

SECTION 3 (POST AWARD ISSUES)

1.0 INTRODUCTION

The post-award activities, from award to closing of Contracts, which will be undertaken by NEEPCO, have been detailed at Section 2. The processes and general procedures associated with different activities have also been described therein, indicating the departments responsible and the time schedules for the same.

In course of execution of Contracts, some issues, which may not be encountered normally, may crop up in specific cases, creating difficulty in expeditious decision making. Such issues have been identified and the methodology to be followed to deal with the same are discussed in this Section.

2.0 CORRESPONDENCE

2.1 The manner in which correspondence will be made during execution of Contracts will be detailed in the individual Contracts. In absence of the same, the correspondence procedure shall however be tied up with the Contractor by the HOP/HOD immediately after the award.

2.2 Each and every communication received from the Contractor that requires a response, shall be replied promptly to avoid delay in implementation of the Contract on this account. However, if the reply takes some time for obtaining information from Sites and/or consultation within NEEPCO, an interim reply should be given within 1(one) week followed by a detailed reply positively within 4(four) weeks thereafter. Where more than one issue is raised by the Contractor in one communication, a consolidated reply shall be sent after seeking comments from concerned Department.

2.3 Correspondence with the Contractor should not include any commitment or liability beyond contractual provisions without appropriate approval.

2.4 For ease of reference and expeditious retrieval, each and every communication pertaining to a particular Contract should, invariably, bear the reference of the DPO/DWO/ Contract Agreement No. and the name of the package concerned. This shall also be applicable for internal communication within NEEPCO.

2.5 All efforts shall be made to promptly and expeditiously settle the commercial aspect of issues raised by the Contractor and any communication, stating that the commercial aspects shall be settled later, shall be avoided. However in the interest of work, if such a communication becomes inevitable, the same shall be made only after the approval of HOP/HOD.

3.0 RECORD OF BANK GUARANTEES

3.1 Considering the number of Bank Guarantees that are involved in execution of a contract, e.g., BGs against Earnest Money, Advance Payment, Contract Performance, etc., finalization of a procedure for proper handling of the BGs is extremely important.

While timely validity extension/encashment of BG needs to be done in the interest of NEEPCO, unnecessary retention of BGs, which are due for release, shall result in additional financial burden to the Contractor. This may turn out to be detrimental to the interest of NEEPCO by way of less competitive prices in future tenders.

Therefore, it shall be the policy of the Corporation to periodically review the status of all BGs so that timely action as required could be taken.

3.2 As already mentioned in Clause No. 1 of Section 2, the concerned Finance Wing, from where the payment under a Contract is to be released, shall be the custodian of all the Bank Guarantees pertaining to a Contract which shall maintain proper record in respect of the same.

3.3 In order to have proper monitoring of status of all types of BGs, Corporate Finance wing shall release a consolidated list of BGs in its custody, along with salient details thereof, once in every quarter i.e. on 1st January, 1st April, 1st July and 1st October to trigger off necessary action by all concerned towards extension/encashment/release of BGs. Such list shall be furnished to all concerned departments. Similarly, the Site Finance shall also release similar status on quarterly basis and circulate to all concerned departments.

3.4 Based on the above, the concerned Department will move proposal and send to the respective Finance Wing for necessary action towards extension/encashment/release of BGs, as the case may be. The proposal shall be so timed that action can be taken by concerned Finance Wing at least 1(one) month before the expiry of validity of the BG.

3.5 It shall, on the basis of above, be ensured by the Finance Wing that action for either its validity extension or encashment, as the case may be, is taken by it 1(one) month before the expiry of validity of the BG, in consultation with C&P Wing of Corporate Office or HOP/HOD, whenever required. In case validity is expiring but no advice has been received, Finance Wing shall take action on its own towards validity extension along with conditional claim and this fact shall be indicated in the Quarterly Status as per Clause No. 3.3 above.

3.6 In the normal course when the intended purpose of the BG is not over, the general procedure for taking above actions shall be with the approval of HOP in case of Corporate Contracts.

For other Contracts, head of respective C&P Wing will be approving authority for extending validity period and HOD/HOP for encashment of BG.

3.7 However, detailed procedure with specific reference to different type of BGs, after having served their intended purpose, is described hereinafter.

3.7.1 **Bank Guarantee against Advance**

3.7.1.1 The validity of BG taken for release of advance against Non-Recoverable Down Payment shall be initially kept till 90 (ninety) days after the scheduled date of issuance of Taking Over/Completion Certificate. The Finance Wing from where the payments are released shall immediately, on completion of the Warranty Period/Defect Liability Period, move a proposal and take

approval of the Head of Finance for release of BGs. The proposal will be forwarded to HOP for release of the BG.

3.7.1.2 The value of Advance Bank Guarantee shall be proportionately reduced on half yearly basis, based on the request of the contractor, on adjustment of advance against supplies made.

3.7.1.3 The validity of BG against Mobilization Advance, Plant and Machinery Advance and Secured Advance shall be till complete recovery of the respective advances. The validity of such BGs should be for a period of not less than 1(one) year plus 90 days of Recovery Schedule for Contracts with completion period of more than 1(one) year.

Within 90(ninety) days from full adjustment of advance, the BG shall be released back to the Contractor irrespective of initial validity.

The Finance Wing from where the payments are released shall immediately, on adjustment of full advance, move a proposal and take approval of the Head of Finance for release of BGs. The proposal will be forwarded to HOP for release of the BG.

3.7.1.4 In cases where BGs received for release of initial advance is required to be retained for some specific reasons despite adjustment of full advance, the approval of concerned Ed shall be taken explaining reasons thereof in respect of all corporate packages. The proposal in this regard shall be moved by the Execution Site, whosoever considers such a necessity, through the concerned HOP. In case of site packages for which payment is being released from Site Offices, approval of the concerned HOP shall be taken. However, in all cases the concerned finance shall provide the details of all advance BGs, whose validity are got extended and which are retained even after adjustment of full advances, to HOP briefly indicating reasons against each BG.

3.7.2 **Contract Performance Guarantee (CPG)/Security Deposit (SD)**

On completion of Warranty Period/Defects Liability Period, the concerned execution Department, if contract closing activities other than release of BG towards CPG/SD are over by then, shall send a note to the Finance Wing, advising release of CPG/SD. For Corporate packages, HOP shall forward the proposal to ED(C&P) for release of the CPG/SD, after obtaining clearance of Site Finance. The proposal for release shall, inter-alia, contain the status in regard of issuance of various Contract Closing Certificates and shall be accompanied with CCP-13 duly signed. This activity shall not normally take more than 15(fifteen) days. For Site Contracts, after the proposal is approved by HOP, the CPG/SD will be released by the Ordering Authority. On release of CPG/SD, HOP, in case of Corporate packages and head of C&P Wing of project Sites in case of Site packages shall take further action towards declaring the Contract as closed.

If at any of the above stages, it is detected that despite lapse of Warranty Period/Defects Liability Period, the CPG/SD, as whole or part, cannot be released and its validity needs to be extended for valid reasons, a proposal shall be processed by the executing Department explaining the reasons/circumstances necessitating such action. Necessary action towards

validity extension of the CPG/SD shall be taken by Site Finance with the approval of HOP in case of packages awarded by Corporate Office. For Site packages, such action shall be taken by Site Finance Wing with approval of the HOP.

While all efforts shall be made to complete all Contract closing activities before expiry of Warranty Period/Defect Liability Period, there may be a situation that though Warranty Period/Defect Liability Period has expired, some of the Contract closing activities remain to be completed for none of Contractor's fault. In such a situation, it shall be examined whether because of any of the uncompleted activities there is a possibility of any recoverable amount from the Contractor at a later date. In case, no such possibility exists or rather there is likelihood of some additional payment to be made to the Contractor on completion of such uncompleted activities, CPG/SD can be released to the Contractor with the approval of ED(C&P) for Corporate Package and HOP for other packages. The proposal in such cases shall be initiated by execution Department explaining various reasons, and the approval by Competent Authority as mentioned above shall be taken through concerned Finance Wing. However, this shall be resorted to in exceptional circumstances where delay (more than 03 months after expiry of Warranty Period/ Defect Liability Period) in completing some of the formalities has taken place for no fault of the Contractor.

