



Bureau of Energy Efficiency

Ministry of Power, Government of India

Executing Agencies for the BEE SME Programme

Request For Proposals for Executing Agencies (EAs) for BEE SME Programme

January 9, 2009

Bureau of Energy Efficiency
4th Floor, Sewa Bhavan, R.K. Puram
New Delhi -110066, India

Reference No: 02/80/SMEs/2007

Project Name: BEE SME Programme

Name of the Ministry / Department: Ministry Of Power/ Bureau of Energy Efficiency (BEE)

Section 1. Letter of Invitation

Project Name: Request For Proposals for appointment of Executing Agencies in 7 clusters for executing the "BEE SME Programme in 25 SME clusters".

Name of Ministry / Department: Bureau of Energy Efficiency

The Bureau of Energy efficiency (BEE) (hereinafter called the "Employer") is intending to appoint Executing Agencies for the undertaking the activities in the BEE SME programme.

1. The Employer intends to start the BEE SME programme in 7 SME clusters spread across the country as a part of it's scheme for improving Energy Efficiency in SMEs.
2. The Executing Agency will be selected as per the procedure described in this RFP.
3. The RFP includes the following documents

Section 1 – Letter of Invitation

Section 2 – Instruction to Executing Agencies

Section 3 – Technical Proposal – Standard Forms

Section 4 – Financial Proposal – Standard Forms

Section 5 – Terms of Reference

Section 6 - Standard Forms of Contract

4. The last date for receipt of separate Technical and Financial bids is 4:00 PM, February 6, 2009, at the address mentioned in the Data Sheet..

5. Please inform us in writing at the address mentioned in the data sheet , upon receipt:
- (a) that you received the Letter of Invitation and RFP document;
 - (b) that you will submit the proposal by the date & time indicated in para 4 above.
 - (c) the names of the cluster the you wish to submit bids for.

Yours sincerely,

(Jitendra Sood)

Energy Economist

Section 2
Instructions to EA
Part I
Standard

1. Definitions

- (a) “Employer” means the BEE who have invited the bids for consultancy services and with which the selected EAs sign the Contract for the Services and to which the selected EAs shall provide services as per the terms and conditions and TOR of the contract.
- (b) “EA” (Executing Agency for SME Programme), means any entity or person or associations of person who have been short-listed to submit their proposals that may provide or provides the Services to the Employer under the Contract.
- (c) “Contract” means the Contract signed by the Parties and all the attached documents listed in its Clause 1, that is the General Conditions (GC), the project Specific Conditions (SC), and the Appendices.
- (d) “Project specific information” means such part of the Instructions used to reflect specific project and assignment conditions.
- (e) “Day” means calendar day.
- (f) “Government” means the Government of India
- (g) “Instructions to EA” (Section 2 of the RFP) means the document which provides short-listed Service providers with all information needed to prepare their proposals.
- (i) “LOI” (Section 1 of the RFP) means the Letter of Invitation being sent by the Employer to the short-listed service providers.
- (j) “Personnel” means professionals and support staff provided by the EA or by any Sub-EA and assigned to perform the Services or any part thereof; “Foreign Personnel” means such professionals and support staff who at the time of being so provided had their domicile outside the Government’s country; “Domestic Personnel” means such professionals and support staff who at the time of being so provided had their domicile in India.
- (k) “Proposal” means the Technical Proposal and the Financial Proposal.
- (l) “RFP” means the Request For Proposals prepared by the Employer for the selection of EAs.
- (m) “Assignment / job” means the work to be performed by the EA pursuant to the Contract.
- (n) “Sub-EA” means any person or entity with whom the EA subcontracts any part of the Assignment/job.
- (p) “Terms of Reference” (TOR) means the document included in the RFP as Section 5 which explains the objectives, scope of work, activities, tasks to be performed, respective responsibilities of the Employer and the EA, and expected results and deliverables of the Assignment/job.

2. Introduction

2.1 The Employer named in the Part II Data Sheet will select service providers/organizations (the EAs) from those to whom the RFP has been addressed, in accordance with the method of selection specified in the Part II Data Sheet.

2.2 The name of the assignment/Job has been mentioned in Part II Data Sheet. Detailed scope of the assignment/ job has been described in the Terms of Reference in Section 5.

2.3 The date, time and address for submission of the proposals has been given in Part II Data Sheet.

2.4 The short-listed EAs are invited to submit their Proposal, for Assignment/job named in the Part II Data Sheet. The Proposal will be the basis for contract negotiations and ultimately for a signed Contract with the selected EA.

2.5 EAs should familiarize themselves with Local conditions and take them into account in preparing their Proposals. To obtain first-hand information on the Assignment/job and Local conditions, EAs are encouraged to meet the Employer’s representative named in part II Data Sheet before submitting a proposal and to attend a **pre-proposal meeting** if one is specified in the Part II Data Sheet. Attending the pre-proposal meeting is optional. EAs should contact the Employer’s representative to arrange for their visit or to obtain

additional information on the pre-proposal meeting. EAs should ensure that these representatives are advised of the visit in adequate time to allow them to make appropriate arrangements.

2.6 The Employer will provide at no cost to the EAs the inputs and facilities specified in the Part II Data Sheet, assist the EAs in obtaining licenses and permits needed to carry out the Assignment/job, and make available relevant project data and reports.

2.7 EAs shall bear all costs associated with the preparation and submission of their proposals and contract negotiation. The Employer is not bound to accept any proposal, and reserves the right to annul the selection process at any time prior to Contract award, without thereby incurring any liability to the EAs.

3. Eligibility of Association of EAs and Sub-EAs

3.1 An EA may associate with sub-EAs and /or individual expert at the time of submission of proposal. Under such circumstances each member of the association of EA shall be evaluated as per the qualification/ eligibility criteria set forth in Part II data Sheet. The combined score of the each member of the association of EA shall be taken into account for evaluation purpose. However, the lead member of the association of the EA shall be the EA who has been short-listed by the Employer and employer shall deal with only the lead member for the purpose of this assignment. The contract shall be signed by only the lead EA and the same EA shall be responsible and liable to the Employer for every aspects of their proposal, contract etc.

4. Clarification and Amendment of RFP Documents

4.1 EAs may request a clarification on any clause of the RFP documents up to the number of days indicated in the Part II Data Sheet before the proposal submission date. Any request for clarification must be sent in writing, or by standard electronic means to the Employer's address indicated in the Part II Data Sheet. The Employer will respond in writing, or by standard electronic means and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all EAs. Should the Employer deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure under para. 4.2 below.

4.2 At any time before the submission of Proposals, the Employer may amend the RFP by issuing an addendum in writing or by standard electronic means. The addendum shall be sent to all EAs and will be binding on them. EAs shall acknowledge receipt of all amendments. To give EAs reasonable time in which to take an amendment into account in their Proposals the Employer may, if the amendment is substantial, extend the deadline for the submission of Proposals.

5. Conflict of Interest

5.1 Employer requires that EAs provide professional, objective, and impartial advice and at all times hold the Employer's interests paramount, strictly avoid conflicts with other assignment/jobs or their own corporate interests and act without any consideration for future work.

5.2 Without limitation on the generality of the foregoing, EAs, and any of their affiliates, shall be considered to have a conflict of interest and shall not be recruited, under any of the circumstances set forth below:

Conflicting activities : (i) A firm that has been engaged by the Employer to provide goods, works or Assignment/job other than consulting Assignment/job for a project, and any of its affiliates, shall be disqualified from providing consulting Assignment/job related to those goods, works or Assignment/job. Conversely, a firm hired to provide consulting Assignment/job for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or Assignment/job other than consulting

Assignment/job resulting from or directly related to the firm's consulting Assignment/job for such preparation or implementation. For the purpose of this paragraph, Assignment/job other than consulting Assignment/job are defined as those leading to a measurable physical output, for example surveys, exploratory drilling, aerial photography, and satellite imagery.

Conflicting Assignment/job ; (ii) An EA (including its Personnel and Sub-EAs) or any of its affiliates shall not be hired for any Assignment/job that, by its nature, may be in conflict with another Assignment/job of the EA to be executed for the same or for another Employer.

Conflicting relationships (iii) An EA (including its Personnel and Sub-EAs) that has a business or family relationship with a member of the Employer's staff who is directly or indirectly involved in any part of (i) the preparation of the Terms of Reference of the Assignment/job, (ii) the selection process for such Assignment/job, or (iii) supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Employer throughout the selection process and the execution of the Contract.

5.3 EAs have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Employer, or that may reasonably be perceived as having this effect. Any such disclosure shall be made as per the Standard forms of technical proposal provided herewith. If the EA fails to disclose said situations and if the Employer comes to know about any such situation at any time, it may lead to the disqualification of the EA during bidding process or the termination of its Contract during execution of assignment.

5.4 No agency or current employees of the Employer shall work as EAs under their own ministries, departments or agencies.

6. Unfair Advantage

6.1 If a short-listed EA could derive a competitive advantage from having provided consulting Assignment/job related to the Assignment/job in question and which is not defined as conflict of interest as per para 5 above, the Employer shall make available to all short-listed EAs together with this RFP all information that would in that respect give such EA any competitive advantage over competing EAs.

7. Proposal

7.1 Short-listed EAs may only submit only one proposal per cluster. The limit of the number of clusters that one EA can bid for is 10. If an EA submits or participates in more than one proposal in a cluster, such proposals shall be disqualified. However, this does not limit the participation of the same Sub-EA, including individual experts, to more than one proposal.

8. Proposal Validity

8.1 The Part II Data Sheet to EA indicates how long EAs' Proposals must remain valid after the submission date. During this period, EAs shall maintain the availability of Professional staff nominated, services offered in the Proposal and also the financial proposal unchanged. The Employer will make its best effort to complete negotiations within this period. Should the need arise however, the Employer may request EAs to extend the validity period of their proposals. EAs who agree to such extension shall confirm that they maintain the availability of the Professional staff nominated, services offered in the Proposal and their financial proposal remain unchanged, or in their confirmation of extension of validity of the Proposal, EAs could submit new staff in replacement, who would be considered in the final evaluation for contract award. EAs who do not agree have the right to refuse to extend the validity of their Proposals, under such circumstance the Employer shall not consider such proposal for further evaluation.

9. Preparation of Proposals

9.1 The Proposal as well as all related correspondence exchanged by the EAs and the Employer, shall be written in English language, unless specified otherwise.

9.2 In preparing their Proposal, EAs are expected to examine in detail the documents comprising the RFP. Material deficiencies in providing the information requested may result in rejection of a Proposal.

9.3 While preparing the Technical Proposal, EAs must give particular attention to the following:

(a) If a short-listed EA considers that it may enhance its expertise for the Assignment/job by associating with other EAs in sub-contracting, it may associate with a non-short-listed EA.

(b) The estimated number of Professional staff-months for the Assignment/job is as shown in the Part II Data sheet. However, the Proposal shall be based on the number of Professional staff-months or budget estimated by the EAs. While making the proposal, the EA must ensure that he proposes the minimum number and type of experts as sought by the Employer, failing which the proposal shall be considered as non-responsive.

(c) Alternative professional staff shall not be proposed, and only one curriculum vita (CV) may be submitted for each position mentioned.

9.4 EAs are required to submit a Technical Proposal (TP) in forms provided in Section-III. The Part II Data sheet in Section-II indicates the formats of the Technical Proposal to be submitted. **Submission of the wrong type of Technical Proposal will result in the Proposal being deemed non-responsive.** The Technical Proposal shall provide the information indicated in the following paras from (a) to (g) using the attached Standard Forms (Section 3). Form Tech – I in Section-III is a sample letter of technical proposal which is to be submitted alongwith the technical proposal.

(a) (i) A brief description of the EA's organization and in the case of a consortium/ joint venture, of each partner, will be provided in Form Tech-2. In the same Form, the EA and in the case of a consortium/ joint venture, each partner will provide details of experience of assignments which are similar to the proposed assignment/ job as per the terms of reference.. For each Assignment/job, the outline should indicate the names of Sub-EAs/ Professional staff who participated, duration of the Assignment/job, contract amount, and EA's involvement. Information should be provided only for those Assignment/jobs for which the EA was legally contracted by the Employer as a corporation or as one of the major firms within a joint venture. Assignment/jobs completed by individual Professional staff working privately or through other consulting firms cannot be claimed as the experience of the EA, or that of the EA's associates, but can be claimed by the Professional staff themselves in their CVs. EAs should be prepared to substantiate the claimed experience alongwith the proposal and must submit letter of award / copy of contract for all the assignments mentioned in the proposal.

