



## KERALA STATE ELECTRICITY BOARD Ltd

(Incorporated under the Companies Act, 1956)

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### ABSTRACT

Review and refinement of General Conditions of Contract and Pre-Qualification conditions applied to Electro mechanical works of Hydro projects - Sanctioned - Orders issued.

### Corporate Office (SBU - G/E)

B.O.(DB) No.211 /2024 (DGE/G2/AEE3/GCC-E&M/2024 - Part (1))  
Thiruvananthapuram.

Dated:06-05-2024

- Read :
1. Note No. DGE (G2)/AEE3/Tender Modifications/2023-24 dated 07.03.2024 of Chairman and Managing Director to the Board of Directors.
  2. Proceedings of the 76<sup>th</sup> meeting of the Board of Directors held on 13.03.2024 vide (Agenda 19-03/2024).

### ORDER

The Kerala Power System is blessed with the Hydro Electric Projects carried out by KSEBL. The projects were carried out by inviting tenders either by EPC mode, combined tenders for Civil and Electro Mechanical (E&M) or separate tenders for Civil and E&M portions. After year 2010 many Small Hydro Electric Projects are commissioned but many of the contracts are not closed till now. This is due to the fact that as per tender condition, by imposing generation loss, pending supply of spares etc., contractor is liable for balance amount. But due to the absence of clarity in the present clauses, contractor is hesitant to oblige the demand from KSEBL. Hence the completion certificate is not issued, and performance BGs are not released, and the cases get unresolved. The examples of projects whose cases to be closed are Vilangad SHEP (3x2.5 MW), Vellathooval SHEP (2x1.8MW), Perumthenaravi SHEP (2x3 MW), Ranni Perunad SHEP (2x2 MW) Sholayar (3x18 MW) Poringalkuthu SHEP (1x24 MW). Also, there are issues raised in the on-going projects like Thottiyar HEP (40 MW) and Pazhassisar SHEP (7.5 MW). Being the situation as above, though KSEBL is floating lot of tenders for implementation of Hydroelectric Power Projects, it is seen that there is lack of participation from reputed bidders and hence finding it difficult to get more competitive rates. This is due to inherent complexities involved in the existing tender conditions such as Generation loss calculation, Efficiency loss calculation, pending supply of spares, date of taking over, Price escalation, etc.

In the existing performance guarantee clause, the term reasonable time often creates arguments between contractor and KSEBL as it is written that KSEBL shall decide the reasonable time for rectification taking into account various aspects. Due to this issue of generation loss in completed projects like Vilangad, Vellathooval, Perunthenaravi and Sholayar etc. could not be sorted out. The clause of certificate of completion and taking over also make arguments between contractor and KSEBL. Here also the completion of all works is decided by KSEBL and even though the machine generates electricity the machine may not be taken over due to incomplete punch points which may not directly affect the running of the machine. Due to the absence of clarity in the above clause, the date of taking over is not agreed by contractor in projects like Poringalkuthu (1x24) SHEP, Sholayar RMU etc. Like above clauses, there are unattractive clauses to contractors like terms of payment, dues from the contractor, right to withhold payments absence of price escalation, absence of clauses like resolution of disputes, suspension of works by contractor, termination rights by contractor, definition of reasonable period, etc. which prevents them from bidding. The present terms of payment do not allow LC payment and there is no price escalation provision. If LC payment is given, contractor will have enough cash flow



to streamline the works. Also due to absence of price escalation clause, bidder will quote non-realistic rates and KSEBL will have to pay excess amount.

Due to absence of price escalation clause of E&M works, the contractors in on-going projects like Thottiyar, Pzhassisagar, etc. are frequently requesting to address the issue where the works is slowed down not due to their faults. Also, in Poringalkuthu 1x24 MW, the E&M contractor had to wait for years up to 2022 to commission the project due to slowdown of civil works. Also due to the clauses of interlinking projects (right to withhold payments and dues from the contractor) bidder feels that KSEBL will penalize in one project due to some issues in another project. They are of the view that each project is unique and independent and cannot be interlinked. The existing clauses like suspension of works is one sided and KSEBL has the only right to suspend the work due to unavoidable situation and does not treat contractor with equal rights.

