

PFC CONSULTING LIMITED
(A wholly owned subsidiary of Power Finance Corporation Ltd. -
A Government of India Undertaking)

Bid Invitation

for

**Selection of an agency for supplying & fixing of RCC Pillars in
433.40 Acre Revenue Forest Land in village Sardega, Tiklipara and
Gopalpur of Hemgir Tehsil, Sundargarh District in the State of
Odisha**



Registered Office
1st Floor, “Urjanidhi” 1, Barakhambha Lane, Connaught Place,
New Delhi – 110 001

April, 2014

Bid Document

1.0 Background

PFC Consulting Limited (PFCCL) is assisting Mahanadi Coalfields Limited for setting up of a 2x800 MW Thermal Power Plant in Basundhara Garjanbahal Coalfield area in village Sardega, Tiklipara and Gopalpur of Hemgir Tehsil, Sundargarh District in the State of Odisha. PFCCL wishes to avail services of an agency for supplying & fixing of RCC pillars in 433.40 Acre Revenue Forest in village Sardega, Tiklipara and Gopalpur of Hemgir Tehsil, Sundargarh District in the State of Odisha (“Project Area”) as per the Guidelines of Ministry of Environment & Forest (MoEF).

Sealed Price Bids are invited for selection of an agency for supplying & fixing of RCC Pillars in 433.40 Acre Revenue Forest Land in village Sardega, Tiklipara and Gopalpur of Hemgir Tehsil, Sundargarh District in the State of Odisha.

The Scope of Work, Eligibility Criteria, Selection procedure and criteria, terms of payment, terms and conditions etc. are given below:

2.0 SCOPE OF WORK

The Scope of work will include supplying & fixing of RCC pillars in 433.40 Acre Revenue Forest in village Sardega, Tiklipara and Gopalpur of Hemgir Tehsil, Sundargarh District in the State of Odisha (“Project Area”) as per the Guidelines of Ministry of Environment & Forest (MoEF). The broad Scope of work will include the following:

- i. Making RCC pillars of size – 125cm x 20cm x 20cm. Each pillar to be constructed with RCC 1:2:4 i.e. 1 part cement, 2 part coarse sand and 4 part 20mm nominal size chips with 4 nos. of vertical bar of 8 mm dia Tor steel and binder of 6mm dia mild steel @ 150mm centre to centre.
- ii. Transportation of pillars to forest plot boundary area in villages Sardega, Tiklipara and Gopalpur in Hemgir Tehsil, Sundargarh District.
- iii. Making of pot hole of size 45cm x 45cm x 65cm for fixing of pillars
- iv. Fixing of RCC pillars on the boundary of the forest plot in villages Sardega, Tiklipara and Gopalpur in Hemgir Tehsil, Sundargarh District
- v. Fixing of half-length inside ground at a visible distance from the previous pillar and at every corner and bends. Each pillar to be embedded underground at least half the length of pillar with plain cement concrete 1:2:4 i.e. 1 part cement, 2 part coarse sand and 4 part 20 mm nominal chips.
- vi. Taking readings & marking co-ordinates etc. on the each pillar of forest boundary.
- vii. Assist forest officials, revenue officials and ORSAC officials during site inspection and fixing of pillars at site.

3.0 Time Schedule for Completion of the Work

The agency is required to complete work as per the scope of work within 2 months from the issuance of Letter of Award (LoA). The time schedule may increase or decrease as required by PFCCL or for completion of the assignment depending upon sequence of completion of interrelated activity.

4.0 Eligibility Criteria

- 4.1 The agency should have undertaken/ handled at least one similar assignment of supplying & fixing of RCC pillars in the last 5 financial years i.e. from Financial Year 2008-09 onwards. The agency is required to submit the documentary proof (e.g. Copy of work Order/Letter of Award/LoI/Purchase Order or any other representative documents etc.) for meeting this eligibility criteria.
- 4.2 The agency should have Annual Turnover of Rs. 1 crore in any of the last 3 financial years i.e. from Financial Year 2011-12 onwards. The agency is required to submit a copy of the auditor's certificate in this regard certifying the Annual Turnover.

5.0 PERIOD OF ENGAGEMENT

The period of engagement would be till the completion of all the activities as per the scope of work.

6.0 BASIS OF OFFER

The price offer for the Assignment should be quoted inclusive of all taxes and duties etc as may be applicable. No escalation for any reason whatsoever shall be allowed over and above the bid price. However, service tax, if any, and educational-cess or any such tax/levy calculated as a percentage of the service tax at applicable rates, on the date(s) of payment(s) shall be paid over and above the bid price (price to be quoted as per Form-2). Income tax at source will be deducted by PFCCL as per the applicable law and regulation and TDS certificate shall be issued to the selected agency by PFCCL.