(b) (i) Comments and suggestions on the Terms of Reference including workable suggestions that could improve the quality/ effectiveness of the Assignment/job; and on requirements for counterpart staff and facilities including: administrative support, office space, Domestic transportation, equipment, data, etc. to be provided by the Employer (Form TECH-3 of Section 3).

(c) (i) A description of the approach, methodology and work plan for performing the Assignment/job covering the following subjects: technical approach and methodology, work plan, and organization and staffing schedule. Guidance on the content of this section of the Technical Proposals is provided under Form TECH-4 of Section 3. The work plan should be consistent with the Work Schedule (Form TECH-8 of Section 3) which will show in the form

of a bar chart the timing proposed for each activity.

(d) The list of the proposed Professional staff team by area of expertise, the position that would be assigned to each staff team member, and their tasks is to be provided in Form TECH-5 of Section 3.

(e) Estimates of the staff input needed to carry out the Assignment/job needs to be given in Form TECH-7 of Section 3. The staff-months input should be indicated separately for each location where the EAs have to work and / or provide their key staff.

(f) CVs of the Professional staff as mentioned in para 9.4 (d) above signed by the staff themselves or by the authorized representative of the Professional Staff (Form TECH-6 of Section 3).

(g) A detailed description of the proposed methodology and staffing for training needs to be given, if the Part II Data sheet specifies training as a specific component of the Assignment/job.

9.5 The Technical Proposal shall not include any financial information. A Technical Proposal containing financial information may be declared non responsive.

9.6 Financial Proposals: The Financial Proposal shall be prepared using the attached Standard Forms (Section 4). It shall list all costs associated with the Assignment/job, including (a) remuneration for staff, (b) cost of equipments/ technology development and (c) reimbursable expenses indicated in the Part II Data sheet. If appropriate, these costs should be broken down by activity and, if appropriate, into foreign (if applicable) and domestic expenditures. The financial proposal shall not include any conditions attached to it and any such conditional financial proposal shall be rejected summarily.

10. Taxes

10.1 The EA shall fully familiarize themselves about the applicable to Domestic taxes (such as: value added or sales tax, service tax or income taxes, duties, fees, levies) on amounts payable by the Employer under the Contract. All such taxes must be included by the EA in the financial proposal.

11. Currency

11.1 EAs shall express the price of their Assignment/job in India Rupees. [In case of assignment where payment in foreign currency are allowed to be made, the EAs are free to make their quote in any foreign currency. The employer shall mention the provision regarding conversion of such foreign currency to Indian Rupees]

12 Earnest Money Deposit (EMD) and Bid processing Fees

12.1 Earnest Money Deposit

- I. An EMD of Rs. 50,000, in the form of DD drawn in favor of the Employer (Bureau Of Energy Efficiency) and payable at New Delhi, must be submitted alongwith the proposal for each cluster..
- II. Proposals not accompanied by EMD shall be rejected as non-responsive.
- III. No interest shall be payable by the Employer for the sum deposited as earnest money deposit.
- IV. No bank guarantee will be accepted in lieu of the earnest money deposit.
- V. The EMD of the unsuccessful bidders for a cluster would be returned back within one month of signing of the contract for the cluster.

12.2 The EMD shall be forfeited by the Employer in the following events:

- I. If Proposal is withdrawn during the validity period or any extension agreed by the EA thereof.
- II. If the Proposal is varied or modified in a manner not acceptable to the Employer after opening of Proposal during the validity period or any extension thereof.
- III. If the EA tries to influence the evaluation process.
- IV. If the First ranked EA withdraws his proposal during negotiations (failure to arrive at consensus by both the parties shall not be construed as withdrawal of proposal by the EA).

13 Bid Processing Fees

All EAs are required to pay Rs. 10,000 towards Bid Processing Fees in the form of demand Draft drawn in favor of Employer (Bureau Of Energy Efficiency) and payable at New Delhi. The Bid Processing Fee is Non-Refundable. The bid processing fee is irrespective of the number of clusters that the EA bids for. The bid processing fee should be enclosed in a separate envelop marked so.

Please note that the Proposal, which does not include the bid processing fees, would be rejected as non-responsive.

14. Submission, Receipt, and Opening of Proposal

14.1 The original proposal, both technical and Financial Proposals shall contain no interlineations or overwriting, except as necessary to correct errors made by the EAs themselves. The person who signed the proposal must initial such corrections. Submission letters for both Technical and Financial Proposals should respectively be in the format of TECH-1 of Section 3, and FIN-1 of Section 4.

14.2 An authorized representative of the EAs shall initial all pages of the original Technical and Financial Proposals. The authorization shall be in the form of a written power of attorney accompanying the Proposal or in any other form demonstrating that the representative has been dully authorized to sign. The signed Technical and Financial Proposals shall be marked "ORIGINAL".

14.3 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "TECHNICAL PROPOSAL" Similarly, the original Financial Proposal shall be placed in a sealed envelope clearly marked "FINANCIAL PROPOSAL" followed by the name of the Assignment/job. The envelopes containing the Technical Proposals, Financial Proposals, EMD and bid processing fees shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address, reference number be clearly marked "DO NOT OPEN, BEFORE [Insert Date]". The Employer shall not be responsible for misplacement, losing or premature opening if the outer envelope is not sealed and/or marked as stipulated. This circumstance may be case for Proposal rejection. **If the Financial Proposal is not submitted in a separate sealed envelope duly marked as indicated above, this will constitute grounds for declaring the Proposal non-responsive. Each envelope containing the Technical and Financial Proposal should be marked with the name of the cluster it is for.**

14.4 The Proposals must be sent to the address/addresses indicated in the Data sheet and received by the Employer no later than the time and the date indicated in the Data sheet, or any extension to this date in accordance with para 4.2 above. Any proposal received by the Employer after the deadline for submission shall be returned unopened.

15. Proposal Evaluation

15.1 From the time the Proposals are opened to the time the Contract is awarded, the EAs should not contact the Employer on any matter related to its Technical and/or

Financial Proposal. Any effort by EAs to influence the Employer in the examination, evaluation, ranking of Proposals, and recommendation for award of Contract may result in the rejection of the EAs' Proposal.

15.2 The employer has constituted a EA Selection Committee (EASC) which will carry out the entire evaluation process.

15.3 Evaluation of Technical Proposals:

EASC while evaluating the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and the competent authority accepts the recommendation.

15.4 The EASC shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference and by applying the evaluation criteria, sub-criteria specified in the Data sheet. In the first stage of evaluation, a Proposal shall be rejected if it is found deficient as per the requirement indicated in the Data sheet for responsiveness of the proposal. Only responsive proposals shall be further taken up for evaluation. Evaluation of the technical proposal will start first and at this stage the financial bid (proposal) will remain **unopened**. The qualification of the EA and the evaluation criteria for the technical proposal shall be as defined in the Data sheet.

15.5 Public opening & evaluation of the Financial Proposals:

Financial proposals of only those firms who are technically qualified shall be opened publicly on the date & time specified the Data sheet, in the presence of the EAs' representatives who choose to attend. The name of the EAs, their technical score (if required) and their financial proposal shall be read aloud.

15.6 The EASC will correct any computational errors. When correcting computational errors, in case of discrepancy between a partial amount and the total amount, or between word and figures, the former will prevail. In addition to the above corrections the items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items.

15.7 After opening of financial proposals, appropriate selection method shall be applied to determine the EA who will be declared winner and be eligible for award of the contract. The methods of selections are described in the Data Sheet [The employer shall mention here which method out of all listed method shall be applied for selection of EA for this assignment / job]

This selected EA will then be invited for negotiations, if considered necessary.

16. Negotiations

16.1 Negotiations will be held at the date, time and address intimated to the qualified and selected bidder. The invited EA will, as a pre-requisite for attendance at the negotiations, confirm availability of all Professional staff. Representatives conducting negotiations on behalf of the EA must have written authority to negotiate and conclude a Contract.

16.2 Technical negotiations: Negotiations will include a discussion of the Technical Proposal, the proposed technical approach and methodology, work plan, and organization and staffing, and any suggestions made by the EA to improve the Terms of Reference. The Employer and the EAs will finalize the Terms of Reference, staffing schedule, work schedule, logistics, and reporting. These documents will then be incorporated in the Contract as "Description of Assignment/job". Special attention will be paid to clearly defining the inputs and facilities required from the Employer to ensure satisfactory implementation of the Assignment/job. The Employer shall prepare minutes of negotiations which will be signed by the Employer and the EA.

16.3 Financial negotiations: After the technical negotiations are over, financial

negotiations should be carried out in order to reflect any change in financials due to change in scope of work or due to clarification on any aspect of the technical proposal during the technical negotiations. Under no circumstance, the financial negotiation shall result in to increase in the price originally quoted by the EA. Unless there are exceptional reasons, the financial negotiations will involve neither the remuneration rates for staff nor other proposed unit rates. For other methods, EAs will provide the Employer with the information on remuneration rates described in the Appendix attached to Section 4 - Financial Proposal - Standard Forms of this RFP.

16.4 Availability of Professional staff/experts: Having selected the EA on the basis of, among other things, an evaluation of proposed Professional staff, the Employer expects to negotiate a Contract on the basis of the Professional staff named in the Proposal. Before contract negotiations, the Employer will require assurances that the Professional staff will be actually available. The Employer will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or for reasons such as death or medical incapacity or if the professional staff has left the organisation. If this is not the case and if it is established that Professional staff were offered in the proposal without confirming their availability, the EA may be disqualified. Any proposed substitute shall have equivalent or better qualifications and experience than the original candidate and be submitted by the EA within the period of time specified in the letter of invitation to negotiate.

16.5 Conclusion of the negotiations: Negotiations will conclude with a review of the draft Contract. To complete negotiations the Employer and the EA will initial the agreed Contract. If negotiations fail, the employer will reject all the proposals received and invite fresh proposals.

17. Award of Contract

17.1 After completing negotiations the Employer shall issue a Letter of Intent to the selected EA and promptly notify all other EAs who have submitted proposals about the decision taken.

17.2 The EAs will sign the contract after fulfilling all the formalities/pre-conditions mentioned in the standard form of contract in Section-6, within 15 days of issuance of the letter of intent.

17.2 The EA is expected to commence the Assignment/job on the date and at the location specified in the Part II Data Sheet.

18. Confidentiality

Information relating to evaluation of Proposals and recommendations concerning awards shall not be disclosed to the EAs who submitted the Proposals or to other persons not officially concerned with the process, until the publication of the award of Contract. The undue use by any EA of confidential information related to the process may result in the rejection of its Proposal and may be subject to the provisions of the Employer's antifraud and corruption policy.