Due to the weak participation of bidders and stoppage of works due to poorly qualified contractors both financially and technically, KSEBL suffers non completion of projects in the scheduled time and causes revenue loss. The situation aggregates especially in the present power crisis, and it is high time to switchover to the prevailing conditions in other utilities like NHPC. Having noted the precarious situation, the Chairman and Managing Director, KSEBL had directed Generation-SBU, vide notes ranging from 27.08.2022 to 22.11.2023, to put up proposals after studying the bidding procedures of central PSUs and other DISCOMs and amend the standard bidding document. As per the Note dated 22.11.2023, the Chairman and Managing Director had directed to conduct a workshop participating all prospective bidders to collect the modifications proposed by them against the existing tender conditions in KSEBL. One day workshop was conducted on 13.12.2023 for taking valuable recommendations/suggestions from various stake holders.

In order to have a system for all the items and services procured by KSEBL and all the turnkey contracts given by KSEBL, the contracting agencies were requested to give valuable inputs for formulating a well-balanced tender document for electro-mechanical tenders of Hydroelectric Power Projects. In the workshop the contracting agencies were requested to present the difficulties that prevent them from bidding and offer solutions for the same. Also, requested them to present the equivalent specification for the concerned clauses of other PSUs like THDCL, NHPC, etc. as a solution. The contracting agencies like M/s. Flovel Energy Private Ltd, Andritz Hydro Pvt. Ltd., Voith Hydro Private Limited, Kirloskar Brothers Pvt. Limited, Shri. Saravana Industries Pvt. Ltd. have put forward their suggestions. Based on the suggestions received from various stake holders on review and refinement of GCC and prequalification conditions applied to E&M works, the modification in some commercial as well as technical conditions is proposed for receiving more competitive bidders.

The existing conditions, proposals from various bidders, existing condition for the same in NHPC and other utilities and proposal of KSEBL with justification in a tabular format was placed before the Board of Directors as per the note read as 1<sup>st</sup> above and the following was decided in respect of the conditions in serial No. 1 to 26.

#### **1. Advance Payment: Clause 5.5.14**

The Board agree to adopt the corresponding clause in the NHPC contract for advance payment as under:-

"1. An advance payment maximum of 10% of Contract Price (for supply portion only) may be released to the Contractor. Such advance payment shall be interest bearing which shall be at Long Term (3 years) MCLR of SBI plus margin of 150 basis points above MCLR as on 28 days prior to the last date of Bid Submission calculated on daily basis. 2. Five percent (5%) of the total EXW amount (as per Price Schedule) as an interest-bearing advance payment, if opted for, against receipt of invoice, Performance Security and an irrevocable Advance Payment Security equivalent to 110% of advance amount made out in favour of the Employer".

#### **2. Payment: Clause 5.2.3**

"Payment for Electro Mechanical Works - For Supply

1) 10 % of ex-works price as interest bearing advance



2) 80 % of ex-works price (90% if advance is not availed).

3) Three percent (3%) of the total or pro rata (machine wise) EXW amount (as per Price Schedule) upon issue of Completion Certificate. Three percent (3%) of the total or pro rata (machine wise) EXW amount (as per Price Schedule) upon issue of the Operational Acceptance Certificate. Three percent (3%) of the total or pro rata (machine wise) EXW amount (as per Price Schedule) upon issue of the Taking Over Certificate. Balance one Percent (1%) of the Total Contract Price (as per Price Schedule) shall be paid after handing over of documents as specified in 'Particular Technical Specification' & 'General Technical Specification' and completion of outstanding items, if any".

