

LETTER INVITING TENDER

No:-

Date:

(Attn: Mr.)

Sub: - Tender for Third Party Inspection Services (TPIS) for Testing of Escalators of Bangalore Metro Rail Project.

Dear Sir,

1. Bangalore Metro Rail Corporation Limited (BMRCL) intends to invite tenders to appoint a Firm / Agency for carrying out inspection of Escalators at manufacturers premises in China. The manufacturer is to supply 176 Escalators as per the Contract. The number of Escalators for inspection may vary by + 10 %.
2. The detailed terms of reference (TOR) including the scope of work are attached here with.
3. The tender documents are available on payment of a non-refundable fee of 110 US Dollars/ INR.5,000 in the form of a crossed Demand Draft issued from an Indian Schedule bank (excluding Cooperative Banks) drawn in favour of 'Bangalore Metro Rail Corporation Limited', payable at Bangalore, from:
The Managing Director,
Bangalore Metro Rail Corporation Ltd.,
III Floor, BMTC Complex,
K.H.Road
Shanthinagar
Bangalore – 560 027
Karnataka state
India
Between 11.00 hrs to 17.00 hrs (IST) on all working days, from 10th March 2010 to 25th March 2010 only.
4. The Evaluation of bids will be done in two stages. In the first stage technical proposal submitted by the bidder as per Annexure - 1 will be evaluated.
5. The technical proposal should contain:-
 - i. Documentary evidence of being an organization capable of doing an independent third party test inspection of Electrical and Mechanical Equipment of Escalators.
 - ii. A comprehensive listing of similar works so certified by organization / experts;
6. The financial offer of the firms which qualify/ clear the first stage (Technical Evaluation) will only be opened. The date of opening the financial offer will be

communicated by BMRCL to the successful bidders. Second stage of Evaluation will involve the evaluation of Financial offers.

7. The bidder is required to quote in the Price bid Format enclosed, in Indian rupees and / or freely convertible international trading currencies. The evaluation of offer will be carried out as per the quantities indicated in price bid format.
8. For determining the Lowest Tenderer at the time of evaluating the financial offers, the Foreign Currency portion of the offers will be converted into Indian Rupees at the Selling Rate of Exchange on the close of business of State Bank of India 28 days before the latest date of Tender Submittal.
9. The Offer submitted should be valid for 120 days.
10. Last date for submitting clarificatory questions by the Tenderers is 31.03.2010.
11. Clarifications to the queries of Tenderers will be issued along with Addendum.(if any)
12. Currency of the Contract:- 30 Months from the date of Notice To Proceed (N.T.P).
13. The Tenderer shall submit his Tender in Four separate sealed envelopes wrapped in an outer cover clearly marked with the name of the Tenderer, Name of work and with marking as :-
Envelope -1 : Original Tender Security
Envelope -2 : Technical Package including Pre-Qualification and Eligibility Criteria
Envelope -3 : Financial Package
one set of all the Tender Documents, Clarifications and Addenda thereto (if any) (un-tampered), with each page signed (by the applicant / leader of JV) and stamped to confirm acceptance by the Tenderer of the contents
Bidders should submit their offer in Two sets. (One in Original and second marked as Copy). In case of discrepancy between Original and Copy, the contents of Original shall prevail. The offer should be duly paginated. Tender submission should be duly paginated using indelible machine numbering.
14. Please note that offer / tender without a price for withdrawal of condition / qualification / remarks / comments (if any) is liable for rejection.
15. The tender documents are to be submitted in the office of Managing Director, at the address given above on or before 15:00 hours on 15th April, 2010 and the bids will be opened at 15:30 hrs on 15th April, 2010 itself in the presence of the bidders or their authorized representative who chose to be present.

