

Bid Document
for
Procurement of electricity
on medium term basis [3 years]
from Hydro Generating Stations
with
Contracted Capacity equivalent to [200] MW

Tender Specification no:
ED (PM)/2023-24/702

Event No.: CESC/Medium/Supply from hydro-electric power station/24-25/ET/01
RA No: CESC/Medium/Supply from hydro-electric power station/24-25/RA/01

Issued by:

POWER MARKETING DEPARTMENT
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DISCLAIMER

The information contained in this document (the “**Bidding Document**”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form, by or on behalf of the Utility or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out here and such other terms and conditions subject to which such information is provided.

This Bidding Document is not an agreement and is neither an offer nor invitation by the Utility to the prospective Bidders or any other person. The purpose of this Bidding Document is to provide interested parties with information that may be useful to them in the formulation of their application (the “**Application**”) for qualification and selection pursuant to Section A (“**Request for Qualification**” or “**RFQ**”) and financial bids (the “**Bid**”) for qualification and selection pursuant to Section B (“**Request for Proposal**” or “**RFP**”) of this Bidding Document. This Bidding Document includes statements, which reflect various assumptions and assessments arrived at by the Utility in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This Bidding Document may not be appropriate for all persons, and it is not possible for the Utility, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this Bidding Document. The assumptions, assessments, statements and information contained in this Bidding Document may not be complete, accurate, adequate or correct. Each Bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this Bidding Document and obtain independent advice from appropriate sources.

Information provided in this Bidding Document to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Utility accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Utility, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder or Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Bidding Document or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the Bidding Document and any assessment, assumption, statement or information contained therein or deemed to form part of this Bidding Document or arising in any way with pre-qualification of Bidders for participation in the Bidding Process.

The Utility also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this Bidding Document.

The Utility may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this Bidding Document.

The issue of this Bidding Document does not imply that the Utility is bound to select and short-list pre-qualified Applications for opening of the Bids or to appoint the selected Bidder or Supplier, as the case may be, for the Project and the Utility reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Application and Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Utility or any other costs incurred in connection with or relating to its Application and Bid. All such costs and expenses will remain with the Bidder and the Utility shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Application and Bid, regardless of the conduct or outcome of the Bidding Process.

SECTION A

Request For Qualification

for

Agreement for Procurement of Power

on medium term basis [3 years]

from

Hydro Generating Stations

with

Contracted Capacity equivalent to [200] MW

GLOSSARY

[Allocated Coal Linkage]	[Details to be inserted by the Utility in case the source of coal is provided by the Utility]
APP	As defined in Clause 1.1.3
Application	As defined in the Disclaimer
Bid Due Date	As defined in Clause 1.1.6
Bids	As defined in the Disclaimer
Bid Security	As defined in Clause 1.2.6
Bidder(s)	As defined in Clause 1.2.1
Bidding Documents	As defined in the Disclaimer
Bidding Process	As defined in Clause 1.2.1
BOLT	Build, Own, Lease and Transfer
BOO	Build, Own and Operate
BOOT	Build, Own, Operate and Transfer
BOT	Build, Operate and Transfer
Developer	shall mean the owner and operator of the Power Station from which the supplier shall supply the Power to the Utility(ies);
FOO	Finance, Own and Operate
Eligible Projects	As defined in Clause 3.2.1
e-Reverse Auction Stage	As defined in Clause 1.2.1
Financial Capacity	As defined in Clause 2.2.2 (B)
Government	Government of India/State
LOA	Letter of Award
Lowest Bidder	As defined in Clause 1.2.10
Net Worth	As defined in Clause 2.2.2 (B)
PPP	Public Private Partnership
Project	As defined in Clause 1.1.1
Qualification	As defined in Clause 1.2.1
Qualified Bidder	As defined in Clause 1.1.2
Re. or Rs. or INR	Indian Rupee
SECTION A (RfQ)	As defined in the Disclaimer
SECTION B (RfP)	As defined in the Disclaimer
Supplier/ Selected Bidder	As defined in Clause 1.1.3
Tariff	As defined in Clause 1.2.10
Technical Capacity	As defined in Clause 2.2.2 (A)
Trading Licensee(s)	shall mean the Bidder which is an Electricity Trader or a Distribution Licensee in terms of the Electricity Act, 2003 and submits its Application on the basis of an exclusive power purchase agreement executed with the entity with identified generation source from where the power is proposed to be supplied by the Bidder
Utility	As defined in Clause 1.1.1

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto hereinabove.

1. INTRODUCTION^{\$}

1.1 Background¹

- 1.1.1 CESC Limited (the “**Utility**”), having its registered office at CESC House, Chowringhee Square, Kolkata – 700001, a company within the meaning of the Companies Act, 2013 and a distribution licensee under Section 14 of the Electricity Act, 2003, is engaged in the distribution of electricity within its licensed area in the city of Kolkata and its suburbs.

The Utility has decided to procure electricity from the Run off the River/ Pondage/ Pumped Storage hydro power generating station(s) that would dedicate a capacity for supply of electricity thereof for a specified period and time (the “**Supply of Electricity**”) and has, therefore, decided to carry out the bidding process for selection of the Bidder to whom the contract may be awarded for production of electricity and supply thereof as per the terms and conditions specified in the Bidding Document and in accordance with the provisions of an agreement for purchase of power.

