

Section 8: Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The clause number of the SCC is the corresponding clause number of the GCC.

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1. Definitions

The Employer is: **Marshalls Energy Company**

[The Employer should be the Executing Agency/Implementing Agency named in the Financing Agreement or the entity authorized to carry out the procurement activities under the Project Administration Manual]

The Project Manager is: **Steve Wakefield**

The Bank is: **The Asian Development Bank**

Country of Origin: means a country listed in Section 5 of the bidding documents.

5. Law and Language

5.1 The Contract shall be interpreted in accordance with the laws of: The Republic of the Marshall Islands

5.2 The ruling language is: English

5.3 The language for communications is: English

6. Fraud and Corruption

6.4 The Contractor has the obligation to notify the Employer of any changes in connection with the matters described in paragraphs (f), (h), (i), (j), (k), (l), (m) and (n) of the Letter of Technical Bid.

6.5 If the Contractor is debarred or temporarily suspended by ADB, it shall inform the Employer of such debarment or suspension, and that the endorsement of ADB's Office of Anticorruption and Integrity is required for any variations, extensions or modifications to the Contract.

7. Scope of Facilities

7.3 The Contractor agrees to supply spare parts for a period of years: **Five (5)**

The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components shall be supplied as promptly as possible, but at the most within 6 months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time to permit the Employer to procure the needed requirement. Following such termination, the Contractor will furnish to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.

8. Time for Commencement and Completion

- 8.1 The Contractor shall commence work on the Facilities within **30 days** from the Effective Date for determining Time for Completion as specified in the Contract Agreement provided that access to and possession of the Site or any part thereof have been given under subclause 10.2 and shall then proceed with the work on the Facilities with due expedition and without delay.
- 8.2 The Time for Completion of the whole of the Facilities shall be **24 months** from the Effective Date as described in the Contract Agreement.

Time for Completion for parts of the Facilities: _____

9. Contractor's Responsibilities

- 9.6 To add the following paragraph at the end of GCC 9.6:

"ADB's right to inspect the Site and/or the Contractor's accounts and records relating to the performance of the Contract stated in Subclause 6.1 (e) and 9.6 shall survive termination and/ or expiration of this Contract."

- 9.8 Protection of the Environment

At the end of the sub-clause in 9.8 Protection of the Environment, add the following paragraphs:

"The Contractor shall comply with all applicable national, provincial, and local environmental laws and regulations.

The Contractor shall also comply with all reasonable requests of the national and local authorities responsible for enforcing environmental controls.

Within 28 days of the Commencement Date the Contractor shall submit a detailed Site Specific Environmental Management Plan (SSEMP), based on the Environmental Health and Safety Management Plan submitted in the technical proposal, for the Project Manager's no objection showing how the Contractor intends to comply with environmental laws and regulations and other specific requirements prescribed in the Contract, addressing all the monitoring and mitigation measures set forth in the Environmental Impact Assessment ("EIA") and the Environmental Management Plan ("EMP") of the project attached in Section 6- Employer's Requirements. Work shall not commence on the Site until the no objection of SSEMP has been obtained from the Project Manager and is being implemented.

The Contractor shall (a) establish an operational system for managing environmental impacts, (b) comply with the approved SSEMP and any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor the implementation of the project EMP through the SSEMP, (c) allocate the budget required to ensure that such measures, requirements and actions are carried out, (d) submit semi-annual reports on the compliance of such measures to the Employer.

Where unanticipated environmental risks or impacts become apparent during the Contract, the Contractor is required to update the SSEMP to outline the potential impacts to site works and associated mitigation measures for the Project Manager's approval."

10. Employer's Responsibilities

- 10.2 There shall be no work nor construction activities at the Site or any part thereof (as the case may be) unless the Employer has granted access to the Site or part thereof (as the case may be) in accordance with this Subclause 10.2.

11. Contract Price

- 11.2 The Contract Price shall be adjusted in accordance with the provisions of Appendix 2 (Price Adjustment) to the Contract Agreement.

