

Amendment-I dated 27.06.2024 to the bidding document of **Appointment of Independent Engineer for “Western Region Expansion Scheme XXXIII (WRES - XXXIII): Part B”**. Spec. No. CTUIL/IE/2023-24/36. GeM Bid No.: GEM/2024/B/5046137 dated 13.06.2024

Clause ref.	Existing Clause		Amended as	
Clause 52.0, Section-III Condition of Contracts	52.0	SETTLEMENT OF DISPUTE	52.0.0	SETTLEMENT OF DISPUTE
	52.1	Except as otherwise specifically provided in the contract all disputes concerning questions of fact arising under the contract shall be decided by the Engineer-in-charge subject to a written appeal by the consultant to the Engineer-in-charge whose decision shall be final to the parties hereto.	52.1.0	If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities, whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference, to the extent possible, amicably by mutual consultation.
	52.2	Any disputes or differences including those considered as such by only one of the parties arising out of or in connection with the contract shall be to the extent possible settled amicably between the parties.		
	52.3	If an amicable settlement cannot be reached then all disputed issues shall be settled by arbitration as provided in clause No. 53.0 herein below.	52.1.1	If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute shall be referred by the Contractor to the Engineer In Charge (EIC), who, within a period of thirty (30) days after being requested by Contractor to do so, shall give written notice of his decision.
	53.0	ARBITRATION		
	53.1	In the event of any question, dispute or difference arising out of or in connection with this consultancy work, whether during the progress of the work or after its completion, abandonment or breach of contract, the same shall be referred for arbitration, for which purpose the Owner and the Consultant shall nominate one Arbitrator each. These Arbitrators shall appoint an Umpire not later than one month from the latest date of their respective appointment. The arbitration	52.1.2	The decision/instruction of the Engineer In Charge (EIC) shall be deemed to have been accepted by the Contractor unless notified by the Contractor of his intention to refer the matter for Arbitration/Conciliation within thirty (30) days of such decision/instruction.
		52.1.3	In the event the Engineer In Charge (EIC) fails to notify his decision as aforesaid within thirty (30)	

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	<p>shall be conducted in accordance with the provisions of Indian Arbitration and Conciliation Act 1996, the rules framed hereunder and any statutory modifications thereof. The costs of reference and arbitration award shall be payable by the parties to the extent and in a manner as may be determined by the Arbitrators or the Umpire.</p> <p>However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings shall be borne by each party itself.</p>	<p>days, the Contractor, if he intends to go for Arbitration/Conciliation, shall notify his intention to the Engineer In Charge (EIC) within 30 days of expiry of the first mentioned period of thirty days failing which it shall be deemed that there are no dispute or difference between the Employer and the Contractor.</p>
53.2	<p>Notwithstanding the above, in case the contractor is a Central Public Sector Enterprise (CPSE)/Government Organization or Department then the dispute/ difference (other than those related to taxation matters) between the Employer and the Contractor shall be settled through Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22.05.2018 and DPE OM No. DPE-GM-05/0003/2019-FTS-10937 dated 20.02.2020. The decision through AMRCD will be final and binding on all the concerned.</p>	<p>52.1.4 In case of dispute or difference between the Employer and the Contractor, if the Employer intends to go for Arbitration/Conciliation, he shall notify such intention to the Contractor.</p> <p>52.1.5 All disputes or differences in respect of which the decision, if any, of the Engineer In Charge (EIC) and/or the Head of the Implementing Authority has not become final or binding as aforesaid shall be settled by arbitration/conciliation in the manner provided herein below.</p>
53.3	<p>Notwithstanding the existence of any dispute or difference and/or reference for arbitration, the</p>	<p>53.1.0 ARBITRATION</p> <p>53.1.1 In the event of any question, dispute or difference arising out of or in connection with this work, whether during the progress of the work after its completion, abandonment or breach of contract, the same shall be referred for arbitration.</p> <p>The arbitration shall be conducted by a sole arbitrator in case the amount of claim is less than Rs. 25 Crore and by three member arbitral tribunal</p>