Yours faithfully,
Sd/-
Managing Director

TERMS OF REFERENCE (TOR)

1.0 Introduction

- 1.1 Bangalore Metro Rail Corporation Ltd (BMRCL) is a special Purpose Vehicle of Government of Karnataka and Government of India implementing Phase- I of Bangalore Metro Rail Project. The sanctioned Detailed Project Report (DPR) envisages two corridors viz East-West corridor, of approximately 18.10 km length with 17 stations and North-South corridor including extensions ,of 24.2 Km length with 24 stations, comprising of at-grade, elevated and underground sections. The two corridors will cross at a common interchange station at Majestic. The train rake interchange line between North-South and East-West corridors is proposed at Majestic. The mode of traction is 750V DC Third Rail. The track will be of Standard Gauge (1435mm). On the East- West corridor, a maintenance depot along with full workshop facilities is envisaged at Baiyappanahalli, adjacent to the Eastern Terminal Station. On the North- South Corridor a depot is envisaged at Peenya, 3.7 km north of Yeshwantpur, where adequate land is available. An Integrated Operation Control Centre (OCC) for both the corridors is proposed at Baiyappanahalli Depot and Back-up Control Centre (BCC) at Peenya Depot. The complete work is proposed to be brought into operational use in various stages.
- 1.2 In order to facilitate, passenger movement at stations,176 Nos. Escalators are planned to be provided at all the stations of East-West and North-South corridor as per details given in Annexure-2. The number of Escalators for inspection may vary by + 10 %. For 176 Escalators, a turnkey contract 2ESCAL-DM for Design, Manufacture, Supply, Installation, Testing and Commissioning of Escalators has been signed and Letter of Acceptance issued. This contract has been awarded to the Consortium of M/s Johnson Lifts Private Limited, India and M/s SJEC Corporation, China, with M/s Johnson Lifts Private Limited, India as the Lead member of the Consortium. The tentative supply schedule for the Escalators is enclosed as Annexure - 3.
- 1.3 These Escalators being procured are Heavy duty Escalators suitable for Mass Rapid Transit Applications (i.e. capable of running for 20 hours a day and seven days a week). Escalators are one of the critical passenger amenities for the MRTS system.

2.0 Purpose

Ensuring good quality of Escalators is essential for MRTS. BMRCL intends to engage an agency / firm for witnessing Testing of complete Escalators during stages of manufacturing (at factory premises of M/s SJEC China and the sub - vendors) on behalf of BMRCL to conduct Inspection / Quality-checks for each Escalator as per the specifications and approved design and also random checks of the sub-assemblies / Components at the premises of the approved Vendors.

3.0 Scope of Works

Following major tasks are involved under the scope of this work:

- i. Routine testing of Escalators as mentioned in Annexure - 4 including additional tests.
- ii. Tests and Checks as under:
 - (a) Type testing of sub - components/ sub - systems of Escalators as mentioned in Annexure - 4.
 - (b) Random checks of the sub-components at the premises of the approved Vendors.
 - (c) Additional tests to be done in addition to a & b above as per Annexure - 4.
- iii. To discuss & review Quality Assurance Checks / Formats for the testing Schedule / Program as per defects noted during inspection and in consultation with the Employer (BMRCL) and incorporate checks as may be necessary.

Note:- Generally, One Man - day is sufficient for Routine Testing of Escalator including Finalisation of Inspection report, However, not more than Two escalators shall be tested by one person in a day.

For item- iii, BMRCL will assign the work to TPI Contractor, on specific requirement/ need basis and payments will be made on actual man - day basis. For item- iii, no separate payments are stipulated.

4.0 Documents Comprising the Tender

The Tenderer shall, on or before the date and time given in the Notice of Invitation to Tender, submit his Tender in Four separate sealed envelopes (wrapped in an outer Envelope) clearly marked with the name of the Tenderer :

- "Contract No.3 ESCAL-TPIS: Original of the Tender Guarantee"
- " Contract No.3 ESCAL-TPIS: Technical Package including documents in support of Pre-Qualification and Eligibility Criteria"
- " Contract No.3 ESCAL-TPIS: Financial Package " and
- " Contract No.3 ESCAL-TPIS: one set of all the Tender Documents, Clarifications and Addenda thereto (if any) (un-tampered), with each page signed (by the applicant / leader of JV) and stamped to confirm acceptance by the Tenderer of the contents".