Brief particulars of the Project are as follows:

Source	Months of Supply	Year of Supply	Contracted Capacity (MW)	Timings (Hrs.)	Minimum Bid Capacity (MW)	Delivery Point
Domestic /Imported	May to September	FY 2024–25 to FY 2027-28	200	Round the Clock (RTC) 00:00 to 24:00	5.0	As per the provisions of enclosed APP

- 1.1.2 The Utility intends to pre-qualify and short-list suitable bidders (the “**Bidders**”) whose Bid shall be opened on the date specified at Clause 1.3 of this RFQ and will be eligible for participation in the e-Reverse Auction Stage (the “**Qualified Bidders**”), for awarding the Project through an open competitive bidding process in accordance with the procedure set out herein.
- 1.1.3 The selected Bidder (the “**Supplier**”/ “**Selected Bidder**”) shall be responsible for financing, construction, operation and maintenance of the Project, and in case of Supplier being a Trading Licensee, it shall be responsible for supply of electricity from the Power Station, under and in accordance with the provisions of a medium- term Agreement for procurement of power (the “**Agreement for Procurement of Power**” or the “**APP**”) to be entered into between the Supplier and the Utility in the form provided by the Utility as part of the Bidding Documents pursuant hereto.

- 1.1.4 The scope of work will broadly include operation and maintenance of the Power Station and supply of electricity, and in case of Supplier being a Trading Licensee, the scope of work will be supply of electricity from the Power Station, in accordance with the terms of the APP.
- 1.1.5 All Bidders shall indicate the particulars of the relevant Power Station in the form specified at Annex-V of Appendix-I and at National e-Bidding Portal ("**DEEP Portal**") developed by PFC Consulting Ltd. Bidders may bid for the capacity specified in Clause 1.1.1, or a part thereof, not being less than 10% (ten per cent) of such capacity or 100 (hundred) MW, whichever is lower. The remaining capacity, if any, may be procured from other Bidders who are willing to match the lowest Bid.
- 1.1.6 The Utility shall receive Applications pursuant to this Bidding Document in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Utility, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the "**Bid Due Date**").

1.2 Brief description of Bidding Process:

- 1.2.1 The Utility has adopted a two-stage bidding process (collectively referred to as the "**Bidding Process**") for selection of the bidder for award of the Project. The first stage (the "**e-Tender Stage**") of the process involves qualification (the "**Qualification**") of interested parties who submit Application and Bids in accordance with the provisions of this Bidding Document, comprising of RFQ and RFP (the "**Bidder**"). Prior to submission of the Application, the Bidder shall pay to the Utility a sum of Rs 60, 000 (Rupees sixty thousand only) plus applicable taxes as indicated above, as the cost of the Bidding Process. At the end of e- Tender stage, system will send an email to all Qualified Bidders who are eligible to participate in the second stage of the Bidding Process (the "**e-Reverse Auction Stage**").
- 1.2.2 All the Bidders would be able to participate in the e-Bidding events on making payment of the requisite fees of Rs. 500 per MW per requisition for the total capacity sought by the Utility for that particular requisition for which the bidder is willing to bid, to PFC Consulting Limited (PFCCL). The requisite fee shall be deposited through NEFT/IMPS/RTGS after adding the applicable taxes. After the completion of the bidding process, only successful Bidder(s) will have to pay these charges for the quantum allocated to each bidder. The balance amount will be refunded by PFCCL within seven (7) working days of issuance of LOA without any interest. The fee deposited by non-Selected Bidder(s) will also be refunded by PFCCL within seven (7) working days of issuance of LOA without any interest.
- 1.2.3 The e-Tender Stage shall be a two-fold process, where the Bidders will be required to submit their Application and Bid online at the DEEP Portal on or before the Bid Due Date.
- 1.2.4 In the e-Tender Stage, Bidders would be required to furnish all the information
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specified in this Bidding Document by submitting (a) its Application under Section A (RFQ) for its qualification in accordance with the eligibility requirement under the RFQ and (b) its Bid in accordance with Section B (RFP).

- 1.2.5 The Bid shall be valid for a period of not less than one hundred and twenty (120) days from the Bid Due Date. The Bids of only those Bidders that are pre-qualified and short-listed by the Utility after evaluation of their Application, shall be opened on such date as specified under Clause 1.3 of this Section A and shall be invited to participate in e-Reverse Auction Stage for the Project, in accordance with Clause 4 of Section B, to submit their revised financial bids in e-Reverse Auction stage. The Utility is likely to provide a comparatively short time span for submission of the Bids for the Project. The Bidders are, therefore, advised to familiarize themselves with the terms of the Model/draft APP that will govern the structure of this Project. The said Model APP has been notified by the Government under section 63 of the Electricity Act 2003 for tariff-based bidding by the Utilities.
- 1.2.6 The Bidders will be required to submit their Application and Bid online at the DEEP Portal on or before the Bid Due Date.
- 1.2.7 In the e-Reverse Auction Stage, the “**Bids**” of qualified and short-listed Bidder(s) shall be opened in accordance with the RFP and other documents to be provided by the Utility (collectively the “**RFP Documents**”).
- 1.2.8 In terms of the RFP, a Bidder will be required to deposit, along with its Bid, a bid security of Rs 5,00,000 (Rupees five lakh) per MW of capacity offered by the Bidder (the “**Bid Security**”), refundable not later than 60 (sixty) days from the Bid Due Date, except in the case of the selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the APP. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Utility or may be submitted as e-bank guarantee or deposited online through NEFT/IMPS/RTGS payment. The demand draft shall be kept valid for a period not less than 180 (one hundred and eighty) days from the Bid Due Date, by submitting another demand draft before expiry of the existing demand draft and may be further extended as may be mutually agreed between the Utility and the Bidder from time to time. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.9 In e-Reverse Auction Stage, the lowest Bid received in the e-Tender Stage shall be displayed to the Bidders on the DEEP Portal and thereafter any subsequent lowest bid in e-Reverse Auction Stage on a real time basis. During the e-Reverse Auction Stage, the Bidders will have the option of reducing the Tariff in decrements of 1 (one) paise or multiples thereof and to increase/maintain the quantum quoted by them at e-Tender Stage by 1 MW or multiples thereof. At

the end of the e-Reverse Auction, lowest bidder will be identified by the system, the system will check all bids received in e-Tender and e-Reverse Auction and identify the Bidder who has quoted the lowest Tariff therein ("**Lowest Bidder**").