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	<p>Consultant shall proceed with and continue without hindrance the performance of the work under the contract with due diligence and expedition in a professional manner and the payment due to the Bidders shall not be withheld by the owner on account of such difference or arbitration proceedings unless such payment is subject matter of the arbitration.</p> <p>53.4 The arbitrators may from time to time with consent of the parties enlarge the time, for making and publishing the award. The venue of arbitration shall be the registered office of Employer.</p>	<p>in case the amount of claim is greater than Rs. 25 Crore.</p> <p><u>Sole Arbitration</u></p> <p>The sole Arbitrator shall be chosen from a panel of empanelled Arbitrators maintained by POWERGRID/CTUIL. The same shall comprise of retired Judges and retired Senior executives of PSUs other than POWERGRID/CTUIL. Further, the choice of sole Arbitrator shall be governed by the amount of claim in the following manner:</p> <table border="1" data-bbox="1391 708 2031 1275"> <thead> <tr> <th data-bbox="1391 708 1458 810">Sl no</th> <th data-bbox="1458 708 1610 810">Claim amount</th> <th data-bbox="1610 708 2031 810">Work Experience/Qualifications</th> </tr> </thead> <tbody> <tr> <td data-bbox="1391 810 1458 1094">1</td> <td data-bbox="1458 810 1610 1094">< Rs. 10 Crore</td> <td data-bbox="1610 810 2031 1094">Sole arbitrator-Retired Senior Executives of PSUs other than POWERGRID or CTUIL/Retired Distt Judges/ High Court Judges.</td> </tr> <tr> <td data-bbox="1391 1094 1458 1275">2</td> <td data-bbox="1458 1094 1610 1275">Rs.10 Crore- Rs.25 Crore</td> <td data-bbox="1610 1094 2031 1275">Sole arbitrator- Retired High Court/Supreme Court Judges</td> </tr> </tbody> </table> <p>(a) In case of invocation of arbitration by CTUIL, CTUIL shall, within 30 days, send a list of</p>	Sl no	Claim amount	Work Experience/Qualifications	1	< Rs. 10 Crore	Sole arbitrator-Retired Senior Executives of PSUs other than POWERGRID or CTUIL/Retired Distt Judges/ High Court Judges.	2	Rs.10 Crore- Rs.25 Crore	Sole arbitrator- Retired High Court/Supreme Court Judges
Sl no	Claim amount	Work Experience/Qualifications									
1	< Rs. 10 Crore	Sole arbitrator-Retired Senior Executives of PSUs other than POWERGRID or CTUIL/Retired Distt Judges/ High Court Judges.									
2	Rs.10 Crore- Rs.25 Crore	Sole arbitrator- Retired High Court/Supreme Court Judges									

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		<p>names of 3 arbitrators from its list/database of Arbitrators and the contractor shall within the period of further 30 days select any one person to act as “Sole Arbitrator”, which will be confirmed by CTUIL and matter will be referred to such appointed Arbitrator for further arbitration proceedings.</p> <p>(b) In case of invocation of arbitration by the Contractor, the Contractor shall request CTUIL for its database of Arbitrators/ chose from the list of Arbitrators available on POWERGRID’s/CTUIL’s website, and the contractor shall, within 30 days, select any one Arbitrator from the above to act as “Sole Arbitrator”, which will be confirmed by CTUIL within 30 days and matter will be referred to such appointed Arbitrator for further arbitration proceedings.</p> <p>If the parties fail to appoint sole arbitrator within sixty (60) days after receipt of a notice from the other party invoking Arbitration, the appointment of sole arbitrator shall be done by Courts as per the provisions of Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof.</p> <p><u>Three member arbitral tribunal</u></p> <p>The arbitration shall be conducted by three arbitrators, who are retired High Court/Supreme</p>

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		<p data-bbox="1370 236 2036 855">Court Judges, one each to be nominated by the Contractor and the Employer and the third to be appointed by both the arbitrators in accordance with the Indian Arbitration & conciliation Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the Arbitration clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus regarding appointment of presiding Arbitrator, within a period of 30 days from the appointment of the arbitrator appointed subsequently, the presiding arbitrator shall be appointed by Courts as per the provisions of Arbitration & conciliation Act.</p> <p data-bbox="1234 895 2036 1002">53.1.2 The cost of arbitral proceedings inter-alia including the Arbitrators’ fee, logistics and any other charges shall be equally shared by both parties.</p> <p data-bbox="1370 1042 2036 1329">In case of Sole Arbitrator, the fees to be paid to the sole Arbitrator shall be as per the terms of empanelment in POWERGRID/CTUIL whereas in case of the three member tribunal, the Arbitrator’s fees shall be as agreed upon by the Arbitrators in line with the Arbitration & Conciliation Act. However, the expenses incurred by each party in connection with the preparation, presentation, etc.</p>

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		<p>of its proceedings shall be borne by each party itself.</p> <p>53.1.3 The language of the arbitration proceedings and that of the documents and communications between the parties shall be English. The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof. The venue of arbitration shall be New Delhi.</p> <p>53.1.4 The decision of the sole arbitrator/ the majority of the arbitrators, as the case may be, shall be final and binding upon the parties. In the event of any of the sole arbitrator/ any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the parties to nominate another sole arbitrator/ another arbitrator in place of the outgoing arbitrator.</p> <p>53.1.5 Notwithstanding the above, in case the contractor is a Central Public Sector Enterprise (CPSE)/Government Organization or Department then the dispute/ difference (other than those related to taxation matters) between the Employer and the Contractor shall be settled through Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22.05.2018 and DPE OM No. DPE-GM-</p>