4.0 RELEASE OF PAYMENT AGAINST QUANTITY VARIATION/EXTRA ITEM:

4.1 While every effort shall be made towards expeditious issuance of technical approval/change order/supplementary order, whenever necessary, a situation may arise wherein a particular work/quantity may be carried out pending issuance of such technical approval/change order/supplementary order.

4.2 In absence of such technical approval/change order/supplementary order, following procedure will be adopted to facilitate release of interim payment to the Contractor so as to ensure that there is no impediment in the progress of the work.

4.2.1 If there is delay in the Corporation and the Contractor coming to an agreement on the rate of extra, altered, substituted items of work, provisional rates @ 75% (in case of extra works executed at BOQ rates or analogous rates) and 50% (in case of extra works executed as per analyzed rates) of the rates as determined by the Corporation shall be payable till such time as the rates are finally determined. In any case the Corporation shall decide the rates within a maximum period of 90 (ninety) days from the date of submission of the analysis of rates by the Contractor. Under no circumstances, the Contractor shall, at any stage, suspend the work on account of non-settlement of rates of such deviated items.

Such interim payments will be released only during execution of the works under the Contract.

4.2.2 No interim payment under Clause No. 4.2.1 above will be released after completion of all works under the concerned Contract.

5.0 ADVANCEMENT OF SUPPLIES

- 5.1 During execution of a Contract, a situation may arise when materials and equipment are required to be supplied ahead of schedule on account of NEEPCO's requirement or Contractor's request.
- 5.2 The requirement for advancement of supplies from NEEPCO's side may arise on account of the following:-
- i) Equipment/material is required to be transferred/diverted from the assigned Project to another to meet latter's urgent requirement.
 - ii) In view of initial delay in award of Contract for supply of material/equipment to be issued by the Owner to the erection Contractor, supply needs to be expedited to match with erection schedule.
 - iii) Supply of material/equipment may be required to be expedited in order to ensure completion of the work ahead of schedule so as to achieve revised target for overall project completion.
- 5.3 In case supply is required to be advanced due to any of the reasons mentioned above, the site, after obtaining the approval of ED(Projects), shall advise the Supplier/Contractor for needful. In this regard the proposal will be initiated by the execution Department and will be routed through site Finance and HOP before obtaining approval of ED(Projects)/ED(C&P) for site Contracts and Corporate Contracts respectively. Payment towards price variation, in such cases, will be made to the Contractor on the basis of indices pertaining to the period when supply is actually made. However, in no circumstances, enhancement of BOQ rates will be permitted.
- 5.4 The request by Contractor for advancement of supplies may arise on account of the following:-
- (i) Apprehending disruption in production because of Force Majeure condition such as labour problem in the factory or riotous situation prevailing in some part of the country where one of Contractor's works is situated, advancement of supply is contemplated by the Contractor so as to complete the total supplies within time schedule stipulated in the Contract.
 - (ii) Apprehending disruption in transportation on account of Force Majeure condition such as possibility of occurrence of floods in some part of the country affecting road transportation, call for transporter's strike, advancement of supply is contemplated by the Contractor so as to complete total supplies within time schedule stipulated in the Contract.
- 5.5 If Contractor requests for advancement of supplies as per Clause No. 5.4(i) & (ii), the same shall be examined along with all relevant details stated/furnished by him. If NEEPCO is satisfied that the contention of the Contractor is in order and is in the interest of timely project completion, the same shall be accepted with the approval of HOP/ED(C&P) for Site Contracts /Corporate Contracts, and PV shall be paid in the similar manner as described under Clause No. 5.3. However, in no circumstances,

enhancement of BOQ rates will be permitted. For this, the proposal shall be initiated by execution Department and shall be routed through site Finance and HOP before obtaining the approval.

- 5.6 Notwithstanding above, advancement of supplies up to a period of 30 days shall not require any approval.

6.0 ISSUE OF PROJECT AUTHORITY CERTIFICATE/EDEC:

- 6.1 Project Authority Certificate (PAC) to be issued to the Contractor by NEEPCO, wherever applicable under the Contract, shall be for the import content limited to that indicated in the DWO/DPO/Contract Agreement. The price variation portion (to the extent certain/known) on the ex-works price component of the material/equipment under the DWO/DPO/Contract Agreement can also be considered, if requested by the Contractor, for issuance of the PAC by the Ordering Authority.

For Civil, Electro-Mechanical and Hydro-Mechanical Works awarded from Corporate Office, the executing Site, shall, on request of the Contractor, initiate the proposal for issue of PAC. The same shall be recommended by the HOP in consultation with ED (D&E) for issue by the Ordering Authority.

On receipt of the recommendation, the Ordering Authority shall obtain the necessary certificate from Ministry of Power, Government of India to the effect that customs duty exemption is applicable, and issue the PAC.

- 6.2 With regard to excise duty exemption, the prevailing procedure shall be followed.
- 6.3 In regard to all matters relating to excise and customs duty exemptions, issue of PAC as well as the qualifying criteria for mega projects, the concerned Ordering Authorities should verify the applicable laws and procedure from the relevant circulars and gazette notifications of the Government as well as the applicable websites.
- 6.4 Record of the PACs issued will be kept in the office of the Ordering Authority.
- 6.5 The procedure of finalization of draft PAC by ED(C&P) as explained above shall apply in respect of initial certificates to be issued to the contractor on award of the contract and also for issue of amendment to above certificates at a subsequent stage, necessitated on account of amendment to the contract etc.

7.0 INSURANCE

- 7.1 In order to cover different risks in contracts awarded by NEEPCO, the following types of Insurance coverage are to be generally arranged by the contractor for the materials and works supplied by him as well as by owner, for incorporation in the 'Works':
- (i) Transit/ Marine Insurance during supply of materials for Supply/Supply portion of Supply Cum Erection/Turnkey Contracts

- (ii) Storage Cum Erection(SCE)/Installation All Risks coverage for Supply Cum Erection/Turnkey Contracts
- (iii) Contractor's All Risk Policy(CAR) for works contracts.

7.2 Regarding Transit/Marine Policy, the concerned contractor takes the same and documentary evidence in support thereof is furnished by him along with dispatch documents. Such a policy covers different risks during transit of materials and is generally valid up to 60(sixty) days of receipt of materials at Owner's store or store of the erection contractor as the case may be.

7.3 In case of Erection/Supply Cum Erection/Turnkey contracts, Erection Contractor is required to insure all equipments and materials being supplied by Owner as well as those supplied by the contractor from the point of receipt at site to commissioning including handling, storage, erection, testing, etc. The premium towards such insurance coverage for materials and equipments supplied by Owner is generally reimbursable to the contractor against documentary evidence on actual basis, in addition to the Contract Price. The cost towards insurance coverage in respect of materials and works supplied by the erection/turnkey contractor is included in its contract price.

7.4 In case of CAR policy, the contractor will insure loss or damage to works, corporation's plant, equipment and materials issued to him.

7.5 **Owner Supplied Materials (OSM):**

7.5.1 In order to enable the contractor to take Insurance Coverage of materials supplied by Owner, for erection/installation by him, the value of such materials and equipments is required to be furnished to him well in time. The value for this purpose is to be carefully arrived at, so as to generally represent the replacement cost, as under:

i) Imported Equipments/Materials:

It shall include CIF cost, Customs duty, port clearance charges, inland transportation charges, octroi, erection charges, price variation etc.

In order to cover all above charges except price variation, 165% of CIF cost shall be taken. Price Variation @10% per annum of CIF cost shall be taken subject to a maximum of 30% or the limit provided in the concerned contract, whichever is lower.

ii) Domestic Equipment/Materials:

It shall include FOR destination charges, charges towards excise duties, sales taxes, other levies including octroi/entry tax, price variation etc.