13. Securities

- 13.3.1 The amount of performance security, as a percentage of the Contract Price for the Facility or for the part of the Facility for which a separate Time for Completion is provided, shall be: **10 percent**
- 13.3.2 The performance security shall be in the form of the **Performance Security** as per form included in Section 9 (Contract Forms).
- 13.3.3 The performance security shall be reduced to 10% of the value of the component covered by the extended defect liability to cover the Contractor's extended defect liability in accordance with the provision in the SCC, pursuant to GCC Subclause 27.10.

19. Subcontracting

- 19.6 The Contractor shall not subcontract (i) works with a total accumulated value greater than the specified percentage of the Contract Price, or (ii) any part of the Works for which subcontracting is not permitted as specified below;
- (i) Maximum allowable accumulated value of work subcontracted (as a percentage of the Contract Price): 50 %
 - (ii) Parts of the Works for which subcontracting is not permitted: None.

20. Design and Engineering

- 20.3 Approval/Review of Technical Documents by Project Manager

20.3.1 Add the following at the end of the second paragraph:

The sign board design shall be considered to relate to the whole of the Facilities. Hence,

no work related to the Facilities shall commence until the Project Manager has given (or is deemed to have given) his approval to the sign board design and until the sign board(s) have been properly installed in the agreed location(s) at the Site

- 20.3.2 Within 21 days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Subclause 20.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes.

If the Project Manager fails to take such action within the said 21 days, then the said document shall be deemed to have been approved by the Project Manager.

22. Installation

22.2 Labor

22.2.5 Working Hours

- (a) Normal working hours are: 0800 to 1700 hrs local time Monday to Friday and 0800 to 1400 hrs Saturday. There shall be no work on Sundays.

22.2.7 Health and Safety

- (d) The Contractor shall throughout the contract (including the Defect Liability Period):
- (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labor (including all the Contractor's employees, all Subcontractors and Employer's and Project Manager's employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behavior with respect to of Sexually Transmitted Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular;
 - (ii) provide male or female condoms for all Site staff and labor as appropriate; and
 - (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labor.

The Contractor shall include in the program to be submitted for the execution of the Facilities under Subclause 18.2 an alleviation program for Site staff and labor and their families in respect of STI and STD including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Subclause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related subcontracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for the preparation and implementation this program shall not exceed the amount dedicated for this purpose.

After the existing paragraph in GCC 22.2.7 (a), add the following:

“The Contractor is responsible for establishment of preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks of the construction site work to the health and safety of local communities.

Within 28 days of the Effective Date the Contractor shall submit a detailed Site Specific Health and Safety Management Plan (SSHSM), based on the Environmental Health and Safety Management Plan submitted in the technical proposal, for the Project Manager’s no objection showing how he/she intends to comply with the local Health and Safety laws and regulations and other specific requirements prescribed in the Contract, taking into account the Supplementary Information in Section 6- Employer’s Requirements. Work shall not commence on the Site until the confirmation of no objection of the SSHSM has been obtained from the Project Manager and is being implemented.

Where unanticipated health and safety hazards or risks become apparent during the Contract, the Contractor is required to update the SSHSM to outline the potential impacts to site works and associated mitigation measures for the Project Manager’s no objection.

The Contractor shall comply with the approved SSHSM and any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor the implementation of the project EMP through the SSHSM.

In particular, the Contractor is required to provide all personnel on site including Employer’s Personnel and visitors with personal protective equipment, including protection for feet (safety boots), head, eyes, ears (safety helmets) and hands, etc., in accordance with the Contractor’s SSHSM. The Contractor should ensure that his Subcontractors comply with the SSHSM and provide all such necessary equipment to their personnel.

The Contractor shall bear the costs to ensure that such measures, requirements and actions are carried out.

The Contractor shall submit semi-annual reports on the compliance of such measures to the Employer.”

