CONDITIONS OF NIT

1. Contract Performance Guarantee: The party shall furnish to EPI a contract Performance Guarantee (CPG) for the value of Ten percent (10%) of the total estimated value given above immediately but not later than 10 days from the date of this LOI in the form of a Bank Guarantee in favour of Engineering Projects (India) Ltd., New Delhi in EPI’s format of Security Deposit Cum Performance Bank Guarantee (Annexure-IV) from a Nationalized /Scheduled Bank valid until 90 days from the date of expiry of the warranty period of the project.

2. Payment Terms:

2.1 Payment: 100% Payment will be released within 15 days of submission of bills progressively on successful completion of inspection and testing of the materials/items, submission of documents indicated herein under and up on receipt of materials at site:

(a) Evidence of dispatch (R/R or receipted L/R by EPI’s Stores Incharge)
(b) Suppliers detailed invoice & packing list identifying contents of each shipment.
(c) Certificate to the effect that details of dispatches have been notified to EPI for arranging Transit Insurance
(d) Manufacturer’s/Contractor’s guarantee certificate of Quality.
(e) Material Inspection Clearance Certificate (MICC) for dispatch issued by the EPI/employer’s representative and the factory inspection report.
(f) Test Certificate.

3. Completion Schedule: The entire Supplies shall be completed by 30.06.2012. The basic consideration and the essence of the Order shall be strict adherence to the time schedule. The material will be delivered at Bijnore

4. Taxes and Duties and price basis:

The quoted price shall be FIRM and include all taxes, duties, levies and freight transit insurance up to Bijnore (UP) as per requirement. Price escalation whatsoever is not applicable.

4.1 All customs duties, excise duties, sales taxes, VAT and other statutory levies etc. are included in the prices.

4.2 EPI shall not give Form “C”.
5. The supplier shall obtain approval of his make, Guaranteed Technical Parameters (GTP) and Drawings of Equipment from M/s PVVNL prior to Manufacture/Supply.

6. EPI/PVVNL reserves the right to vary the quantities of material as per requirement but the order value shall remain within \( \pm 20\% \) of the original value.

7. **Quality Assurance, Inspection, Dispatch, Storage & Bills of Supply:**

7.1. All the Quality Assurance & Inspection matters pertaining to this Contract shall be dealt as per the Bidding Documents and in accordance with quality assurance plan.

7.2 **Inspection and Testing:**

The clause 2.7 inspection and testing and 2.1.1 of general requirement of specification is superceded by the following:-

Pre-despatch inspection and testing of equipments shall be carried out by EPI and a team of two Engineer Officers of PVVNL representing the Engineer of Contract at the premises of the manufacturer/vendor supplying the material. The testing shall be done as per specification & relevant IS and its latest amendment thereof. One officer shall be nominated by the Managing Director/DGM (Equator), Pashchimanchal Vidyut Vitran Nigam Ltd. Meerut from his office or its quality control wing, and other officer shall be nominated by the GM(PIME), PVVNL., Meerut. Party is required to submit inspection call letter to EPI/above officers as soon as the material is ready for inspection at vendors/manufacturer premises, giving minimum of 7 days time to the department for arranging the inspection.

7.3 **Packing and Dispatch of Material:** The equipment/material shall be dispatched, in presence of inspection Engineer of PVVNL within 3 days as per dispatch instructions to be issued by EPI. Telegraphic/Fax intimation shall also be given to the consignee(s) immediately after the dispatch of equipment mentioning the specification number, name of equipment, R/R number, Date of dispatch, No. of packages, wagon number and approximate weight of each package to enable him to take the delivery and unload the material in case the dispatch documents are not received by him in time.

8. All other terms and conditions shall be as per EPI’s “Additional Conditions of Purchase Order” (Annexure-II).

9. EPI reserves its rights to Sub-divide the items into different agencies at the lowest offer received
Annexure II

Engineering Projects (India) Ltd

RURAL ELECTRIFICATION WORK IN WESTERN UTTAR PRADESH UNDER PASCHIMANCHAL Vidyut VitrAN NIGAM LTD.(PVVNl)

ADDITIONAL CONDITIONS OF PURCHASE ORDER

1. **Scope of Supply:**

   Scope of Supply is as per the Technical Specifications, Drawings if any and Price Schedule.

1. **Delivery:**

   The entire Supplies shall be completed by 30.06.2012. The basic consideration and the essence of the Order shall be strict adherence to the time schedule. The material will be delivered at Bijnore.