In order to cover all above charges except price variation, 130% of FOR destination cost shall be taken. Price Variation @ 10% per annum of the FOR destination cost shall be taken subject to a maximum of 30% or the limit provided in the concerned contract, whichever is lower.

-
- 7.5.2 HOP/HOD shall work out the value of OSM in the above manner and inform the same to the Erection Contractor, after vetting by site finance, under intimation to the executing department.
- 7.5.3 The insurance coverage shall be effective from the date of handing over of first consignment to the Erection Contractor. The period of insurance shall be decided on the basis of expected date of completion of the work and taking over to avoid subsequent extension of the policy in normal cases. Therefore, the same shall generally be arrived at by adding 20% extra time over the scheduled period to avoid subsequent extension of policy in normal cases.
- 7.5.4 The Erection Contractor shall accordingly be informed, by the HOP, the expected dates of handing over of various owner supplied equipment/materials along with their insurable value so as to enable him to obtain competitive bids from insurance companies with a view to obtain the most reasonable rate of premium.
- 7.6 In order to avail more discount, a composite policy covering both(Contractor as well as owner supplied) will be taken with date of policy commencing from the receipt of first consignment of material supplied by either the Contractor or the Owner.
- 7.6.1 Wherever a composite policy has been taken, the premium proportional to the value of OSM shall be reimbursed by NEEPCO.
- 7.7 After insurance policies have been taken with due approval, the same along with the bills will have to be submitted by the Contractor to the execution site, for the cases which need reimbursement by NEEPCO. The site, after due verification and making necessary entries in MB, wherever required, will authorize the payment and forward the bill along with relevant documents to concerned Finance. The Contractor shall furnish copy of insurance policy, also in cases where cost of the coverage is to be borne by the contractor/included in the contract price, to enable the Owner to verify relevant details in order to safeguard its interest.
- 7.8 All insurance policies pertaining to Storage Cum Erection/Installation, All Risks coverage shall be taken in the joint name of NEEPCO and the Contractor unless otherwise specifically provided. All such insurance policy shall indicate NEEPCO as beneficiary. It will be the responsibility of the Contractor to lodge, pursue and settle all claims (including Owner supplied material) with the insurance company in case of any damage, loss, theft, pilferage, fire etc. and NEEPCO shall be kept informed about it. The Contractor shall replace the lost/damaged Plant including owner supplied item promptly, irrespective of the settlement of the claims by the underwriters.
- 7.8.1 On settlement of claims, the same shall be passed on to the contractor if the contractor has made replacement.
- 7.9 A situation may arise that the execution of Contract is delayed necessitating extension of insurance policy for a further period. In such a case, pro-rata reimbursement of premium for OSM portion will be made by NEEPCO as done initially. However, if it is established during finalization of LD case that net delay is attributable to the Contractor, then pro-rata insurance premium
-

for the period of delay attributable to the Contractor will be treated as loss to NEEPCO for working out LD amount as per methodology described at Cl. No. 14 of Section 2.

8.0 CORRESPONDENCE WITH GOVERNMENT AGENCIES, MINISTRIES, FINANCING AGENCIES:

- 8.1 All communication with Ministry of Power, Government of India and funding agencies for matters relating to Contracts shall be through ED(C&P). This includes forwarding of Change Order/Supplementary Order for projects funded by external agencies, wherever required. Accordingly, based on the details furnished by the execution site, such letter will be finalized and issued by ED(C&P).

9.0 REFERENCE /CLARIFICATION SOUGHT FROM OTHER DEPARTMENTS

- 9.1 The Department concerned will avoid unnecessary references to other departments/offices especially in routine matters and matters for which the powers are delegated to them as per DOP or as per guidelines of this manual. All concerned will thoroughly study the Contract Documents and take decisions in areas of their responsibility and deal with the Contractors as per provisions of the Contract. Inadequate understanding of the Contract and contract management system/ DOP/ policies and procedures etc. shall not be accepted as ground for referring cases to other departments/offices.
- 9.2 However, if a genuine contradiction/shortcoming is detected in the terms and conditions of the contract Documents and is referred for clarification, the same shall be promptly attended to by the Ordering Authority, notwithstanding that responsibility for post award activities lies with site. While reference in this regard shall be made by site to Ordering Authority through the head of executing Department, the required clarification would be sent to site by the Ordering Authority.

10.0 MAINTENANCE/CUSTODY OF DOCUMENTS/FILES DURING POST-AWARD CONTRACT EXECUTION

- 10.1 All concerned Departments will maintain contract wise files pertaining to activities being carried out by their Departments. All files should be systematically docketed and bound. The concerned Department should maintain a file list.
- 10.2 Safe custody of documents like Contract Agreement, DWO/DPO, MBs, Test Certificate, Approval of Variations, Time Extension/LD and other important documents shall be ensured by respective HODs.
- 10.3 Retention period of documents has been dealt with in Clause No. 19 of Section-3, Vol-II of this Manual.

11.0 NEGATIVE PRICE VARIATION

- 11.1 Price Variation payment in a Contract, wherever applicable, is released to the Contractor on submission of bill along with documentary evidence in support of change of relevant price indices. In case there is a downward change of indices, a situation sometimes encountered particularly in supply Contracts,

the Contractor is also supposed to submit bill/computation so that recoverable amount, if any, on this account is regularly adjusted from other payments due to the Contractor.

11.2 In case of downward change of indices, a situation may be encountered that Contractor does not come forward with PV bills/calculation, apprehending considerable recovery on this account.

11.3 In order to have a check on such occurrences, site Finance, executing Department and HOP will keep a close watch on the indices governing Contract price adjustment and make constant follow up with the Contractor for prompt submission of bills/calculation (Irrespective of whether positive or negative PV), where recovery is anticipated. In case the Contractor fails to submit details despite reminder, to be issued at an interval of 15 days after the initial demand, adhoc amount, as provisionally worked out, shall be retained from other payments due to the Contractor, for which clearance of HOP/HOD for Corporate packages and of head of site C&P for site packages shall be obtained.

11.4 In order to effectively take care of various issues resulting out of negative PV, the last 10% payment against supply of a consignment will be claimed along with PV payment for the same. If the last 10% payment bill is not accompanied by the corresponding PV bill, the same will not be processed till the said PV bill is received. Suitable provisions in this regard may be made in bid documents of all future packages by ED(C&P)/HOP, as applicable.

12.0 PAYMENT TERMS – ADVANCE PAYMENT

12.1 In most of the Contracts awarded by Corporate Centre, the payment terms envisages payment of advance(s), which is payable on submission of a bank guarantee of equivalent value(s), besides fulfilling other terms and conditions.

If the contractor decides not to take advance and confirms so in writing, the percentage payment, which is payable to him on receipt and verification of material, shall be increased by the percentage payable to him as advance. For this, a proposal shall be initiated by the execution site and approved by the concerned HOP through the finance from where progressive payment is to be released. It shall, however, not be treated as a modification of payment terms.

12.2 During life cycle of a Contract, it may sometimes happen that the Contractor request for advance/loan over and above that provided in the Contract. While such a request of the Contractor will normally not be entertained, one additional advance in form of a loan (not exceeding 10% of the value of balance works) can be processed and accepted in exceptional circumstances with the approval of CMD/Board of Directors in the interest of project completion. For Corporate packages, the proposal in regard to the above will be initiated by execution site and sent to D(T) through Site Finance, HOP and ED(Projects), for obtaining approval of CMD/Board of Directors. Such a loan will, inter-alia, be subject to following terms and conditions:

- (a) BG of equivalent amount to be furnished by the Contractor.
- (b) Interest @ SBI MCLR 1 YR plus at least 5% will be charged.