The above envelopes wrapped in an outer Envelope shall be addressed to :

The Managing Director,
Bangalore Metro Rail Corporation Ltd.,
III Floor, BMTCL Complex,
K.H.Road, Shanthinagar
Bangalore – 560 027
Karnataka state,India

5.0 Major eligibility criteria and qualifying requirement:

5.1 General:

- (a) Whether the Tender is accompanied by the required valid Tender Guarantee or not.
- (b) Whether tender is properly signed or not.
- (c) Whether Tender is submitted within stipulated time or not.
- (d) The Tender Guarantee is submitted in a separate envelope and not with the Technical or Financial Package.
- (e) Whether the Tender is complete or not.

5.2 Technical:

- (a) The Tenderer should have minimum Three years of experience in the field of Inspections out of which minimum one year experience shall be in the field of Inspection of Escalators.
- (b) The Tenderer should have in the last One year, successfully completed, minimum One work of Third Party Inspection of value not less than INR 3.2 Million or minimum Two works of INR 2.0 Million each or Minimum Three works of INR 1.6 Million each.
- (c) The Tenderer must have a team of professionals having professional certifications and must have on its payroll at least 3 professionals with relevant experience in the field of inspection of Electrical & Mechanical systems of Escalators.
- (d) The Tenderer shall have Quality certification from an accredited and internationally reputed / renowned firm (viz. ISO 9000).

5.3 Financial:

- (a) Bidder should have minimum average Annual turnover of INR 10 Million or above in the last three financial years.
- (b) The Net worth of the Company should be positive for the last Financial year.

[The Tenderer shall submit relevant documents in support of the above Qualifying Requirement and Eligibility criteria along with the Technical Package]

6.0 List of documents for technical package:

The Tenderer shall submit the following documents duly completed in the Technical Package of his Tender submission:

- (a) Appendix-A : Letter of Application
Appendix-B: Letter of Participation from each member. (in case of a Group / JV / Consortium)
- (b) Appendix –C: Letter of Undertaking on formal alliances / partnership / associations with the major OEM vendors / sub - vendors / Manufacturers of Escalators.
- (c) Appendix-D :Letter of undertaking on confidentiality.
- (d) Appendix –E: General Information & Joint Venture Data.
- (e) Appendix-G: Statement of Deviations.
- (f) Notarized copy of Certificate of Incorporation.
- (g) Relevant documents for confirming minimum Three years experience in the field of Inspection Services.
- (h) An undertaking in the prescribed format, signed by the authorized signatory of the company that the bidder would not subcontract / outsource any part of the work defined for TPI without the permission of BMRCL.
- (i) Copies of Annual Reports for the last Three financial years, or, Extracts of Audited Profit and Loss Account and Balance sheet for the last Three financial years duly certified by Chartered Accountant.
- (j) Copies of Certification and a brief on Quality policy and System being followed to be submitted.
- (k) Previous experience in the inspection of Electrical and Mechanical Systems of Escalators- Include relevant citations and the brief details of scope of work and copies of test formats.
- (l) Brief write- up to establish experience / awareness about the testing procedures for Escalators as per International Standard EN115.
- (m) Brief note in not more than 5 (Five) pages of A4 size duly indicating the methods and processes to be followed for ensuring the quality and life of Escalators and the components.
- (n) Work Program along with the details of Organisation Setup / Resources planned for the work.
- (o) Details of Professional Team- Submit CVs of the concerned professionals with Self Certification by the authorized signatory proposed for this work.
- (p) Acceptance to the Sample Test Format for Routine Inspection enclosed with the Tender document by BMRCL. (Annexure - 5).

7.0 List of documents for financial package:

The Tenderer shall submit the following document duly completed with the Financial Package of his Tender submission:

Appendix-F: Price Bid (duly signed with seal of the company)

8.0 Tender evaluation:

8.1 Evaluation of Eligibility Criteria cum Qualifying Requirements:

The Evaluation of Eligibility Criteria cum Qualifying Requirements of Tenders will be based on the eligibility criteria specified under clause No. 5.1, 5.2 and 5.3. The offer of the Tenderer for whom the answer is 'No' to any of the items mentioned under clause 5.1 during evaluation will be summarily rejected. Similarly, the offers of Tenderers who do not qualify minimum Eligibility criteria cited under clause 5.2 & 5.3 will be rejected and their Technical Package and Financial Package will not be opened.