7.0 SUBMISSION OF BID

- 7.1 The bid shall consist of two parts "Technical Proposal" and "Financial Proposal" must be submitted in separate sealed envelopes in the following manner:
 - i) **The first Envelope** sealed and marked as "TECHNICAL PROPOSAL for Assistance to PFC Consulting Limited (PFCCL) relating to **selection of an agency for supplying & fixing of RCC Pillars in 433.40 Acre Revenue Forest Land in village Sardega, Tiklipara and Gopalpur of Hemgir Tehsil, Sundargarh District in the State of**

Odisha” from ----- (Name of the agency)" should contain following:

- a. The agency should agree to the entire scope of work and deliverables (given in the Covering Letter Form-1). No proposal for deviation/ part scope of work will be considered.
- b. Details of past experience are to be provided in Technical Bid. Documentary evidence (e.g. Copy of work Order/Letter of Award/LoI/Purchase Order or any other representative documents etc.) to be provided in support of past experience.

PFCCL may call for any clarifications/ information if required.

This envelope should not contain any cost/price information, whatsoever.

- ii) The **Second Envelope** - sealed and marked as “FINANCIAL PROPOSAL for Assistance to PFC Consulting Limited (PFCCL) relating to **selection of an agency for supplying & fixing of RCC Pillars in 433.40 Acre Revenue Forest Land in village Sardega, Tiklipara and Gopalpur of Hemgir Tehsil, Sundargarh District in the State of Odisha**" from ----- (Name of the agency)" should contain the detailed price offer for the consultancy services as per as per format provided at Form-2 of Bid Document.

7.2 The **First envelope** sealed and marked as "TECHNICAL PROPOSAL" and the **Second envelope** sealed and marked as “FINANCIAL PROPOSAL" both shall be submitted together in a sealed cover marked as **Technical and Financial proposal** on the cover with superscription i.e. Name of the Package, Agency’s Name & Address.

7.3 Above mentioned sealed envelopes mentioned at 7.2 are to be submitted latest upto **12:00** hrs (IST) on **5.5.2014** at the following address:

Sh. Manish Agrawal, Manager PFC Consulting Limited Behind Vijaya Talkies, Dengibari Sundargarh, Odisha Tel No: 09873079611	OR	Sh. Sanjay Nayak, Manager PFC Consulting Limited Behind Vijaya Talkies, Dengibari Sundargarh, Odisha Tel No: 09871611467
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7.4 Agencies are instructed not to approach via e-mail, fax, and telephone or contact any official in PFCCL as regards to this bid after the submission of the bids, apart from communications by PFCCL in writing, and any agency doing so shall be summarily rejected.

8.0 BID OPEINING AND EVALUATION OF PROPOSALS

8.1 Opening of Technical Proposal

The first envelope containing the Technical Proposal will be opened in the presence of the authorized representatives of the agencies, who wish to be present.

8.2 Technical Proposal

The Technical proposal would be opened and seen.

A) Responsiveness check

The check will be with respect to the following:

- i) The Agency should agree to the entire scope of work and deliverables (given in the Covering Letter Form-1). No proposal for deviation/ part scope of work will be considered.
- ii) Details of past experience are to be provided in Technical Bid. Documentary evidence (e.g. Copy of work Order/Letter of Award/LoI/Purchase Order or any other representative documents etc.) to be provided in support of past experience.
- iii) A copy of the auditor's certificate certifying the Annual Turnover of Rs. 1 crore in any of the last 3 financial years i.e. from Financial Year 2011-12 onwards.

PFCCCL may call for any clarifications/ information if required.

The agencies submitting documentary proofs as per clause 8.2 (ii) and 8.2 (iii) to the satisfaction of PFCCCL would be considered as technically qualified.

8.3 Opening of Financial Proposal

The second envelope marked as "Financial Proposal" would be opened only of the technically qualified agencies. The Financial Proposal will be opened in the presence of the authorized representatives of the agencies, who wish to be present. Financial Proposal of other agencies not technically qualified will be returned unopened.

8.4 Evaluation of Financial Proposal

The price offer for the Assignment should be quoted inclusive of all taxes and duties etc as may be applicable. No escalation for any reason whatsoever shall be allowed over and above the bid price. However, service tax, if any, and educational-cess or any such tax/levy calculated as a percentage of the service tax at applicable rates, on the date(s) of payment(s) shall be paid over and above the bid price. Income tax at source will be deducted by

PFCCL as per the applicable law and regulation and TDS certificate shall be issued to the selected agency by PFCCL.

