



കേരളം KERALA

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Annexure - II
FORM OF AGREEMENT

NO: 103/2015-16

Articles of Agreement made the 28th day of March 2016 Between Smt. Jayakumari K.K. Chief Engineer (SCM), Kerala State Electricity Board, Trivandrum acting for/on behalf of the Kerala State Electricity Board Ltd, hereinafter called the "Board" of the one part and Sri.M.S.Balasubramani, Manager-Sales of M/s.Novateur Electrical & Digital Systems Private Limited incorporated under the Company Act, 1956 and having its registered Office at 61/62,6th Floor, Kalpatharu Square, Kondivita Road, Off Andheri - Kurla Road, Andheri (East), Mumbai, Maharashtra-400 059 and UPS Division Office at No.183, 10th Floor, (Northern Wing), "Prestige Centre Court", Vijaya Forum Mall, N.S.K.Salai, Arcot Road, Vadapalani, Chennai - 600 026 (herein after called the Contractor) of the other part.

Jay
CHIEF ENGINEER
SUPPLY CHAIN MANAGEMENT
K.S.E.BOARD, THIRUVANANTHAPURAM.



GL No. 50518 Value Rs 500/-
Issued to 16/3/16

Novateur Electrical & Digital Systems

K.R. Suresh Kumar, Thankachy

D/Hd. Chennai

Kalyan & Neel



WHEREAS the Contractor has tendered for the supply and maintenance of articles for the use of Board as per Tender Notification No. e-Tender No.KSEB/SCM/eP/37/2015-16 dated 03/11/2015. And WHEREAS the Board have been pleased to accept the contract in respect of the articles mentioned in the copy of order attached.

And WHEREAS the Contractor as security for the satisfactory fulfillment of this contract deposited Rs13,20,900/- (Rupees Thirteen lakhs twenty thousand nine hundred only) i.e., a sum equal to 5% percent of the value of the contract as per Bank Draft No. dated..... Bank Guarantee No.IGT1601081 dated 18.03.2016 of the BNP Paribas Bank duly approved by the KSEB Ltd.

Now these presents witness and it is hereby mutually agreed as follows:-

- 1) The Contractor shall undertake to supply and install material according to the standard samples and specifications.
- 2) No representation for enhancement of rates once accepted will be considered.
- 3) The approximate quantities to be supplied are shown in the copy of order No.SCM.145/2015-16/5642 dated 08.03.2016 herewith attached which shall be treated as a part of this agreement as nearly as can be foreseen. But they are merely estimates of quantities that may be required for general guidance of tenderers and the Board in no case binds itself to purchase any quantity at all during the period of contract if no necessity arises therefore, but the Contractor shall supply any quantity of any article at the rate tendered by him, for that article up to 25 percent, in excess of the estimated quantity quoted, and in the event of his inability to do so or to offer a suitable alternative to the satisfaction of the Board, the Board is at liberty to purchase the articles or an article of similar quality from elsewhere and should the price of the articles so purchased be in excess of the tendered rate to deduct the difference of cost from the contractor's bills or his security deposit, as the case may be. The Contractor shall not however be entitled to the excess, if any, of the tendered rate over such purchase amount.
- 4) In case the Contractor fails to supply and deliver any of the articles and things tendered for by him within the time provided for delivery of the same or in case the Contractor commits any breach of any of the covenants, stipulations and agreements here in contained and on his part to be observed and performed, then and in any such case, it shall be lawful for the Board (if it shall think fit to do so) by an order in writing to put an end to this contract, and

in case the Board shall have incurred, sustained or been put to any costs damage or expenses by reason of this contract having been so put an end to or in case any difference in price, compensation, loss, costs, damages, expenses or other money shall then or at any time during the continuance of this contract be payable by the contractor to the Board under and by virtue of this contract it shall be lawful for the Board from and out of any moneys for the time being payable or owing to the contractor from the Board under or by virtue of this contract or otherwise to pay and reimburse to the Board all such costs, damages and expenses they may have sustained, incurred or been put to by reason of this contract having been so put an end to as aforesaid, and also all such difference in price, compensation loss, costs, damages, expenses and other moneys as shall for the time being be payable by the Contractor aforesaid.