8.2 Technical Evaluation:

The evaluation of the Technical offers will be undertaken only in respect of those Tenderers who qualifies Minimum Eligibility Criteria and Qualifying Requirement specified under Clause 6.1 above. The Technical evaluation will be based on the completeness, validity and correctness of the submittals.

8.3 Financial Evaluation:

The financial package of only those Tenderer will be opened who qualifies in Technical evaluation as stated above.

For determining the Lowest tenderer at the time of evaluating the financial offers, the Foreign Currency portion of the offers will be converted into Indian Rupees at the Selling Rate of Exchange on the close of business of State Bank of India 28 days before the latest date of Tender Submission.

9.0 Deliverables From Third Party Inspection Firm

Third Party Inspection Firm would be responsible for carrying out tests of complete Escalators, at the manufacturer's premises in China. The Agency would also act as an advisor to BMRCL for ensuring that the finished Escalator complies with the contract specifications and relevant International standards.

The Third Party Inspection Firm / Agency would be required to submit following reports/ certificates to BMRCL based on the Scope defined in previous section. All the reports / certificates are to be submitted in Three Sets along with a Soft copy. Photographs may be incorporated in the Reports for better understanding of testing and observations.

S.No.	Deliverables	Periodicity
1	Finalisation of Sample Inspection Format for No Objection to BMRCL *	Within 15 days of Award of Contract
2	Test Reports of Routine testing.	For every Escalator
4	Test Reports of Type testing of sub – systems / components of Escalator.	As & when applicable
5	Report for review of appropriateness of the approved Quality Check Schedule / Program by the Employer.	Quarterly

A sample test format for Routine testing of Escalators has been enclosed as Annexure – 5 with the Tender documents. The bidder is requested to review the format based on relevant conditions of Escalator contract (2ESCAL-DM) and propose improvements. Successful bidder will be responsible for getting No Objection for the Inspection Format from BMRCL.(The successful contractor will be provided with Copy / Extracts of the Contract Agreement)

BMRCL will have exclusive rights on the deliverables and these will be classified as Confidential.

Third Party Inspection Firm will not have any right to use or transfer the details / information / photographs gathered during this contract to any other firm / client without getting specific approval from Bangalore Metro Rail Corporation Limited.

10.0 Details of manpower / experts to be deployed for the work.

The TPI Contractor will submit the details of Experts to be deployed for this contract. CVs of the experts should be submitted with the bid. The proposed Experts should have sufficient experience of inspecting Electrical and Mechanical equipment and shall have sufficient background to ensure that all personnel selected for undertaking the work specified in this enquiry are fully acquainted with the testing of Escalators.

11.0 Price

This contract is a fixed price contract. The bidder should quote the Contract price as per the Price bid format enclosed as Appendix-F. The prices quoted should be firm & all inclusive, i.e. rates should be inclusive of all local and international taxes, duties, Manpower cost, cost of testing instruments, (required to be arranged if any), travelling and boarding charges of the Inspectors, cost of insurances of local and expatriate staff, documentation charges, record maintenance, etc.

However, any new statutory tax / duty introduced in India 28 days before the latest date of submission of Tender and during currency of the contract, will be reimbursed by

BMRCL on production of documentary evidence of depositing the tax with the concerned statutory authority. Detail modalities for the same are stipulated in clause - 11 of Terms of Reference.

No Escalation will be applicable on these prices during the currency of Contract. The evaluation will be done as per the quantities indicated in price bid format. Actual quantities may increase or decrease, payments will be made as indicated in Appendix -F.

12.0 Currency of the Contract

The Contract shall be valid for a time period of Thirty Months from the date of Letter of Acceptance or satisfactory Testing and Commissioning of Escalators whichever is later; BMRCL may extend the contract for the aforementioned TPI services on mutually agreeable terms.

13.0 Work Programme

The above work is required to be completed in about 30 Months. (Detailed schedule provided in Annexure - 3). The TPI Contractor should submit a work programme indicating the various activities.