- 1.2.10 Generally, the Lowest Bidder shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified here, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for any reason or in case the Capacity Required as per Clause 1.1.1 is not fully met by the Lowest Bidder. All other bidders will be asked to match the Lowest Bid in the system ("**L-1 Matching**"). In L-1 Matching round, the Qualified Bidders will be displayed the bid of the Lowest Bidder ("**Lowest Bid**") and available quantity, they will be required to input the quantity in MW that they wish to supply at the Lowest Bid. At the end of L-1 Matching round, system will allocate power to bidders in the order as they were at the end of e-Reverse Auction Stage (like L-1, L-2, L-3 cumulative in e-Tender Stage and e-Reverse Auction Stage) for the quantity bid by Lowest Bidder in Bid Stage and other bidders in L-1 Matching. It is hereby clarified that the Utility will not accept the entire capacity offered of the last Lowest Bidder in the order of progression, in the event the Capacity Required gets fulfilled by a part thereof. In the event that none of the other Qualified Bidders match the Bid of the Lowest Bidder, the Utility may, in its discretion, (i) allocate the remaining capacity, if any, after completion of L-1 Matching round to the Bidders at the Tariff quoted cumulative in e-Tender Stage and e-Reverse Auction Stage in the order as they were at the end of L-1 Matching round or (ii) invite fresh Bids from the remaining Qualified Bidders or (iii) annul the Bidding Process, as the case may be. Further, it is clarified that any single Bidder cannot quote part capacity from different power stations.
- 1.2.11 During the Bidding Process, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the contract including implementation of the Project.
- 1.2.12 As part of this Bidding Documents, the Utility will provide a draft APP and other information pertaining/ relevant to the Project available with it.
- 1.2.13 Bids are invited for the Project under Section B of this Bidding Document, on the basis of a tariff to be offered by a Bidder for production and supply of electricity in accordance with the terms of the draft APP forming part of the Bidding Documents. For the purposes of bidding hereunder, the Fixed Charge and Variable Charge shall constitute the tariff for the Power Station (the "**Tariff**"). The Fixed Charge and the Variable Charge shall each be at least 35% of the Tariff. The contract period shall be pre-determined, and will be indicated in the draft APP. The Project shall be awarded to the Bidder quoting the lowest Tariff, after the completion of the process under Clause 1.2.7 above.

Supply from Hydro-electric Power Station

The Bidder shall quote a Variable Charge comprising the generating cost of
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electricity, the transmission charges and the transmission losses. Based on its Bid, a lumpsum tariff shall be paid to the Supplier comprising of (a) a Variable Charge, and (b) a Fixed Charge, as per the provisions of Clause 12.3.1 of the APP. The Tariff shall be revised as per the terms of the APP. The Bid for the Project shall, therefore, comprise the Fixed Charge and the Variable Charge and the Bidder seeking the lowest Tariff shall be the Selected Bidder.

In this Section A, the term “**Lowest Bidder**” shall mean the Bidder who is offering the lowest Tariff.

1.2.14 Further details of the process for submission of Bid to be followed at the e-Tender Stage and the terms thereof will be spelt out in Section B of this Bidding Document.

1.2.15 Any queries or request for additional information concerning this Section A shall be submitted in writing on the DEEP Portal and e-mail attaching the queries in Microsoft word file so as to reach the officer designated in Clause 2.12.3 by the specified date. The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information: Bidding for Hydro Power Project".

1.3 Schedule of Bidding Process

The Utility shall endeavor to adhere to the following schedule:

	Event Description	Date and Time
1.	Date and time of Start of e-Tender Stage	01.03.2024
2.	Last date and time for receiving queries on RFQ and RFP	11.03.2024 at 17:00 hrs
3.	Pre-Bid Meeting (On-Line)	16.03.2024 at 11:30 hrs.
4.	Utility response to queries latest by	21.03.2024 by 23:59 hrs.
5.	Last date and time of submission of Application and Bids (including Section A and Section B) – Bid Due Date	01.04.2024 by 14:00 hrs.
6.	Opening of Application	01.04.2024 at 15:00 hrs.
7.	Intimation to Qualified Bidders for opening of their Bids	08.04.2024 at 12:00 hrs.
8.	Opening of Bids of those Qualified Bidders.	16.04.2024 12:00 hrs.
9.	Start of e-Reverse Auction	16.04.2024 at 14:00 hrs.

10.	Close of e-Reverse Auction	[120 minutes from the start of e-Reverse Auction subject to Auto Extension of 10 minutes]
11.	L-1 Matching	If needed at the close of the e-Reverse Auction Stage, there will be an L-1 Matching Round for 30 mins.
12.	Letter of Award (LOA)	Will be intimated based on receipt of Appropriate Commission's approval
13.	Validity of Bids	30.07.2024
14.	Signing of APP	Will be intimated

1.4 Pre-Bid Meeting

The date, time and venue of the Pre-Bid Meeting shall

be:Date: ****16.03.2024

Time: ***11:30 hrs.

Venue: ***On line

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 Scope of Application

- 2.1.1. The Utility wishes to receive Applications for Pre-Qualification in order to short-list experienced and capable Bidders for opening of the Bids in the RFP process.
- 2.1.2. The Bids of the short-listed Qualified Bidders may be opened subsequently as per the schedule specified in Clause 1.3. of this RFQ.