5) Every notice hereby required or authorized to be given may be either given to the Contractor personally or left at his residence or last known place of abode or business or may be handed over to his agent personally or may be addressed to the Contractor by Post at his usual or last known place of abode or business and if so addressed and posted shall be deemed to have been served to contractor on the date on which in the ordinary course of Post a letter is addressed and posted would reach his place of abode or business.

6) All payments to the Contractor will be made in due course:

- i) either by the Board's cheques payable at the Government Treasuries.
- ii) or by cheques or drafts on the State Bank of Travancore, Trivandrum or at any of its principal branches in Kerala

7) The Contractor shall not assign or make over the contract or the benefits or burdens there of or any part thereof to any other person or person or body corporate. The Contractor shall not underlet or sublet to any person or body corporate the execution of the contract or any part thereof without the consent in writing of the Board. The Board shall have absolute power to refuse such consent or rescind such consent (if given) at any time, if they are not satisfied with the manner in which the contract is being executed and no allowance or compensation shall be made to the Contractor or the subcontractor upon such rescission. Provided always that if such consent be given at any time, the Contractor shall not be relieved from any obligation, duty or responsibility under this contract.

8) In case the contractor becomes insolvent or goes into liquidation or makes or proposes to make any assignment for the benefit of his creditors or proposes any composition with his creditors for the settlement of his debts or carries on his business or the contract under inspection on behalf of his creditors, or in case any receiving order or orders for the administration of his estate are made against him, or in case the Contractor shall commit any act of insolvency, or in case in which, under any clause or clauses of this contract, the Contractor shall have rendered himself liable to damages amounting to the whole of his

security deposits, the contract shall thereupon, after notice given by the Chief Engineer (SCM), Kerala State Electricity Board to the Contractor, be determined and the Chief Engineer (SCM) may complete the contract in such time and manner and by such person as the Board shall think fit. But such determination of the contract shall be without any prejudice to any right of remedy of the Board against the Contractor or his sureties in respect of any breach of contract committed by the Contractor.

1. All expenses and damages caused to the Board by any breach of all or any of the terms of this contract by the Contractor shall be paid by the Contractor to the Board and may be recovered from him.

9.(a) The Contractor agrees that final payment will be made only on Production of Tax Clearance Certificates relating to Agricultural Income Tax, Sales Tax and Income Tax by him.

10) The Security Deposit will be released only after the successful completion of the contract period viz., 6years & 6months after producing Non Liability Certificate. But in the event of any dispute arising between the Electricity Board and the Contractor, the Board shall be entitled to deduct out of the deposits or the balance thereof, until such dispute is determined the amount of such damages, costs, charges and expenses as may be claimed the same may also be deducted from any other sum which may be due at any time from the Board to the Contractor.

11) The Contractor/hereby declares that the goods/stores/articles sold to buyer under this contract shall be of the best quality (and workmanship) and shall be strictly in accordance with the specifications and particulars contained/mentioned in the copy of the order mentioned in clause 3 here of and the contractor/hereby guarantees that the said goods/stores/articles would continue to conform to the description and quality aforesaid for a period of 36 days/months from the date of delivery of the said goods/stores/articles to the Board and that notwithstanding the fact that the Board (Inspector) may have inspected and/or approved the said goods/stores/articles, if during the aforesaid period of 36 days/months the said goods/stores/articles be discovered not to conform to the description and quality aforesaid or have deteriorated and the decision of the Board in that behalf will be final and conclusive the Board will be entitled to reject the said goods/stores/articles or such portion thereof as may be discovered not to conform to the said description and quality. On such rejection of goods/articles/stores will be at the contractor's risk and all the provisions herein contained relating to rejection of goods & c, shall apply. The contractor/Seller shall if so called upon to do replace the goods & c, or such portion thereof as is rejected by the Board, Otherwise the Contractor/Seller shall pay to the Board such damages as may arise by reason of the break of the conditions herein contained. Nothing herein contained shall prejudice any other right of the Board in that behalf under this contract or otherwise.