14.0 Payment Schedule

Payment to the TPI Contractor shall be made in the Currencies quoted. The Payment will be made in stages as given below :

S.No	Description	Payment
1	Payment of Inspection Charges Per Escalator for Routine Testing after Inspection by the firm.	80% of the Routine Testing Charges Per Escalator
2	Payment of Inspection Charges Per Escalator for Routine Testing after taking over of Escalator by BMRCL.	20% of the Routine Testing Charges Per Escalator
3	Man-day for inspection	90% of man - day fees on submission of Inspection report. Remaining 10 % on acceptance of Inspection report by BMRCL.

The 80% payment of item A of Price bid format at Appendix - F shall be released on the submission of following documents:

- Inspection report;
- Quality Assurance check report
- Dispatch clearance report; and
- Proof of insurance of inspecting officers;

The 20% payment of item A of Price bid format at Appendix - F shall be released on Taking over of Escalator by BMRCL after completion of satisfactory testing and commissioning of Escalator at site.

For item - B of Price bid format at Appendix - F, 90% of man - day fees for the work assigned will be released on submission of Inspection report. Remaining 10% of man - day fees will be released on acceptance of Inspection report by BMRCL.

The Tenderer shall be responsible for ensuring proper documentation as stated above. Delay in payment due to non-submission of any of the above documents shall not be attributable to BMRCL.

In the unlikely event of the TPI contractor being unable to witness the Type or routine testing of escalator and if the same is witnessed by BMRCL at its own cost, the TPI contractor will not be released any payment on this account and the cost incurred by BMRCL will be recovered from the Contractor.

15.0 Tax deduction at source

Tax deductions as per statutory requirement will be made at source from every payment made to the Contractor, at the tax deduction rates notified from time to time.

16.0 Introduction of New Tax / Duty

In case, any new statutory tax / duty is introduced in India 28 days before the latest date of submission of Tender and during the currency of contract, the TPI contractor will inform BMRCL within one month of introduction of such Tax / Duty. Once BMRCL agrees / concurs with the applicability of the tax on this contract, the same will be reimbursed by BMRCL on production of documentary evidence of depositing the tax with the concerned statutory authority.

Any new tax / duty introduced off - shore will be paid by the TPI contractor and BMRCL will not reimburse these Tax / duty.

17.0 Insurance and Indemnity

The successful tenderer will provide a copy of the insurance entered with Indian Insurance company (in case of local inspectors) and with the Insurance company in China (in case of expatriates) to insure the Inspectors to be deputed for this project.

Further, the Contractor will submit an Indemnity bond/ undertaking as per the approved format of BMRCL to indemnify BMRCL and the manufacturer against any loss / damage /injury / death suffered by the Inspector during the course of the Inspection.

18.0 Preparedness for inspection at short notice.

The Contractor will be informed to undertake inspection based on the Inspection Offer / Call by the manufacturer. Bidder should be prepared to undertake inspection of Escalators at manufacturer's premises within Seven days of receiving the suitable intimation by BMRCL. Generally, the call for Inspection will be given for minimum Five Nos. of Escalators.

19.0 Joint Venture / Consortium

In case of Joint Venture / Consortium, following shall be submitted with the offer:-

- (a) A Memorandum of Understanding shall be provided which shall comprise the name of members and the leader.
- (b) Nomination of one of the members of the partnership, consortium or joint venture to be in-charge; and this authorisation shall be covered in the Power of Attorney signed by the legally authorised signatories of all members of consortium or joint venture;
- (c) Details of the intended participation by each member shall be confirmed and expanded with complete details of the proposed division of responsibilities and corporate relationships among the individual members.
- (d) The JV/Consortium agreement must contain a clause stating "all the partners are jointly and severally liable to BMRCL".

The Joint Venture Agreement should be registered in Bangalore, so as to be legally valid and binding on partners/members of the Joint Venture.

20.0 APPLICABLE LAW

The contract shall be governed by the laws and procedures established by Govt, of India, within the framework of applicable legislation and enactment made from time to time concerning such commercial dealings/processing.

21.0 AWARD OF CONTRACT

On acceptance of the proposal, BMRCL will notify the successful bidders.