2.2 Eligibility of Bidders

- 2.2.1 For determining the eligibility of Bidders for their pre-qualification hereunder, the following shall apply:

- (a) The Bidder should be a corporate entity;
- (b) The Bidder should either be the owner and operator of the Power Station from where electricity shall be supplied or a Trading Licensee in terms of the Electricity Act 2003;
- (c) In case of Bidder being a Trading Licensee, such Trading Licensee should have executed a power purchase agreement or an equivalent arrangement with the Developer for at least the Capacity for which the Application has been made;
- (d) the Power Station(s) has access to an assured supply of Fuel (water): and

- 2.2.2 To be eligible for pre-qualification and short-listing, a Bidder shall fulfil the following conditions of eligibility:

- (A) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall own and operate power generating station(s) having an installed capacity equivalent to at least twice the capacity for which the Bidder is willing to Bid. Bidders shall not be allowed to increase their capacity at e-Reverse Auction Stage or L1 Matching round greater than for which Technical Capacity has been demonstrated.

In case the Bidder is a Trading Licensee, the condition under Clause 2.2.2 (A) shall be fulfilled through the Developer.

- (B) **Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) equivalent to Rs. 1 crore (Rs. one crore) per MW of the capacity the Bidder is willing to Bid, at the close of the preceding financial year. Bidders shall not be allowed to increase their capacity at e-Reverse Auction Stage or L1 Matching round greater than for which Financial Capacity has been demonstrated.

In case the Bidder is a Trading Licensee, the condition under Clause 2.2.2(B) may be either fulfilled jointly or severally by the Trading Licensee and Developer.

2.2.3 The Bidders shall enclose with its Application, to be submitted as per the format at Appendix-I, complete with its Annexes, the following:

- (i) certificate(s) from statutory auditors of the Bidder or in case the Bidder is a Trading Licensee, then of the Developer, stating the power stations which are owned and operated by the Bidder or the Developer, as the case may be, as specified in paragraph 2.2.2 (A) above; and
- (ii) certificate(s) from statutory auditors of the Bidder specifying the net worth of the Bidder as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.3 (ii). For the purposes of this Section A, net worth (the “**Net Worth**”) shall mean the net worth as per the Companies Act, 2013.

In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.3 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ.

2.2.4 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorizing the signatory of the Bidder to digitally sign and submit the Application and Bid.

2.2.5 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Application, would not be eligible to submit an application. In case the Bidder is a Trading Licensee, the entity herein shall be construed as the Trading Licensee as well as the Developer.

2.2.6 An Bidder and/or the Developer (in case the Bidder is a Trading Licensee) should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder and/or the Developer, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder and/or the Developer. Provided, however, that where an Bidder claims that its or the Developers disqualification arising on account of any cause or event specified in this Clause 2.2.6 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a

representation to this effect to the Utility for seeking a waiver from the disqualification hereunder and the Utility may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

2.2.7 Omitted.

2.2.8 The following conditions shall be adhered to while submitting an application:

- (a) Bidders should submit their application online at the DEEP Portal only and upload clearly marked and referenced documents/sheets in the e-Tender Stage.
- (b) Information supplied by a Bidder must apply to the Bidder named in the Application. The Bid of only those Bidders will be opened whose identity and/ or constitution is identical to that at pre-qualification; and
- (c) In responding to the pre-qualification submissions, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below.

2.2.9 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 3 (three) years preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.3 Number of Applications and costs thereof

2.3.1 No Bidder shall submit more than one Application for the Project from the same Power Station.

2.3.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Applications and their participation in the Bidding Process.

The Utility will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.4 Verification of information

2.4.1 Bidders are encouraged to submit their respective Applications after familiarising themselves with the information and physical conditions relevant to the Project, including the transmission capacity, applicable laws and regulations, and any other matter considered relevant by them.

2.5 Acknowledgement by Bidder

2.5.1 It shall be deemed that by submitting the Application, the Bidder has:

- (a) made a complete and careful examination of this Section A;
- (b) received all relevant information requested from the Utility;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in this Section A or furnished by or on behalf of the Utility relating to any of the matters referred to in Clause 2.4 above; and
- (d) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.2 The Utility shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to this document or the Bidding Process, including any error or mistake therein or in any information or data given by the Utility.

2.6 Right to accept or reject any or all Applications/ Bids

2.6.1 Notwithstanding anything contained in this Section A, the Utility reserves the right to accept or reject any Application and to annul the Bidding Process and reject all Applications/ Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore. In the event that the Utility rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.6.2 The Utility reserves the right to reject any Application and/ or Bid if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by the Utility, the supplemental information sought by the Utility for evaluation of the Application.

If such disqualification/ rejection occurs after the Bids have been opened and the Lowest Bidder gets disqualified/ rejected, then the Utility reserves the right to:

- (a)
- (b) invite the remaining Bidders to match the Lowest Bidder/ submit their Bids in accordance with the Section B; or
- (c) take any such measure as may be deemed fit in the sole discretion of the Utility, including annulment of the Bidding Process.

- 2.6.3 In case it is found during the evaluation or at any time before signing of the APP or after its execution and during the period of subsistence thereof, including the contract thereby granted by the Utility, that one or more of the pre-qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Supplier either by issue of the LOA or entering into of the APP, and if the Bidder/SPV has already been issued the LOA or has entered into the APP, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this Section A, be liable to be terminated, by a communication in writing by the Utility to the Bidder, without the Utility being liable in any manner whatsoever to the Bidder and without prejudice to any other right or remedy which the Utility may have under this Section A, the Bidding Documents, the APP or under applicable law.
- 2.6.4 The Utility reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFQ. Any such verification or lack of such verification by the Utility shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Utility thereunder.

B. DOCUMENTS

2.7 Contents of the RFQ (Section A)

This RFQ comprises the Glossary; Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

Invitation for Qualification

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Criteria for Evaluation
- Section 4. Fraud & Corrupt Practices
- Section 5. Pre Application Conference
- Section 6. Miscellaneous

Appendices

- I. Letter comprising the Application
- II. Power of Attorney for signing of Application
- III. List of Application-specific Provisions

2.8 Clarifications

- 2.8.1 Bidders requiring any clarification on the RFQ may notify the Utility in writing

online at DEEP Portal and by e-mail attaching the queries in microsoft word file in accordance with Clause 1.2.12. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3 of the RFQ. The Utility shall endeavour to respond to the queries within the period specified therein, but no later than 7 (seven) days prior to the Bid Due Date. The responses will be sent by e-mail or online at the DEEP Portal. The Utility will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries or upload all the queries and its responses on the DEEP Portal.