INSTRUCTIONS TO EA

Part-II

DATA SHEET

S.No	Clause	Subject	Particulars
1	2.2	Name of Project and Employer	Executing Agencies for the BEE SME Programme, Bureau of Energy Efficiency
2	2.3	Date/ Time and Venue for submission of bids	February 6, 2009 at 1600 Hrs at Bureau Of Energy Efficiency, 4 th Floor, Sewa Bhavan, Sector 1 R.K. Puram, New Delhi.
3	2.5	Nodal officer for issuing clarifications	1. Sh. Saurabh Kumar Secretary, BEE 4 th Floor, Sewa Bhavan, Sector 1 R.K. Puram, New Delhi. +91-11-2617-9699/ +91-11-2617-9691 Fax: +91-11-2617 8352 saurabhkumar@nic.in , skumar@beenet.in 2.Sh. Jitendra Sood Energy Economist, BEE 4 th Floor, Sewa Bhavan, Sector 1 R.K. Puram, New Delhi +91-11-2617-9699/ +91-11-2610-9567 Fax: +91-112617 8352 jsood@beenet.in 3.Sh. Abhishek Nath BEE 4 th Floor, Sewa Bhawan, Sector 1, R K Puram, New Delhi anath@beenet.in +91-11-26179699
4	2.6	Provision of facilities by employer	1. Coordination with State Designated Agencies if required. 2. Any other activity that is outside the scope of the ToR specified in this document but is essential for the execution of the scheme.
5.	8.1	Validity of the proposals	The proposals must remain valid till 90 days from the date of submission of bids.
6.	4.1	Last date for seeking clarifications	January 23, , 2009 in writing or by email to persons and address mentioned in 3 above.
7.	9.4	Format of proposal	Form Tech 1: Letter of Proposal submission Form Tech 2 : EA's organization & experience Form Tech 3 : Comments & suggestions on TOR Form Tech 4 : Approach & methodology Form Tech 5 : Team composition Form Tech 6 : Curriculum vitae Form Tech 7 : Staffing Schedule Form Tech 8 : Work Schedule Form Tech 9 : Comment / modification suggested on draft contract. Form Tech 10 : Information regarding any conflicting activities and declaration thereof.
8.	11.1	Currency of financial bids	Indian Rupees
9.	14.3	Submission of bids	Original Technical and financial bids with a copy on CD (sealed in the respective envelope) to be

			submitted. The bids are to be submitted clusterwise, with the name of the cluster marked on the envelope. .
10.	15.4	Evaluation Criteria	<p>Procedure for evaluation of Technical Proposals</p> <p>(a) Specific experience of the EAs (that is, the firm's) relevant to the Assignment/job: [Specify the nature of the experience required and the number of minimum assignments / jobs performed in the past.]</p> <p>The EASC will divide the Proposals into qualifying and non-qualifying category. The non-qualifying proposals shall be treated as un-responsive.</p> <p>(b) Adequacy of the proposed methodology and work plan in responding to the Terms of Reference:</p> <p>The EASC will classify them as qualifying / non qualifying. The non-qualifying proposals will be treated as non-responsive.</p> <p>(c) The methodology and work plan will be evaluated under the following two sub criteria:</p> <ul style="list-style-type: none"> a) Work plan b) Organization and staffing <p>A qualifying proposal should qualify under both the sub-criteria mentioned above.</p> <p>(d) Key professional staff qualifications and competence for the Assignment/job</p> <p>The EASC shall first see if the EA has provided all the professionals as per the requisite expertise. If the EA has not provided all the professionals as per the requisite expertise, the bids can be termed as non-qualifying. The qualification & experience of key professionals including the team leader will be evaluated for the following sub-criteria:</p> <ul style="list-style-type: none"> 1) General qualifications (Education, special training, age etc.) 2) Adequacy for the Assignment/job (experience, positions held etc.) <p>Against each of the above sub-criteria, minimum qualifying requirement will be 60%. The EASC</p>

			will classify them as qualifying / non-qualifying . The non-qualifying proposals will be treated as non-responsive.
11.	15.7	Method of selection	EAs who are found qualified under all the parameters of the eligibility criteria mentioned above under para 15 will be considered technically qualified for award of contract. Price bids of all these technically qualified firms will be opened on a date to be informed separately and the contract awarded to the lowest bidder , after negotiations, if necessary.
12		Expected date and place of commencement	Date to be announced for commencement of work at the 7 SME clusters. The list of 7 SME clusters is given in Section 5 Part II.

Section 3

Technical Proposal - Standard Forms

LETTER OF PROPOSAL SUBMISSION

[Location, Date]

To: The Director General, Bureau of Energy Efficiency

4th Floor, Sewa Bhavan, R.K. Puram

New Delhi.

Dear Sirs:

We, the undersigned, offer to provide the consulting assignment/job for Executing Agency in the [Insert name of the cluster] SME cluster of the BEE SME Programme in accordance with your Request For Proposals dated [Insert date] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope and the requisite EMD and bid processing fees.

We are submitting our Proposal in association with: [Insert a list with full name and address of each associated/sub EA]

We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification.

If negotiations are held during the period of validity of the Proposal, i.e., before the date indicated in Paragraph 4 of the Part II Data Sheet, we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature [In full and initials]: Name and Title of Signatory:
Name of Firm:
Address:

EA'S ORGANIZATION AND EXPERIENCE

A - EA's Organization

[Provide here a brief description of the background and organization of your firm/entity and each associate for this Assignment/job. The brief description should include ownership details, date and place of incorporation of the firm, objectives of the firm, last 3 years balance sheets, etc. Also if the EA has formed a consortium, details of each of the member of the consortium, name of lead members etc shall be provided]

B - EA's Experience

[Using the format below, provide information on each Assignment/job for which your firm, and each partner in the case of consortium or joint venture, was legally contracted either individually as a corporate entity or as one of the major partners within an association, for carrying out consulting Assignment/job similar to the ones requested under this Assignment/job (if possible, the employer shall specify exact assignment / job for which experience details may be submitted). In case of consortium, association of EA, the EA must furnish the following information for each of the consortium member separately]

1. Firm's name:

1	Assignment/job name:	
1.1	Description of Project	
1.2	Approx. value of the contract (in Rupees):	
1.3	Country:	
1.4	Location within country:	
1.5	Duration of Assignment/job (months) :	
1.6	Name of Employer:	
1.7	Address:	

1.8	Total No of staff-months of the Assignment/job:	
1.9	Approx. value of the Assignment/job provided by your firm under the contract (in Rupees):	
1.10	Start date (month/year):	
1.11	Completion date (month/year):	
1.12	Name of associated EAs, if any:	
1.13	No of professional staff-months provided by associated EAs:	
1.14	Name of senior professional staff of your firm involved and functions performed.	
1.15	Description of actual Assignment/job provided by your staff within the Assignment/job:	

FORM TECH-3

COMMENTS AND SUGGESTIONS ON THE TERMS OF REFERENCE AND ON COUNTERPART STAFF AND FACILITIES TO BE PROVIDED BY THE EMPLOYER

A - On the Terms of Reference

[Suggest and justify here any modifications or improvement to the Terms of Reference you are proposing to improve performance in carrying out the Assignment/job (such as deleting some activity you consider unnecessary, or adding another, or proposing a different phasing of the activities). Such suggestions should be concise and to the point, and incorporated in your Proposal.]

B - On Inputs and Facilities to be provided by the employer

[Comment here on Inputs and facilities to be provided by the Employer according to Paragraph 6 of the Part II Special information to EAs including: administrative support, office space, Domestic transportation, equipment, data, etc.]

DESCRIPTION OF APPROACH, METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT/JOB

[Technical approach, methodology and work plan are key components of the Technical Proposal. You are suggested to present your Technical Proposal divided into the following three chapters:

- a) Technical Approach and Methodology,
- b) Work Plan, and
- c) Organization and Staffing,

a) Technical Approach and Methodology. In this chapter you should explain your understanding of the objectives of the Assignment/job, approach to the Assignment/job, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. You should highlight the problems being addressed and their importance, and explain the technical approach you would adopt to address them. You should also explain the methodologies you propose to adopt and highlight the compatibility of those methodologies with the proposed approach. This should include a documentation plan with deliverables and a list of instruments that may be used in conducting the activities. The list of instruments should include a declaration of the latest calibration dates.

b) Work Plan. The EA should **propose and justify** the main activities of the Assignment/job, their content and duration, phasing and interrelations, milestones (including interim approvals by the Employer), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here. The work plan should be consistent with the Work Schedule of Form TECH-8 and should not exceed time limits set for the programme as given in Section 5 Part I. There should be a clear linkage of deliverables to the payments as per terms in Section V Part 2 para 26.

c) Organization and Staffing. The EA should **propose and justify** the structure and composition of your team. You should list the main disciplines of the Assignment/job, the key expert responsible, and proposed technical and support staff.]You should also list the strengths the EA has at the local level in the cluster for which the proposal is meant. This may be in the form of previous work, present association with local agencies or presence of the EA or sub EA thereof. The staffing details should include CVs of personnel with expertise in energy efficiency, industrial process, finance and equipment design. Tie-ups with the local industry association will carry weightage and should be supported by a letter of cooperation. The bidder should also be able to demonstrate both clusters specific work experience of the staff and the sector specific experience. The staffing should include at least one professional who will be located in the cluster for the duration of the assignment.

FORM TECH-5

TEAM COMPOSITION AND TASK ASSIGNMENT/JOBS

Professional Staff

Sr. No.	Name of Staff	Name of Firm	Area of Expertise	Position / Task assigned for this job
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FORM TECH-6

CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

- 1 . Proposed Position: [For each position of key professional separate form Tech-6 will be prepared]:
- 2 . Name of Firm:
[Insert name of firm proposing the staff]:
- 3 . Name of Staff:
[Insert full name]:
- 4 . Date of Birth:
- 5 . Nationality:
- 6 . Education:
[Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and dates of obtainment]:
- 7 . Membership of Professional Associations:
- 8 . Other Training:
- 9 . Countries of Work Experience: [List countries where staff has worked in the last ten years]:
- 1 0 . Languages [For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing]:
- 1 1 . Employment Record:
[Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.]:

From [Year]: To

Year]:

Employer:

Positions held:

1 2 . Detailed Tasks Assigned

[List all tasks to be performed under this Assignment/job]

13. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned

[Among the Assignment/jobs in which the staff has been involved, indicate the following information for those Assignment/jobs that best illustrate staff capability to handle the tasks listed under point 12.]

- Name of Assignment/job or project: Year:
- Location:
- Employer:
- Main project features:
- Positions held:
- Activities performed:

14. Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Date:

[Signature of staff member or authorized representative of the staff]

Place:

[Full name of authorized representative]:

FORM TECH-7

STAFFING SCHEDULE

S.No.	Name of Staff	Staff input (in the form of a bar chart)												Total
		Months 1	2	3	4	5	6	7	8	9	10	11	12	
1.														
2.														
3														
.														
N														
o														

t
e
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- 1 For Professional Staff the input should be indicated individually; for Support Staff it should be indicated by category (e.g.: draftsmen, clerical staff, etc.).
- 2 Months are counted from the start of the Assignment/job. For each staff indicate separately staff input for home and field work.

FORM TECH-8

WORK SCHEDULE

S.No.	Activity	Months												Total
		1	2	3	4	5	6	7	8	9	10	11	12	

- 1.
- 2.
- 3.
- 4.

- 1 Indicate all main activities of the Assignment/job, including delivery of reports (e.g.: inception, interim, draft and final reports), and other benchmarks such as Employer approvals. For phased Assignment/jobs indicate activities, delivery of reports, and benchmarks separately for each phase.
- 2 Duration of activities shall be indicated in the form of a bar chart.

FORM TECH-9

COMMENTS / MODIFICATIONS SUGGESTED ON DRAFT CONTRACT

[Here the EA shall mention any suggestion / views on the draft contract attached with the RFP document. The EA may also mention here any modifications sought by him in the provisions of the draft contract. This information shall be used at the time of the negotiations. However, the Employer is not bound to accept any/all modifications sought and may reject any such request of modification.]

FORM TECH-10

INFORMATION REGARDING ANY CONFLICTING ACTIVITIES AND DECLARATION
THEREOF

Are there any activities carried out by your firm or group company or any member of the consortium which are of conflicting nature as mentioned in para 5 of section 2. If yes, please furnish details of any such activities.

If no, please certify,

We hereby declare that our firm, our associate / group firm or any of the member of the consortium are not indulged in any such activities which can be termed as the conflicting activities under para 5 of the section 2. We also acknowledge that in case of misrepresentation of the information, our proposals / contract shall be rejected / terminated by the Employer which shall be binding on us.

Authorized Signature [In full and initials]:

Name and Title of Signatory:

Name of Firm:

Address:

Section 4.

Financial Proposal - Standard Forms

FINANCIAL PROPOSAL SUBMISSION FORM

[Location, Date]

To: [Name and address of Employer]

Dear Sirs:

We, the undersigned, offer to provide the consulting Assignment/job for Executing Agency for the BEE SME Programme in the [insert name of cluster] SME cluster in accordance with your Request For Proposal dated [Insert Date] and our Technical Proposal. Our attached Financial Proposal is for the sum of [Insert amount(s) in words and figures 1]. This amount is inclusive of the Domestic taxes. We hereby confirm that the financial proposal is unconditional and we acknowledge that any condition attached to financial proposal shall result in reject of our financial proposal.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. before the date indicated in Paragraph 4 of the Part II Data Sheet.

