Engineer-in-charge, shall at his own cost get the validity period of Performance Security extended and shall furnish the



extended/revised Performance Security to the Engineer-in-charge before the expiry date of the Performance Security originally furnished.

- v) The PHPA-II shall release the Performance Security within 30 days after the expiry of the warranty period of the last commissioned equipment.

Clause-10 Inspection of Site

The Contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have satisfied himself, so far as is practicable, before submitting his Bid, as to the form and nature thereof, including the subsurface conditions, the hydrological and climatic conditions, the extent and nature of work, and materials necessary for the completion of the Works, means of access to the Site and the accommodation he may require and, in general, shall be deemed to have obtained all necessary information, subject as above mentioned, as to risks, contingencies and all other circumstances which may influence or affect his Bid.

Clause-11 Sufficiency of Bid

The Contractor shall be deemed to have satisfied himself before bidding as to the correctness and sufficiency of his Bid for the Works and of the rates and prices stated in the priced Bill of Quantities and the Schedule of Rates and Prices, if any, which Bid rates and prices shall, except insofar as it is otherwise provided in the Contract, cover all his obligations under the Contract, and all matters and things necessary for the proper execution/completion and maintenance of all the permanent works.

Clause-12 Works to be executed to the Satisfaction of Engineer-in-Charge

Save insofar as it is legally or physically impossible, the Contractor shall execute and maintain the Works in strict accordance with the Contract to the satisfaction of the Engineer-in-Charge and shall comply with and adhere strictly to the Engineer-in-Charge's instructions and directions on any matter whether mentioned in the Contract or not, touching or concerning the Works. The Contractor shall take instructions and directions only from the Engineer-in-Charge, or, subject to the limitations referred to in Clause-2 Duties and Powers of Engineer-in-Charge and Engineer-in-Charge's Representative(s) hereof, from the Engineer-in-Charge's Representative.

Clause-13 Programme to be furnished

- i) Within a period of 30 days, the Contractor after the acceptance of his Bid shall submit to the Engineer-in-Charge for his approval, a detailed work program in MS Project/ Primavera along with soft copies of same showing Works within the specified time schedule.
- ii) The programme shall all activities including but not limited to design, drawing, approvals, delivery, erection, testing, commissioning etc.
- iii) The submission to and approval by the Engineer-in-Charge or Engineer-in-Charge's Representative of such programs or the furnishing of such particulars shall not relieve the Contractor of any of his duties or responsibilities under the Contract.



Clause-14 Contractor's Employees

The Contractor shall provide and employ on the Site in connection with the execution and maintenance of the Works:

- a) only such technical assistants as are skilled and experienced in their respective trades and such sub-agents, foremen and leading hands as are competent to give proper supervision to the work they are required to supervise, and
- b) such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution and maintenance of the Works.
- c) experienced Safety Officer to maintain and supervise safety requirements at the site of Works. Safety standards shall be followed at all times during execution of the work.

Clause-15 Setting out

The Contractor shall be responsible for the true and proper setting out of the works in relation to original points, lines and levels of reference given by the Engineer-in-Charge in writing and for the correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith.

Clause-16 Watching and Lighting

The Contractor shall, in connection with the Works, provide and maintain at his own cost, all lights, guards, fencing and watching when and where necessary or required by the Engineer-in-Charge or the Engineer-in-Charge's Representative, or by any duly constituted authority, for the protection of the Works, or for the safety and convenience of the public or others.

Clause-17 Damage to Persons and Property

The Contractor, except if and so far as the Contract provides otherwise, shall indemnify the PHPA-II against all losses and claims in respect of injuries or damage to any persons or material or physical damage to any property whatsoever which may arise out of or in consequence of the execution and maintenance of the Works and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto except any compensation or damages for or with respect to injuries or damage to persons or property resulting from any act or neglect of the PHPA-II, his agent, servants or other Contractors, not being employed by the Contractor, or for 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 compensation as may be just and equitable having regard to the extent of the responsibility of the PHPA-II, its servants or agents or other Contractors for the damage or injury.



Clause –18 Upkeep of Site

- (i) During the progress of the Works, the Contractor shall keep the site reasonably free from all unnecessary obstructions and shall store or dispose of any Constructional plant and surplus materials and clear away and remove from the site any wreckage, rubbish or Temporary Works no longer required.
- (ii) In case the Contractor does not keep the area clean and if found necessary to get the area cleaned, the Engineer-in-Charge shall issue a notice of forty eight hours, and in the event of non-compliance by the Contractor, get the area cleaned by some other agency. The cost of such cleaning shall be borne by the Contractor. In case of rubbish accumulating due to deposition by more than one Contractor, the share of charges to be borne by the Contractors as indicated by the Engineer-in-Charge shall be final.