2.8.2 The Utility shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Utility reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Utility to respond to any question or to provide any clarification.

2.8.3 The Utility may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Utility shall be deemed to be part of the RFQ. Verbal clarifications and information given by Utility or its employees or representatives shall not in any way or manner be binding on the Utility.

2.9 Amendment of RFQ

2.9.1 At any time prior to the deadline for submission of Application, the Utility may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFQ by the issuance of Addenda.

2.9.2 Any Addendum thus issued will be available at the DEEP Portal. The Bidders are advised to check the DEEP Portal for any amendments or notifications.

2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Utility may, in its sole discretion, extend the Bid Due Date.

C. PREPARATION AND SUBMISSION OF APPLICATION

2.10 Language

2.10.1 The Application and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Application may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Application, the English language translation shall prevail.

2.11 Format and signing of Application

- 2.11.1 The Bidder shall provide all the information sought under this RFQ. The Utility will evaluate only those Applications that are received in the required formats and complete in all respects. Incomplete and /or conditional Applications shall be liable to rejection.
- 2.11.2 The Bidder shall submit their Application online on the DEEP portal, signed by a valid digital signature of the authorized signatory of the Bidder.
- 2.11.3 For the documents uploaded online, the Application shall be typed or written in indelible ink. It shall be signed by the authorized signatory of the Bidder who shall also initial each page of the Bidder (including each Appendix and Annex) in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Application shall be initialed by the person(s) signing the Application. The Application shall contain page numbers.
- 2.11.4 The Bidder shall ensure that its authorized signatory has a Digital Signature Certificate (DSC).
- 2.11.5 The Bidder shall register on the DEEP Portal for participation in the Bidding Process.
- 2.11.6 The Official Copy of the Bidding Document shall be available for download on the DEEP Portal and on the website of Utility.

2.12 Sealing and Marking of Applications

- 2.12.1 The Bidder shall submit the Application in the format specified at Appendix-I and the format created online in the DEEP portal, together with the documents specified in Clause 2.12.2.
- 2.12.2 Documents required to be uploaded as per this RFQ shall contain:
- (i) Application in the prescribed format (Appendix-I) along with Annexes and supporting documents;
 - (ii) Power of Attorney for digitally signing the Application as per the format at Appendix-II;
 - (iii) copy of Memorandum and Articles of Association, if the Applicant is a body corporate;
 - (iv) copies of Applicant's (Trading Licensee and Developer both in case Applicant is a Trading Licensee) audited balance sheet and profit and loss account for the preceding three years;

- (v) if the Applicant is a Trading Licensee, a copy of the Power purchase agreement or an equivalent arrangement with the Developer;
- (vi) Omitted.; and
- (vii) a legal opinion from the legal counsel of the Applicant/Bidder/Supplier with respect to the authority of the Applicant/Bidder/Supplier to enter into the HPPA and the enforceability of the provisions thereof;
- (viii) Capacity Certificate and evidence of the capacity of the Power Station;
- (ix) any other project-specific requirement that may be specified by the Utility.

2.12.3 The Bidders shall send the hard copy of all the original documents stated at Clause 2.12.2 in an envelope clearly indicating the name and address of the Bidder, addressed to:

ATTN. OF:	
DESIGNATION:	
ADDRESS:	
PHONE NO:	
E-MAIL ADDRESS:	

Such hard copies should reach the aforementioned address within [5 days] after the opening of the Application in accordance with Clause 1.3 of this RFQ. The Bidders are notified that in case of any discrepancy in the documents uploaded online at the DEEP Portal and the hard copies submitted in accordance with this Clause 2.12.3, the documents uploaded online shall prevail.

2.12.4 If the Application is not uploaded and digitally signed as instructed above, the Utility assumes no responsibility for rejection of the Application and consequent losses, if any, suffered by the Bidder.

Applications submitted by fax or e-mail shall not be entertained and shall be rejected.

2.12.5 In the e-Tender stage, all Bidders after uploading on the DEEP Portal the Application and the Bid as per the RFP and digitally signing the same must click on "Final submit" button to finally submit their Application and Bid, without clicking the "Final submit" button the system will not consider the Application or the Bid.

2.13 Bid Due Date

2.13.1 Applications should be submitted online latest by **1400** hours IST on the Bid Due Date, at the DEEP Portal in the manner and form as detailed in this RFQ.

2.13.2 The Utility may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

2.14 Late Applications

Applications will not be accepted for submission at the DEEP Portal after the time specified on the Bid Due Date.

2.15 Modifications/ substitution/ withdrawal of Applications

2.15.1 The Bidder may modify, substitute or withdraw its application after submission, provided that such modification, substitution or withdrawal is made prior to the Bid Due Date. No Application shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date. The DEEP Portal shall provide the option to Bidders, after submission of the Application and the Bid as per this Bidding Document, to withdraw and delete the Application. Clicking on withdraw, system will withdraw the Application and no further submission will be allowed whatsoever for the Bidder(s). While clicking on delete, system will delete all the encrypted data saved on the DEEP Portal and the Bidder(s) may submit fresh Application prior to the Bid Due Date.

2.15.2 However, notwithstanding this Clause, all bids submitted in L1 Matching will be considered final and cannot be modified after the bid has been accepted by the system.

2.15.3 Any alteration/ modification in the Application or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Utility, shall be disregarded.

D. EVALUATION PROCESS

2.16 Opening and Evaluation of Applications

2.16.1 The Utility shall open the Applications at **1500** hours IST on the Bid Due Date, at the place specified in Clause 2.12.3 and in the presence of the Bidders who chooseto attend.