Commissions and gratuities paid or to be paid by us to agents relating to this Proposal and Contract execution, if we are awarded the Contract, are listed below:

Name and Address of Agents	Amount and Purpose of Commission	Gratuity
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We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature [In full and initials]: Name and Title of Signatory:

Name of Firm:

Address:

SUMMARY OF COSTS

S.No.	Particulars	Amount in Rupees	Amount in words
1	Remuneration		
2	Travel		
3	Events		
4	Communication		
5	Outsourcing and any miscellaneous expenses		
6	Service Tax / Any other tax		
7	Total		

Authorized Signature Name:
 Designation.....
 Name of firm:
 Address:

FORM FIN-3

BREAKDOWN OF REMUNERATION

(for details please refer to Note below)

S.No.	Name of Staff	Position	Man Month Rates (A)	Proposed Man Months (B)	Total Amount in Rupees.(A)*(B)
1	Key professionals * 1				
2.	Support Staff *2				
	Total				

* 1 Key Professionals are to be indicated by name

*2 Support Staff is to be indicated per category (e.g: Draftsman, Assistant etc.)

Total Remuneration = _____ Amount in Rupees

(Amount in Words) :

:

Note:

1 Professional Staff should be indicated individually; Support Staff should be indicated per category (e.g.: draftsmen, Assistants etc.). Cost of Secretarial services, if any, will be indicated in form Fin-5.

2 Positions of Professional Staff shall coincide with the ones indicated in Form TECH-5 & 7.

3 Indicate separately staff-month rate for each activity separately.

BREAKDOWN OF TRAVEL EXPENSES

S.No.	Staff Position	Position	Trips	Per Trip Cost	Total Amount in Rupees.(A)*(B)
1	Key professionals * 1				
2.	Support Staff *2				
	Total				

Total: = Total amount in Rupees.

Amount in words:

BREAKDOWN OF EVENTS EXPENSES

S.No.	Event description and Location	Days	Per Day Cost	Total Amount in Rupees.(A)*(B)
1				
2.				
	Total			

Total: = Total amount in Rupees.

Amount in words:

COMMUNICATION EXPENSES

Total: = Total amount in Rupees.

Amount in words:

Miscellaneous Expenses

(It will include only such expenses which are directly chargeable to the assignment/job)

S.No	Particulars	Unit Rate	Quantity(staff months)/number	Amount
1	Outsourced services i) ii)...			
2	Secretarial staff			
3	Office equipment			
4	Preparation of reports / deliverables.			
	Total			

Section 5

Terms of Reference

Part I Background and Objective

1. Background

1.1 About BEE

The mission of Bureau of Energy Efficiency (BEE) is to develop policy and strategies with a thrust on self-regulation and market principles, within the overall framework of the Energy Conservation Act (EC Act), 2001 with the primary objective of reducing energy intensity of the Indian economy. This will be achieved with active participation of all stakeholders, resulting in accelerated and sustained adoption of energy efficiency in all sectors.

The Energy Conservation Act came into force in March 2002. The setting up of Bureau of Energy Efficiency (BEE) provides a legal framework for energy efficiency initiatives in the country. The Act empowers the Central Government and in some instances the State Governments to:

- (i)** Notify energy intensive industries, other establishments, and commercial buildings as designated consumers.
- (ii)** Establish and prescribe energy consumption norms and standards for designated consumers.
- (iii)** Direct designated consumers to -
 - a. Designate or appoint certified energy manager in charge of activities for efficient use of energy and its conservation.
 - b. Get an energy audit conducted by an accredited energy auditor in the specified manner and intervals of time.
- (iv)** Furnish information with regard to energy consumed and action taken on the recommendation of the accredited energy auditor to the designated agency.
- (v)** Comply with energy consumption norms and standards, and if not so, to prepare and implement schemes for efficient use of energy and its conservation.
- (vi)** Prescribe energy conservation building codes for efficient use of energy and its conservation in commercial buildings
- (vii)** State Governments to amend the energy conservation building codes to suit regional and local climatic conditions
- (viii)** Direct owners or occupiers of commercial buildings to comply with the provisions of energy conservation building codes
- (ix)** Direct mandatory display of label on notified equipment and appliances.
- (x)** Specify energy consumption standards for notified equipment and appliance.
- (xi)** Prohibit manufacture, sale, purchase and import of notified equipment and appliances not conforming to standards.

The Energy Conservation Act, 2001 defines the powers of the State Government to facilitate and enforce efficient use of energy and its conservation. The State Governments have to designate State Designated Agencies in consultation with the Bureau of Energy Efficiency to coordinate, regulate and enforce the provisions of the Act in the State. Thus the State Designated Agencies are the strategic partners for promotion of energy efficiency and its conservation in the country.

1.2 Organization: BEE is a multi disciplinary body formed under the Energy Conservation Act 2001. www.bee-india.nic.in

1.3 Functions of BEE

Under the provisions of the Energy Conservation Act, 2001, Bureau of Energy Efficiency has been established with effect from 1st March, 2002 by merging into it, the erstwhile Energy Management Centre, being a society registered under the Societies Registration Act, 1860, under the Ministry of Power.

The mission of the Bureau of Energy Efficiency is to assist in developing policies and strategies with a thrust on self-regulation and market principles, within the overall framework of the Energy Conservation Act, 2001 with the primary objective of reducing energy intensity of the Indian economy. This will be achieved with active participation of all stakeholders, resulting in accelerated and sustained adoption of energy efficiency in all sectors.

BEE co-ordinates with designated consumers, designated agencies and other organization; recognizes, identifies and utilizes the existing resources and infrastructure, in performing the functions assigned to it under the E.C Act, 2001. The Act provides for regulatory and promotional functions. The major functions of BEE include:

- (i) Develop and recommend to the Central Government the norms for processes and energy consumption standards.
- (ii) Develop and recommend to the Central Government minimum energy consumption standards and labeling design for equipment and appliances.
- (iii) Develop and recommend to the Central Government specific energy conservation building codes.
- (iv) Recommend the Central Government for notifying any user or class of users of energy as a designated consumer.
- (v) Take necessary measures to create awareness and disseminate information for efficient use of energy and its conservation.

1.4 Energy Efficiency in Industry

The target growth for industry sector was put at 10% during 10th Plan consistent with an overall GDP growth of 8%. The rate of growth of industry sector as measured in IIP (Index of Industrial Production) was 7.8% during April – December 2005 compared to 8.6% in the corresponding period of 2004-05 (Economic Survey, GoI, 2005-06). Manufacturing sector grew at 8.9% during this period, contributing for the overall growth of the economy. Indian industry sector accounted for nearly 43% of commercial energy consumption during 2003/04 (93 million tones of oil equivalent) with coal and lignite meeting nearly 1/3rd of the consumption requirements. Industry sector also offers maximum potential for energy conservation. The Government of India has also recognized this when a number of energy intensive industries were included as designated consumers in the Energy Conservation Act, 2001.

Under the provisions of the EC Act, the identified energy intensive industries (Designated Consumers) need to comply with the conduct of regular energy audits and implementation of techno-economically viable recommendations and establishment of energy management systems through appointment of certified Energy Manager, and meeting of specific energy consumption norms once developed.

To bridge the efficiency gaps in the various units within the same sub-sector, there is need to identify general and specific energy saving measures to facilitate the industries in their faster implementation in their respective plants.

However the need for developing information and projects is much more in the SME sector which usually cannot obtain or source the information needed with regard to energy efficiency.

1.5 SME Programme

Large number of Small and Medium Enterprises (SMEs) like foundries, brass, textiles, refractories, brick, ceramics, glass, utensils, rice millst, and khandsari manufacturing units etc, are said to have large potential for energy savings. Many of these units are in clusters located in various states of the countries.

In quantitative terms, there is not much authentic information and data available with respect to their energy consumption and energy saving opportunities. Majority of SMEs are typically run by entrepreneurs who are leanly staffed with trained technical and managerial persons to deploy and capture energy efficiency practice to reduce manufacturing cost and increase competitive edge. Therefore, it will be useful to build their energy efficiency awareness by funding/subsidizing need based studies in large number units in the SMEs and giving energy conservation recommendations including technology up-gradation opportunities. It is envisaged that such interventions supported

by diagnostic studies and pilot projects at cluster level focusing on energy/resource efficiency, energy conservation and technology up gradation. This would help in addressing the cluster specific problems and enhancing energy efficiency in SMEs.

BEE will initiate diagnostic studies in 25 clusters to prepare cluster specific energy efficiency manuals covering Specific energy consumption norms, energy efficient process and technologies, best practices, case studies, etc. These studies would provide information on technology status, best operating practices, gaps in skills and knowledge, energy conservation opportunities, energy saving potential, etc for each of the sub-sector in SMEs. The studies/projects will also be aimed to provide a direction for designing sub-sector specific energy conservation programs in the SME sectors.

BEE will also undertake capacity building of local service providers and entrepreneurs/managers of SMEs. The local service providers will be trained in order to be able to provide the local services in the setting of energy efficiency projects in the clusters.

The programme will prepare detailed project reports for about 375 energy efficiency projects in the 25 clusters. These projects will be prepared in such a way that a minimum of 5 technologies are covered and about three sizes (scale) are considered.

2. Purpose and Objective of the BEE SME Programme

The global objective of the project is to improve the energy intensity of the Indian economy by undertaking actions in the SME sector which directly or indirectly produced 60% of the GDP. The immediate objective of the project is to accelerate the adoption of EE technologies and practices in 25 chosen clusters in the SME sector through knowledge sharing, capacity building and development of innovative financing mechanisms.

The proposed programme is described below:

The main project activities are:

1. Energy Use and Technology Analysis
2. Capacity Building,
3. Implementation of EE measures, and
4. Facilitation of Innovative Financing Mechanisms

These are described in detail below.

Activity 1: Energy Use and Technology Analysis

Objective: The objective of the activity is to develop better information base on status of SMEs in the 25 chosen clusters, possibilities for undertaking EE measures, potential of impact, status technology and energy use and identification of possible EE measures that could be undertaken by the SMEs.

Activity 1.1 Situation Analysis in 35 SME clusters.
(Activity 1.1 of the BEE SME programme has been completed by the Bureau. The output of the activity will be made available to the EAs for use in the programme.)

25 SME clusters have been preliminarily chosen for intervention in this project. However, details of all the clusters are not available from the DCMSME Survey of SMEs 2001-02. It is possible that some of these clusters do not have a large number of units or do not have much energy usage. This will lead to interventions that take place in clusters which are not adequately suitable for these activities. Since some effort has already been undertaken to carefully choose the cluster, only 10 more clusters will be added to this for the situation analysis.

The situation analysis in the 35 clusters will comprise an assessment of the total number of units in the cluster, their complete contact details, capacity, products manufactured, total energy usage by different types of fuels, profit/loss situation for the past three years and comments on preparedness of the management for taking part in this programme. This activity will be partly conducted with the help data from a representative (numbers) of local associations, whose contact details also need to be provided, and also by making a visit once to the SME unit. The situation analysis will also recommend a list of 30% (of the number of units subject to a minimum of 30) units where further activities should be undertaken. These 30% (or 30) units should be representative of the entire cluster in terms of technology used and/or products manufactured.

Output 1.1 The outcome of the activity will be a assessment of total energy usage, preparedness of the cluster to undertake further action and a list of units where further action is recommended along with filled in data collection formats.