Clause –19 Materials and Workmanship

- i) Materials and Workmanship

The Contractor shall be responsible for arranging all the materials and worker required for execution of the Works. He shall be responsible for proper transportation and storage to the satisfaction of the Engineer-In-Charge and shall bear all related costs.

Any assistance that the PHPA-II/ Engineer-In-Charge can give to the Contractor for arranging the materials shall be provided on a 'no responsibility basis.'

- (ii) Quality of materials and Tests

The Contractor shall subject to the provisions of the Contract and with due care and diligence provide the goods of quality, kind and specifications as provided in the Contract. The Contractor shall produce to the Engineer-In-Charge, certified quality test reports in respect of the goods supplied by him. In case the goods supplied are not to the satisfaction of the Engineer-In-Charge and do not conform to the specifications laid in the Contract, the Engineer-In-Charge shall reject such goods and the cost and time incurred on such procurement shall be the responsibility of the Contractor.

Clause – 20 Pre-dispatch Inspection and Testing

The PHPA-II representatives (max. 3 personnel) shall inspect the goods at the premises of manufacturer or dealer before dispatch and during calibration of the instruments. The Contractor shall provide all necessary assistance required in connection with the inspection at no extra cost to PHPA-II.

The Engineer-in-Charge shall be entitled to test the materials to be supplied under the Contract. This shall take place on the Contractor's premises. When the Goods have passed the tests, the Engineer-in-Charge shall furnish to the Contractor a certificate or endorse the Contractor's test certificate to that effect.



If, as a result of the inspection or testing, the Engineer-in-Charge decides that any work is defective or otherwise not in accordance with the Contract, he may reject such work and shall notify the Contractor thereof immediately. The notice shall state the Engineer-in-Charge's objections with reasons.

The Contractor shall then, with all speed, make good the defect or ensure that any rejected work complies with the Contract.

Clause –21 Installation & Commissioning of Equipment

The Contractor shall be responsible for the true and proper installation and commissioning of the equipment as per drawings and as directed by the Engineer-In-Charge. The checking by the Engineer-In-Charge or the Engineer-In-Charge's Representative shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve the equipments. The detail of installation is provided under section-III: Technical Specifications of the Bidding Document.

Clause – 22 Suspension of Works, Transportation or Erection

(i) Order to Suspend

The Engineer-in-Charge may, at any time instruct the Contractor to:

- (a) Suspend progress of the Works, or
- (b) Suspend transportation of the Goods, if fabricated/ manufactured at a place other than on the site, which are ready for transportation to the site at the time specified in the programme, or if no time is specified, at the time appropriate for it to be transported, or
- (c) Suspend the erection of the Goods

When the Contractor is prevented from transporting and erecting of goods in accordance with the programme, the Engineer-in-Charge shall be deemed to have instructed a suspension, except when such suspension is caused by the Contractor's default.

The Contractor shall, during suspension, protect and secure the Works or Goods affected at the Contractor's Works or elsewhere or on the site, as the case may be, against any deterioration, loss or damage.

- (d) When the goods at Works are ready for dispatch and the transportation of such goods is suspended by PHPA-II, the payment Ex-Works shall be released against Bank Guarantee for an equal amount valid until a maximum period of 6 (Six) months.

(ii) Cost of Suspension

The additional cost, if any, incurred by the Contractor in protecting, securing and insuring the Works or the Goods in following the Engineer-in-Charge's instructions under **Sub-clause (i)** of this Clause and in resumption of the Work, shall be added to the Contract Price.



The Contractor shall not be entitled to be paid any additional costs if such suspension is necessary by reason of some default on the part of Contractor, or

The Contractor shall not be entitled to additional costs unless he notifies the Engineer-in-Charge of his intention to make such claim, within **30 (thirty)** days after receipt of the order to suspend progress or transportation or erection.

Clause –23 Time for Completion

The period of completion of the whole of the Work shall be **9 (nine) months** or such extended time as may be allowed under Clause –24 Extension of Time for Completion hereof. The period of completion shall be reckoned from the 30th day of issue of the Letter of Award to the Contractor by the PHPA-II.