2.16.2 Applications which are withdrawn in accordance with Clause 2.15 shall not be opened and payments if any made shall be refunded within [7] working days in accordance with Clause 2.20.2.

2.16.3 The Utility will subsequently examine and evaluate Applications in accordance with the provisions set out in Clause 3.

2.16.4 Bidders are advised that pre-qualification of Bidders will be entirely at the discretion of the Utility. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

2.16.5 Any information contained in the Application shall not in any way be construed as binding on the Utility, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.

2.16.6 The Utility reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s) without assigning any reasons.

2.16.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Utility may, in its sole discretion, exclude the relevant project from computation of the Technical Capacity of the Bidder.

2.17 Confidentiality

2.17.1 Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Utility in relation to, or matters arising out of, or concerning the Bidding Process. The Utility will treat all information, submitted as part of Application, in confidence and will require all those who have access to such material to treat the same in confidence. The Utility may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Utility or as may be required by law or in connection with any legal process.

2.18 Tests of responsiveness

2.18.1 Prior to evaluation of Applications, the Utility shall determine whether each Application is responsive to the requirements of the RFQ. An Application shall be considered responsive if:

- (a) it is received as per format at Appendix-I.
- (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.13.2;
- (c) it is digitally signed and uploaded as stipulated in Clauses 2.11 and 2.12;
- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.4;
- (e) it contains all the information and documents (complete in all respects) as requested in this RFQ;
- (f) it contains information in formats same as those specified in this RFQ;
- (g) it contains certificates from its statutory auditors in the formats specified at Appendix-I of the RFQ for each Eligible Project;
- (h) it contains a copy of power purchase agreement or equivalent arrangement with the Developer in case the Bidder is a Trading Licensee;
- (i) it contains an attested copy of the system generated receipt or receipt of

the Utility for payments towards the cost of the Bidding Process, e-Bidding fees submitted to PFCCL as per Clause 1.2.1 and Bid Security as specified in Clause 1.2.6;

- (j) submitted the Capacity Certificate and evidence of the capacity of the Power Station;
- (k) it does not contain any condition or qualification; and
- (l) it is not non-responsive in terms hereof.

2.18.2 The Utility reserves the right to reject any Application which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Utility in respect of such Application. Provided, however, that the Utility may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Application

2.19 Clarifications

2.19.1 To facilitate evaluation of Applications, the Utility may, at its sole discretion, seek clarifications from any Bidder regarding its Application. Such clarification(s) shall be provided within the time specified by the Utility for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

2.19.2 If a Bidder does not provide clarifications sought under Clause 2.19.1 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Utility may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Utility.

E. QUALIFICATION AND BIDDING

2.20 Pre-qualification and notification

2.20.1 After the evaluation of Applications, the Utility would announce a list of pre-qualified Bidders (Bidders) whose Bid submitted online shall be opened on the date specified in accordance with Section B of this Bidding Document. At the same time, the Utility would notify the other Bidders that they have not been pre-qualified. The Utility will not entertain any query or clarification from Bidders who fail to qualify.

2.20.2 The Bid Security submitted by the Bidders who do not qualify after the evaluation of the Applications shall be refunded by the Utility, without any interest, to such Bidders within 7 working days on issuance of LOA.

2.21 Submission of Bids

The Bidders will be requested to submit a Bid online in the form and manner to be set out in Section B of the Bidding Document.

The Bids of only pre-qualified Bidders shall be opened by the Utility on such date as specified in this Bidding Document. The Utility is likely to provide a comparatively short time span for submission of the Bids for the Project. The Bidders are therefore advised to examine the Bidding Documents, and to carry out such scrutiny and studies as may be required for submitting their respective Bids for award of the Project. No extension of time is likely to be considered for submission of Bids.

2.22 Proprietary data

All documents and other information supplied by the Utility or submitted by a Bidder to the Utility shall remain or become the property of the Utility. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Application. The Utility will not return any Application or any information provided along therewith.

2.23 Correspondence with the Bidder

Save and except as provided in this Section A, the Utility shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Application.

3. CRITERIA FOR EVALUATION

3.1 Evaluation parameters

- 3.1.1 Only those Bidders who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Clause 3. Applications of Bidders who do not meet these criteria shall be rejected.
- 3.1.2 The Bidder's competence and capability is proposed to be established by the following parameters:
 - (a) Technical Capacity; and
 - (b) Financial Capacity

3.2 Technical Capacity for purposes of evaluation

- 3.2.1 Subject to the provisions of Clause 2.2, the Bidders must establish the minimum Technical Capacity specified in Clause 2.2.2 (A) (the "**Eligible Projects**"). For a power generating project to qualify as an Eligible Project, it should be owned and operated by the Bidder, and shall include a power station built and operated on PPP, BOLT, BOO, BOOT, BOT, DBFOO or on other similar basis.
- 3.2.2 The Bidder should furnish the required project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-II of Appendix-I.
- 3.2.3 In case the Bidder is a Trading Licensee, the condition under Clause 3.2 shall be fulfilled through the Developer.