Activity 1.2 Energy Use and Technology Audit
Once the situation analysis has been conducted, a smaller group of 25 SME clusters will be identified by the BEE based on the report of Activity 1.1. These SME clusters will be undertaken for the Energy Use and

Technology Audit. This activity will consist of a energy use and technology audit to be conducted in the 25 identified cluster in all the units that have been recommended for further action in Activity 1.1. The energy use and technology audit will aim to assess the energy productivity of the unit through a detailed assessment of total energy usage in the unit, an energy audit for the main energy consuming areas, potential for energy savings and recommendation in terms of EE measures that can be undertaken (in terms of EE technology and Best Practices). This activity will also identify the possible source of technology or expertise for the recommended measures. A minimum of 2 local service providers, one each in technology and managerial areas are to be identified per 30 units in the cluster. An important part of the activity will be to identify the current Best Practices prevailing in the cluster and to prepare case studies for each of those, representative of the products, technologies and production capacities in the cluster. The Energy Audit component will be conducted in approximately 30% of the units or 30 units at the minimum in smaller clusters. Since clusters usually comprise similar units this number will be good enough to take into account a representation of all the technologies and scales in the cluster.

Output 1.2 The output of this activity will be cluster manual for each of the 25 SME clusters which will give an overview of the cluster in terms of name and numbers of units, contact details, production capacity, technologies in use, products manufactures, potential for energy savings, EE measures applicable, sources of these technologies/expertise and case studies on Best Practices / Technological Innovations in the cluster. For choosing the units where activities will be conducted the Executing agency will confirm with the unit whether they have the entrepreneurship memorandum and record the same before going ahead.

Activity 2: Capacity Building

The Capacity Building (Activity 2.1 and 2.2) will be conducted by the Nodal Agency under the guidance of the Project Management Cell. EAs do not have to conduct the activities mentioned under Activity 2. The details are however provided here in order to help the bidders ascertain the level of effort required from them to provide knowledge support for the conduct of these activity, in the form of information support, making presentations at the events based on their activities in the cluster and identifying resource persons/entities.

Objective: The objective of this activity is to create capacities among local services providers/technology providers in the SME clusters that would help in the uptake of the EE measures identified in Activity 1.

- Activity 2.1** **Introductory Local Service providers' Workshop**
The local service providers and the technology providers identified during Activity 1 will be registered as experts with the SME programme of the BEE. A 1-day workshop will be organized with these experts and representatives from the industry/associations to share the outcome of Activity 1 with them and will identify issues regarding avenues for implementing EE measures, roadblocks in terms of capacities in the cluster, financing issues and carbon-market related issues. This activity will also involve the concerned SDA(s).
- Output 2.1** The output of Activity 2.1 will be a workshop proceeding which cover the entire activities of the workshop along with the outcome of the workshop on issues regarding implementation of EE measures. The activity will also enroll all the attending experts for the BEE SME Programme.
- Activity 2.2** **Information Dissemination Workshops**
A one-day Information dissemination workshop will be conducted in all the 25 clusters with the help of local industry association and enrolled local service providers. The main focus of these workshops will be to share with the cluster the Energy Use and Technology Analysis manual prepared for each of the 25 clusters by the respective EAs. The workshop will discuss the EE measures identified in the cluster manuals and shortlist a minimum of 5 projects for which bankable DPRs will be prepared across maximum three segments of capacities in each cluster. Another important focus of the cluster workshop will be to share the best practices prevailing in the cluster.
- The workshop will also discuss managerial issues related to implementing EE measures. These will have mainly the financing component; how to keep books, what types of financing schemes are presently available and discuss what further can be done in this regard. SDA(s) will also be involved in order to help disseminate information.
- Output 2.2** The output of this activity will be a list of 15 projects for each cluster for which bankable DPRs will be prepared.
- Activity 3** **Implementation of EE Measures**
- Objective** The objective of this activity is to facilitate implementation of EE measures in the 25 identified clusters through development of DPRs.
- Activity 3.1** **Preparation of DPRs**
This activity is meant to prepare bankable DPRs for 15 projects in each cluster (over maximum 3 segments of capacities). This activity will also

target identification of the match between the projects and the specific expertise of the LSPs in order to allot the project to the LSPs which they will have to take forward in the clusters. These LSPs will be responsible for reporting to BEE for the progress that they may make with regard to implementation of the projects. A team of LSPs if they which to can group to take up projects.

Output 3.1 The output of this activity is a bank of 15 DPRs for all the 25 clusters and a match for experts and projects in all the 25 clusters. Thus the total number of DPRs will be 375.

Activity 3.2 Capacity Building of LSPs
This activity is meant to enhance the capacity of the enrolled Local Service Providers implement EE measures in the identified SME clusters. This will be based on identification of needs of the experts in line with the DPRs/projects allotted to them. The training will be undertaken at centers of learning to be identified by the EAs during the course of the project.

Output 3.2 The LSPs will be equipped with the necessary capacity to undertake the implementation of the EE projects measures in the identified clusters.

Activity 4: Facilitation of Innovative Financing Mechanism

Objective: The objective of this activity is to encourage uptake of EE measures through facilitation of innovative financing mechanisms without creating market distortion.

Activity 4.1 Facilitation of Financing EE
The Facilitation of Innovative Financing Mechanism (Activity 4.1, 4.2 and 4.3) will be conducted by the Nodal Agency under the guidance of the Project Management Cell. EAs do not have to conduct the activities mentioned under Activity 4.1, 4.2 and 4.3. The details are however provided here in order to help the bidders ascertain the level of effort required from them to provide knowledge support for the conduct of these activity, in the form of information support, making presentations at the events based on their activities in the cluster and identifying resource persons/entities.

Financing is often projected as one of the major roadblocks for implementing new technology including EE measures. The project will work to facilitate a financing arrangement in the form of partial funding of collaterals for EE measures being undertaken by the units in the 25 clusters. Such a scheme could be implemented through CGFTI, SIDBI and the lead banks in various districts. Such a fund is being proposed by the World Bank as a part of multilateral funding for SMEs. The Bureau

would work to facilitate the formation of this fund. The Partial Guarantee Fund for SMEs (PGFSME) will cover 30% of the risk guarantee, along with the entrepreneur sharing 30% and the banks the remaining 40% of the risk. The Bureau estimates that a funding of approximately Rs. 40 crore would be required to give shape to this fund. However, only facilitation of the formation of this fund and not the fund itself is a part of the Bureaus activities.

Output 4.1 The output of this activity will be an arrangement between the World Bank and with SIDBI/lead banks which will fund collaterals for EE measures.

Activity 4.2 Capacity Building of banks to evaluate EE projects
A 3 day training programme will be conducted with the officers of the SIDBI and the lead banks in the 25 clusters where the project is being undertaken. A training manual for the same will also be prepared. The training programme will be conducted at a central location and will be oriented towards enabling the bank officials with requisite information and knowledge on how to evaluate an EE project.

Output 4.2 The outcome of the activity will be enhanced capacities in the lead banks in the 25 clusters where the project is working. The training programme will also come up with a training manual.

Activity 4.3 Concluding LSPs Workshop
A 2-day workshop of the LSPs and representatives from the industry/associations will be called to share with each other the results of implementations that have been undertaken in the cluster. The concluding LSPs' workshop will detail the projects undertaken; savings made and will discuss future needs of the clusters to carve out a suggested roadmap for future BEE programme. SDA(s) will also participate in this workshop.

Output 4.3 This activity will result in an assessment of the impact of the project and a roadmap for future act

ion.

**Part – II
TOR for EA**

Terms of Reference for appointment of EAs in 7 SME clusters for the “BEE SME Programme in 25 SME Clusters”

I. Definitions

I. Definitions

1. SME Programme: Scheme of Bureau Of Energy Efficiency, Ministry Of Power, Government of India for enhancing energy efficiency in the SME sector of the Indian Industry
2. Local Service Providers: Technical and Financial/managerial service providers who provide project conceptualization and implementation services to the SMEs in specific clusters. In addition this includes technology suppliers, fuel suppliers, raw material suppliers, buyers and other stakeholders.
3. Stakeholders: Includes local service providers, experts in relevant areas, technology providers, bankers, government and non governmental agencies involved in working with SMEs in specific clusters, local industry associations etc.
4. Clusters: Group of industries manufacturing similar products usually using similar processes. The list of 35 SME clusters in 4 groups is enumerated in this document.
5. EE Technologies and measure: Energy efficiency technologies and measures which include renewable energy and fuel switching options.
6. PMC BEE: Project Management Cell, BEE.
7. Nodal Agency: Agency appointed by the BEE for programme management of the BEE SME programme.
8. Executing Agency: An agency (or a consortium represented by one agency), which is selected as per the process laid down in their RFP for conducting the activities in a SME cluster.

II Expectations from Executing Agencies

The following are the main activities for the executing agencies. In addition the EAs will undertake all possible efforts whether mention herein or not to complete the task to achieve the stated objectives. **Some activities will be undertaken by the PMC BEE and the EAs will be required only to support these activities in their respective clusters. The table below assigns the primary responsibility between the EAs and the PMC BEE:**

Activity	Responsibility of EA	Responsibility of PMC BEE
Activity 1.1	(completed)	(completed)
Activity 1.2	Primary Responsibility	--
Activity 2.1 and 2.2	Support/participation required	Primary Responsibility
Activity 3.1 and 3.2	Primary Responsibility	--
Activity 4.1, 4.2 and 4.3	Support participation required	Primary Responsibility

Activity 1.1 Situation analysis in 35 SME clusters

This activity has been completed and the results will be shared with the Executing Agencies.

Activity 1.2 Energy Use and Technology Audit

1. The Executing agencies will conduct an energy use and technology audit in the identified clusters.
2. The Executing agency will conduct energy audits and technology gap assessment studies of 30% of the units or 30 units, whichever is larger subject to a maximum of 75 such studies.. In clusters where the number of units is less than 30 all the units have to be covered. For 70% of these units a preliminary energy audit assessing the overall energy use in the unit (based on measurement) and technology gap assessment has to be conducted. Once the areas of high energy consuming sections of the plant have been identified detailed energy audits and the comprehensive technology gap assessment for these areas has to be done in the remaining 30% units. Both the selections should be such that they represent the various process routes and the scale of the operations in the cluster. The detailed energy audit and technology gap assessment studies for these units will include identification of energy efficiency measures, energy efficiency, renewable energy and fuel-switching technologies evaluation of competing technologies, sources of technologies (including international suppliers/vendors/developers of technology if any), costs related to setting up of projects, analysis and costs of down time if any, financing requirements, payback, IRR and cash flows. The identified energy efficiency measures/technologies should be classified as housekeeping/low cost investments and capital intensive technologies requiring major investment. The executing agency will identify about 10 EE technologies in each cluster. For choosing the units where activities will be conducted, the Executing agency will confirm with the unit whether they have the entrepreneurship memorandum number issued by the Ministry Of Micro Small and Medium Enterprises (MoMSME) and prefer those units which have this number. They shall also record the same. .
3. The Executing agency will also compile case studies of the technological intervention that may already have been made in the units and the Best Practices in the cluster. A minimum of three such case studies are required for each cluster. These case studies will be about 2 pages each and will have to be printed in the form of brochures in English and the local language. About 250 copies each of the brochures have to be printed by the EA and a ready to print .pdf version to be provided to the BEE PMC.
4. The Executing agency will also obtain information about the possible sources of EE measures/technologies that it suggests to be taken up and also provide the information about the local service providers available (at least 10 – five technical, fabricators, technology suppliers, technical consultants and five managerial, marketing people, financial analysts, quality consultants per cluster) who can undertake the implementation of these EE measures. The information should include detailed CVs of these local service providers and their technical and managerial capacity to provide services. These local service providers will be trained by the EA as per activity 3.2 and may be involved in the possible execution of projects post DPR preparation (activity 3.1).
5. The EA will prepare a cluster manual for the cluster in which it is working, which will give an overview of the cluster in terms of name and numbers of units, contact details, production capacity, technologies in use, products manufactured, potential

for energy savings, EE measures applicable, sources of these technologies/expertise and case studies on Best Practices / Technological Innovations in the cluster. The EA can draw upon from the situation analysis reports of the cluster they are working in. The executing agency will identify about 10 EE technologies in each cluster. These will be included in the cluster manual. Out of these 10 EE technologies 5 technologies shall be selected for preparation of DPRs. These 5 technologies for which the EA will make the DPRs (activity 3.1) should be ratified in the cluster workshop as given in 2.2.

6. The executing agency will prepare the cluster manuals incorporating the information generated from the study as given in 5 (above) and will print 100 copies of the same after getting the contents approved from the PMC BEE. They will also provide the BEE PMC with ready to print .pdf version of the cluster manuals.