22.0 Tender Security

Along with the Bid, the Tenderer should submit a bank guarantee from a scheduled commercial nationalized bank based in India for INR 2,50,000 (Indian Rupees Two lakh Fifty Thousand) as Earnest Money Deposit (EMD) / Tender Security with the validity period of not less than 120 days from the latest date of Tender submission. The format of Bank Guarantee is enclosed as Appendix - H.

23.0 Refund of EMD / Tender Security

The Earnest Money Deposit (EMD) / Tender Security will be refunded without any interest accrued, under following conditions: -

- i. In the case of unsuccessful bidders, the Earnest Money Deposit (EMD) will be refunded immediately after issuing of 'Letter of acceptance' for the contract to the successful bidder.
- ii. For the successful bidder, the EMD will be refunded subsequent to submission of Performance Bank Guarantee and subject to unconditional acceptance of the terms and conditions mentioned in the Letter of acceptance for the contract

24.0 Performance Bank Guarantee

The successful bidder shall be required to submit a Performance Bank Guarantee (in the format given in Annexure-7) for 10% of the Contract Value within two weeks from the date of issue of Letter of acceptance (LOA) for the contract. The Performance Bank Guarantee shall be valid for 90 days beyond the Currency of the Contract (Period of Contract).

25.0 Release of Performance Bank Guarantee:-

Performance Bank Guarantee will be released subject to satisfactory completion of the contract by the firm. This will be based on the Completion certificate issued by the 'Engineer - In – charge' nominated by BMRCL.

26.0 Forfeiture of Earnest Money Deposit /PBG

(a) Forfeiture of Earnest Money Deposit.

Earnest Money Deposit submitted by the Bidder can be forfeited if the firm

- withdraws its bid during the period of bid validity.

- does not accept the correction of errors.
- does not submit the Performance Bank Guarantee as in S.No. 19 above.
- fails to sign the Contract, within the time stipulated by BMRCL i.e. 30 days from the date of issue of LOA. (in case of successful Bidder)
- fails to unconditionally withdraw any deviations, conditions, qualifications at the price indicated by the firm in Appendix – G.
- The successful Bidder refuses to take up the job.

(b) Forfeiture of Performance Bank Guarantee

Performance Bank Guarantee submitted by the Bidder can be forfeited if the firm refuses to take up the job or fails to execute the contract as per the conditions of contract.

27.0 Notice to Employer

All notices to the Employer or Engineer shall be served by post or telex or tele-fax, or delivered by hand to the address nominated for the purpose.

28.0 Change of Address

Parties to the Contract may change the nominated address with a notice to all concerned.

29.0 Change in Constitution of Firm

The Contractor shall forth with notify the Employer of any change in constitution of the firm.

30.0 Signing of Agreement

The Tenderer should note that in the event of acceptance of the Tender, the Tenderer will be required to execute the Contract Agreement within a period of 30 days from the date of issue of the Letter of Acceptance. The form of Contract Agreement is at Annexure – 6.

31.0 Corrupt and Fraudulent Practice

BMRCL requires that tenderers observe the highest standard of ethics during the procurement and execution of contracts. In pursuance of this policy, BMRCL: -

- i. Defines, for the purpose of these provisions, the terms set forth below as follow:

- (a) "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
 - (b) "Fraudulent practices" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract detriment to BMRCL and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive BMRCL of the benefits of free and open competition.
- ii. will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
 - iii. Will declare a Contractor ineligible, either indefinitely or for a stated period of time, to be awarded a Contract/s if BMRCL at any time determines that the Contractor has engaged in corrupt or fraudulent practices in competing for, or in executing the Contract.

32.0 Disputes

Except where otherwise provided for in the Agreement, all questions and disputes arising between the parties pertaining or relating to the Agreement directly or indirectly connected with the Agreement shall in the first place be referred to a sole conciliator to be appointed by Director /General Manager / Chief Engineer of BMRCL or any other nominee appointed by him as the case may be. There will be no objection if the sole conciliator so appointed is an official of BMRCL of the rank of Deputy Chief Engineer and above.