1. **Documents:**

   3.1 Following documents shall form the complete set of documents for order:-

   3.1.1 Additional Conditions of Purchase Order

   3.1.2 Technical Specifications and Drawings if any

   3.1.3 Scope of Supply and Price Schedule

   3.2 Notwithstanding sub-division of the document into separate sections and volumes, every part shall be deemed to be supplementary of every other part and shall be read with and into the contract so far as it may be practicable to do so. The application of the Clauses of the Conditions of Contract of the bidding documents of the Owner regarding Supply and Erection shall be limited to Supply component only for Suppliers.

   3.3 The specifications, designs, drawings, instructions terms and conditions given in the tender documents of client as listed above shall apply on the Supplier Mutates Mutandis. Wherever the reference is made of Owner/Employer in the tender documents, the same shall be read as EPI / Owner. Similarly, wherever the reference is made of Contractor, it shall be read as Sub-Contractor/Supplier.

4. **Price:**

   The quoted Price shall be **FIRM AND WITHOUT ANY VARIATION (EVEN IF INDICATED ELSEWHERE)** ex-works/ex-factory/ex-showroom (referred to as ‘Ex-works’) price, as applicable, with transportation charges, for F.O.R. destination site at Bijnore (UP), delivery of all the items indicated in the Price Schedule. Transit Insurance policy shall also be taken by the bidder.
The Prices shall include the cost of type tests and other tests, to be carried out in line with the Technical Specifications, in the prices of the respective equipment and no separate charges for any test and service tax on the same shall be payable to the supplier.

SUPPLIER TO INDICATE BASIC RATE, TAXES, DUTIES AND FREIGHT SEPARATELY.

5. Taxes and Duties:

All customs duties, excise duties, sales taxes, VAT and other statutory levies etc. are included in the prices on full tax basis. EPI will not issue any short of concessional form.

6. Price Adjustment:

NO PRICE ADJUSTMENT SHALL BE APPLICABLE

7. Payment Terms:

As per Clause no. 2 of Conditions of NIT.

8. The Supplier shall give Guarantee/Warrantee for the equipment/materials supplied by him as per Contract Conditions.

9. The supplier shall obtain approval of his make, Guaranteed Technical Parameters (GTP) and Drawings of Equipment from M/s PVVNL prior to Manufacture/Supply.

10. The supplier shall submit quality plans which shall set out, during the various stages of manufacture and installation, the quality practices and procedures followed by the supplier’s quality control organization, the relevant document/standard used, acceptance level, inspection document raised etc. Such quality plans shall be discussed and finalized in consultation with M/s PVVNL and EPI form part of the order.

11. EPI/PVVNL reserves the right to vary the quantities of material as per requirement but the order value shall remain within ± 20 % of the original value.

12. Consignee shall be M/s PVVNL a/c UBEL a/c EPI that shall be communicated to you in the dispatch instructions.

13. In the event of slackness, delay, bad-workmanship and any other default on part of the supplier, EPI shall cancel the order partly or in full and carry out the same at the risk and cost of the Supplier.

14. Both the parties shall make efforts to settle disputes amicably. Only if amicable settlement is not possible, the same shall be referred to the sole arbitration of the Chairman & Managing Director of EPI or the person appointed by the CMD, EPI and the decision of the arbitrator shall be final and binding on both the parties. Arbitration will be according to “Conciliation & Arbitration” clause, which is enclosed.

15. Jurisdiction – Jurisdiction shall be Delhi courts alone.

16. Association of the Supplier shall be subject to approval of M/s PVVNL.
SECURITY DEPOSIT CUM PERFORMANCE GUARANTEE

The Chairman & Managing Director,
Engineering Projects (India) Ltd.,
Core-3, SCOPE Complex
7, Institutional Area, Lodhi road,
New Delhi –110 003

Dear Sir,

In consideration of the Chairman & Managing Director, Engineering Projects (India) Ltd.(hereinafter called ‘EPI’ which expression shall unless repugnant to the subject or context includes its successors and assigns) having agreed under the terms and conditions of supply contract /sub-contract no. ____________________________

Dated ____________________________ made

between ________________________________________________________________

(hereinafter referred to as the said Supplier/sub-contractor)

which expression shall unless repugnant to the subject or context includes its successors and assigns) and EPI in connection with ____________________________ (hereinafter called ‘The said supply Contract/Sub-contract’) to accept a Deed Security Deposit-cum-Performance bank guarantee as herein provided for

lieu of:

a) The Security Deposit to be made by the said supplier/sub-contractor for the due fulfillment by the said supplier/sub-contractor of the terms and conditions contained in the said supply contract/sub-contract, and

b) Fulfillment of the conditions of the said supply contract/sub-contract/furnishing a security for the performance of the equipment in accordance with conditions of the said Contract.
We _____________________________(hereinafter referred to as “the said bank a Government of India Undertaking which expression shall unless repugnant to the subject or context includes its successors and assigns) and having our registered office at __________________________ do hereby unconditionally and irrevocably undertake and agree to indemnify and keep indemnified EPI from time to time to the extent of _(_______________________________)