The assignment will be awarded to the technically qualified agency who has quoted lowest price, in Indian Rupees, without condition(s) or alternate price bid. Conditional Financial Proposals will be rejected out rightly.

9.0 CONTRACT AGREEMENT

- 9.1 In the event of award, the selected agency will be required to enter in to a Contract Agreement with the PFCCL within 10 (ten) working days from the date of the Letter of Award (LOA) or within such extended time, as may be granted by the PFCCL.
- 9.2 Formal Contract Agreement will be executed on Non-judicial stamp paper of Rs. 100/- (Rs. one hundred only) as per the format provided by PFCCL. Two sets of Non-Judicial Stamp papers of Rs.100/- each and water mark papers to be purchased by the selected agency from Delhi State.
- 9.3 The Agreement will be signed in two originals and the selected agency shall be provided with one signed original Agreement
- 9.4 The date of execution of the contract agreement in no case shall alter the date of start or completion period of the work.
- 9.5 Till the time a 'Contract Agreement' is prepared and executed, the Letter of Award shall be read in conjunction with the Bidding Documents and will constitute a binding contract.

10.0 Validity of Bid

Agency shall keep their bids /proposals valid up to 60 (Sixty) days from the date of opening of the Financial Proposal. Agency may be required to further extend the validity of Bid as per the requirement of PFCCL.

11.0 TERMS OF PAYMENT

- 11.1 80% of payment will be made on supply & fixing of actual number of RCC Pillars on the boundary of the forest plot on fortnightly basis after duly verified by PFCCL.
- 11.2 The balance 20% of payment will be made after completion of the site inspection by the DFO / forest officials.
- 11.3 The selected agency shall submit the bills in duplicate to PFCCL addressed to EVP, PFCCL.
- 11.4 All expenses including travel expenses incurred by the selected agency (except statutory payments and applicable taxes) for carrying out the assignment will be borne by the selected agency and PFCCL will not take any responsibility whatsoever on this account

12.0 Other Terms & Conditions

- i) PFCCL shall not issue any material for the work. All the materials should be strictly as per the scope of work and relevant specifications. The agency has to make their own arrangements for water and electricity required for construction/supply of the pillars and smooth execution of the work at their own cost.
- ii) The selected agency shall be liable to comply with provisions under various labour legislation. Besides other obligations under the labour legislation, the agency is required to ensure payment of Minimum Wages under the Minimum Wages Act, grant of leave as per the notification of chief labour commissioner, Provident fund under the Provident Funds Acts, Compensation under the workmen Compensation Act, Maternity leave under Maternity Act, Retrenchment compensation etc. The selected agency shall indemnify the Corporation against all claims, damages compensations, damages on account of his failure to comply with statutory provisions.
- iii) The financial proposal by the agency shall be in Indian Rupees as per format enclosed (Form 2) with no escalation provision for any reason whatsoever till the completion of the Assignment.
- iv) The selected agency shall make available the services of the identified personnel as may be required for successful execution of the assignment and or as may be required by PFCCL on specified dates, venues and time in order to meet the obligations of PFCCL.
- v) All claims shall be raised by the selected agency as per the terms of payment after being due, and would be accepted for payment based on satisfactory progress and quality of the work at the sole discretion of the competent authority.
- vi) In case there is a delay by the selected agency in accomplishing the work as per scope of work which in the opinion of PFCCL is attributable to the selected agency, PFCCL reserves the right to get such specific work(s) done through any other Agency(ies) at the risk and cost of the selected agency for timely completion of the work.
- vii) The selected agency shall keep PFCCL, both during and after the term of this Contract, fully and effectively indemnified against all losses, damage, injuries, deaths, expenses, actions, proceedings, demands, costs and claims, including, but not limited to, legal fees and expenses, suffered by PFCCL or any Third Party, where such loss, damage, injury or death is the result of a wrongful action, negligence or breach of contract by the selected agency, or its personnel.
- viii) No offer should be sent by Fax or E-mail.

- ix) Offers received in the designated office after the due time and date mentioned above shall not be considered.
- x) PFCCL reserve the right to accept or reject any or all Proposals/Offer or annul the bid Process or modify/ change the content of the bid document without assigning any reason.
- xi) PFCCL shall not entertain any claim of any nature, whatsoever, including without limitations, any claim of expenses in relation to the preparation, submission or any other activity relating to bidding or any other expense till award of contract.