Activity 2.1 Introductory Experts Workshop

7. The executing agency will discuss the BEE SME programme with service providers/entrepreneurs /local industry association and, provide the list and contact details of those who want to get associated with the BEE SME Programme and will facilitate their participation in the workshop. The workshop will be held in New Delhi or any other central location and the local service providers local industry association office bearers will travel to the location for the same. The executing agency will also attend the workshop and make presentations if required. The cost of travel of these participants will be borne by the PMC BEE.

Activity 2.2 Information Dissemination Workshop

8. The information dissemination workshop (one day) will be conducted by the PMC BEE in each of the clusters of activity.
9. A minimum of 15 projects (minimum 5 technologies and maximum 3 capacities of the same type) have to be identified prior to the workshop by the executing agency for each cluster and these projects will have to be presented during the information dissemination workshop by the executing agency. Further they will be converted into bankable DPRs (detailed project reports) by the executing agency (as per activity 3.1), in consultation with probable financing agencies, entrepreneurs and implementers (the local service providers) .
10. The executing agency will share the best practices prevailing in the cluster.
11. The cluster manuals prepared by the executing agencies (Activity 1.2) before the workshop for their respective clusters will be distributed by the executing agency to the participants in the cluster workshops. Brochures can also be distributed.

Activity 3.1

Preparation of DPRs

12. The Executing agency will be responsible for preparation of DPRs for the 15 projects (minimum 5 technologies and maximum 3 capacities of the same type) earlier identified (in activity 2.2) in each cluster. These DPRs will be made for energy efficiency, renewable energy and fuel switching technologies. For this they may take the help of the local service providers on terms decided between them. The DPRs should include technology assessment, financial assessment, economic assessment and sustainability assessment. The technology assessment should include details of the design of the equipment/technology along with the calculations of energy savings. The DPR of each of the 5 identified technologies of the most prevalent capacity should also incorporate the detailed engineering design of the equipment/technology and installation, including suggested civil work and structural

work that may be required, and the system modification. The design should also include instrumentation and electrical line diagrams.

13. The Executing agency will find a match between the projects identified and the local service providers so that these LSPs can take the implementation forward.
14. Technical and managerial LSPs may group if they so desire.
15. The executing agencies will proactively try to ensure that the DPRs are implemented in the respective cluster and will provide implementation support in the form of advisory services to any project that may be undertaken by the units during the term of the assignment.
16. The Executing agency will report to the BEE the number of projects implemented and the amount of energy savings effected in the clusters.
17. The executing agency will assess the potential of converting the EE projects to CDM project and will prepare a CDM PINs for the 'CDMable' technologies. The estimations of emission reductions should be made assuming three scenarios for technology penetration within the cluster.
18. It may be noted that a peer review of the DPRs will be independently arranged by PMC BEE before approval and acceptance.

Activity 3.2

18. The Executing agency will undertake the capacity building of the local service providers.. The executing agency will augment the list of local service providers and work out a plan for their capacity building as per the needs identified by them.
19. The executing agency will arrange for training and capacity building of the local service providers either by itself or by another specialized (preferably) local/regional agency and conduct the programs.

Activity 4.1 Financing Energy Efficiency

20. The Executing agency will provide information and ground support to the PMC BEE for carrying out this activity.

Activity 4.2 Capacity Building of banks

21. The activity will be conducted by the PMC BEE. The EAs have to provide ground support for these activities. The EAs will provide ground support and facilitate the participation of the officials of local banks/branches of banks from the respective clusters.

Activity 4.3 Concluding Service Providers workshop

22. The Executing agency will provide ground support, facilitate the participation of the people from their respective clusters, share knowledge generated in the project and participate in the workshop to be conducted by the PMC BEE.

General Conditions

23. While the RFP asks for comprehensive proposals for the whole period of the programme over the XI plan period and the contracts will be signed for the same between the executing agency and the BEE, the contracts will be subject to annual reviews.
24. It is proposed to disseminate the information generated in the programme through the BEE website. The executing agencies should be able to provide all the information generated in the project to the BEE in soft form in order to publish it on the website.

25. Activities 1.2, 2.1, 2.2, 3.1, 3.2 have to be completed by December 2010. All the activities in the programme have to be completed by June 2011.

26. The payment schedule will be

1. 20% of the charges – mobilisation cost
2. 30% of the charges – after completion of activity 1.2 Energy Use and Technology Gap Assessment, report submission and acceptance
3. 30% of the charges – after completion of activity 3.1 and 3.2 Preparation of final DPRs and Capacity Building of LSPs in the clusters, report submission and acceptance
4. 20% of the charges – after the completion of the assignment

(h) The list of 7 clusters is given below:

List of 7 clusters in the BEE SME Programme					
Sl. No.	Cluster	Product Name	Group	State/ UT Name	Number surveyed
1	Jamnagar (Brass)	Brass	Metals	Gujarat	846
2	Warangal (Rice Milling)	Rice Milling	Agro	Andhra Pradesh	115
3	Surat (Textiles)	Textile Process Houses	Textiles	Gujarat	415
4	Pali (Textiles)	Textiles	Textiles	Rajasthan	357
5	Morvi (Ceramics)	Ceramics	Ceramics & Minerals	Gujarat	442
26	Ahmedabad (Chemical Industries)	Process industries	Others	Gujarat	395
7	Solapur (Textiles)	Textiles	Textiles	Maharashtra	175

Section 6. Standard Form of Contract

CONTRACT FOR EXECUTING AGENCY'S SERVICES

Between

[name of the Client]

and

[name of the EA]

Dated:

I. Form of Contract

This CONTRACT (hereinafter called the "Contract") is made the [day] day of the month of [month], [year], between the President of India acting through (designation), Bureau of Energy Efficiency, Ministry of Power, Government of India, 4th Floor Sewa Bhavan, Sector 1, R.K. Puram (hereinafter called the "Employer"), of the First Part and, [name of EA] (hereinafter called the "EA") of the Second Part.

WHEREAS

- (a) the EA, having represented to the "Employer" that he has the required professional skills, personnel and technical resources, has offered to provide in response to the RFP dated _____ issued by the Employer ;
- (b) the "Employer" has accepted the offer of the EA to provide the services on the terms and conditions set forth in this Contract.

NOW, THEREFORE, IT IS HEREBY AGREED between the parties as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:

- (a) The General Conditions of Contract;
- (b) The Special Conditions of Contract;
- (c) The following Appendices:

Appendix A: Description of Services
Appendix B: Reporting Requirements
Appendix C: Staffing schedule
Appendix D: Cost Estimates
Appendix E: Duties of the "Employer"
Appendix F: Duties of the EA

2. The mutual rights and obligations of the "Employer" and the EA shall be as set forth in the Contract, in particular:

- (a) the EAs shall carry out and complete the Services in accordance with the provisions of the Contract; and
- (b) the “Employer” shall make payments to the EA in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

Signed by -----

In presence of

1. For and on behalf of the President of India [name of “Employer”]

(Witnesses)

(i) [Authorized Representative]

(ii)

2. For and on behalf of [name of EA]

In presence of

(Witnesses)

(i)

(ii) [Authorized Representative]

[Note: If the EA consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]

3. For and on behalf of each of the Members of the EA.

[name of member]

[Authorized Representative]

4. [name of member]

[Authorized Representative]

II. General Conditions of Contract

1. GENERAL PROVISIONS

1.1 **Definitions** Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) “Applicable Law” means the laws and any other instruments having the force of law in India for the time being.
- (b) “EA” means any private or public entity that will provide the Services to the “Employer” under the Contract.
- (c) “Contract” means the Contract signed by the Parties and all the attached documents listed in its Clause 1, that is this General Conditions (GC), the Special Conditions (SC), and the Appendices.
- (d) “Day” means calendar day.
- (e) “Effective Date” means the date on which this Contract comes into force and effect

pursuant to Clause GC 2.1.

- (f) "Foreign Currency" means any currency other than the currency of the "Employer's" country.
- (g) "GC" means these General Conditions of Contract.
- (h) "Government" means the Government of India
- (i) "Local Currency" means Indian Rupees.
- (j) "Member" means any of the entities that make up the joint venture/consortium/association; and "Members" means all these entities.
- (k) "Party" means the "Employer" or the EA, as the case may be, and "Parties" means both of them.
- (l) "Personnel" means professionals and support staff provided by the EAs or by any Sub-EAs and assigned to perform the Services or any part thereof; "Foreign Personnel" means such professionals and support staff who at the time of being so provided had their domicile outside the Government's country; "Local Personnel" means such professionals and support staff who at the time of being so provided had their domicile inside the Government's country; and "Key Personnel" means the Personnel referred to in Clause GC 4.2(a).
- (m) "Reimbursable expenses" means all assignment-related costs [such as travel, translation, report printing, secretarial expenses, subject to specified maximum limits in the Contract].
- (n) "SC" means the Special Conditions of Contract by which the GC may be amended or supplemented.
- (o) "Services" means the work to be performed by the EA pursuant to this Contract, as described in Appendix A hereto.
- (p) "Sub-EAs" means any person or entity to whom/which the EA subcontracts any part of the Services.
- (q) "Third Party" means any person or entity other than the "Employer", or the EA.
- (r) "In writing" means communicated in written form with proof of receipt.

1.2 Relationship Between the Parties

Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the "Employer" and the EA. The EA, subject to this Contract, has complete charge of Personnel and Sub-EAs, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 **Law Governing Contract:** This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the applicable laws of India.

1.4 **Headings:** The headings shall not limit, alter or affect the meaning of this Contract.

1.5 Notices

1.5.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered post to such Party at the address specified in the SC.

1.5.2 A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the SC.

1.6 **Location:** The Services shall be performed at such locations as are specified in **Appendix A hereto** and, where the location of a particular task is not so specified, at such locations, as the "Employer" may approve.

1.7 **Authority of Lead Partner:** In case the EA consists of a joint venture/consortium/association of more than one entity, the Members hereby authorize the entity specified

(Lead EA) in the SC to act on their behalf in exercising all the EA's rights and obligations towards the "Employer" under this Contract, including without limitation the receiving of instructions and payments from the "Employer". However, each member or constituent of Consortium of EA shall be jointly and severally liable for all obligations of the EA under the Contract.

1.8 Authorized Representatives: Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the "Employer" or the EA may be taken or executed by the officials specified in the SC.

1.9 Taxes and Duties: The EA, Sub-EAs and Personnel shall be liable to pay such direct and indirect taxes, duties, fees and other impositions levied under the applicable laws of India.

1.10 Fraud and Corruption

1.10.1 Definitions: It is the Employer's policy to require that Employers as well as EAs observe the highest standard of ethics during the execution of the Contract. In pursuance of this policy, the Employer defines, for the purpose of this provision, the terms set forth below as follows:

- (i) "corrupt practice" means the offering, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the selection process or in contract execution;
- (ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract;
- (iii) "collusive practices" means a scheme or arrangement between two or more EAs, with or without the knowledge of the Employer, designed to establish prices at artificial, noncompetitive levels;
- (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract;

1.10.2 Measures to be taken by the Employer

- (a) The Employer may terminate the contract if it determines at any time that representatives of the EA were engaged in corrupt, fraudulent, collusive or coercive practices during the selection process or the execution of that contract, without the EA having taken timely and appropriate action satisfactory to the Employer to remedy the situation;
- (b) The Employer may also sanction against the EA, including declaring the EA ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the EA has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Employer-financed contract;

1.10.3 Commissions and Fees

At the time of execution of this Contract, the EAs shall disclose any commissions or fees that may have been paid or are agreed to be paid to agents, representatives, or commission agents with respect to the selection process or execution of the contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1 Effectiveness of Contract: This Contract shall come into force and effect on the date (the "Effective Date") of the "Employer"'s notice to the EA instructing the EA to begin carrying out the Services. This notice shall confirm that the conditions precedent and effectiveness conditions, if any, listed in the SC have been met.

2.2 Termination of Contract for Failure to Become Effective: If this Contract has not become effective within such time period after the date of the Contract signed by the Parties as specified in the SC, either Party may, by not less than twenty one (21) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

2.3 Commencement of Services: The EA shall begin carrying out the Services not later than the number of days after the Effective Date specified in the SC.