- (c) Recovery shall be on pro rata basis, monthly/quarterly as decided by Site authority. Recovery shall commence from last day of the 1st month following the one in which the advance was released. Recovery shall be complete in the last but one month of schedule/extended date of completion of the work.

The proposal in regard to the above will be initiated by execution site and put up for approval of concerned ED. The loan can be directly released to the sub-contractor/supplier on the request of the contractor with the approval of concerned ED if considered necessary to maintain proper progress of work.

13.0 CHANGE OF NAME/OWNERSHIP OF THE CONTRACTOR/BIDDER

- 13.1 The Contractor/Bidder, during pre-award or post-award stage, sometimes requests for effecting the change of its name in the concerned Contract/bid due to situations discussed hereunder.
- 13.2 The Contractor/Bidder has changed its name without any other change in the constitution of the company or otherwise. Such a change of name, which does not affect the legal entity of the Contractor/bidder and rights and obligations of the contractor under the concerned Contract, shall be accepted subject to furnishing of documents prescribed under the law where Contractor/bidder is registered.
- 13.3 The change of name may also arise out of the merger or acquisition of the Contractor with/by another firm. As a result, the Bidder's/Contractor's name may change to that of transferee firm or altogether a new name as decided consequent upon such merger. In such cases also, change of name may be accepted by NEEPCO provided the new firm is the lawful successor of NEEPCO's Bidder/Contractor and subject to the furnishing of requisite documents by the Contractor/Bidder and/or transferee company, as may be required under the law and after execution of deed of adherence under the common seal by the new company/firm.
- 13.4 It also sometimes happens that Contractor/Bidder, which comprises of several divisions, sells the concerned division, on the basis of which the firm was considered and qualified for NEEPCO's Contract. In absence of the said division, if the contractor/bidder company expresses its inability to continue with the tender/contract in its name and at the same time the new company, which has acquired the said division, approaches NEEPCO for consideration as contractor/bidder in the instant case, the same shall be examined and decided on the basis of the merits of individual case.

If sufficient justification does not exist, recourse to any action provided in the contract/bid documents may be resorted to.

However, if such a request for change of name is found to be justified taking into account facts and circumstances of the case based on the various documents furnished including those protecting NEEPCO's interest, the same can be accepted. In such a case the deed of adherence, duly executed under the common seal by the company acquiring the said division, shall, inter-alia, be furnished.

-
- 13.5 Apart from situations discussed above, there could be other instances of amalgamations or mergers of Contractor/Bidder companies or dissolution or winding up of companies or any other change of companies registered in India or outside India necessitating change of name of Bidder's/Contractor's firm. All such situations shall be dealt with on case-to-case basis. Moreover, laws in different countries would govern these differently. Therefore, such cases are to be dealt with individually supported by request letter and in-house and independent legal opinion furnished by the Contractor/Bidder indicating the purpose of the change, the prescribed legal provision, pursuant to which, such a change is made and the compliance made thereof enclosing therewith the duly executed documents by the Contractor/Bidder and impact of such change on Contracts awarded by NEEPCO.
- 13.6 In all cases of change of name, request letter from Contractor/Bidder indicating the reason and justification for change of name, the existing legal provisions, and its impact on Contracts awarded by NEEPCO, along with certified copies of the requisite documents duly executed in support of the said change of name, shall be obtained by the Department awarding the contract. The request letter along with relevant documents shall be examined and processed through Law and Finance Wings for approval of the competent authority towards change of name. The authority competent to approve the award of the Contract shall be the Competent Authority to approve such proposal, except in cases where Competent Authority is Board of Directors, in which case the approval of CMD shall be taken.
- 13.7 The cases involving foreign companies as the Contractor / Bidder shall be governed by laws in different countries. In such cases, the Bidder shall be required to also furnish legal opinion from in-house as well as from an Independent legal practitioner indicating the purpose of the change, prescribed law and method under the relevant laws of the concerned country pertaining to change of name under a particular situation. Further, such legal opinion, while specifying the type of change of name, should clearly confirm that the same is in accordance with law and is based on the requisite documents. Moreover, copies/translated copies of the requisite documents, which will be enclosed with the legal opinion, will be duly stamped/ notarized by notary public in the concerned country and certified by Indian embassy in that country. The said opinion, while ratifying obligations under NEEPCO's contracts that have been undertaken by the transferee company under transfer deed, should confirm that the documents enclosed are sufficient for the said transfer of business.
- 13.8 There may be a situation when the Contractor/Bidder is unable to submit some of the required documents for valid reasons. Relaxation from submission of such documents may be allowed with the approval of Ordering Authority/D(T)/CMD, whichever is lower, in consultation with Law Wing, provided such a document is not fundamental to the issue as per the legal position
- 13.9 All cases of change of name in respect of Corporate Packages shall be dealt with at Corporate Office. After obtaining the approval at Corporate Office in the manner described in Clause No. 13.6 above, the amendment will be issued by ED(C&P). Change of name in case of Site packages shall however be dealt with in the same manner at Site.
-

- 13.10 Keeping in view the global scenario in this regard, a provision will be made in the bid documents that the change of name of Bidder's/Contractor's company will be permitted in accordance with the applicable Companies' Act.

14.0 QUANTITY VARIATION PROVISIONS

- 14.1 While processing administrative approval for issue of change order/supplementary order, it may become necessary to finalize the rates of contract item(s) for the quantities varying beyond a specified limit in line with provisions of the contract.

- 14.2 It may so happen that in order to follow guidelines of multilateral financial institutions, Quantity Variation provisions in contracts under multilateral funding are different from that in packages under domestic funding. Quantity Variation provisions are also at variance in different type of packages under domestic funding too.

For ready reference, the quantity variation provisions in different types of contracts is brought out below.

"The Employer reserves the right to increase or decrease upto 15%(fifteen percent only) of the contract value, the quantity of goods and services specified in the contract without any change in unit price or other terms and conditions during the execution of the contract. However, the quantities of individual items may vary upto any extent."

- 14.3 In case of packages having Quantity Variation limit with respect to overall contract price, as long as the executed contract price is within the specified limit, the rate of contract items and other terms and conditions of the contract remain unchanged irrespective of the extent of variation in quantities of individual items.

- 14.4 For simplified contract administration it will be proper to have uniform quantity variation provisions in all types of contracts. Accordingly, the revised provision in this regard, to be uniformly adopted for all types of packages irrespective of funding and scope, is explained hereunder.

During execution of the Contract, NEEPCO shall reserve the right to increase or decrease the quantity of individual contract items upto any extent subject to the following:

- (i) As long as the overall variation remains within the prescribed limit of the contract price as specified in the Contract Agreement, the rate of individual contract items and other terms and conditions of the contract shall remain unaltered.
- (ii) In case the overall contract price surpasses the prescribed limit of the contract price as specified in the Contract Agreement, all such items, where executed/anticipated quantity has exceeded/is expected to exceed that specified in the contract by more than the prescribed limit, will be identified. In respect of all such items, while the quantity originally specified in the contract plus the extra quantity upto the prescribed limit shall be paid at unit rates available in the Contract, the

payment for the balance quantity shall be released also as per the rates specified in the Contract for such excess quantity.

- (iii) In case the overall contract price reduces by more than the prescribed limit as specified in the Contract Agreement, procedure as at 14.4(ii) above shall be followed.

14.5 There may be a situation that the prevailing market price of some of items of a contract at any point of time during execution stage is considerably different (either higher or lower) with reference to that prevailing during period of preparation and submission of bids. Notwithstanding such wide fluctuations, the contract will be treated as sacrosanct for operating quantity variation provisions. Accordingly, such wide fluctuation will not become a basis for opening the process of price negotiation as long as quantity variation limit is not exceeded. However, in all such cases of wide fluctuation, care will be taken to ensure that any additional scope, which is not essential for completing the scope of work originally contracted, is not executed.