Add after the existing paragraph in GCC 22.2.7 (c) the following:

“In the event of a significant injury involving medical treatment or hospitalization and fatal accident the Contractor shall notify the Project Manager immediately by verbal communication and submit a formal report as soon as practicable after its occurrence. For all accidents, whether fatal or not, the Contractor shall also notify the appropriate local authorities in accordance with the Laws of the Country.”

22.2.8 Funeral Arrangements

Funeral arrangements: The contractor shall be responsible for the repatriation to the home country of the remains of any worker who dies on Majuro, whether through accident, work related disease or otherwise.

22.2.17 Respectful Work Environment

The Contractor shall ensure that its employees and Subcontractors observe the highest ethical standards and refrain from any form of bullying, discrimination,

misconduct, and harassment, including sexual harassment and shall, at all times, behave in a manner that creates an environment free of unethical behavior, bullying, misconduct, and harassment, including sexual harassment. The Contractor shall take appropriate action against any employees or Subcontractors, including suspension or termination of employment or subcontract, if any form of unethical or inappropriate behavior is identified.

The Contractor shall conduct training programs for its employees and Subcontractors to raise awareness on and prevent any form of bullying, discrimination, misconduct, and harassment including sexual harassment, and to promote a respectful work environment. The Contractor shall keep an up to date record of its employees and subcontractors who have attended and completed such training programs and provide such records to the Employer or the Engineer at their first written request.

25. Commissioning and Operational Acceptance

25.2.2 The Guarantee Test of the Facilities shall be successfully completed within one month from the date of Completion.

26. Completion Time Guarantee

26.2 Applicable rate for liquidated damages: **2% of the Contract Price** for each month, or part thereof, beyond the 24 month Contract Period

Maximum deduction for liquidated damages: **10% of the Contract Price**

26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.

27. Defect Liability

27.10 The critical components covered under the extended defect liability are **switchgear , power transformer and BESS** and the period shall be **five (5) years**.

30. Limitation of Liability

30.1 (b) The multiplier of the Contract Price is: One (1)

42. Termination

42.1 Termination for Employer's Convenience

42.1.3 (f) a reasonable amount of profit for the parts of the Works not executed by the Contractor as at the date of termination.

45. Disputes and Arbitration

45.1 The Dispute Board shall be appointed within three (3) months after the Effective Date.

The Dispute Board shall consist of one sole member.

List of potential Dispute Board members is: no list

45.2 Appointment (if not agreed) to be made by: The International Centre for Dispute Resolution.

45.3 This sentence shall be added as last paragraph in GCC Subclause 45.3:

If the decision of the Dispute Board requires a payment by one Party to the other Party, the Dispute Board may require the payee to provide an appropriate security in respect of such payment.

45.5 Rules of procedure for arbitration proceedings:

(a) Contracts with foreign contractors:

International arbitration shall be conducted in accordance with the rules of The International Centre for Dispute Resolution. If no rules have been specified, then the Rules of the Singapore International Arbitration Centre (SIAC) shall apply.

Arbitration shall be administered by The International Centre for Dispute Resolution. If no institution has been specified, then SIAC shall be the institution to administer the arbitration.

The place of arbitration shall be Honolulu, Hawaii..

(b) Contracts with contractors being nationals of the Employer's country: Arbitration shall be conducted in accordance with the laws of the Republic of the Marshall Islands.

45.6 GCC Subclause 45.6 shall be replaced with the following sentence:

In the event that a Party fails to comply with a Dispute Board decision which has become either binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Subclause 45.5 [Arbitration] for summary or other expedited relief, as may be appropriate. Subclause 45.3 [Obtaining Dispute Board's Decision] and Subclause 45.4 [Amicable Settlement] shall not apply to this reference.

46. Eligibility

- 46.1 The Contractor shall have the nationality of an ADB member or non-ADB member country. The Contractor shall be deemed to have the nationality of a country if the Contractor is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.
- 46.2 The materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, the Contractor may be required to provide evidence of the origin of materials, equipment and services.
- 46.3 For purposes of SCC 46.2, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.