12) The tender documents viz., Tender Notice, Declaration by Tenderer, General Instructions, Technical Conditions, Commercial Conditions, Performance Guarantee, Price Bid – Schedule, General Conditions will form part of this Agreement. The terms & conditions

given in this agreement and/or the Order referred to in Clause 3 above shall supercede all the terms and conditions contained in the tender/quotation submitted by the Contractor or in the covering letter forwarding the said tender/quotation. Where the contractor's terms and conditions are at variance with this agreement and/or the order for the supply, the latter shall prevail.

13) In case where a successful tenderer after having made partial supplies fails to fulfill the contracts in full, all or any of the materials not supplied may, at the discretion of the purchasing Officer be purchased by means of another tender/Quotation or by negotiation from the next higher tenderer who had offered to supply already and the loss, if any, caused to the Board shall thereby together with such sums as may be fixed by the Board towards damages be recovered from the defaulting, tenderer.

14) Even in cases where no alternate purchases are arranged for the materials not supplied the proportionate portion of the security deposit based on the cost of the materials not supplied at the rate shown in the tender of the defaulter shall be forfeited and balance alone shall be refunded.

15) The equipments supplied under this contract will be under performance guarantee valid for the period to (6 years and grace period of 6 months).


16) **PERFORMANCE GUARANTEE:-**

1) The offer shall be inclusive of a comprehensive onsite warranty for the 3 (three) years and subsequent three year Annual Maintenance Contract (AMC) period (if AMC agreement executed) for all the items from the date of commissioning. The supplier shall maintain UPS supplied and installed under this contract in accordance with the provisions laid down in the clauses below during the above period.

2) Scope and Services Covered under performance Guarantee and AMC:- The supplier shall provide the following services under the performance guarantee and AMC to keep the Online UPS in good working order

a) Un scheduled on call corrective and remedial maintenance service to set right the malfunctioning of the UPS. This includes replacement of unserviceable parts. The parts replaced will either be new parts or equivalent in performance to new parts. In the case of a part, the defective part removed from the system will become the property of the supplier.

b) Scheduled preventive maintenance (PM) shall be carried out **once in Three Months** for all **Online UPS** as detailed in **Annexure-I**. The supplier should submit the call sheets/ PM reports as in **Annexure-V** to respective Engineers. In case the supplier fails to submit PM reports, a penalty prescribed in clause '3'(4) below will be levied for the period so delayed. Preventive maintenance can be clubbed with corrective maintenance.

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3) Downtime Penalty:-

A.Downtime penalty will be charged for completing the calls after the time allowed viz.,24 hours.

B.Downtime penalty shall be settled every year failing which the amount due to the Board is liable to be realised from the Bank Guarantee furnished by the supplier.

C.Penalty for non performance of Preventive Maintenance will be ` .100/- per week for each item. The Down Time Penalty will be as under

For UPS – Rs 100/- per day

D.The maximum downtime penalty charged on a particular item (as per A&C) in each year (during warranty period) shall not exceed 25% of the cost of that item.

- a) Other hardware purchased from the supplier or any other vendor and integrated into the existing warranty system, will be included in the Warranty with the supplier as soon as the warranty of the purchased item expires This will be done through an Addendum to this contract signed by KSEB and the supplier. The new hardware may be inspected by the contractor if it is procured from other sources. In case KSEB decides to withdraw any equipment from contract during the warranty / AMC period, the same will be taken out of this contract with written information to the supplier.
- b) If the User is not able to hand over the system to the supplier's engineer for maintenance purpose, such time will not be considered for the down time penalty.
- c) In case of intermittent failures and repetitive problems due to improper diagnosis or repair, the system will be treated as continuously down.
- d) The supplier is not liable for problems arising out of break down or services or spares cost, arising out of damages caused due to fire, theft, riots, accidents, earthquakes, storm and other natural calamities.
- e) The UPS Batteries are included in the warranty for three years.
- f) At each location, K.S.E.Board will keep a System Maintenance Register, which is a record of machine failure including the nature of failure, date and time of booking the complaint, when the machine was put back in to service and the total down time. This record will be signed by the supplier's Service Engineer and KSEB Engineer. Format for keeping this record will be as per the Annexure-III.
- g) Call Registration And Completion:- All the maintenance calls will be logged using the System Maintenance Register. Also, they may be registered with the nearest supplier's office. The supplier shall acknowledge each call with a unique Call number, which is to be used for reference in future. A call service slip may be made for each call. The Call service slip shall contain the following details: call number, reported problem, affected items, date and time of call reporting, date and time of call attending, date and time of call completion, down time in days/hrs, fault diagnosed, repairs carried out, components replaced etc.