3.3 Financial information for purposes of evaluation

- 3.3.1 The Application must be accompanied by the Annual Reports of the Bidder for the last 3 (three) financial years, preceding the year in which the Application is made.
- 3.3.2 In case the Annual Reports for the latest financial year are not available and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Annual Reports for 3 (three) years preceding the year for which the Annual Report is not being provided.
- 3.3.3 The Bidder must establish the minimum Net Worth specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of Appendix-I.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Utility may reject an Application without being liable in any manner whatsoever to the Bidder if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2 Without prejudice to the rights of the Utility under Clause 4.1 hereinabove, if an Bidder is found by the Utility to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or Section A issued by the Utility during a period of 2 (two) years from the date such Bidder is found by the Utility to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Utility who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the PPA or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Utility, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under this RFQ, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the APP, as the case may be, any person in respect of any matter relating to the Project or the LOA or the APP, who at any time has been or is a legal, financial or technical adviser of the Utility in relation to any matter concerning the Project;
 - (b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
 - (c) “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;

- (d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Utility with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-BID MEETING

- 5.1 A Pre-Bid meeting of the interested parties shall be convened at the designated date, time and place. A maximum of three representatives of each interested party shall be allowed to participate on production of identity.
- 5.2 During the course of Pre-Bid meeting, the Bidders will be free to seek clarifications and make suggestions for consideration of the Utility. The Utility shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.
- 5.3 In case the Utility desires to have the pre-bid meeting online at the DEEP Portal, the Pre-bid meeting will take place as per the schedule specified in this Bidding Document. A report of the Pre-Bid meeting shall be prepared online and be made available to all the participating Bidders.

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which the Utility has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Utility, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the Utility by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Application, the Bidder agrees and releases the Utility, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDIX -I

Letter Comprising the Application for Pre-Qualification to be uploaded during e-Tender Stage

To,

[The ***,

***]

Sub: Application for pre-qualification for *** Project

Dated:

Dear Sir,

With reference to your Bidding Document dated[§], I/we, having examined Section A of the Bidding Document and understood its contents, hereby submit my/our Application for Qualification for the aforesaid project. The Application is unconditional and unqualified.

2. I/ We acknowledge that the Utility will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Bidders for the aforesaid project, and we certify that all information provided in the Application and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the aforesaid Project and for sale of electricity to the Utility.
4. I/ We shall make available to the Utility any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
5. I/ We acknowledge the right of the Utility to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we and the Developer (to be inserted incase of a Trading Licensee being the Bidder)} have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

[§] All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant.

7. I/ We declare that:
 - 7.1 I/ We have examined and have no reservations to the Bidding Document, including any Addendum issued by the Utility;
 - 7.2 I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of Section A of the Bidding Document, in respect of any tender or Section B of the Bidding Document issued by or any agreement entered into with the Utility or any other public sector enterprise or any government, Central or State; and
 - 7.3 I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of Section A of the Bidding Document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to open the Bid of the Bidders, without incurring any liability to the Bidders, in accordance with Clause 2.16.6 of Section A of the Bidding Document.
9. I/ We believe that we/ satisfy the Net Worth criteria and meet all the requirements as specified in Section A of the Bidding Document and are/ am qualified to submit a Bid.
10. Omitted.
11. I/We declare that the Developer is not a Bidder or Member of any other Bidder applying for pre-qualification where I/We as Trading Licensee am/are applying for pre-qualification. (Clause Applicable only if Bidder is a Trading licensee).
12. I/ We certify that in regard to matters other than security and integrity of the country, we {and the Developer (to be inserted in case of a Trading Licensee being the Bidder)} have not been convicted by a Court or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
13. I/ We further certify that in regard to matters relating to security and integrity of the country, we {and the Developer (to be inserted in case of a Trading Licensee being the Bidder)} have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

14. I/ We further certify that no investigation by a regulatory authority is pending against us {and the Developer (to be inserted in case of a Trading Licensee being the Bidder)} or against our CEO or any of our directors/managers/ employees[§].
15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of Section A of this Bidding Document, we shall intimate the Utility of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annex-IV in Appendix-I of Section A of the Bidding Document, and duly signed, is enclosed.
17. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Utility in connection with the selection of Bidders, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
18. I/ We agree and undertake to abide by all the terms and conditions of the Bidding Document.
19. Omitted.
20. I/ We certify that in terms of Section A of the Bidding Document, [my/our Networth is Rs. (Rs. in words) and our Technical Capacity is equivalent toMW (MW in words).][§]
21. I/We offer a Capacity of {...MW[§]} from {Capacity, Name and address of the Project} which conforms to Clause 1.1.4 of Section A of the Bidding Document out of the Capacity Required of {... MW} given under Clause 1.1.1 of Section A of the Bidding Document.

In witness thereof, I/ we submit this application under and in accordance with the terms of Section A of the Bidding Document.

[§] In case the Applicant is unable to provide the certification specified in para 14, it may precede the paragraph by the words, viz. "Except as specified in Schedule **** hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Application. The Utility will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are of a nature that could cast a doubt on the ability or suitability of the Applicant to undertake the Project.

[§] To be retained only if source of fuel is from Allocated Coal Linkage arranged by the Utility.

[§] In case the Applicant is a Trading Licensee, the words in square parenthesis shall be replaced by the following "I/We certify that in terms of the RFQ our Networth is Rs. (Rs. In words) and Technical Capacity of the Developer is equivalent to MW (MW in words)"

[§] Maximum capacity offered

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)
Place: Name and seal of the Applicant

ANNEX-I
Particulars of the Bidder

1. (a) Name:

 (b) Date of commencement of business:

 (c) Address of the corporate headquarters:
2. Brief description of the Company including details of its main lines of business:
3. Particulars of individual(s) who will serve as the point of contact/
communication for the Bidder:

 (a) Name:

 (b) Designation:

 (c) Company:

 (d) Address:

 (e) Telephone Number:

 (f) E-Mail Address:

 (g) Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:

 (a) Name:

 (b) Designation:

 (c) Address:

 (d) Phone Number:

 (e) Fax Number:

5. The following information shall also be provided for the Bidder:

Name of Bidder:

No.	Criteria	Yes	No
1.	Has the Bidder {and the Developer (to be inserted in case of a Trading Licensee being the Bidder)} been barred by the Central/State Government, or any entity controlled by it, from participating in any project (BOT or otherwise)?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Application?		
3.	Has the Bidder {and the Developer (to be inserted in case of a Trading Licensee being the Bidder)} paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

6. A statement by the Bidder disclosing material non- performance or contractual non- compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

Note: In case the Bidder is a Trading Licensee, the information required at point 5 and 6 above shall be provided by the Bidder for itself and the Developer.