The conciliator shall make the settlement agreement after the parties reach agreement and shall give an authenticated copy thereof to each of the parties. The settlement agreement shall be final and binding on the parties. The settlement agreement shall have the same status and effect as an arbitration award.

The views expressed, or suggestions made or the admissions made by either party in the course of conciliation proceedings shall not be introduced as evidence in any arbitration proceedings.

33.0 ARBITRATION

If the efforts to resolve all or any of the disputes through conciliation fails, then such disputes shall be referred within 30 days to Arbitration in accordance with the following provisions:

- i. Matters to be arbitrated upon shall be referred to a sole Arbitrator where the total value of claims does not exceed INR.1.50 millions. Beyond the claim limit of INR 1.50 million, there shall be three arbitrators. For this purpose the Employer will make out a panel of Engineers with the requisite qualifications and professional experience relevant to the field to which the Contract relates. This panel will be from serving or retired Engineers of Government departments or of Public sector Undertakings
- ii. For those disputes to be decided by sole Arbitrator, the BMRCL shall prepare the panel of three Engineers, out of which the Contractor will choose one.
- iii. For those disputes to be decided by three arbitrators, the BMRCL shall make out a panel of five Engineers. The Contractor and BMRCL shall choose one arbitrator each and the two so chosen shall choose the third arbitrator from the said panel, who shall act as the presiding Arbitrator of the Arbitration Panel.
- iv. No Suspension of Work

The reference to arbitration shall proceed notwithstanding that Works shall not then be or be alleged to be complete, provided always that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reasons of arbitration being conducted during the progress of Works. Neither party shall be entitled to suspend the work to which the dispute relates on account of arbitration and payments to the Contractor shall continue to be made in terms of the Contract.

- v. Rules Governing The Arbitration Proceedings

The arbitration proceedings shall be governed by Indian Arbitration and Conciliation Act, 1996, as amended from time to time.

- vi. Interest on Arbitration Award

Where the arbitration Award is for payment of money, no interest shall be payable on whole or any part of the money for any period, till the date on which the award is made.

- vii. Cost of Arbitration

The Cost of Arbitration shall be borne by the respective parties. The cost shall, inter-alia include the fees of the arbitrator(s) as per the rates fixed by BMRCL from time to time.

- viii. This arbitration clause or any proceedings initiated or pending in the arbitration shall be without prejudice to BMRCL's rights to take recourse under other applicable laws and regulations.
- ix. Arbitration proceedings shall not be terminated, delayed or suspended due to the occurrence of any force majeure, fire, war or any other cause beyond the control of the parties provided such force majeure occurrence shall be notified to the other party within 21 days of such occurrence
- x. The court at Bangalore shall have the exclusive jurisdiction to try all disputes between the parties

The place of arbitration shall be Bangalore only. The language of proceedings, of the documents and communications shall be English and the award shall be made in writing. The Arbitrators shall always give reasoned award in all cases

34.0 FORCE MAJEURE

34.1 In this clause, "force majeure" means as event beyond the control of the Employer and the Contractor, which makes it impossible or illegal for a party to perform, including but not limited to:

- (a) Act of God;
- (b) War, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;
- (c) Rebellion, revolution, insurrection, or military or usurped power, or civil war;
- (d) Contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such an assembly;
- (e) Riot, commotion or disorder, unless solely restricted to employees of the Contractors currently or formerly engaged on the Works.

If a party considers that it may be affected by Force Majeure, the party shall promptly notify the other party and Employer's Representative of such Force Majeure

34.2 Neither the Employer nor the Contractor shall be considered in default or in contractual breach to the extent that performance of obligation is prevented by a Force Majeure event which arises after the date of Notice to Proceed Upon the occurrence of such Force Majeure, the affected party shall endeavor to continue to perform its obligations as far as reasonably practicable

- (a) If affected by such Force Majeure, the Contractor shall promptly notify the Employer's Representative of any proposals for overcoming the consequences of the Force Majeure, including any reasonable alternative means for performance, but shall not carry out these proposals without the consent of the Employer's Representative.
- (b) If affected by such Force Majeure, the Employer shall promptly notify the Employer's Representative and the Contractor of any proposals for overcoming the consequences of the Force Majeure.