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Completion of calls will be certified by an Assistant Engineer or by a nominee. The supplier shall prepare the call service slips in duplicate. These will be signed by KSEB Engineer & the supplier. One copy will be given to the user and one copy will be retained by the supplier. No other documents will be used to workout downtime for penalty calculation. The entries in the System Maintenance Register may also be completed based on the entries of the Call service slip after closing the call.

A provision of a common telephone number with a minimum of 5 lines is to be provided by the supplier for making calls to register complaints and getting token numbers for the same at the time of complaint registration. All calls received should be registered in a portal, which can be accessed by K.S.E.Board with facility to generate reports of down time of all complaints. The details of closing a call will be entered by the supplier. These entries shall be based on the call service slip signed by the KSEB engineer of the section office and the service engineer of the supplier with date and time.

- h) KSEB personnel will be responsible for operating the systems and peripherals. During the period of warranty and AMC, KSEB will restrict to operational activities only and will not repair any equipment.
- i) Whenever the Online UPS cannot be repaired on site within the specified time limits, the vendor will have to provide an alternate equipment of matching specification of the equipment supplied under the contract. This shall be replaced within the period of maximum 30 days with the same equipment after repair or with an equipment of same or better model of the equipment supplied under the contract. All such replaced equipments will also come under the clauses of the existing Performance Guarantee.
- j) Force Majeure:- The supplier shall not be liable or deemed to be default of any delay or failure in performance stated herein resulting directly or indirectly from causes beyond his reasonable control. If the supplier is prevented from performing its function under the instrument for a period longer than six months, the supplier's liability ceases. Then both the parties shall discuss the course of action to be taken afterwards.
- k) Annual Maintenance Contract (AMC):- All the UPS purchased from the supplier will be included in three years AMC as soon as three years warranty expires if K.S.E.Board desires so. Rates (annual) for the AMC for three years after the expiry of warranty period is as per Annexure-I. This will be done through an agreement. AMC Agreement shall be executed ^{by} the consignees/ ARU Heads.
- l) The Annual Maintenance Contract will be comprehensive and cover the cost of all the spare parts required for replacement/repair the Online UPS. The AMC shall be on regular basis to ensure the minimum down time of the system.
- m) Payment for AMC:- The payment will be released yearly. The supplier will submit yearly bill along with the downtime statement within one week of completion of the


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year to the paying authority along with certified monthly downtime statements of the custodian officers. The Paying authority will reconcile this and release the payment. In case penalty exceeds AMC amount the excess amount will be adjusted in the next year bill or the Security Deposit.

- n) The purchaser has the right to terminate the AMC at any time after giving one months notice and in case of such termination, the supplier shall not be entitled to claim any compensation.
- o) If the supplier fails to execute the AMC Agreement and carryout AMC works after the expiry of the Guarantee period, the maintenance of the Online UPS will be arranged through other agencies at risk and cost of the supplier and their Security Deposit forfeited.
- 17) The Courts situated at the place where the headquarters of the Board is situated. Viz., Thiruvananthapuram alone will have jurisdiction to entertain civil suits pertaining to this contract.

In witness where of the parties hereto have hereunto set their hands the day and year first above written.

Smt. Jagakumari K.K

Signed sealed and delivered by.....Chief Engineer (SCM) acting for and on behalf of the Kerala State Electricity Board.

In the presence of:

Witness 1.

Jolly Mathias *Jolly Mathias*
Supdt. Corporate Affairs

2.

Preetiy Joseph
AGE SCM

Jaby
CHIEF ENGINEER
SUPPLY CHAIN MANAGEMENT
K.S.E.B.OARD, THIRUVANANTHAPURAM

Signed sealed and delivered by M/s.Novateur Electrical & Digital Systems Private Limited



M.S.Balasubramani
Manager-Sales
(Contractor)

In the presence of

Witness 1. *N. Prakash (N. PRAKASH)*

2.

R. V. Jayakumar