Yours sincerely,

For and on behalf of PFC Consulting Ltd.

(R. Rahman)
Executive Vice President

Encl.: As above

FORM – 1: COVERING LETTER

From: To:
Name: Manager
Designation: PFC Consulting Ltd.,
Address: Behind Vijaya Talkies, Dengibari
Sundargarh, Odisha

Sir,

Sub: Selection of an agency for supplying & fixing of RCC Pillars in 433.40 Acre Revenue Forest Land in village Sardega, Tiklipara and Gopalpur of Hemgir Tehsil, Sundargarh District in the State of Odisha

1. We _____(Name of agency) herewith enclose Technical & Financial proposal for selection of our agency for supplying & fixing of RCC Pillars in 433.40 Acre Revenue Forest Land in village Sardega, Tiklipara and Gopalpur of Hemgir Tehsil, Sundargarh District in the State of Odisha.
2. We are submitting our bid consisting of:
 - i) **Technical Bid** in a sealed envelope consisting of:
 - a) The Covering Letter (Form-1) in which the agency inter alia agrees to the entire scope of work and deliverables as proposal for deviation / part scope of work will not be considered.
 - b) Details of past experience in Technical Bid. Documentary evidence (e.g. Copy of work Order/Letter of Award/LoI/Purchase Order/Completion certificate/ Project Report /proof of payment/ any other relevant documents etc.) in support of past experience.
 - ii) **Price Offer** (as per format provided at Form 2 of Bid document) in a sealed envelope
3. We declare that the quoted price is firm and shall remain valid for the entire period of the assignment. We further declare that the above quoted fee includes all taxes (excluding service tax), duties & levies etc. payable by us under this assignment.
4. We hereby confirm that if any Income Tax, Surcharge or any other Corporate Tax is attracted under the law, we agree to pay the same to the concerned authorities.
5. We confirm that the prices and other terms and conditions of this proposal are valid for a period of 30 days from the date of opening of the Financial Proposal.

6. We declare that the services will be rendered strictly in accordance with the specifications and guidelines of MoEF. We confirm our acceptance/compliance to the `Terms of payment` clauses as stipulated in the bid documents.
7. We confirm and certify that all the information / details provided in our bid are true and correct.
8. We give our unconditional acceptance to the Bid Documents issued by PFCCL and as amended. We shall execute the Contract Agreement as per the provisions of the Bid Document.
9. Further, we confirm that we agree to and seek no deviations from the scope of work, time schedule, payment terms and all other terms and conditions as contained in the `Bid Document`. The proposal is unconditional.
10. We certify that all the information provided in our bid are true. We understand that any willful misstatement in the bid may lead to disqualification or cancellation of award if made or termination of contract.

Signature of Authorized Person

Name

Designation & seal

Date:

Place:

FORM – 2: SCHEDULE OF PRICE BID

(To be submitted as Financial Proposal in Second Envelope)

Sub: Selection of an agency for supplying & fixing of RCC Pillars in 433.40 Acre Revenue Forest Land in village Sardega, Tiklipara and Gopalpur of Hemgir Tehsil, Sundargarh District in the State of Odisha.

I _____ (Name) on behalf of _____ (Name of the agency) herewith submit the Financial Proposal for supplying & fixing of RCC Pillars in 433.40 Acre Revenue Forest Land in village Sardega, Tiklipara and Gopalpur of Hemgir Tehsil, Sundargarh District in the State of Odisha.

Sl. No	Description	Quantity of Pillars	Price per Pillar in INR	Total Price in INR
1	Supply, transportation & Fixing of RCC Pillars on the boundary of the forest plot in village Sardega, Tiklipara and Gopalpur of Hemgir Tehsil, Sundargarh District in the State of Odisha.	1000* nos.		
Total Price				

**The quantity of number of pillars is indicative and the same may vary upto +/- 25%. However, the agency would be paid as per the actual number of pillars supplied & fixed. The actual number of pillars to be supplied & fixed will be intimated by PFCCL based on the site requirement/MoEF guidelines.*

Note:

1. The price offer for the Assignment should be quoted inclusive of all taxes and duties etc as may be applicable. No escalation for any reason whatsoever shall be allowed over and above the bid price till completion of the assignment. However, service tax, if any, and educational-cess or any such tax/levy calculated as a percentage of the service tax at applicable rates, on the date(s) of payment(s) shall be paid over and above the bid price.
2. The agency shall quote prices taking into consideration of the complete scope of work, any item left out and not specifically mentioned but are required for completion of the work shall be carried out by the agency without any additional cost to PFCCL.
3. PFCCL shall not issue any material for the work. All the materials should be strictly as per the scope of work and relevant specifications. The agency has to make their own arrangements for water and electricity required for construction/supply of the pillars and smooth execution of the work at their own cost.
4. Income tax at source will be deducted by PFCCL as per the applicable law and regulation and TDS certificate shall be issued to the Agency by PFCCL