34.3 If the works shall suffer loss or damage due to such Force Majeure, the Contractor shall be entitled to have included, in an Interim Payment Certificate, the Cost of work executed in accordance with the Contract. If the Contractor incurs Cost in complying with Sub-Clause 29.2, the Cost shall be agreed or determined by the Employer's Representative and shall be included in the Contract Price

- (a) The obligations under the Contract shall be resumed as soon as practicable after the event has come to an end or ceased to exist.
- (b) In case of doubt or dispute, whether a particular occurrence should be considered an "event" as defined under this clause, the decision of the 'Employer' shall be final and binding.
- (c) Works that have already been measured shall be paid for by the Employer even if the same is subsequently destroyed or damaged as a result of the event. The cost of rebuilding or replacing any work that has been measured shall be borne by the Employer.
- (d) Irrespective of any extension of time, if a Force Majeure occurs and its effect continues for a period of 182 days, after notice has been given under Sub-Clause 29.1, either party may give to the other party a notice of termination the contract which shall take effect 28 days after the notice is given. Unless at the end of 28 days period the effect of the force Majeure has ceased, the Contract shall terminate upon that date. Otherwise, the Contract shall remain in effect.

The contractor shall be paid fully for the work done under the Contract, but not for any defective work or work done which has been destroyed or damaged before its measurement.

35.0 DEFAULT OF CONTRACTOR

If the Contractor fails to carry out any of his obligations, or if the Contractor is not executing the Works in accordance with the Contract, the Employer's Representative may give notice to the Contractor requiring him to make good such failure and remedy the same within a specified reasonable time.

- 35.1 If the Contractor:
- (a) fails to comply with a notice under Sub-Clause 30.1,
 - (b) abandons or repudiates the Contract,
 - (c) fails:
 - (i) to commence the Works in accordance with Clause 4,
 - (ii) to proceed with the Works in accordance with Clause 4, or
 - (iii) to demonstrate that sufficient capacity is employed in the Inspection Services and other aspects of the work to achieve completion within the time for Completion,
 - (d) Becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration or made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under any applicable law) has a similar effect to any of these acts or events,
 - (e) Fails to comply with a notice issued under Sub-Clause 30.1 within 28 days after having received it, then the Employer may, after having given 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site. The Contractor shall then deliver all relevant Documents, and other design documents made by or for him, to the Employer's Representative. The Contractor shall not be released from any of his obligations or liabilities under the Contract. The rights and authorities conferred on the employer and the employer's Representative by the Contract shall not be affected.
- 35.2 The Employer's Representative shall, as soon as possible after termination under Sub-Clause 30.2 determine and advise the Contractor of the value of the work done and all sums then due to the Contractor as at the date of termination.
- 35.3 After termination under Sub-Clause 30.2, Employer shall not be liable to make any further payments to the Contractor until the costs of Inspection Services, damages for delay in completion (if any), and all other costs incurred by the employer, have been established.
- 35.4 Any act done as described in clause 26 by or on behalf of the Contractor, his representatives or servants of any one on his/their behalf to any employee, representative of the employer or any person on his behalf in relation to the execution of this or any other Contract with the Employer shall, in addition to the criminal liability under the laws in force, subject the Contractor to cancellation of this and all other contracts with the Employer, and also to payment of any loss resulting from any such cancellation. The Employer shall be entitled to deduct the amounts so payable from any money otherwise due to the Contractor under this or any other Contract. Any question

of dispute as to the commission or any offence under the present Sub-Clause shall be settled by the employer in such manner and on such evidence or information as may be thought fit and sufficient and his decision shall be final and conclusive on the matter.

- 35.5 If the Contractor or any partner of the Contractor or Directors of the Contractor's company, are closely related to any of the officers of the Employer or Employer's Representative, or alternatively, if any close relatives of an officer of the Employer or the employer's Representative have financial interest/stake in the Contractor's firm, the same shall be disclosed by the Contractor at the time of filing his tender. Any failure to disclose such interest involved, shall entitle the Employer to rescind the contract. The contractor shall note that he is prohibited from developing such interest during the contract period.