### **3. Payment: Clause 5.2.3**

Board agreed to adopt the proposed clause for payment for services based on the modification suggested by Director in charge of Finance and HRM as under:-

"Eighty percent (80%) (as per Price Schedule), of the measured value of work performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Employer's authorization of the Contractor's application, will be made monthly. Price variation, if any, shall be payable at this stage. Six percent (6%) (as per Price Schedule), of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate. Six percent (6%) (as per Price Schedule), of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the contractor's monthly applications, upon issue of the Operational Acceptance Certificate. Six percent (6%) (as per Price Schedule), of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Taking Over Certificate. Balance two Percent (2%) (as per Price Schedule), of the Model Test & Installation services shall be paid after handing over of documents as specified in 'Particular Technical Specification' & 'General Technical Specification' and completion of outstanding items, if any".

### **4. Certification of completion and takeover Clause 5.1.12**

The Board agreed to adopt modified clause as under:-

"Certification of completion and takeover clause 5.1.12

1. Taking-Over Certificate means the certificate to be given by the Employer / Engineer In-Charge to the Contractor.

2. The Facilities or part thereof shall be taken over by the Employer when they have been completed in accordance with the contract, except in minor respects that do not affect the use of the Facilities or part thereof for their intended purpose, the activities of pre-commissioning, commissioning and trial runs have been accomplished successfully and have passed all the tests (including Operational Acceptance Test) in accordance with the contract and a Taking- Over Certificate has been issued or deemed to have been issued in accordance with the Sub-Clause 3 below.

3. The Contractor may apply by notice to the Engineer- In Charge for a Taking-Over Certificate not earlier than 14 days before the Facilities or part thereof will in the Contractor's opinion be complete and ready for taking over after the issue of an Operational Acceptance Certificate as per sub-clause 25.3 of GCC (NHPC clause). The Engineer In-Charge shall within 28 days after the receipt of the Contractor's application either: (a) issue the Taking-Over Certificate to the Contractor with a copy to the Employer stating the date on which the Facilities 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. (c) If the Engineer In-Charge fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days he shall be deemed to have issued the Taking-Over Certificate on the last day of that period. Issue of the Taking-Over Certificate will mark the beginning of the Defects Liability Period. The Contractor shall be entitled to apply for and obtain Taking-Over Certificate Generating unit wise. The Sequence of Activities to obtain Taking-Over Certificate shall be as per annexure".



## 5. Escalation and Revision of Rates Clause 5.2.16

The Board agreed modified clause as under:-

"Escalation and Revision of Rates Clause 5.2.16: Price Adjustments will be applicable only for the works, which are carried out within the Time for Completion. However, if the Contractor fails to complete whole of the Works within the Time for Completion, adjustment of prices thereafter until the date of completion of the Works shall be made using either i. the indices or prices applicable on the date 49 days prior to the scheduled date of completion or ii. current indices of prices; whichever is more favourable to KSEBL. Price variation is not applicable for initial 6 months. Price variation is not applicable for E&M works with contract period of 18 months or less. Prices payable to the Contractor, in accordance with the Contract, shall be subject to adjustment during the performance of the Contract to reflect the changes occurring in cost of labour and material components, in accordance with the following formulae: Price Adjustment Formula for Supply of Plant and Equipment. Prices payable to the Contractor, in accordance with the Contract for Supply of Plant and Equipment, shall be subject to adjustment in accordance with the following PV formulae:

$P1 = P_o \times (0.15 + 0.30 L1/L0 + 0.55 M1/M0) - P_o$  in which: P1 = adjustment amount payable to the Contractor P<sub>o</sub> = Hundred Percent (100%) of Contract Price minus amount of advance, if drawn L<sub>o</sub>, L1 = All India Average Consumer Price Index for Industrial Workers, General Index as published in the Indian Labour Journal of 'Labour Bureau' Ministry of Labour, Govt. of India, on the base date and the date for adjustment, respectively M<sub>o</sub>, M1 = Material indexes for the major raw materials in the country of origin on the base date and on the date of adjustment respectively. Price Adjustment Formula for Installation of Plant and Equipment Prices payable to the Contractor, in accordance with the Contract for Installation of Plant and Equipment including transportation shall be subject to adjustment in accordance with the following formula:

$P1 = P_o \times (0.20 + 0.60 L1/LO + 0.15 F1/FO + 0.05 M1/MO) - P_o$  in which: P1 = adjustment amount payable to the Contractor P<sub>o</sub> = Hundred Percent (100%) of Contract price L<sub>o</sub> = All India Average Consumer Price Index for Industrial Workers, General Index as published in the Indian Labour Journal of 'Labour Bureau', Ministry of Labour, Govt. of India, on the base date. L1 = All India Average Consumer Price Index of Industrial Workers, General Index as published in the Indian Labour Journal of 'Labour Bureau', Ministry of Labour, Govt. of India, on the date of adjustment. F<sub>o</sub> = Actual all-inclusive price of diesel at Delhi as fixed by Indian Oil Corporation on the base date. F1 = Actual all-inclusive price of diesel at Delhi as fixed by Indian Oil Corporation calculated on the date of adjustment. M<sub>o</sub> = Wholesale Price index for 'Manufacture of other Non-metallic Mineral Product' on the base date, as published in the monthly Bulletin 'Wholesale Price indices' (2011-DGE/G2/AEE3/GCC-E&M/2024-Part(1) I/36926/2024 12=100) issued by the Office of Economic Adviser, Ministry of Commerce & Industry, New Delhi. M1 = Wholesale Piece Index for 'Manufacture of other Non-metallic Mineral Product' on the date of adjustment as published in the monthly Bulletin 'Wholesale Price indices' (2011-12=100) issued by the Office of Economic Adviser, Ministry of Commerce & Industry, New Delhi. The base date shall be thirty (30) days prior to date of submission of bid".

## 6. Resolution of Disputes (Arbitration) Clause 5.9.6

Existing provision: Arbitration has been totally banned by the Government. No arbitration of any disputes on contracts will be allowed under any circumstance. In case of disputes between the contractor and the KSEBL, the KSEBL / Agreement authority will give the final decision.

The Board decided to seek approval of Government for including Arbitration clause in contracts for Generation projects executed by KSEBL.

## 7. Commencement and Completion Clause 5.1.11

Existing provision: The work shall be commenced on or before thirty days from the date of issue of letter of acceptance vide clause 4.17. However, the period of completion of work as stipulated vide clause 2.2.3 will be reckoned from thirty days after the date of issue of letter of acceptance and time of completion will be worked out accordingly. All the works stipulated under the scope of this contract



shall be completed in all respects, supplies made, services provided and final cleaning up done and required testing shall be completed and commissioned before the expiry of the time of completion thus worked out, unless the time of completion is postponed and period of completion is extended by a written letter from the agreement authority.

The Board decided to include the following clause in the existing provision of Commencement and Completion.

The contractor shall accept the LOA within two weeks from the date of issue of LOA and shall sign the agreement within 30 days from the date of issue of LOA.

#### **8. Suspension of works Clause 5.1.15**

The Board accepted the clause on suspension of work as under :

"1. The Employer may request the Engineer In-Charge, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Facilities) until ordered in writing to resume such performance by the Engineer In-Charge. If, by virtue of a suspension order given by the Engineer- In Charge, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Engineer In-Charge requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 39 (Change in the Facilities) (NHPC clause), excluding the performance of the suspended obligations from the Contract. If the Employer fails to do so within such period, the Contractor may, by a further notice to the Engineer-in-Charge, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 (Change in the Facilities) or, where it affects the whole of the Facilities, as termination of the Contract under GCC DGE/G2/AEE3/GCC-E&M/2024-Part(1) I/36926/2024 Sub-Clause 42.1 (Termination for Employer's Convenience) (NHPC Clause).