5. All expenses including travel expenses incurred by the selected agency (except statutory payments and applicable taxes) for carrying out the assignment will be borne by the selected agency and PFCCL will not take any responsibility whatsoever on this account
6. The financial proposal with condition(s) or alternate price bid will be summarily rejected.

Seal

Authorised Signatory

Full Name

Address

CONTRACT AGREEMENT

This CONTRACT (hereinafter, together with all Appendices attached hereto and forming an integral part hereof, called the "Contract") is made this day of the month of _____, 2014, between:

PFC Consulting Limited (a wholly owned subsidiary of Power Finance Corporation Limited, a Government of India Company) incorporated under the Indian Companies Act 1956, having its registered office at first Floor, Urjanidhi, 1-Barakhamba Lane, Connaught Place New-Delhi-110001 hereinafter referred to as "Owner"(which expression shall unless repugnant to the context or the meaning thereof include its successors and permitted assigns)

AND

_____ having its office at _____
_____ hereinafter called the "Agency" (which expression shall unless repugnant to the context or the meaning thereof include its successors and permitted assigns)

WHEREAS the Owner is in the process of selection of an agency for supplying & fixing of RCC Pillars in 433.40 Acre Revenue Forest Land in village Sardega, Tiklipara and Gopalpur of Hemgir Tehsil, Sundargarh District in the State of Odisha.

AND WHEREAS the Owner is intending to hire an experienced and qualified Agency who has undertaken similar projects and is capable of providing "Services".

AND WHEREAS the Agency, have represented to the Owner that they have the requisite experience, professional skills, adequate manpower and technical resources and personnel, to render the Services required by the Owner in a timely and efficient manner.

AND WHEREAS based on above representations of the Agency, the Owner has agreed to appoint the Agency to render services on the terms and conditions hereafter contained:

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANATS HEREIN CONTAINED, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1.0 GENERAL PROVISIONS

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract, Appendices, Schedules and Exhibits shall have the following meanings:

- (a) "Approvals" shall mean all consents, licenses and approval of any local, municipal, State or National Authority necessary to carry out the services for each and every phase of the assignment.
- (b) "Contract" means this Contract together with all Appendices and including all modifications made in accordance with the provisions of Clauses 12 hereof between the Owner and the Agency.
- (c) "Agency" means _____.
- (d) "Confidential Information" means any material, proprietary, non-public information acquired, developed, disclosed or exchanged among the parties pursuant to this Agreement.
- (e) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause 3.1 hereof;
- (f) "Personnel" means persons hired by the Agency as employees, for the purposes of rendering services or any part thereof; Personnel includes:
- (i) "Local Personnel" mean such persons who at the time of being so hired have their domicile in India and;
 - (ii) "Foreign Personnel" mean such persons who at the time of being so hired had their domicile outside India
- (g) "Parties" means the Owner or the Agency, as the case may be;
- (h) "Contract time" means the duration of time of the Contract as referred to Clause 3.
- (i) "No claim Certificate" means certificate issued by the Owner after the Contract has expired and the agency has performed all his Services as per the terms and conditions envisaged in this Contract and all undisputed payments of remuneration and reimbursable expenditures payable by the Owner to the Agency has been made.
- (k) "Services" means the works to be provided/performed by the Agency for completion of various tasks as described in Letter of Award (LoA) hereto;
- (l) "Starting Date" means the date referred to in Clause 3.3 hereof;
- (m) "Third Party" means any person or entity other than the Owner and the Agency.

2.0 LOCATION FOR PERFORMANCE OF THE SERVICES:

The Agency shall render/perform services at Odisha and at the Project site at village Sardega, Tiklipara and Gopalpur of Hemgir Tehsil, Sundargarh District in the State of Odisha.

3.0 COMMENCEMENT, COMPLETION, AND TERMINATION OF CONTRACT

3.1 Commencement of Contract

This contract shall come into force from the date (“effective date”) on which the Owner and the Agency have signed the present contract.