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		<p>05/0003/2019-FTS-10937 dated 20.02.2020. The decision through AMRCD will be final and binding on all the concerned.</p> <p>53.1.6 During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the Contract.</p> <p>53.2.0 CONCILIATION</p> <p>53.2.1 The mechanism of Dispute resolution through Conciliation shall be available in cases where the amount involved in the dispute exceeds INR 1 Cr.</p> <p>53.2.2 The settlement of Disputes through conciliation mechanism shall be done by the Conciliation Committee of Independent Experts (CCIE) constituted by Ministry of Power, Govt. of India as per the procedure outlined in its OM dated 29.12.2021 as detailed herein below and its subsequent amendments/modifications (if any).</p> <p>53.2.2.1 Each member of CCIE would be paid a sum of Rs. 50,000/- as sitting fee per sitting. In addition, Rs. 5,000/- per sitting will be paid for local transport charges for each day of proceeding. The conciliation proceedings shall be completed in each case through 5 sittings in a period of not more than three months from the date the reference made to the CCIE. In exceptional cases, if any dispute so merits, the time period may be extended at the</p>

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		<p>discretion of Conciliation Committee (with reasons to be recorded in writing), for a further period of three months. In case, a particular dispute requires more than 5 sittings, the same may be held at the discretion of the CCIE but with a cap on payment of fee for 5 sittings only. The local transport charges shall, however, be paid as provided for each day of sitting beyond the 5 sittings.</p> <p>53.2.2.2 The CCIE shall hold day to day sitting at the Headquarter of the Employer or New Delhi and may hold as many sittings every month as it deems appropriate keeping in view the volume of work.</p> <p>53.2.2.3 All expenditure incurred on the conciliation proceedings including payment of fees to the Conciliators, office space, logistic, secretarial assistance and other incidental expenses etc. shall be borne by the Employer initially. Thereafter it shall be shared equally by both parties on completion of the conciliation process.</p> <p>53.2.3 The procedure of CCIE shall not be treated as alternate arbitration proceedings where both parties come with Statement of claims/defence, arguments/counter arguments, rejoinders, written submissions etc., aided by their respective lawyers. The forum of CCIE is a conciliation forum, where mutual give and take constitutes the essence, rather than strict legal positions of the parties. Hence, the parties are expected to be brief and to the point</p>

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		<p>before the committee with regard to their respective stance and view the exercise in the spirit of conciliation / settlement.</p> <p>53.2.4 The Standard Operating Procedure for the conciliation mechanism shall be as follows:</p> <p>i) On receipt of a reference from the Contractor for conciliation of dispute, the concerned Executive Director of the Employer shall send a communication within 7 working days thereby inviting the Contractor to depute a team of their representatives to interact with the Employer to crystallize the issues and prepare the agenda containing the gist on each dispute.</p> <p>ii) Once a conciliation request has been raised by the contractor, within 30 days the same shall be referred to the CCIE in the event of the matter remaining unresolved internally.</p> <p>iii) The Employer will also be free to suggest the option of resolution of disputes by conciliation in case a dispute has arisen. The contractor may select any one of the CCIEs as constituted by MOP after leaving out those CCIEs which are unavailable due to work load or any other reason as maintained by Central Electricity Authority (CEA).</p> <p>iv) The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation Act, 1996.</p>

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		<p>v) The Conciliation Committee would either be able to resolve and settle the dispute(s) between the parties, or the process may fail.</p> <p>vi) In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996.</p> <p>vii) After successful conclusion of Conciliation, proceedings, the Parties to the conciliation process, have to undertake and complete all necessary actions for implementation of the terms of settlement within a period of 30 days from execution of settlement agreement, unless a different timeline not exceeding 60 days is agreed upon in settlement agreement. All pending claims of parties, in connection with the dispute, before any other legal forum are to be withdrawn within the said 30 days in pursuance of the settlement agreement.</p> <p>viii) In case of failure of the conciliation process at the level of the Conciliation Committee, the parties may withdraw from conciliation process and take recourse to Arbitration proceedings or the laid down legal process of Courts.</p> <p>53.2.5 In cases of disputes pending before the Arbitration Tribunals or the Courts, both the parties (i.e. Employer and Contractor) need to agree to explore the possibilities of conciliation through the</p>

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		<p data-bbox="1370 236 2042 783">Conciliation Committee of Independent Experts. In case of such agreement, an appropriate reference shall be made to the Conciliation Committee, upon which the Committee shall proceed to examine such reference(s). In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996. However, the parties may resume the Arbitration proceedings or take recourse to any other legal remedies in the event of the conciliation proceedings not being successful.</p> <p data-bbox="1238 823 2042 930">53.2.6 During settlement of disputes and conciliation proceedings, both parties shall be obliged to carry out their respective obligations under the Contract.</p>