2. If (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to (Terms and Procedures of Payment) to the Contract Agreement (NHPC Clause), or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 12.3, (NHPC Clause) requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice or (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GCC Sub-Clause 10.2 (NHPC Clause), or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities; then the Contractor may by fourteen (14) days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

3. If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause (suspension), 5.1.15 then the Time for Completion shall be extended, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction as determined based on Annexure-A to GCC i.e. (Valuation of Idling Time Cost Claims) (NHPC calculation) shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

4. During the period of suspension, the Contractor shall not remove from the Site any Plant and



Equipment, any part of the Facilities or any contractor's Equipment, without the prior written consent of the Employer which shall not be unreasonably withheld".

**9. Suspension of works on account of climatic conditions Clause 5.1.16**

Existing provision: The Engineer-in-charge may order the contractor to suspend the work or part of a work or work in a specified location that may be subjected to damage by climatic or weather conditions. The contractor shall have no claim for compensation for losses in this account. The care and safeguarding of works, site, men, machinery, materials, tools and plants are the responsibility of the contractor without any extra payment from the KSEBL. Losses or damage to KSEBL on account of failure from the contractor in safeguarding from weather and climatic conditions as mentioned above will be realized from the contractor. Any event of stoppage on account of climatic conditions shall be brought to the notice of the Engineer-in-charge immediately with reasons for such stoppage. No claims for extra work/expenditure necessitated on account of stoppage due to the fault of the contractor will be entertained, The KSEBL will not be liable for any loss or damages or any other sum of money, if any, sustained by the contractor on account of climatic and weather conditions.

The Board decided to add the following to the existing force majeure clause.

"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.

a. 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 GCC Clause 5.3.7 (Extension of Time for Completion). Notwithstanding GCC Sub-Clause 37.5, (NHPC Clause) Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein".

**10. Defects Liability Period Clause 2.1**

The Board agreed to adopt the modified clause as under :

"The Defect Liability Period shall be thirty-six (36) months from the date of issue of Taking-Over Certificate of the generating unit which is commissioned first or twenty-four (24) months from the date of issue of Taking-Over Certificate of the generating unit which is commissioned last whichever happens earlier".

**11. Performance Security, Payment Terms & Retention Money**

Existing provision: At present performance security is 10% of the contract value.

The Board directed to adopt the performance security followed in NHPC contracts executed during the post Covid period.

**12. Civil Construction period**

There is no proposal placed before the Board for inclusion of the clause in this regard.

**13. Due Payment Clause 5.2.6 & 5.2.7**

The Board decided to modify the Due payment clause as under :

"The agreement authority shall make earnest effort to make payments within 60 days from the date of submission of invoice / bill in full particulars in the prescribed form/format, by the contractor. In the event that the Employer fails to make any payment which has become due by its respective due date or within the period set forth in the contract, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate of One-month MCLR of SBI at the time of due date of payment".

**14. Delayed Payment due to Dispute**

The Board decided to continue the existing condition as under:



"No claim for interest or damages will be entertained by the KSEBL with respect to any money or balance which may be lying with the KSEBL owing to any dispute, difference or misunderstandings between the Engineer-in-charge on the one hand and the contractor on the other hand or with respect to any delay on the part of the Engineer-in-charge in making periodic or final payment of any respect whatsoever, and the KSEBL shall not be liable to pay any interest or damages or loss to the contractor".

#### **15. Site facilities Clause 5.4.10**

The Board accepted the modification in the clause as under:

"The contractor can construct building of temporary nature for accommodation of labour & staff, stores, work shed, offices etc. only for scope of works agreed in contract agreement, with the prior concurrence from the Engineer-in-charge. The Engineer-in-charge will point out the sites in immediate vicinity to the proposed Powerhouse area upon request from the contractor for the same at free of cost".