14.6 The exercise of negotiation of rate in case of increase in the contract price or providing compensation to the contractor in case of reduction in the contract price shall generally be taken up at the end when the contract execution is nearing completion and the final variation in the overall contract price is known. However, in cases where the final variation in overall contract price is known/assessable in advance depending upon the type of package, the said exercise can be carried out earlier also.

15.0 REFERENCE CONTRACT PRICE FOR DIFFERENT PURPOSES:

15.1 The contract price, as originally awarded, shall be the reference price for determining the percentage variation in the contract price on account of Quantity/Scope Changes, determining the value of CPG, LD amount, advance payable to the Contractor etc.

15.2 However, it shall be ensured that in case of downward revision of Contract price, entire amount paid as advance is recovered from progressive payment by suitably enhancing the rate of recovery in subsequent bills.

15.3 All concerned Departments will take action for incorporating suitable provisions in the bid documents in this regard.

16.0 CONTRACTS WITH LUMP SUM PRICE:

16.1 Wherever Contracts contain a lump-sum contract price, a billing break-up shall be provided for release of progressive payments. While such a billing break-up can be finalized during post-bid discussions in case of ongoing Contracts, it is preferable to specify the same in the bid documents/ seek such details in the bid itself for future packages.

In Contracts which have already been awarded but no such break-up is available, the same shall be processed and recommended by the HOP/HOD for approval of ED(C&P) for packages awarded by Corporate Office. The concerned HOP/HOD shall finalize the same for packages awarded from Site/other stations.

- 16.2 In case of Contracts with lump-sum price, quantities of some of the items are indicated as lump-sum or lot and/or quantities of some of the items are estimated by the Bidder and accordingly incorporated in the Contract. The Contract Price of such items, irrespective of quantities actually executed, shall remain unchanged unless a change is effected in the Scope of Work by NEEPCO. The quantities and unit prices (i) subsequently arrived at while approving the BOQ/Billing break-up of lumpsum quantities/lot and/or (ii) estimated by the bidder shall be for on account payment purpose only. Therefore, in case additional quantities, over and above the quantities in BOQ/billing break-up and /or estimated by the bidder, are required for successful completion of the scope of work as per Technical specification, the Contractor shall execute additional quantities of these items for which no additional payment shall be made over and above the lumpsum price mentioned in the contract. Similarly, in case quantities of these items supplied at site are in excess of that required for successful completion of scope of work, such additional quantities shall be the property of the contractor and he shall be allowed to take back the same from the site for which no deduction from the lumpsum contract price shall be made. Further, in case actual requirement of quantities for successful completion of scope of work is less than the quantities identified in the approved BOQ/billing break-up and/or estimated by the bidder, the lumpsum contract price shall remain unchanged and no deduction shall be made from the lumpsum price due to such reduction of quantities.

However, in case of contracts having deemed export benefits, it shall be the responsibility of the contractor to pay in respect of such surplus material all statutory taxes, duties and levies, which would otherwise have been lawfully payable in case of `non-deemed export contracts, to concerned authorities. The contractor shall submit an indemnity bond to keep NEEPCO harmless from any liability before release of such material to the Contractor by NEEPCO.

17.0 ROLE OF THE HEAD OF PROJECT:

- 17.1 As already explained in the beginning of this Manual, the overall responsibility of implementation of a Project shall rest with the Head Of Project (HOP). The HOP, with the approval of ED(Projects) and Director(Tech), will finalize his construction team, comprising employees of various levels right from Executives to workmen, for execution of the project/package. The respective construction team shall be responsible for successful execution/implementation of Contract (s) entrusted/assigned and will be answerable to HOP through normal hierarchy of the reporting system.
- 17.2 In order to ensure that the project is completed as per schedule, it is necessary that all contracts under the project be executed in a sequential and coordinated manner. In smaller projects, whose value and geographical spread is limited, the senior most executive of execution site coordinates various related activities pertaining to all contracts under the project.
- 17.3 However, in case of big/large projects, in terms of both value and geographical spread, or project of complex and specialized nature, the coordination activities become more. In such a case, an overall in-charge, not below the rank of DGM, to be designated as Head of Project, will be identified,

to whom different execution teams, responsible for successful execution of all the Contracts constituting the project, will be answerable.

17.4 While ED (Projects)/ED(O&M) will continue to be the overall In charge of all construction/O&M projects under their overall control, the Head of Project shall be primarily responsible for successful execution of the Project/O&M of their respective plants and will be answerable to both ED (Projects)/ED(O&M) and top management at Corporate Office.

17.5 For successful and timely execution of the Project, the Head of Project shall be required to coordinate not only with his execution teams and the associated Contractors at project site but also with different departments of NEEPCO, from whom inputs are required for completion of the Project, as well as external agencies/departments.

18.0 DISCREPANCIES IN DOCUMENTS

18.1 In case of contradictions amongst various documents constituting the Contract, the following order of preference/precedence will apply:

- (i) Deed of Agreement
- (ii) DWO/DPO along with annexure, which will interalia include BOQ/Price Schedule.
- (iii) Special Conditions of Contract.
- (iv) General Conditions of Contract.
- (v) Technical Specifications.
- (vi) Bid Drawings.
- (vii) Bid Forms including BOQ.
- (viii) Any other document forming part of the Contract.

18.2 A suitable provision in this regard may be incorporated in bid documents.

18.3 The above order of precedence may be modified from time to time as deemed fit by the Ordering Authority.

19.0 RETENTION OF CONTRACT DOCUMENTS

19.1 All documents related to and connected with award of any Contract and post award execution of the Contract will, as a matter of policy, be preserved in good order and retained by NEEPCO for a period of 8(eight) financial years following the financial year in which the Contract is closed. In case formal closure of the Contract is not applicable for any particular Contract, the period of retention of the said documents will be 8(eight) financial years following the year of completion of the Contract in all respects including return of Security Deposit/Contract Performance Guarantee to the Contractor, if applicable.

19.2 The above period for retention and destruction will also be applicable for all the documents connected with award and execution of Contracts including those related with payments for all works and procurements. However, all original Contract Agreements and all documents regarding policy decisions, as-built drawings including O&M Manuals and the circulars issued from time to time in regard to above, will be retained permanently.

-
- 19.3 Upon expiry of the retention period as mentioned above, the said documents would be destroyed by the concerned Departments by tearing off/shredding the same. However, before destroying the documents, ED(C&P) for Corporate Contracts and the concerned Ordering Authority for other Contracts will take following actions.
- 19.4.1 It should be ascertained by the ED(C&P)/Ordering Authority whether any Arbitration proceedings are in progress or contemplated in respect of the concerned Contract. In that event, the related documents will have to be preserved until the completion of the Arbitration proceedings.
- 19.4.2 Before destroying the Documents, as aforesaid, confirmation from the Vigilance Department and the Internal Audit Department of Corporate Office or Finance Department will be obtained by ED(C&P) or other Ordering Authority, as the case may be, whether the Contract in question is under scrutiny/examination/ inspection of Vigilance, Audit or any other Government/ statutory authority. If the Vigilance and Internal Audit/ Finance Department confirm that the Contract in question is not under scrutiny/examination/ inspection, as above, the concerned departments will take action for destroying the documents upon receipt of the communication to that effect from ED(C&P) (for Corporate Packages) and concerned Ordering Authority (for Contracts awarded from project Sites/other stations). Otherwise, documents will be continued to be retained by respective Departments till satisfactory completion of scrutiny/examination/ inspection, as aforesaid.
- 19.4.3 Procedure of retention/destruction of documents will be followed in the following manner:
- (i) Immediately upon closure of a Contract awarded from Corporate Office, the executing Department (not below the level of Manager) will issue a communication intimating closure of the Contract to all concerned departments including Finance, Internal Audit and Vigilance Department, HOP and ED(C&P). In case of packages awarded by project Sites/other stations, the executing Department (not below the level of Manager) will issue such communication to concerned Finance Department, HOP/HOD, Internal Audit and Vigilance Departments.
 - (ii) A 'Register of Closed Contracts' will be maintained by ED(C&P) and HOP for Contracts awarded from Corporate Office and HOD/HOP for Contracts awarded from project Sites/other stations. 'Register of Closed Contracts' will contain the date of closing of the Contract besides other relevant details. The register will be maintained with dated signatures by an executive, not below the level of Manager at O/O ED(C&P) and Dy. Manager at project Sites/other stations. This 'Register of Closed Contracts' will be used to decide the destruction of documents upon expiry of period specified at Clause No. 19.1 above.
 - (iii) Once the period specified under Clause No. 19.1 above, is over, an executive not below the level of Manager of O/O ED(C&P) and Dy. Manager in project Sites/other stations will seek the information from concerned Vigilance and Internal Audit Departments as explained in Clause No. 19.4.2 above. Based on the same, as and when the documents become eligible for destruction, an order will be issued by
-