3.2 Termination of Contract for Failure to Become Effective

- a) If this Contract has not become effective within 15 days from effective date the Owner has the right to declare the same to be null and void, and in the event of such a declaration the agency shall not have any claim against the Owner.
- b) In case the contract is rendered null and void on account of failure/inaction on the part of the agency, the agency shall be liable to pay damages to the Owner.

3.3 Commencement of Services

The Agency shall begin carrying out the Services immediately viz. from the date of issue of Letter of Award (the "Starting Date"), or on such date as the Parties may agree in writing

3.4 Expiration of Contract

Unless terminated earlier pursuant to Clause 10 hereof, this Contract shall expire after the agency has performed all his Services as per the terms and conditions envisaged in this Contract and the Owner has issued a ‘No claim Certificate’ to the Agency.

The Owner shall issue the “No claim certificate” after being satisfied that the Agency has performed/rendered all the services to the satisfaction of the Owner, as per the contract and all undisputed payments of remuneration and reimbursable expenditures payable by the Owner to the Agency has been made.

4.0 OBLIGATIONS OF THE AGENCY

4.1 Standard of performance

The Agency shall perform the Services and carry out his obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted techniques and practices used with professional engineering and consulting standards recognized by professional bodies, and shall observe sound management, and technical and engineering practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods in award of project. The Agency shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Owner, and shall at all times support and safeguard the Owner's legitimate interests in any dealings with Third Parties.

4.2 COMPLAINTS WITH RULES AND REGULATIONS

The Agency agrees that it shall be responsible and liable to comply with all the rules and regulations of various concerned government authorities and departments for the services rendered under this agreement.

4.3 CONFLICT OF INTEREST

The agency shall hold the Owner's interest paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their corporate interests.

4.4 Benefit from Commissions, Discounts etc.

Payment to the Agency shall constitute the Agency's only payment in connection with this Contract or the Services, and the Agency shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Agency shall use their best efforts to ensure that the Personnel shall not receive any such additional benefits.

4.5 Agency and Affiliates not to be otherwise interested in Project

The Agency agrees that, during the term of this Contract, the Agency, Personnel and/or any entity affiliated with the Agency shall not provide services resulting from or directly related to the Agency's Services to any third party. In the event of breach of the aforesaid condition the Owner shall be entitled to disqualify such Agency or any of their Personnel from providing services to the Owner and further claim damages for breach.

4.6 Prohibition of Conflicting Activities

The Agency shall not engage, and shall cause their Personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.

4.7 Insurance to be taken out by the Agency

The Agency shall take out and maintain, at its own cost, insurance against risks etc.

4.8 Liability of the Agency

The Agency and each of his Members (agency personnel) shall be jointly and severally liable to the Owner for the performance of the Services under this Contract and further for any loss suffered by the Owner as a result of a default of the Agency or his members in such performance, subject to the following limitations:

- (a) The Agency shall not be liable for any damage or injury caused by or arising out of the act, neglect, default or omission of any persons other than the Agency or its Personnel; and
- (b) The Agency shall not be liable for any loss or damage caused by or arising out of circumstances of Force Majeure.

4.9 Documents Prepared by the Agency to Be the Property of the Owner

All plans, drawings, specifications, designs, reports and other documents prepared by the Agency in performing the Services shall become and remain the property of the Owner, and the Agency shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Owner, together with a detailed inventory thereof.

5.0 AGENCY'S PERSONNEL

5.1 Agreed Personnel

The Agency hereby agrees to engage the personnel in order to fulfill his contractual obligations under this contract.

5.2 General

The Agency shall employ and provide such qualified and experienced Personnel as are required to carry out the Services.

5.3 Removals and/or Replacement of Personnel

- a) Except as the Owner may otherwise agree, no changes shall be made in the Personnel. If, for any reason beyond the reasonable control of the Agency, it becomes necessary to replace any of the Personnel, the Agency shall forthwith provide as a replacement a person of equivalent or better qualifications.

(b) If the Owner:

- 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 Agency shall, at the Owner's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Owner.

- (c) The new personnel provided as a replacement shall be governed by the same the terms and conditions of employment as the replaced personnel.
- (d) The Agency shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement.

6.0 OBLIGATIONS OF THE OWNER

Payment

In consideration of the Services performed by the Agency under this Contract, the Owner shall make to the Agency such payments and in such manner as is provided by **Clause 7** of this Contract.

7.0 PAYMENTS TO THE AGENCY

7.1 The cost of services payable in Indian Rupees is set forth in **LoA**.

7.2 Mode of Payment

Payments will be made by the Owner to the agency in accordance with the terms of payment as per Letter of Award. Any deviation in the payment terms is not permitted.