2.4 Expiration of Contract: Unless terminated earlier pursuant to Clause GC 2.9 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SC.

2.5 Entire Agreement: This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any other statement, representation, promise or agreement not set forth herein.

2.6 Modifications or Variations: (a) Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clause GC 7.2 here of, however, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

(b) In cases of substantial modifications or variations, the prior written consent of the Employer is required.

2.7 Force Majeure

2.7.1 Definition (a) For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable and not brought about by or at the instance of the Party claiming to be affected by such events and which has caused the non-performance or delay in performance, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other extreme adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Government agencies.

(b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or by or of such Party's Sub-EAs or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.

(c) Subject to clause 2.7.2, Force Majeure shall not include insufficiency of funds or inability to make any payment required hereunder.

2.7.2 No Breach of Contract: The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

2.7.3 Measures to be Taken: (a) A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

(b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the

occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

(c) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

(d) During the period of their inability to perform the Services as a result of an event of Force Majeure, the EA, upon instructions by the "Employer", shall either:

(i) demobilize,; or

(ii) continue with the Services to the extent possible, in which case the EA shall continue to be paid proportionately and on prorata basis, under the terms of this Contract.

(e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause GC 8.

2.8 Suspension: The "Employer" may, by written notice of suspension to the EA, suspend all payments to the EA hereunder if the EA fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall allow the EA to remedy such failure, if capable of being remedied, within a period not exceeding thirty (30) days after receipt by the EA of such notice of suspension.

2.9 Termination

2.9.1.1 By the "Employer": The "Employer" may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (h) of this Clause GC 2.9.1.1.

(a) If the EA fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GC 2.8 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the "Employer" may have subsequently approved in writing.

(b) If the EA becomes (or, if the EA consists of more than one entity, if any of its Members becomes and which has substantial bearing on providing Services under this contract) insolvent or go into liquidation or receivership whether compulsory or voluntary.

(c) If the EA fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 8 hereof.

(d) If the EA, in the judgment of the "Employer", has engaged in corrupt or fraudulent practices in competing for or in executing this Contract.

(e) If the EA submits to the "Employer" a false statement which has a material effect on the rights, obligations or interests of the "Employer".

(ee) If the EA places itself in position of conflict of interest or fails to disclose promptly any conflict of interest to the Employer.

(f) If the EA fails to provide the quality services as envisaged under this Contract. The Consultancy Monitoring Committee (CMC) formulated to monitor the progress of the assignment may make judgment regarding the poor quality of services, the reasons for which shall be recorded in writing. The CMC may decide to give one chance to the EA to improve the quality of the services.

(g) If, as the result of Force Majeure, the EA is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

(h) If the "Employer", in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

2.9.1.2 In such an occurrence the "Employer" shall give a not less than thirty (30) days' written notice of termination to the EAs, and sixty (60) days' in case of the event referred to in (h).

2.9.2 By the EA: The EA may terminate this Contract, by not less than thirty (30) days' written notice to the "Employer", in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause GC 2.9.2.

(a) If the “Employer” fails to pay any money due to the EA pursuant to this Contract and not subject to dispute pursuant to Clause GC 8 hereof within forty-five (45) days after receiving written notice from the EA that such payment is overdue.

(b) If, as the result of Force Majeure, the EA is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

(c) If the “Employer” fails to comply with any final decision reached as a result of arbitration pursuant to Clause GC 8 hereof.

(d) If the “Employer” is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the EA may have subsequently approved in writing) following the receipt by the “Employer” of the EA’s notice specifying such breach.

2.9.3 Cessation of Rights and Obligations: Upon termination of this Contract pursuant to Clauses GC 2.2 or GC 2.9 hereof, or upon expiration of this Contract pursuant to Clause GC 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GC 3.3 hereof, (iii) the EA’s obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GC 3.6 hereof, and (iv) any right which a Party may have under the Law.

2.9.4 Cessation of Services: Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof, the EA shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the EA and equipment and materials furnished by the “Employer”, the EA shall proceed as provided, respectively, by Clauses GC 3.9 or GC 3.10 hereof.

2.9.5 Payment upon Termination: Upon termination of this Contract pursuant to Clauses GC

2.9.1 or GC 2.9.2 hereof, the “Employer” shall make the following payments to the EA:

(a) If the Contract is terminated pursuant to Clause 2.9.1 (g), (h) or 2.9.2, remuneration pursuant to Clause GC 6.3(h) (i) hereof for Services satisfactorily performed prior to the effective date of termination, and reimbursable expenditures pursuant to Clause GC 6.3(h)(ii) hereof for expenditures actually and reasonably incurred prior to the effective date of termination;

(b) If the agreement is terminated pursuant of Clause 2.9.1 (a) to (f), the EA shall not be entitled to receive any agreed payments upon termination of the contract. However, the “Employer” may consider to make payment for the part satisfactorily performed on the basis of Quantum Merit as assessed by it, if such part is of economic utility to the Employer. Applicable Under such circumstances, upon termination, the client may also impose liquidated damages as per the provisions of Clause 9 of this agreement. The EA will be required to pay any such liquidated damages to client within 30 days of termination date.

2.9.6 Disputes about Events of Termination: If either Party disputes whether an event specified in paragraphs (a) through (g) of Clause GC 2.9.1 or in Clause GC 2.9.2 hereof has occurred, such Party may, within forty-five (30) days after receipt of notice of termination from the other Party, refer the matter to Clause GC 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE EA

3.1 General

3.1.1 Standard of Performance: The EA shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The EA shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the “Employer”, and shall at all times support and safeguard the “Employer”’s legitimate interests in any dealings with Sub-EAs or Third Parties.

3.2 Conflict of Interests: The EA shall hold the “Employer”’s interests paramount, without any consideration for future work, and strictly avoid conflict of interest with other assignments or their own corporate interests. If during the period of this contract, a conflict of interest arises for any reasons, the EA shall promptly disclose the same to the Employer and seek its instructions.

3.2.1 EA not to benefit from Commissions, Discounts, etc.: (a) The payment of the EA pursuant to Clause GC 6 hereof shall constitute the EA’s only payment in connection with this Contract and, subject to Clause GC 3.2.2 hereof, the EA shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the EA shall use its best efforts to ensure that any Sub-EAs, as well as the Personnel and agents of either of them, similarly shall not receive any such additional payment.

(b) Furthermore, if the EA, as part of the Services, has the responsibility of advising the “Employer” on the procurement of goods, works or services, the EA shall comply with the Employer’s applicable procurement guidelines, and shall at all times exercise such responsibility in the best interest of the “Employer”. Any discounts or commissions obtained by the EA in the exercise of such procurement responsibility shall be for the account of the “Employer”.

3.2.2 EA and Affiliates Not to Engage in Certain Activities: The EA agrees that, during the term of this Contract and after its termination, the EA and any entity affiliated with the EA, as well as any Sub-EAs and any entity affiliated with such Sub-EAs, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the EA’s Services for the preparation or implementation of the project.

3.2.3 Prohibition of Conflicting Activities: The EA shall not engage, and shall cause their Personnel as well as their Sub-EAs and their Personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

3.3 Confidentiality: Except with the prior written consent of the “Employer”, the EA and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the EA and its Personnel make public the recommendations formulated in the course of, or as a result of, the Services.

3.4 Insurance to be Taken out by the EA: The EA (i) shall take out and maintain, and shall cause any Sub-EAs to take out and maintain insurance, at their (or the Sub-EAs’, as the case may be) own cost but **on terms and conditions approved by the “Employer”**, insurance against the risks, and for the coverages specified in the SC, and (ii) at the “Employer”’s request, shall provide evidence to the “Employer” showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.

3.5 Accounting, Inspection and Auditing: The EA (i) shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time changes and costs, and the bases thereof, and (ii) shall periodically permit the “Employer” or its designated representative and/or the Employer, and up to five years from expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the “Employer” or the Employer, if so required by the “Employer” or the Employer as the case may be.

3.6 EA’s Actions Requiring “Employer”’s Prior Approval: The EA shall obtain the “Employer”’s prior approval in writing before taking any of the following actions:

(a) Any change or addition to the Personnel listed in Appendix C.

(b) Subcontracts: the EA may subcontract work relating to the Services to an extent and with such experts and entities as may be approved in advance by the “Employer”. Notwithstanding such approval, the EA shall always retain full responsibility for the Services. In the event that any Sub-EAs are found by the “Employer” to be incompetent or incapable or undesirable in discharging assigned duties, the “Employer” may request the EA to provide a replacement, with qualifications and experience acceptable to the “Employer”, or to resume the performance of the Services itself.

3.7 Reporting Obligations: The EA shall submit to the “Employer” the reports and documents specified in Appendix B hereto, in the form, in the numbers and within the time periods set forth in the said Appendix. Final reports shall be delivered in CD ROM in addition to the hard copies specified in said Appendix.

3.8 Documents Prepared by the EA to be the Property of the “Employer”: All plans, drawings, specifications, designs, reports, other documents and software prepared by the EA for the “Employer” under this Contract shall become and remain the property of the “Employer”, and the EA shall, not later than upon termination or expiration of this Contract, deliver all such documents to the “Employer”, together with a detailed inventory thereof. The EA may retain a copy of such documents, but shall not use anywhere, without taking permission, in writing, from the Employer and the Employer reserves right to grant or deny any such request.. If license agreements are necessary or appropriate between the EA and third parties for purposes of development of any such computer programs, the EA shall obtain the “Employer”’s prior written approval to such agreements, and the “Employer” shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned.

3.9 Equipment, Vehicles and Materials Furnished by the “Employer”:

Equipment, vehicles and materials made available to the EA by the “Employer”, or purchased by the EA wholly or partly with funds provided by the “Employer”, shall be the property of the “Employer” and shall be marked accordingly. Upon termination or expiration of this Contract, the EA shall make available to the “Employer” an inventory of such equipment, vehicles and materials and shall dispose of such equipment and materials in accordance with the “Employer”’s instructions. While in possession of such equipment, vehicles and materials, the EA, unless otherwise instructed by the “Employer” in writing, shall insure them at the expense of the “Employer” in an amount equal to their full replacement value.

Equipment and Materials Provided by the EAs: Equipment or materials brought into the Government’s country by the EA and the Personnel and used either for the Project or personal use shall remain the property of the EA or the Personnel concerned, as applicable.

4. EAs' PERSONNEL AND SUB-EAs

4.1 **General:** The EA shall employ and provide such qualified and experienced Personnel and Sub-EAs as are required to carry out the Services.

4.2 **Description of Personnel:** (a) The title, agreed job description, minimum qualification and estimated period of engagement in the carrying out of the Services of each of the EA's Key Personnel are as per the EA's proposal and are described in Appendix C. If any of the Key Personnel has already been approved by the "Employer", his/her name is listed as well.

(b) If required to comply with the provisions of Clause GC 3.1.1 hereof, adjustments with respect to the estimated periods of engagement of Key Personnel set forth in Appendix C may be made by the EA by written notice to the "Employer", provided (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10% or one week, whichever is larger, and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GC 6.1(b) of this Contract. Any other such adjustments shall only be made with the "Employer"'s written approval.

(c) If additional work is required beyond the scope of the Services specified in Appendix A, the estimated periods of engagement of Key Personnel set forth in Appendix C may be increased by agreement in writing between the "Employer" and the EA. In case where payments under this Contract exceed the ceilings set forth in Clause GC 6.1(b) of this Contract, this will be explicitly mentioned in the agreement.

4.3 **Approval of Personnel:** The Key Personnel and Sub-EAs listed by title as well as by name in Appendix C are hereby approved by the "Employer". In respect of other Personnel which the EA proposes to use in the carrying out of the Services, the EA shall submit to the "Employer" for review and approval a copy of their Curricula Vitae (CVs). If the "Employer" does not object in writing (stating the reasons for the objection) within twenty-one (21) days from the date of receipt of such CVs, such Personnel shall be deemed to have been approved by the "Employer".