an officer (not below the rank of Manager in the O/O ED(C&P) and not below the rank of Dy. Manager in project sites/other stations) for Corporate Contracts and contracts awarded from Sites/other stations, authorizing destruction of the documents pertaining to the particular contract. The above order will be issued after obtaining the approval of ED(C&P) or HOD/HOP, as the case may be. A copy of the order, in case of Corporate Contract, will be sent to ED(Projects), ED(O&M), ED(F), CVO and HOP of the respective project. In case of Contracts awarded from Sites/other stations, copies of such order will be sent to O/O ED(Projects), O/O ED(O&M) and Site Finance.

19.4.4 The details of the Documents destroyed will also be recorded in the 'Register of Closed Contracts'.

19.5 The 'Register of Closed Contracts' and other communication/order related to destruction of documents will be retained permanently by the ED(C&P)/HOD/HOP.

20.0 PERFORMANCE CERTIFICATE TO THE CONTRACTORS:

20.1 On completion/foreclosure/termination of a Contract, the HOP/HOD will forward performance report of the Contractor in respect of the Contract in question to ED(C&P) for all packages awarded by Corporate Office. Such report will be sent after completion of Warranty Period/Defect Liability Period.

20.1.1 In order to ensure above, as soon as a Contract is completed i.e., 'Works' are taken over by NEEPCO or the contract is foreclosed or the contract is terminated, performance report in the prescribed proforma (**Annexure-III, SECTION-4**) will be submitted by the execution site through HOP/HOD to ED(Projects) or ED(O&M), as the case may be, in respect of all Corporate Contracts. The performance report so obtained from the HOP shall, after approval of ED(Projects)/ED(O&M), be forwarded to ED(C&P) with copies to ED(D&E), ED(Finance) and GM(Monitoring). It shall be ensured from O/O ED(Projects)/ ED(O&M) that information provided in the performance report is correct, objective and to the extent possible based on facts, which can be reasonably substantiated.

The 2nd performance report after completion of defects liability, in case of supply cum erection contract, will be forwarded in the similar manner.

20.1.2 A data bank of all the performance reports received will be maintained in O/O ED(C&P) for future reference and record.

20.2 In case a Contractor requests for issuance of 'Performance Certificate' in respect of any Contract executed by him or a request is received from a client agency like SEB etc for Performance Certificate in respect of Contracts executed by any Contractor, the same shall be issued based on the above data bank.

20.2.1 Performance Certificate in respect of Contracts awarded by Corporate Office shall be issued by ED(C&P), for Site Contracts by Ordering Authority.

20.2.2 If Performance Certificate is required to be issued in respect of a Contract, which has just been executed, and the report for the same has not been

received in O/O ED(C&P), ED(C&P) will obtain the same from ED(Projects)/ED(O&M) who will forward the report in the manner explained above.

20.2.3 As a matter of policy, the performance report should normally be furnished by the site within 1(one) month of the completion of the Contract or completion of defects liability period/warranty period.

20.3 In respect of contracts awarded from site/other stations, performance report will be obtained by O/O HOP/HOD in the prescribed proforma (**Annexure-III, SECTION-4**) from the concerned execution site once the request for the same is received from the Contractor or a client organization. The 'Performance Report', so received from the execution site, shall be issued by HOP/HOD through a forwarding letter.

20.4 Against the request of the Contractor or other clients, 'Performance Certificate' will normally be issued where the Contract in question has been completed and 'Works' have been taken over. However, also in cases where 'Works' have been physically completed but not taken over by NEEPCO because of delay in commissioning for reasons not attributable to the contractor, 'Performance Certificate' may be issued.

20.5 In case the Contractor is a Joint Venture, the fact shall be clearly brought out in the performance report where the name of the Contractor is written. Irrespective of as to which partner of JV requests for the Performance Certificate, the same shall always be issued to the lead partner, if in his name the DWO/DPO has been placed. However, a copy will be given to the partner requesting for performance report in case he is not the lead partner.

20.5.1 Wherever feasible, break-up of scope of work/quantities, along with price thereof, actually executed by each partner will be shown in the Performance Certificate.

20.6 It shall be ensured by HOP/HOD that the Performance Report is forwarded to ED(Projects)/ED(O&M) within 15 days of receipt of reference. Within 7(seven) days of receipt, the same will be forwarded by ED(O&M)/ED(Projects) to ED(C&P). ED(C&P) shall ensure issuance of the Certificate within 30(thirty) days of receipt of reference (Additional 15(fifteen) days if the report is not available in data bank). For contracts awarded by project site/other stations, the performance report shall be issued within 30(thirty) days of receipt of reference from agency.

21.0 CANCELLATION OF CONTRACT:

21.1 Cancellation of Contract shall normally be resorted to only after all efforts to explore and act upon reasonable options, keeping the interest of the Project/ NEEPCO in view, for salvaging the situation, are exhausted. However, if the contractor is found to have indulged in Corrupt and Fraudulent practice, cancellation of contract can be resorted to without exploring such options though in such a case to the interest of project completion shall definitely be kept in view. While taking the decision, though the interest of Project/ NEEPCO has to be primary, it is imperative to consider and keep in mind the associated legal, commercial and other relevant aspects so that complications at a subsequent stage are avoided. In this context, it is

essential that all concerned Departments maintain the documents and the details/ data pertaining to the Contract, in line with the policy and procedures outlined in this Manual. Further, the concerned HOP/HOD of the execution Site/station shall make sure that the 'Notice of Default' and/ or such other notice (s) required to be issued as per the Contract, prior to cancellation, have been properly issued and communicated to the Contractor.

21.2 Action for cancellation of a Contract, in full or in part, shall normally be initiated under compelling circumstances such as the following:

- (i) The contractor fails to submit CPG/ISD within the specified period or extension thereof, despite repeated reminder.
- (ii) The Contractor fails to commence the work with due diligence or fails to perform the work in accordance with the specified time schedule or as per specified quality parameters/ specification, for reasons generally attributable to him alone, despite repeated reminders and warnings issued by NEEPCO, or deserts the site without NEEPCO's prior permission and does not respond in a positive manner to NEEPCO's repeated communications.
- (iii) The Contractor is found to be engaged in corrupt and fraudulent practices.

21.2.1 Delay in submission of CPG/ISD

- a) The submission of CPG/ISD is the first and most important signal from the Contractor towards his earnestness for performing a Contract. The submission of CPG/ISD by the Contractor needs to be religiously monitored. Keeping in view the importance of this activity, it is also provided in the bid documents that failure in submission of CPG within specified period may result in annulment of award and forfeiture of the bid security. However, suitable extension, to the extent considered appropriate and reasonable, taking into account overall completion of the project as well as looking into various aspects, especially whether the Contractor has taken reasonable action towards commencement of the works earnestly, can be given with the approval of ED(C&P) in case of Corporate Contracts and concerned HOP/HOD in case of packages awarded by Sites/other stations. However, in all such situations, it is to be ensured that the Bid Security remains valid till such time CPG is received from the Contractor and authenticity is verified. If the extension of the validity of the Bid Security is not received from the Contractor at least 7(seven) days before its expiry or there is no evidence that the Contractor is taking suitable action for such extension, conditional claim for encashment of Bid Security shall be lodged by the Ordering Authority. For encashment of Bid Security, wherever necessary, proposal shall be initiated by Ordering Authority and approved by competent authority, depending upon the type of package. Subsequently, on receipt of approval, the concerned Finance Wing will take necessary action for encashment.
- b) In case Contract Performance Guarantee/Initial Security Deposit is not received from the Contractor within the specified time (including extensions) as discussed above, annulment of award and forfeiture of

Bid Security may be considered in terms of provisions of the bid documents, depending upon associated aspects including progress of site activities. In case of annulment of award, fresh bids will be invited for finalizing the Contract.