7.3 The Agency shall submit the bills in duplicate to PFCCL addressed to EVP, PFCCL.

7.4 The Owner shall cause the payment of the Agency as per the above given schedule of payment within 30 days of the receipt of the bills raised along with supporting documents. However, it is agreed between the parties that the Owner may restrict or withhold the payment if the performance or progress of the services rendered by the Agency is not satisfactory and not in accordance with the scope of work.

7.5 The final payment under this Clause shall be made only after satisfactory completion of all the activities as per scope of work in LoA and after the issuance of No Claim Certificate.

7.6 All payments under this Contract shall be made to the account of the Agency with:

Account No

_____ Bank,

8.0 Suspension

The Owner may, by written notice of suspension to the Agency, suspend all payments to the Agency.

9.0 Termination

9.1 By the Owner

The Owner may terminate this contract, by issuing a written notice not less than thirty (30) days, from the date of occurrence of any of the events as specified in sub clause (a) to (e) of this Clause.

The Owner may terminate this contract, by issuing a written notice not less than sixty (60) days, from the date of occurrence of the event as specified in sub clause (f) of this Clause.

- (a) if the Agency fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 9 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the Owner may have subsequently approved in writing;
- (b) if the Agency fails to comply with any final decision reached as a result of arbitration proceedings pursuant to **Clause 16** hereof;
- (c) if the Agency submits to the Owner a statement which has a material effect on the rights, obligations or interests of the Owner and which the Agency knows to be false;
- (d) if, as the result of Force Majeure, the Agency is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (e) if Agency become Bankrupt and the company has been wound up through liquidation proceedings.

(f) if the Owner, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

9.2 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to Clauses 9 hereof, or upon expiration of this Contract pursuant to Clause 3 hereof, all rights and obligations of the Parties hereunder shall cease, except

- (a) such rights and obligations as may have accrued on the date of termination or expiration,
- (b) the obligation of confidentiality set forth in Clause 15 hereof,
- (c) any right which a Party may have under the Applicable Law.

9.3 Cessation of Services

Upon termination of this Contract by notice to pursuant to Clauses 9 hereof, the Agency 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.

9.4 Payment upon Termination

Upon termination of this Contract pursuant to **Clause-9** hereof, the Owner shall make the following payments to the Agency:

- (a) Remuneration pursuant to **Clause 7** hereof for Services satisfactorily performed prior to the effective date of termination; and

10.0 Force Majeure

10.1 Definition

- (a) For the purposes of this Contract, "Force Majeure" means an event or circumstance or combination of events and circumstances, the occurrence of which is beyond the reasonable control of either party and which materially affects the performance by either Party of its obligations under this agreement, provided such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected party and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other 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) It is however agreed that 'Force Majeure' shall not mean or include:
 - (1) any event caused by the negligence or intentional action of a Party or employees, nor
 - (2) any event which a diligent Party could reasonably have been expected take into account at the time of the Award of this Agreement, and avoid or overcome in the carrying out of its obligations hereunder.
- (c) The Agency shall not be paid /reimbursed any further price or cost or any additional cost in re-activating the services after the end of Force Majeure event.

10.2 No Breach of Contract

Neither party shall be responsible or be liable for, or deemed to be in breach hereof because of any failure or delay in complying with its obligations under or pursuant to this Agreement due to one or more events of Force Majeure or its effects or any combination thereof, 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. However it is agreed that in no event shall Force Majeure shall exclude any Party's obligation to pay monies under this Agreement.

10.3 Measures to be taken

- (a) A Party affected by an event of Force Majeure or any combination of events shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event or any combination of events of Force Majeure shall notify the other Party of such event as soon as possible, and in any event 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 notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

10.4 Extension of Time

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.

10.5 Consultation

Not later than thirty (30) days after the Agency, as the result of an event of Force Majeure, have become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

11.0 Amendment/Modification

This Agreement may not be altered, modified, revoked or cancelled in any way unless such alteration, modification or cancellation is in writing and duly signed by or on behalf of the parties which shall not be effective until the consent of the parties has been obtained. However, it is agreed between the parties that each Party shall give due consideration to any proposals for modification made by the other Party.

12.0 Amicable Settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof. Any dispute between the parties as to matters arising pursuant to this Contract which cannot be settled amicably shall be resolved as per the Indian Arbitration Act, 1996 as amended from time to time.

13.0 FAIRNESS AND GOOD FAITH

13.1 Good Faith

The Parties hereunder undertake to act in good faith with respect to their performance, obligations and rights under this Agreement and further undertake, during the tenure of this Agreement, to take all reasonable measures, to ensure the achievement/realization of the objectives of this Agreement.