#### **16. Site-other Requirements Clause 5.4.12**

The Board decided to continue the existing condition as under:

"The contractor shall be responsible for the proper fencing, guarding, lighting and watching of all works comprised in the contract and for the proper provision of temporary road way, foot ways, guards and fences as far as the same may be rendered necessary by reasons of the work for the accommodation and protection of pedestrians and passengers or other traffic and of the owners and occupants of adjacent property and of the public. The contractor will be permitted to use, the site and the lands for execution of work, labour camp, staff colonies, site offices, workshop or stores and for related activities without charge".

#### **17. Termination due to default Clause 5.3.14**

The Board decided to adopt the corresponding clause in NHPC in this matter as under:

"1. If(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to (Terms and Procedures of Payment) of the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 12.3 (NHPC clause), requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Sub-Clause 1, forthwith terminate the Contract.

2. The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GCC Sub-Clause 2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

3. If the Contract is terminated under GCC Sub- Clauses 1&2, then the Contractor limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities, which the Employer is required to obtain as per provision of the Contract or as per relevant applicable laws of the



Country shall immediately (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d)(ii) (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractor's personnel from the Site; and (d) subject to the payment specified in GCC Sub- Clause 4, (i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and (iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

4. If the Contract is terminated under GCC Sub- Clauses 1 & 2 above, the Employer shall pay to the Contractor all payments specified in GCC Sub-Clause 42.1.3 (NHPC Clause), and reasonable compensation for all loss, except for loss of profit or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

5. Termination by the Contractor pursuant to this GCC Sub-Clause 3 above is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause (termination by contractor) above.

a. In this GCC Clause 5.3.14 (termination due to default), the expression "Facilities executed" shall include all work executed, Installation Services provided, and all Plant and Equipment acquired (or subject to a legally binding obligation to purchase) by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

b. In this GCC Clause 5.3.14 (termination due to default), in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to (Terms and Procedures of Payment) to the Contract Agreement.

c. Any GST liability on account of Termination of Contract shall be borne by the Contractor".

#### **18. Bid Validity Clause**

The Board decided to continue the existing condition as under:

"The bid shall be valid for six calendar months reckoned from the last date of submission of bid. In exceptional circumstances, the KSEBL may require extension of the period of validity. The requirement of KSEBL and bidders' response shall be made in writing. A bidder may refuse the request without forfeiting his bid security. A bidder agreeing to the request will not be required or permitted to modify his bid, but will be required to extend the validity of his bid security for the period of the extension".

#### **19. Right to Withhold Payments Clause 5.5.12**

Existing provision: The KSEBL shall have a right on and over all or any money that may become due and payable to the contractor under this contract or also and over the security and retention deposits/guarantees, in respect of any debt or sum that may become due and payable to the contractor either alone or jointly with another or others, or either under this or under any other contracts or transactions of any nature whatsoever between the Government and / or KSEBL and the contractor and also in respect of any Government tax or taxes or other money which may become due and payable to the Government or only other statutory enactment or enactments in force in modifications or substitutions thereof, KSEBL shall at all-time be entitled to deduct the said debt or sum or tax due by the contractor from the money, Securities like Bank Guarantee or deposit which may become payable/ returnable to the contractor under this contract by Government and / or KSEBL. The Board decided to retain the existing clause.

#### **20. Bid Prices Clause 4.1**

The Board decided to continue the existing condition as under:



"The contractor shall take care of all his men, machinery, finished work and ensure sufficient protection of work site from flood, fire, earthquake, slip and similar other natural calamities. In such an event, the contractor shall make his own arrangement for the rectification of damage or loss at his own cost and no compensation shall be paid by the KSEBL on whatsoever reasons on any account".