- c) In case some mobilization by the Contractor has taken place after issue of the LOI, the status of site activities of the Contractor shall be sought by the Ordering Authority from the execution Site. The status shall be furnished by execution Site through ED (Projects)/ ED(O&M) for Corporate Contracts. In case, the package has been awarded from Sites/other stations, HOP/HOD shall collect the said status from execution site. After receipt of the same, proposal shall be processed by the concerned Department either for extension of period of submission of CPG or for cancellation of the Contract, as the case may be, depending upon the facts and circumstances.

21.2.2 Poor Performance of Contractor

- a) After award of the Contract, the Contractor is required to mobilize and commence the work within a specified period so as to complete the entire scope of work in time. Therefore, immediately after the award is placed, the mobilization/commencement of work by the Contractor and the progress of work vis-à-vis the schedule is to be closely monitored by execution Site so that corrective action, if required, could be timely taken and salvaging, to the extent possible, could be done.
- b) In order to effectively achieve the above objective, the performance of a Contractor, for Corporate Contracts, shall be judged against the specified time schedule developed by adopting the methodology as discussed hereunder.
 - (i) During kick-off meeting immediately following the award of a Contract, ED(Projects) shall, for Corporate Contracts, finalize the targets and milestones, in consultation with representatives of execution site including the concerned HOP, D&E Wing, C&P Wing etc. For packages awarded from site/other stations, HOP/HOD shall finalise the same. These targets, which would be set both for the Contractor and NEEPCO, shall specify different activities to be generally completed by the end of every quarter after award of the Contract.
 - (ii) The targets shall be objective and measurable (in percentage or absolute terms) such as submission and approval of drawings, completion of type tests, manufacture/ production, inspection/ dispatch clearances, receipts at site, physical progress of construction and erection activities at site including testing/ commissioning, etc.
 - (iii) The targets so finalized shall be circulated by ED(Projects) to ED(C&P), ED(D&E), GM(Monitoring) and execution Site, for monitoring progress of the Contractor and NEEPCO in respect of their respective scope against the set targets. This

circulation shall be made within 7(seven) days from finalization of the same.

- (iv) The progress against set targets in case of Corporate Packages shall be reviewed by the ED(Projects), at the end of the quarter with the representatives of ED(D&E), GM(Monitoring) and execution Site. During review, if, it is found that the set targets have been generally met, the targets and milestones for the next quarter shall be finalized for further action as per para (iii) above, this para and subsequent paras. Some of the packages awarded by execution Site may also be included in such review depending upon its criticality. Other Site packages shall be separately reviewed.
- (v) If on review as per para (iv) above, it is found that the set targets for the quarter under review have not been met, the areas of slippages and reasons thereof shall be identified and analyzed by ED(Projects)/HOP (keeping in view all related aspects including the targets/ actual achievements under other connected/ associated contracts and the targeted/ anticipated completion of the Project) and plan for further action shall be finalized based on a realistic assessment of the overall progress of the project. Such plan may include one or more of the following points depending on the assessment of the situation:
 - Review meeting with the Contractor at the level of ED(Projects)/HOP.
 - Review meeting with the Contractor at the level of CMD/ Director (Tech) to be arranged by ED(Projects).
 - Issuance of the Notice of Default to the Contractor. Such notice shall be issued by HOP for Corporate packages, under intimation to ED(Projects), ED(D&E), ED(C&P) and ED(F). Suitable provision to this effect will be incorporated in the bid documents. Law Department of Corporate Office may also be consulted for the purpose. For Site Contracts, authorities identified as Engineer-In-Charge shall issue it.
 - Actions to be taken by the concerned Departments within NEEPCO and the time frame for the same wherever the slippage is attributable to NEEPCO/ Force Majeure conditions. The action plan for corporate Departments, including that of ED(D&E) shall be monitored by GM(Monitoring) and that for the site, by ED(Projects). Further, in such a case the time period of delays attributable to NEEPCO/ Force Majeure shall be acknowledged and fresh targets and milestones for the next quarter shall be set.

- Grant of provisional time extension (if the scheduled completion period is nearing completion), period of such extension and revised targets for achieving completion within the provisional extension.
- (vi) A record note of deliberations, as above, shall be prepared and circulated by ED(Projects) to ED(D&E) and HOP(for taking follow-up action, wherever necessary) and GM(Monitoring) . The feedback in regard to the action taken shall be given to ED(Projects) by concerned Departments within the specified time. The compiled information shall then be furnished by ED(Projects) to all concerned ahead of the next review meeting. For Site Contracts, the circulation shall be restricted to concerned authorities in the Site.
- (vii) Once a 'Notice of Default' is issued, at the end of the period specified therein, comments on the Contractor's response along with connected details/ documents, wherever required, shall be sought from the concerned Departments by HOP in respect of Corporate Contracts. The comments, as above, shall be forwarded (within a week) by the concerned Department after obtaining approval of HOD of the Department. Once the comments are received, HOP shall, in case of Corporate Contracts, hold consultation with ED(Projects), ED(D&E), ED(C&P) and ED(F) to decide on further course of action which may include the following:
- To send a suitable reply to the Contractor.
 - Not to pursue the cancellation of the Contract and to tie-up revised targets with the Contractor.
 - To proceed ahead with cancellation of the Contract.
- In case of Contracts awarded by Sites/other stations, the concerned HOP/HOD will discuss with the head of executing Department, etc. to arrive at any one of the above options.
- (viii) In case, it is decided to proceed ahead with cancellation of Contract, further action shall be taken as under:
- A comprehensive note, bringing out the relevant details leading to the proposal for cancellation of the Contract shall be prepared by the execution Site, enclosing therewith the draft Notification for Contract Cancellation for approval of the Competent Authority as per DOP. The proposal shall, inter-alia, be routed through Corporate Law Department, wherever considered necessary.
 - Upon approval of the proposal as above, ED(C&P) shall issue the Notification of Cancellation of Contract for all Corporate Contracts. For Contracts awarded by

Sites/other stations, the above shall be issued by an authority not below the level of Sr. Manager.