Clause –24 Extension of Time for Completion

The Contractor may claim an extension of the Time for Completion, if the completion of the Works is delayed by any of the following causes:

- i) Extra or additional work ordered in writing under Clause – 29 Variations hereof.
- ii) Delay by any other Contractor engaged by the PHPA-II which affects this contract materially.
- iii) Any suspension of the Works under Clause – 22 Suspension of Works, Transportation or Erection hereof, except when due to the Contractor's default.
- iv) Any force majeure conditions

The Contractor shall give to the Engineer-in-Charge, notice of his intention to seek for an extension of time within 14 days of the circumstances becoming known to the Contractor for such an extension. The notice shall be followed as soon as possible with full supporting details.

The Engineer-in-Charge will evaluate such details and grant the Contractor from time to time, either prospectively or retrospectively, such extension of Time for Completion as may be justified provided always that, the circumstances leading to the extension of Time for completion are other than through a default of the Contractor. The Engineer-in-Charge shall notify the Contractor accordingly.

Clause – 25 Liquidated Damages for Delay

- i) If the Contractor shall fail to achieve completion of the Works within the time prescribed by Clause –23 Time for Completion hereof, then the Contractor shall pay to the PHPA-II, the sum stated in sub-clause (ii) of this Clause as liquidated damages for such default for each day or part thereof which shall elapse between the time prescribed by Clause –23 Time for Completion hereof and the date of certified completion of the Works. The PHPA-II may without prejudice to any other method of recovery, deduct the amount of such damages from any money in its hands, due or which may become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.



- ii) The Liquidated damages penalty will be charged for all delays due to the fault of the Contractor at the rate of 0.1 % of contract value per day beyond the stipulated period of completion including authorized extensions if any, and shall not exceed the 10% of the initial contract price.

Clause -26 Tests on Completion

(i) **Notice of Tests**

The Contractor shall give to the Engineer-in-Charge, **seven (7) days** notice of the date after which he will be ready to make the Tests on Completion hereinafter called the Tests. Unless otherwise agreed, the Tests shall take place within **seven (7) days** after the said date, on such day or days as the Engineer-in-Charge notifies the Supplier.

(ii) **Time for Tests**

If the Engineer-in-Charge fails to notify a time after having been asked to do so, or does not attend at the time and place notified, the Contractor shall be entitled to proceed with the Test in his absence and such tests shall be deemed to have been carried out in the presence of Engineer-in-Charge.

(iii) **Delayed Tests**

If the Tests are being unduly delayed by Contractor, the Engineer-in-Charge may, by a notice, require the Contractor to make the Tests within **twenty one (21) days** after the receipt of such notice. The Contractor shall make the Tests on such days within that period as the Contractor may fix and of which he shall give notice to the Engineer-in-charge.

If the Contractor fails to make the Tests within **twenty-one (21) days**, the Engineer-in-Charge may himself proceed with the Tests. All Tests so made by the Engineer-in-Charge shall be at the risk and cost of the Contractor and the cost thereof shall be deducted from the Contract Price. The Tests shall then be deemed to have been made in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

(iv) **Facilities for Tests on Completion**

Except where otherwise specified, the Contractor shall provide, at his cost, such labour, materials, instruments electricity, fuel, apparatus, and other necessary equipments as may be required to carry out the Tests.

(v) **Re-Testing**

If the Works or any section fails to pass the Tests, the Engineer-in-Charge may require such Tests to be repeated on the same terms and conditions. The costs on account of repetition of the Tests under this **Sub-Clause** hereof shall be borne by the Contractor.

(vi) **Disagreement to Results of Tests**

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If the Engineer-in-Charge and the Contractor disagree on the interpretation of the Test results, each shall give a statement of his views to the other within **fourteen (14) days** after such disagreement arises. The statement shall be accompanied by all relevant evidence. In case of such disagreement, the will be discussed between the Contractor and the PHPA-II and the decision will be taken accordingly.

(vii) Consequences of Failure to Pass Tests on Completion

If the Works or any section fails to pass the Tests on the repetition thereof under **Sub-Clause (v)** of this **Clause**, the Engineer-in-Charge shall be entitled to:

- (a) order one further repetition of the Tests under the conditions of **Sub-Clause (v)** of this **Clause**, or
- (b) reject the Works or section in which event the Contractor shall replace that part of work or section without any cost to the purchaser within a reasonable time without affecting the completion schedule. Testing on this part of work or section shall be performed in the presence of Engineer-in-Charge or his representatives as per procedure specified above.

(viii) Test Certificate

As soon as the Works or any section thereof has passed the Tests, a joint protocol shall be signed based upon which the Engineer-in-Charge shall issue a Certificate to the Contractor to that effect within seven days of signing of protocol and submission of all relevant documents.