Only against any loss of damages, costs, charges and expenses caused to or suffered by or that may be caused or suffered by EP [I by reason of any breach or breaches by the said supplier/sub-contractor of any of the terms and conditions contained in the said supply contract/sub-contract and or any amount becoming due for non-performance and /or penalty as assessed by EPI and top unconditionally pay the amount claimed by EPI on demand and without demur.

We the said Bank further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said supply contract/sub-contract and till all the dues of EPI under the said supply contract/sub-contract or by virtue of any of the terms and conditions governing the said contract have been fully paid and its claims satisfied or discharged and till EPI certifies that the terms and conditions of the said supply contract/sub-contract have been fully and properly carried out by the said supplier/sub-contractor and accordingly discharge this guarantee subject, however, that EPI shall have no claim under this guarantee after 6 months from the date of expiry of the guarantee unless a notice of the claim under this guarantee has been served on the Bank before the expiry of the said period of 6 months.

EPI shall have the fullest liberty without affecting in any way the liability to the said Bank under this Guarantee or indemnity from time to time to vary any of the terms and conditions of the said supply contract/sub-contract to extend time of

Performance of the said Contract or to postpone for any time and from time to time any power’s exercisable by it against the said Supplier/sub-contractor and either to enforce or forbear from enforcing any of the terms and conditions governing the said contract or securities available to EPI and the said Bank shall not be released from its liability under these presents by any exercise by EPI of the liberty with reference to the matters aforesaid or by reason of time being given to the said supplier/sub-contractor or of any other matter or thing whatsoever which under the law relating to sureties would but for this provisions have the effect of so releasing the said bank from its such liability.
We, the said bank, further agree that EPI shall be the sole judge of and as to whether the said supplier/sub-contractor has committed any breach or breaches of any of the terms and conditions of the said supply contract/sub-contract and the extent of loss, damage, cost, charges and expenses caused to or suffered by or that may be caused to or suffered by EPI on account thereof and the decision of EPI that the said supplier/sub-contractor has committed such breach or breaches and as to the amount or amounts of loss, damages, costs, charges and expenses caused to or suffered by EPI from time to time shall be final and binding on the bank.

This guarantee shall be a continuing quarantine and shall remain valid and irrevocable for all claims of EPI and liabilities of the said supplier/sub-contractor arising upto and until mid night of ________________________, subject the claim period as mentioned in para. ____________.

This guarantee shall be in addition to any other guarantee or security whatsoever that EPI may now or at any time anywise may have in relation to the said supplier/sub-contractor obligation/liabilities under and/or in connection with the said supply contract/sub-contract and EPI shall have full authority to take recourse to or enforce this guarantee in preference to any other guarantee or security which EPI may have or obtain and there shall be no forbearance on the part of EPI IN ENGINEERING OR REQUIRING ENFORCEMENT OF ANY OTHER SECURITY AND shall not have the effect of releasing the said bank from its full liability hereunder:

EPI shall be at liberty without reference to the said bank and without effecting the full liability of the said Bank hereunder to take any other security in respect of the said supplier’s/sub-contractor’s obligations and/or liabilities under or in connection with the said contract.

This guarantee shall not be determined or affected by the liquidation or winding up, dissolution, or change of constitution or insolvency of the said supplier/sub-contractor, but shall in all respects and for all purposes be binding and operative until payment of all moneys paid to EPI in terms thereof.
The said bank hereby waives all rights at any time inconsistent with the terms of this guarantee and the obligations of the said bank in terms hereof shall not be anywise affected or suspended by reasons of any dispute or disputes having been raised by the said supplier/sub-contractor.(whether or not pending before any arbitrator, tribunal or court) of any denial or liability by the said supplier/sub-contractor stopping or preventing or purporting to stop or prevent any payment by the said bank to EPI in terms hereof.

The amount stated in any notice of demand addressed to EPI to the Guarantor as liable to be paid to EPI by the Supplier/sub-contractor on account of any losses or damages or costs, charges and/or expenses shall as between the said bank and EPI be conclusive provision of the amount so liable to be paid to EPI or suffered or Incurred by EPI as the case may be and payable by the said Bank to EPI in terms hereof. We, the said Bank further undertake that we shall pay forthwith the amount stated in the notice of demand to EPI without demur.