- 21.2.3 Cancellation of Contract for Fraudulent/Corrupt Practices
- 21.2.3.1 If a Contractor is found to be engaged in corrupt and fraudulent practice as already defined in Vol-I of the Manual, NEEPCO may consider various options such as issuance of warning letter to the Contractor, cancellation of Contract or blacklisting of the Contractor.
- 21.2.3.2 Wherever future business is proposed to be suspended/ blacklisted on this account, the same will be done as per procedure described under Clause No. 22.0
- 21.2.3.3 In cases where, because of the gravity of the offence committed by the Contractor, the Contract is required to be cancelled midway, the same will be done with the approval of Competent Authority. In all such cases, a show-cause notice shall be given to the Contractor by the head of executing Department, in consultation with the Law Wing, wherever felt necessary. The reply of the Contractor will be examined in the office which has issued the notice. The same, if not found tenable, will be put up to the Authority mentioned above within 15(fifteen) days, for approval of cancellation of the Contract.
- 21.2.3.4 If cancellation of the Contract is approved as above, the Notification of Contract Cancellation shall be issued in terms of Clause No. 21.2.2(b)(viii) above.
- 21.3 In case, the Contractor chooses to respond to the Notification for Contract Cancellation, the same shall be replied by the authority which issued the Notification, in consultation with the Law Wing, wherever necessary.
- 21.4 All Notices of Default/Show Cause Notice and the Notification for Contract Cancellation shall be issued to the Contractor at the address given in the Contract and sent by Registered Post/reputed courier services. The same shall also be faxed/emailed to the Contractor. A copy of such notices and notification shall also be sent to site office/ Local/Regional office of the Contractor, if existing.
- 21.5 In case, the Contractor is a Joint Venture, the notices/ notifications as above shall be addressed and sent to all the members of Joint venture except if otherwise advised by the Law Wing.
- 21.6 In case a Contract is awarded to the assignee of the Contractor, the notices/ notifications as above shall be addressed and sent to the Contractor who is responsible for the performance of the Contract, as well as the Assignee.
- 21.7 Once the termination of a Contract comes under active consideration, the HOP/HOD of the site/station shall immediately advise the Law Wing to apply with the appropriate courts for caveat against grant of stay on encashment of Contract Performance Guarantee/ Other BGs of the Contractor. It shall be the responsibility of the Law Wing to immediately obtain the caveat. Simultaneously, Finance Wing shall be advised to take immediate action for encashment of the Contract Performance Guarantee/ Other BGs of the

Contractor for which the necessary communication shall be sent by the head of the executing Department to the head of Finance Wing who shall take necessary action for the same on urgent basis.

21.8 On approval of the cancellation, the concerned financial institution viz. the WB, ADB, JBIC etc., in case the package is covered under multi-lateral funding, shall be appraised of the details of the case leading to contract termination and NEEPCO's decision to go-ahead with risk and cost procurement. A draft communication in this regard shall be finalized by the HOP and forwarded through ED (Projects) to ED(C&P) for issuance. This action will be taken by the HOP within 7(seven) days of receipt of the approval for cancellation.

21.9 While the cancellation is under active consideration (at the stage discussed under Clause 21.2.2.2 (viii) above), the execution site shall initiate advance action for execution/ procurement of balance works/ supplies at the risk and cost of the Contractor. As a first step in this direction, the execution site shall work out the estimated cost of balance works as per the rates given in the contract under cancellation, details of total payments (including the amount reimbursed towards taxes and duties and paid towards price variation) made to the Contractor, details of additional amount payable to the Contractor but not paid (considering 100% of the amount towards the work actually executed/ supplies actually made as payable), amount towards leviable LD and the securities/ monies of the contractor available with NEECO. The same shall be put up by the HOP to the Approving Authority for approval with concurrence of Site Finance for Corporate Packages. For site packages, the same shall be approved by the HOP/HOD after concurrence by the Site Finance Wing.

21.10 The balance works shall be executed as new work and regulated as per provisions of the DOP.

21.11 Procurement at risk and cost shall be undertaken generally in line with the same specifications and terms and conditions as were applicable to the cancelled Contract. However, the time period for completion of the contract, to be awarded at risk and cost, will be judiciously decided by NEEPCO keeping completion of overall project and quantum of works in view.

21.11.1 The process for award of Contracts shall be in line with the policies and procedures for pre-award activities.

22.0 BLACKLISTING OF CONTRACTORS

22.1 Notwithstanding any other provision of this document, NEEPCO may decide to blacklist Contractors, for specified time or indefinitely, based on facts and circumstances of the particular case generally on the following grounds:

- (i) Corrupt or Fraudulent practices resorted to by Contractor including mis-representation of facts.
- (ii) Willful indulgence by the Contractor in supplying sub-standard material irrespective of whether pre-despatch inspection conducted by NEEPCO or not.

- (iii) Repeated use of delaying tactic in fulfilling contractual obligations willfully.
 - iv) Established litigant nature of the Contractor to derive undue benefit.
 - v) Continued poor performance in several Contracts.
- 22.2 Depending upon the nature of problem as outlined above excepting at SI no(v), the proposal for suspension of business relations with a Contractor/Supplier shall emanate either from Site or from concerned Department, viz. D&E, Quality Control, ED(Projects) etc. The proposal, with full details and justifications thereof which will interalia contain the proposed period of blacklisting, shall be routed through the concerned HOP/HOD before being cleared by the concerned ED. After the proposal is cleared by the concerned ED, the same shall be forwarded to ED(C&P). However, if the proposal has been initiated by the site on account of poor quality of material or poor quality of work, the same shall be routed through ED(O&M)(if during O&M stage), ED(D&E) and ED(Projects) before it is forwarded to ED(C&P).
- 22.3 On receipt of the proposal by ED(C&P), the same will be processed for approval of competent authority in consultation with Law and Finances. CMD shall be the competent authority to approve all such proposals.
- 22.3.1 The 'Show Cause' notice shall be issued by the ED(C&P) to be replied by the Contractor within 30(thirty) days.
- 22.3.2 The reply received from the Contractor shall be forwarded to the concerned Department, who shall analyse the reply and recommend action to be taken against the concerned Contractor, through the concerned ED within 15(fifteen) days.
- 22.3.3 Based on the above, further processing will be carried out by ED(C&P) for approval of the competent authority through Law and Finance Wings for final action on the matter. Such action should not take more than 15(fifteen) days in O/O ED(C&P).
- 22.3.4 In case no reply from the Contractor is received within 2(two) months of the date of issue of show cause notice (which shall be served by fax with post confirmation copy of Regd. A/D), suo-moto action for approval shall be initiated.
- 22.3.5 Wherever required, Contracts Services shall take appropriate action in regard to approval/concurrence of funding agencies through Corporate Planning.
- 22.4 On receipt of the approval, the final decision shall be duly communicated to the Contractor by the ED(C&P) and appropriate circular shall be issued within NEEPCO.
- 22.5 In case of problem on account of reason at Clause No. 22.1(v) above, in case of a Contractor mainly of Corporate Packages, the proposal for approval will be initiated by ED(C&P) based on data bank of Performance Report maintained by it as already explained in this Manual. A committee, comprising of ED(Projects), ED(O&M), ED(D&E), ED(C&P), ED(F) and representative of Law Wing will deliberate on the issue and put up its recommendation to the

competent authority. DGM(C)/DGM(E), as the case may be, in the O/O ED(C&P) will be the Convenor of such Committee. All other procedures shall be the same as explained above.

23.0 NEEPCO'S OVERHEAD CHARGES:

During execution of the contract it may so happen that NEEPCO has to supply some materials/equipment, which, as per contract, were required to be supplied by the contractor himself. Such a situation may arise because of inability of the contractor to expeditiously procure those items and the same being readily available with NEEPCO or for any other contingencies. In all such cases the recovery rate of such material/ equipment will be decided in the manner explained as explained in para Clause 18.7.5 (f), Section-2 of Vol-II. Concerned ED will be competent to approve such issue of materials by NEEPCO. The proposal in this regard will be initiated by execution site and routed through Finance before obtaining approval. The overhead charges of 15% as specified in para Clause 18.7.7 Section-2 of Vol-II shall be used in other similarly placed situations.

24.0 MISCELLANEOUS:

24.1 As already mentioned in Vol-I of this Manual, the rights and obligations of NEEPCO and Bidders/Contractors shall be governed by the bid documents/contracts of respective packages and not by what has been written in different paras of this manual (Both Vol-I and Vol-II). Accordingly, no party, including Bidder/Contractor, shall derive any right from this Manual or have any claim on NEEPCO on the basis of the same. It should, therefore, be clear to all concerned that once tenders have been invited, all further actions upto award of contract will be carried out as per provisions contained in the bidding documents including subsequent modifications, if any, thereto. Accordingly, it should also be clear that all post award actions would be as per provisions of the contract.

24.2 Whenever a proposal is required to be forwarded from the executing Site to ED(Projects)/ED(O&M)/ED(D&E)/ED(C&P)/ED(F), as the case may be, it will invariably be done by concerned HOP, with clear recommendation.