#### **21. Execution of Agreement Clause 5.11**

The Board decided to continue the existing condition as under:

".....Failure of the contractor to comply with the above requirements shall constitute sufficient grounds for cancellation of award of contract and re-arrange the work including re-bidding at the risk and cost of the contractor. If due to the default of the bidder / contractor to furnish requisite performance security, execute contract agreement or to take possession of the work and execute the work with proper diligence, the work will be arranged by Engineer-in-charge at risk and cost of the contractor and if any loss to the KSEBL results, the same will be recovered from him as arrears of revenue but should it be a saving to the KSEBL the original contractor shall have no claim whatever be the difference. Recoveries on this or any other account will be made from the sum that may be due to the contractor on this or any other subsisting contracts or under the Revenue Recovery Act or otherwise as the KSEBL may decide"

#### **22. Payments General Clause 5.2.1**

Existing Conditions: Payments will be made, after required checking and auditing, through RTGS/NEFT only.

The Board decided to continue with this clause.

#### **23. No additional compensation for operations not mentioned in the Specification Clause 5.2.14**

The Board decided to accept the corresponding (Clause 35) in NHPC contract.

#### **24. Dues from the Contractor Clause 5.2.15**

The Board decided to continue the existing condition as under:

"All sums of money found due from the Contractor to the KSEBL under this contract shall be recovered from the contractor from his security and bills payable to him and from other assets moveable or immovable as if the dues are arrears of land revenue under the provisions of revenue recovery act for the time being in force or in any other manner as the KSEBL may deem fit".

#### **25. Extension for the Period of Completion Clause 5.3.7 last para**

The Board decided to continue the existing condition as under:

"No extra payment other than those agreed to in the contract will be given on account of the ordered extension of time and the KSEBL will not have any financial commitment. The Contractor shall extend the validity period of the comprehensive security suitably to cover such extension and also, for the period of contract".

#### **26. Force Majeure Clause 5.3.9**

The Board decided to accept the corresponding clause in NHPC contract:

"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 the dispute will be resolved in accordance clause settlement of disputes".

The Chairman stated that authorization may be given by Board in respect of other clauses from 27 to 41 based on the criteria that the clause in NHPC if available would be adopted and if the same is not available the decision could be taken appropriately.

After discussions, the Board decided to follow the principles



- A. Incorporating conditions as in Central PSUs and other DISCOMs.
- B. Wherever there is an additional exclusive condition mentioned by KSEBL, such conditions to be revisited based on the procurement pre bid meeting decisions and post procurement experience.
- C. The definition regarding all specific terms in the agreement eg reasonable time, generation losses, etc ( The indicated examples are not exhaustive) to be standard definitions.
- D. The Document should not have any ambiguous terms.
- E. Wherever needed clear formula with an Example to be mentioned for proper understanding of clauses.
- F. The time specifications for series of activities such as design approvals, processing bills etc shall be for the Agency as well as for KSEBL.

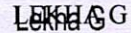
**RESOLVED** to accord in principle approval for the review and refinement of General Conditions of Contract and Pre-Qualifications proposed for Electro Mechanical works of Hydro projects.

**RESOLVED FURTHER** to authorize Director (Gen-Ele) to examine changes required based on the change of conditions in Central PSUs, other DISCOMs, pre bid meeting decisions, past experience of procurement warranting changes by following process to take decisions at appropriate decision-making level.

Orders are issued accordingly.

By Order of the Director Board

Signed by



COMPANY SECRETARY

Date: 06-05-2024 19:05:14

To:

The Deputy Chief Engineer (PED) with full powers of Chief Engineer

Copy to:

The Company Secretary / Chief Engineer (IT,CR&CAPS) / Financial Advisor / LA&DEO / Chief Internal Auditor / Chief Vigilance Officer

The TA to the Chairman & Managing Director / Director (Generation-Civil) / Director (Distribution, Safety, SCM & IT) / Director (Transmission, SO & Planning) / Director (Generation - Electrical, REES, SOURA, Sports & Welfare)

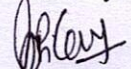
The PA to the Director (Finance & HRM)

The Sr.CA to the Secretary (Administration)

The RCAO/ RAO

Stock File.

Forwarded / By Order



Assistant Executive Engineer