4.4 **Removal and/or Replacement of Personnel:** (a) Except as the "Employer" may otherwise agree, no changes shall be made in the Personnel. If, for any reason beyond the reasonable control of the EA, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Personnel, the EA shall forthwith provide as a replacement a person of equivalent or better qualifications.

(b) If the "Employer" (i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the EA shall, at the "Employer"'s written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the "Employer".

(c) Any of the Personnel provided as a replacement under Clauses (a) and (b) above, as well as any reimbursable expenditures (including expenditures due to the number of eligible dependents) the EAs may wish to claim as a result of such replacement, shall be subject to the prior written approval by the "Employer". The rate of remuneration applicable to a replacement person will be the rate of remuneration paid to the replacement person. Also (i) the EA shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the Personnel replaced.

4.5 **Resident Project Manager :** If required by the SC, the EA shall ensure that at all times during the EA's performance of the Services a resident project manager, acceptable to the "Employer", shall take charge of the performance of such Services.

5. OBLIGATIONS OF THE “EMPLOYER”

5.1 **Assistance and Exemptions** : Unless otherwise specified in the SC, the “Employer” shall

use its best efforts to ensure that the Government shall:

(a) Provide the EA, Sub-EAs and Personnel with work permits and such other documents as shall be necessary to enable the EA, Sub-EAs or Personnel to perform the Services.

(b) Arrange for the Foreign Personnel to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in India.

(c) Issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

(d) Provide to the EA, Sub-EAs and Personnel any such other assistance as may be specified in the SC.

5.2 **Change in the Applicable Law Related to Taxes and Duties:** If, after the date of this Contract, there is any change in the Applicable Laws of India with respect to taxes and duties, which are directly payable by the EA for providing the services i.e. service tax or any such applicable tax from time to time, which increases or decreases the cost incurred by the EA in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the EA under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GC 6.1(b).

5.3 **Services, Facilities and Property of the “Employer”:** (a) The “Employer” shall make available to the EA and its Personnel, for the purposes of the Services and **free of any charge**, the services, facilities and property described in Appendix E at the times and in the manner specified in said **Appendix E**.

(b) In case that such services, facilities and property shall not be made available to the EA as and when specified in Appendix E, the Parties shall agree on any time extension that it may be appropriate to grant to the EA for the performance of the Services .

5.4 **Payment:** In consideration of the Services performed by the EA under this Contract, the “Employer” shall make to the EA such payments and in such manner as is provided by Clause GC 6 of this Contract.

5.5 **Counterpart Personnel:** (a) If necessary, the “Employer” shall make available to the EA free of charge such professional and support counterpart personnel, to be nominated by the “Employer” with the EA’s advice, if specified in Appendix E.

(b) Professional and support counterpart personnel, excluding “Employer”’s liaison personnel, shall work under the exclusive direction of the EA. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the EA that is consistent with the position occupied by such member, the EA may request the replacement of such member, and the “Employer” shall not unreasonably refuse to act upon such request.

6. PAYMENTS TO THE EA

6.1 **Total Cost of the Services** (a) The total cost of the Services payable is set forth in

Appendix D as per the EA’s proposal to the Employer and as negotiated thereafter.

(b) Except as may be otherwise agreed under Clause GC 2.6 and subject to Clause GC 6.1(c), payments under this Contract shall not exceed the amount specified in Appendix-D.

(c) Notwithstanding Clause GC 6.1(b) hereof, if pursuant to any of the Clauses GC 4.2 (c) or 5.2 hereof, the Parties shall agree that additional payments shall be made to the EA in order to cover any necessary additional expenditures not envisaged in the cost estimates

referred to in Clause GC 6.1(a) above, the ceiling or ceilings, as the case may be, set forth in Clause GC 6.1(b) above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Currency of Payment: All payments shall be made in Indian Rupees.

6.3 Terms of Payment The payments in respect of the Services shall be made as follows:

(a) The EA shall submit the invoice for payment when the payment is due as per the agreed terms. The payment shall be released as per the work related milestones achieved and as per the specified percentage as per SC 13.

(b) Once a milestone is completed, the EA shall submit the requisite deliverables as specified in this Contract. The Employer shall release the requisite payment upon acceptance of the deliverables. However, if the Employer fails to intimate acceptance of the deliverables or its objections thereto, within 30 days of receipt of it, the Employer shall release the payment to the EA without further delay.

(c) Final Payment : The final payment as specified in SC 13 shall be made only after the final report and a final statement, identified as such, shall have been submitted by the EA and approved as satisfactory by the "Employer". The Services shall be deemed completed and finally accepted by the "Employer" and the final report and final statement shall be deemed approved by the "Employer" as satisfactory ninety (90) calendar days after receipt of the final report and final statement by the "Employer" unless the "Employer", within such ninety (90) day period, gives written notice to the EA specifying in detail deficiencies in the Services, the final report or final statement. The EA shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. Any amount, which the "Employer" has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract, shall be reimbursed by the EA to the "Employer" within thirty (30) days after receipt by the EA of notice thereof. Any such claim by the "Employer" for reimbursement must be made within twelve (12) calendar months after receipt by the "Employer" of a final report and a final statement approved by the "Employer" in accordance with the above.

(d) For the purpose of payment under Clause 6.3 (b) above, acceptance means; acceptance of the deliverables by the Employer after submission by the EA and the EA has made presentation to the CMC / Employer (Mention this if presentation is required) with / without modifications to be communicated in writing by the Employer to the EA.

(e) If the deliverables submitted by the EA are not acceptable to the Employer / CMC, reasons for such non-acceptance should be recorded in writing; the Employer shall not release the payment due to the EA. This is without prejudicing the Employer's right to levy any liquidated damages under clause 9. In such case, the payment will be released to the EA only after it re-submits the deliverable and which is accepted by the Employer.

(f) All payments under this Contract shall be made to the accounts of the EA specified in the SC.

(g) With the exception of the final payment under (c) above, payments do not constitute acceptance of the Services nor relieve the EA of any obligations hereunder, unless the acceptance has been communicated by the Employer to the EA in writing and the EA has made necessary changes as per the comments / suggestions of the Employer communicated to the EA.

(h) In case of early termination of the contract, the payment shall be made to the EA as mentioned here with: (i) Assessment should be made about work done from the previous milestone, for which the payment is made or to be made till the date of the termination. The EA shall provide the details of persons reasonably worked during this period with supporting documents. Based on such details, the remuneration shall be calculated based

on the man month rate as specified. (ii) A reasonable assessment of the reimbursable and miscellaneous expenses shall be made based on details furnished by the EA in this regard with supporting documents and based on the assessment of the work done and the respective rates as provided. Wherever such an assessment is difficult, the rates should be arrived at by calculating the amount on pro-rata basis. The total amount payable shall be the amount calculated as per (i) and (ii) above plus any applicable tax.

7. FAIRNESS AND GOOD FAITH

7.1 Good Faith: The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

7.2 Operation of the Contract: The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause GC 8 hereof.

8. SETTLEMENT OF DISPUTES

8.1 Amicable Settlement: Performance of the contract is governed by the terms & conditions of the contract, in case of dispute arises between the parties regarding any matter under the contract, either Party of the contract may send a written Notice of Dispute to the other party. The Party receiving the Notice of Dispute will consider the Notice and respond to it in writing within 30 days after receipt. If that party fails to respond within 30 days, or the dispute cannot be amicably settled within 60 days following the response of that party, clause GC 8.2 shall become applicable.

8.2 Arbitration: In the case of dispute arising upon or in relation to or in connection with the contract between the Employer and the EA, which has not been settled amicably, any party can refer the dispute for Arbitration under (Indian) Arbitration and Conciliation Act, 1996. Such disputes shall be referred to an Arbitral Tribunal consisting of 3 (three) arbitrators, one each to be appointed by the Employer and the EA, the third arbitrator shall be chosen by the two arbitrators so appointed by the parties and shall act as Presiding Arbitrator. In case of failure of the two arbitrators, appointed by the parties to reach a consensus regarding the appointment of the third arbitrator within a period of 30 days from the date of appointment of the two arbitrators, the Presiding arbitrator shall be appointed by the Secretary of the Ministry / Department. The Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof, shall apply to these arbitration proceedings.

8.3. Arbitration proceedings shall be held in India at the place indicated in SC and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

8.4 The decision of the majority of arbitrators shall be final and binding upon both parties. The expenses of the arbitrators as determined by the arbitrators shall be shared equally by the Employer and the EA. However, the expenses incurred by each party in connection with the preparation, presentation shall be borne by the party itself. All arbitration awards shall be in writing and shall state the reasons for the award.

9. Liquidated Damages

9.1 The parties hereby agree that due to negligence of act of any party, if the other party suffers losses, damages the quantification of which may be difficult, and hence the amount specified hereunder shall be construed as reasonable estimate of the damages and both the parties agree to pay such liquidated damages, as defined hereunder as per the provisions of this Contract.

9.2 The amount of liquidated damages under this Contract shall not exceed [] % of the total value of the contract as specified in Appendix D.

9.3 The liquidated damages shall be applicable under following circumstances:

(a) If the deliverables are not submitted as per schedule as specified in SC 13, the EA shall be liable to pay 1% of the total cost of the services for delay of each week or part thereof.

(b) If the deliverables are not acceptable to the Employer as mentioned in Clause 6.3 (f), and defects are not rectified to the satisfaction of the Employer within 30 days of the receipt of the notice, the EA shall be liable for Liquidated Damages for an amount equal to []% of total cost of the services for every week or part thereof for the delay.

10. Miscellaneous provisions:

- (i) "Nothing contained in this Contract shall be construed as establishing or creating between the Parties, a relationship of master and servant or principal and agent.
- (ii) Any failure or delay on the part of any Party to exercise right or power under this Contract shall not operate as waiver thereof.
- (iii) The Contractor/EA shall notify the Employer/ the Government of India of any material change in their status, in particular, where such change would impact on performance of obligations under this Contract.
- (iv) Each member/constituent of the Contractor/EA, in case of a consortium, shall be jointly and severally liable to and responsible for all obligations towards the Employer/Government for performance of works/services including that of its Associates/Sub Contractors under the Contract.
- (v) The Contractor/EA shall at all times indemnify and keep indemnified the Employer/Government of India against all claims/damages etc. for any infringement of any Intellectual Property Rights (IPR) while providing its services under the Project.
- (vi) The Contractor/EA shall at all times indemnify and keep indemnified the Employer/Government of India against any claims in respect of any damages or compensation payable in consequences of any accident or injury sustained or suffered by its (the Contractor's/EA's) employees or agents or by any other third Party resulting from or by any action, omission or operation conducted by or on behalf of the Contractor/EA.
- (vii) The Contractor/ EA shall at all times indemnify and keep indemnified the Employer/Government of India against any and all claims by Employees, Workman, Contractors, sub-contractors, suppliers, agent(s), employed engaged or otherwise working for the Contractor, in respect of wages, salaries, remuneration, compensation or the like.
- (viii) All claims regarding indemnity shall survive the termination or expiry of the Contract.
- (ix) It is acknowledged and agreed by all Parties that there is no representation of any type, implied or otherwise, of any absorption, regularization, continued engagement or concession or preference for employment of persons engaged by the (Contractor/EA) for any engagement, service or employment in any capacity in any office or establishment of the Government of India or the Employer.

III. Special Conditions of Contract:

(To be notified in terms of work specified)

IV. Appendices

APPENDIX A – DESCRIPTION OF SERVICES

Note: This Appendix will include the final Terms of Reference worked out by the “Employer” and the EAs during technical negotiations, dates for completion of various tasks, place of performance for different tasks/activities, specific tasks/activities/outcome to be reviewed, tested and approved by “Employer”, etc.

APPENDIX B - REPORTING REQUIREMENTS

Note: List format, frequency, and contents of reports; persons to receive them; dates of submission; etc.

APPENDIX C – STAFFING SCHEDULE

(Include here the agreed (negotiated staffing schedule including the engagement of sub-contractors, if any)

APPENDIX D – Total COST OF SERVICES IN

(Include here the rates quoted in the financial proposal or the negotiated rates, whichever is applicable)

APPENDIX E - DUTIES OF THE “EMPLOYER”

(Include here the list of Services, facilities and property to be made available to the EA by the “Employer”