Clause – 27 Taking Over

(i) Taking over

The Works shall be taken over by the PHPA-II when they have been completed in accordance with the Contract, except in minor respects that do not affect the use of the Works for their intended purpose, have passed the Tests on Completion and a Taking Over Certificate has been issued in accordance with **Sub-Clause (ii)** of this **Clause**.

(ii) Taking Over Certificate

The Contractor may apply to the Engineer-in-Charge for issue of a Taking Over Certificate not earlier than **fourteen (14) days** before he proposes to carry out commissioning and acceptance tests on each section.

The Engineer-in-Charge shall, **within twenty one(21) days** after the receipt of the Contractor's application either:

- (a) Issue the Taking Over Certificate to the Contractor stating the date on which the Works were complete and ready for taking over, or
- (b) Reject the application giving his reasons and specifying the work required to be done by the Contractor to enable the Taking Over Certificate to be issued.



Clause – 28 Warranty

The Supplier warrants that the Goods supplied under the Contract are new, unused, of most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further warrants that all goods supplied under the Contract shall have no defect arising from design, material or workmanship or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in conditions prevailing in Bhutan.

Each equipment shall be warranted against any manufacturing defects and / or improper performance for a period of **18 (eighteen) months** after dispatch or **12 (twelve) months** after commissioning, whichever is later.

The PHPA-II shall notify the Supplier in writing of any claims arising under this warranty. Upon receipt of such notice, the Supplier shall with all reasonable speed repair or replace the defective Goods or parts thereof without costs to the PHPA-II.

If the Supplier having been notified fails to remedy the defect(s) within a reasonable period, the PHPA-II may proceed to take such remedial action may be necessary at the Supplier's risk and cost and without prejudice to any other rights, which the PHPA-II may have against the Supplier under the Contract.

Clause – 29 Variations

- i) The Engineer-in-Charge shall make any variation in the form, quality or quantity of the Works or any part thereof or substitution for original specifications, design, drawings and instructions that may, in his opinion be necessary and for that purpose, or if for any other reason it shall, in his opinion be appropriate, he shall have power to order the Contractor to do and the Contractor shall carry out the same as provided in this Contract.
- ii) The unit rate entered in Bill of Quantities for the individual items shall apply for:-
 - a) The quantities of work increased by not more than fifty percent (50%) of the quantities provided in the Bill of Quantities.
 - b) When such deviations exceeds the above limit then the rates for such variations and the altered, additional and substituted item shall be paid on the basis of actual expenditure relating to that item including cost of materials, fabrication/machinery handling and installation at site plus 20% (twenty percent) towards overheads including profits.

Clause – 30 Expat Workers

- i) The Contractor shall submit to the PHPA-II, the details and bio-data of all personnel he proposes to bring into Bhutan for the performance of the Works under the Contract. Such data for each person shall, besides the proof of his Indian citizenship (either passport or voter identity card only will be acceptable), contain the name, his present address, his assignment and responsibility in connection with the Works, and a short resume of his qualifications, experience etc. in relation to the Works to be performed by him.

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- ii) No person brought to Bhutan for the purposes of the Works shall be repatriated without the consent of the PHPA-II in writing, which shall be based on a written request from the Contractor for such repatriation giving reasons for such an action to the Engineer-in-Charge. The PHPA-II may give permission for such repatriation provided it is satisfied that the progress of Works shall not suffer due to such repatriation/replacement.
- iii) The Contractor and his expatriate personnel shall observe/respect all Bhutanese Acts, Laws, Rules and Regulations and shall not in any way interfere with Bhutanese political and religious affairs and shall meticulously follow any other Rules and Regulations which the RGoB, the PHPA-II and the Engineer-in-Charge may impose on them from time to time. The Contractor's expatriate personnel shall work and live in close co-operation with their co-workers and the community and shall not engage themselves in any other employment either part time nor shall they take part in any local politics.
- iv) The PHPA-II will assist the Contractor, to the extent possible, in obtaining necessary permits to travel to Bhutan and back by issue of necessary certificates and other information needed by the RGoB and other agencies.
- v) All the expenses related to importing of expatriate personnel shall be borne by the Contractor.

Clause –31 Payment Terms & Mode of Payment

i) Payment Terms

- a) Advance Payment: Advance to the extent of **10% (Ten percent)** of the Contracted Price of Goods can be granted against presentation of commercial invoice and an irrevocable Bank Guarantee for an equal amount valid until completion of delivery of goods at site, in the prescribed format (**form 5, section-V**) which shall be suitably extended, if required.