13.2 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 on failure to agree on any action pursuant to this clause shall give rise to a dispute subject to arbitration in accordance with clause 16 hereof.

14.0 TAXES AND DUTIES/CHANGE IN LAW.

It is hereby agreed between the parties that the Agency and its personnel shall pay the taxes, duties, fees, levies and other impositions levied under the existing, amended or enacted laws during life of this contract and the Owner shall deduct the taxes, duties and levy whatsoever as may be lawfully imposed.

15.0 Law Governing Contract

This Agreement, its meaning and interpretation, and the relation between the Parties shall be governed by Indian Laws or any statutory modifications thereof, and shall be subject to the exclusive jurisdiction of the Courts of Delhi in any matter arising under this Agreement and or in matters pertaining to the conduct of arbitration, enforcement of the award or obtaining of interim relief(s) etc.

16.0 SETTLEMENTS OF DISPUTES/ ARBITRATION.

16.1 The parties shall endeavor to resolve amicably, in the first instance, all disputes, controversies or differences which may arise between the Parties, out of or in relation to or in connection with this Agreement, or for breach thereof.

16.2 In the event, the parties are unable to resolve such dispute/difference amicably within **ninety (90)** days after the same has arisen then the dispute shall be referred to arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and such arbitration shall be conducted in accordance with the rules of ICA. The place of arbitration shall be New Delhi or any other place mutually agreeable by the parties and the language of arbitration shall be English

The Arbitration shall be conducted by panel of 3 Arbitrators, one to be appointed by each party and third Arbitrator to be appointed by two Arbitrators as the Chairman of the Tribunal.

The Parties agree that the arbitrator's decision shall be final and conclusive. The costs of arbitration (including without limitation, those incurred in the appointment of the arbitrators) shall be borne equally by the Parties hereto; however each Party shall pay its respective legal charges. The Award shall be final and binding and non-appeal able. Judgment on the award may be entered and enforced in any court of competent jurisdiction. By execution and delivery of this Agreement, each Party agrees and consents to the jurisdiction of the aforesaid arbitration panel and solely for the purpose of enforcement of an arbitral award, as referred to hereinabove, in any court of competent

jurisdiction for itself and in respect of its property and waives in respect of both itself and its property, any defense it may have to or based on sovereign immunity, jurisdiction, improper venue or inconvenient forum.

17.0 GENERAL PROVISIONS

17.1 Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

17.2 Headings

The headings shall not limit, alter or affect the meaning of this Contract.

17.3 Notices

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 mail, or facsimile to such Party at the following address:

1. For the Owner: **PFC Consulting Limited.**
(A Subsidiary of Power Finance Corp. Ltd.)
**First Floor,'Urjanidhi', 1, Barakhamba Lane,
New Delhi - 110001**

Attention: Mr. _____
Facsimile: 011-23456170,

2. For Agency:

Attention:
Facsimile: _____

17.4 Notice will be deemed to be effective as follows:

- (a) in the case of personal delivery or registered mail, on delivery;
- (b) in the case of facsimiles, forty eight (48) hours following confirmed transmission.

17.5 A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to this Clause.

17.6 Authority of Agency in Charge

The Agency hereby authorize : Mr./Ms. _____ to act on their behalf in exercising all the Agency's rights and obligations towards the Owner under this Contract, including without limitation the receiving of instructions and payments from the Owner.

17.7 Authorised Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract, may be taken or executed:

- (a) on behalf of the Owner by _____ or his designated representative;
- (b) on behalf of the Agency _____ or his designated representative.

17.8 WAIVER OF RIGHT

The failure of either party to enforce at any time or for any period of time, the provisions hereof shall not be construed to be waiver of any provision or of any right and shall not preclude such party from subsequently enforcing such provisions or right.

17.9 SEVEREABILITY CLAUSE

If any provision of this Agreement shall be determined to be void or unenforceable, such provision shall be amended or deleted in so far as is reasonably consistent with the provisions of this Agreement and to the extent necessary to conform to applicable law and the remaining provision of this Agreement shall remain valid and enforceable in accordance with their terms.

17.10 This Agreement may be executed in any number of counterparts which together shall constitute a single agreement.

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.

FOR AND ON BEHALF OF
[OWNER]

By :
Authorized Representative

FOR AND ON BEHALF OF
[AGENCY]

By :
Authorized Representative

LIST OF APPENDIX

A. Letter of Award