We, the said bank undertake not to revoke this quarantine during its currency except with the consent of EPI in writing and agree that any change in the constitution of the aid supplier/sub-contractor or the said Bank shall not discharge our liabilities hereunder.

It shall not be necessary for EPI to proceed against the said supplier/sub-contractor before proceeding against the Bank and the guarantee herein contained shall be enforceable against the bank notwithstanding any security which EPI may have obtained or obtain from the supplier/sub-contractor shall at the time when proceedings are taken against the said Bank hereunder be outstanding or unrealized.

Our liability under this guarantee shall be restricted to _________________ and this guarantee shall remain in force until midnight of _________________ unless a claim to enforce this guarantee is filed with us within six months from _________________.(which is date of expiry of this guarantee), we shall be discharged from all liabilities under this guarantee thereafter.

DATED  ________________ THIS day of ________________-20

FOR AND ON BEHALF OF BANK
CONCILIATION AND ARBITRATION

Before resorting to arbitration as per the clause given below, the parties if they so agree may explore the possibility of conciliation as per the provisions of part-II of the Arbitration and Conciliation Act, 1996. When such conciliation has failed. The parties shall adopt the following procedure for arbitration:

1. Except where otherwise provided for in the contract, any disputes and differences relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to quality of workmanship or materials used or as to any other question, claim, right, matter or thing whatsoever in any arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions or these conditions or otherwise concerning the works or the executions or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the Sole Arbitration of the Chairman and Managing Director (CMD) of Engineering Projects (India) Limited (EPI), or any other person discharging the functions of CMD of EPI and if CMD or such person discharging the functions of CMD of EPI is unable to act, to the Sole Arbitration of some other person appointed by the CMD of EPI or such other person discharging the functions of CMD of EPI. There will be no objection if the arbitrator so appointed is an employer of Engineering Projects (India) Limited. However, such an employee shall not have directly dealt with the said contract or the works thereunder on behalf of EPI. Such Arbitration shall be appointed within 30 days of the receipt of letter of invocation of arbitration duly satisfying the requirements of this clause.

2. If the arbitrator so appointed resigns his appointment is unable or unwilling to act due to any reason whatsoever, or dies, the Chairman & Managing Director aforesaid or in his absence the person discharging the duties of the CMD of EPI may appoint a new arbitrator in accordance with these terms and conditions of the contract, to act in his place and the new arbitrator so appointed may proceed from the stage at which it was left by his predecessor.

3. It is a term of the contract that the party invoking the arbitration shall specify the dispute/differences are questions to be referred to the arbitrator under this clause together with the amounts claimed in respect of each dispute.

4. The arbitrator may proceed with the arbitration ex-parte if either party in spite of a notice from the arbitrator ends to take part in the proceeding.

5. The work under the contract shall continue, if required, during the arbitration proceedings.

6. The Arbitrator shall make speaking Award and give reasons for his decision in respect of each dispute/claim along with the sums awarded separately on each individual item of dispute or difference or claim. The Arbitrator shall make separate award on each reference made to him.

7. The award of the arbitrator shall be final, conclusive and binding on both the parties.
2. Subject to the aforesaid, the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modifications or re-enactment thereof and the Rules made there under and for the time being in force shall apply to the arbitration proceedings and Arbitrator shall publish his Award accordingly.

Note: Notwithstanding anything contained here in above, this clause shall not be applicable where the dispute is between EPI and another Public Sector Enterprise or Govt. Department for which a separate Arbitration Clause is provide vide Clause No. A given below:

3. **ARBITRATION BETWEEN PUBLIC SECTOR ENTERPRISES INTERSE/GOVERNMENT DEPARTMENTS.**

4. In the event of any dispute or difference relating to the Interpretation and application of the provisions of the contract, such dispute or difference shall be referred by either party to the arbitration as per the Instruction (Office Memorandums/Circulars) issued by Govt. of India from time to time with regard to arbitration between one Govt. Deptt and another, one Govt. Deptt and a Public Sector Enterprise and Public Sector Enterprises inters.

5. Subject to any amendment that may be carried out by the Government of India from time to time, the procedure to be followed in arbitration shall be as is contained in D.O. No. DPE/4(10)/2001-PMA-GLI dated 22/01/2004 of Department of Public Enterprises. Ministry of Heavy Industries and Public Enterprises or any modification issued in this regard.