The advance is recoverable and the deduction of the advance shall be made on prorata percentage basis from the interim payments certified by the Engineer-in-Charge under the Contract. The deduction shall commence in the next Interim Payment Certificate following that in which the total of all such payments to the Contractor has reached 10% (ten percent) of the Contract Price until such time as the advance has been fully repaid, provided always that the entire amount of advance shall be completely deducted by the time the total of all payments to the Contractor has reached 80% (eighty percent) of the Contract Price.

- b) 80% of the Contracted Price of Goods FOR Jaigaon/ Phuentsholing shall be paid on receipt of goods at Jaigaon/ Phuentsholing within 30 days of submission of clear bills as progressive payment.
- c) 90% of Contract Price in respect of erection, testing and commissioning of the equipment shall be paid as progressive payment within 30 days of commissioning.



- d) The balance payment of the Contract Price for supply, erection, testing and commissioning shall be made after successful commissioning of all equipment under the Contract and within 60 days of issue of Certificate of Completion.
 - e) 3% Contractor's tax in lieu of income tax shall be deducted from every interim payment certified by the Engineer-In-Charge in Terms of Bhutan Income Tax Rules as applicable at present in Bhutan.
- ii) **Mode of Payment**
Payments shall be made at site through cheque and Telegraphic Transfer/ RTGS; the charges for the transfer shall be borne by the Contractor.

Clause – 32 Care of the Works and Passing of Risk

i) **Contractor's Responsibility for the Care of the Works**

The Contractor shall be responsible for the care of the Works or any section thereof from the Commencement Date until the Risk Transfer Date applicable thereto under **Sub-Clause (ii)** of this Clause.

The Contractor shall also be responsible for the care of any part of the Works upon which any outstanding work is being performed by the Contractor during the Defects Liability Period until completion of such outstanding work.

ii) **Risk Transfer Date**

The Risk Transfer Date in relation to the Works or a section thereof is the earliest of either:

- (a) the date of issue of the Taking Over Certificate, or
- (b) the date when the Works are deemed to have been taken over in accordance with Clause – 27 Taking Over hereof, or
- (c) the date of expiry of the notice of termination when the Contract is terminated by the PHPA-II in accordance with the Conditions of the Contract.

iii) **Passing of Risk of Loss or of Damage to the Works**

The risk of loss or of damage to the Works or any section thereof shall pass from the Contractor to the PHPA-II on the Risk Transfer Date applicable thereto.

iv) **Loss or Damage Before Risk Transfer Date**

Loss of or damage to the Works or any section thereof occurring before the Risk Transfer Date shall:

- (a) to the extent caused by any of the Contractor's risks, be made good forthwith by the Contractor at his own cost, and
- (b) to the extent caused by any of the PHPA-II's Risks, be made good by the Contractor at the PHPA-II's expense if so required by the Engineer-in-Charge **within thirty (30) days** after the occurrence of the loss or damage. The price for making good such loss and damage shall be in all circumstances reasonable.

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and shall be agreed by the PHPA-II and the Contractor, or in the absence of agreement, the PHPA-II shall fix a reasonable price which shall be final and binding on the Contractor.

v) Loss or Damage after Risk Transfer Date

After the Risk Transfer Date, the Contractor's liability in respect of loss of or damage to any part of the Works shall, except in the case of gross misconduct, be limited to making good forthwith loss or damage caused by the Contractor during the Warranty Period.

Clause – 33 Insurance

- i. The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation and delivery till Jaigaon, India/Phuentsholing, Bhutan.
- ii. The Contractor shall take insurance cover for the period from the date of start to the date of completion to cover against death or injury to his workmen and the third party insurance. .

Clause – 34 Force Majeure

(i) Definition of Force Majeure

Force Majeure means any circumstances beyond the control of the parties, including but not limited to:

- (a) war and other hostilities, (whether war be declared or not), invasion, act of foreign enemies, requisition or embargo;
- (b) rebellion, revolution, insurrection, military or usurped power and civil war;
- (c) ionising radiation or contamination by radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives, or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;
- (d) riot, commotion or disorder, except where solely restricted to employees of the Contractor or of his sub-Contractors.
- (e) Earthquake and natural calamities affecting Contractor's work.

(ii) Effect of Force Majeure

Neither party shall be considered to be in default or in breach of his obligations under the Contract to the extent that performance of such obligations is prevented by any circumstances of Force Majeure which arise after the date of the Letter of Award or the date when the Contract becomes effective, whichever is the earlier.

(iii) Notice of Occurrence