ANNEX-II

Technical Capacity of the Bidder[@]

(Refer to Clauses 2.2.2(A) and 3.2 of the RFQ)

Item	Refer Instruction	Particulars of the Project
Title of the project	1	
Location		
Total Project cost	3	
Installed capacity of the plant	2	
Project Type (Coal/ Gas/Hydro etc.)		
Date of completion/ Commissioning	4	

Month	Design Energy of installed capacity in kWh/ per year	Design Energy of offered capacity in kWh/ per year
April		
May		
June		
July		
August		
September		
October		
November		
December		
January		
February		
March		
Annual		

Note: It is mandatory to provide monthly Design Energy for the entire project as well as Design Energy of the offered capacity.

[@] Provide details of only those projects that have been undertaken by the Bidder under its own name. In case the Bidder is a Trading Licensee, provide details of only those projects that have been undertaken by a Developer in accordance with Clause 3.2.1.

Instructions:

1. A separate sheet should be filled for each Eligible Project.
2. The total number of units along with the details of the capacity of each unit should be provided.
3. Provide the capital cost of the Eligible Project.
4. The date of commissioning of the project, upon completion, should be indicated.
5. Certificate from the Bidder's or Developer's, as applicable, statutory auditor[§] must be furnished as per formats below for each Eligible Project.

Certificate from the Statutory Auditor regarding Eligible Projects[¶]

Based on its books of accounts and other published information authenticated by it, this is to certify that (*name of the Bidder*) is an equity shareholder in (*title of the power station*) and holds Rs. cr. (Rupees crore) of equity (which constitutes% of the total paidup and subscribed equity capital) of the project company. The project was commissioned on (*date of commissioning of the project*).

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation
of the authorized signatory)

Date:

[¶] Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFQ.

[§] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

6. In case the generating station is not under a separate SPV the following format shall be used, Certificate from the Bidder's or Developer's, as applicable, statutory auditor must be furnished as per formats below for each Eligible Project.

<p style="text-align: center;">Certificate from the Statutory Auditor regarding Eligible Projects^Φ</p> <p>Based on its books of accounts and other published information authenticated by it, this is to certify that (name of the Bidder) having its registered office atowns the.....(name of project) from(date). The project was commissioned on(date of commissioning of the project).</p> <p style="text-align: center;">Name of the audit firm:</p> <p style="text-align: center;">Seal of the audit firm:</p> <p style="text-align: right;">(Signature, name and designation of the authorised signatory)</p> <p>Date:</p>
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^Φ Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFQ.

7. Omitted.
8. In the absence of any detail in the above certificates, the information would be considered inadequate and could lead to disqualification of the project.

ANNEX-III

Financial Capacity of the Bidder (in case the Trading Licensee is the Bidder the words “and/or the Developer” shall be inserted)

(Refer to Clauses 2.2.2(B), 2.2.3(ii) and 3.3 of the RFQ)

Applicant Name	
Net Worth (In Rs. crore)	

€The Bidder should provide details of its own Financial Capacity . In case the Bidder is a Trading Licensee it should provide details of its own Financial Capacity and/or of the Developer.

Name & address of Bidder’s Bankers:

Instructions:

1. The Bidder shall attach copies of the financial statements and Annual Reports for 3 (three) years preceding the Bid Due Date. The financial statements shall:
 - (a) In case the Bidder is a Trading Licensee and is relying on the Financial Capacity of the Developer, it should reflect the financial situation of the Developer also;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Worth shall be as the net worth as per The Companies Act, 2013.
3. Year will be the latest completed financial year, preceding the bidding. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.9 the Year shall be Year immediately preceding the latest completed Financial Year.
4. The Bidder shall provide an Auditor’s Certificate specifying the net worth of the Bidder (in case the Trading Licensee is the Bidder the words “and/or of the Developer” shall be inserted) and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.3 (ii) of the RFQ document.

ANNEX-IV
Statement of Legal Capacity

(To be forwarded on the letterhead of the Bidder)

Ref.

Date:

To,

Dear Sir,

We hereby confirm that we satisfy the terms and conditions laid out in the Bidding Document.

We have agreed that (insert individual's name) will act as our representative on its behalf and has been duly authorized to submit the Application and the Bid. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised

signatory) For and on behalf of.....

ANNEX-V

Particulars of the Power Station

1. Name of the Developer, Date of commencement of business, Address of the corporate headquarters, Brief description of the Company including details of its main lines of business: [§]
2. Location of Power Station (Specify place, district and state):
3.

No. of units and installed capacity of each unit (in MW):	Existing No. of Units	Installed Capacity (in MW)	COD
	Proposed No. of Units	Installed Capacity (in MW)	COD
4. Quantum of electricity contracted with other purchasers, if any (in MW):
5. Details of surplus capacity (in MW):
6. Proposed Supply of electricity (in MW):

Signature:

Name:

Designation:

Date:

Place:

[§] In case the Bidder is a Trading Licensee, provide details of the Developer, else Not Applicable will be mentioned.

APPENDIX II
Power of Attorney for signing of Application and Bid[§]
(Refer Clause 2.2.4)

Know all men by these presents, we..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorised Mr/ Ms (name),

.... son/daughter/wife of and presently residing at..., who is presently employed with us and holding the position of , as our true and lawful attorney (hereinafter referred to

as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the ***** Project proposed or being developed by the ***** (the "Utility") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Utility, representing us in all matters before the Utility, signing and execution of all contracts including the Agreement for Procurement of Power (APP) and undertakings consequent to acceptance of our bid, and generally dealing with the Utility in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the APP with the Utility.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ... DAY OF2.....

For

....

(Signature, name, designation and address)

Witnesses:

[§] To be submitted in original.

Affixation of Common Seal

1.

(Notarised)

2

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- 1. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- 2. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as aboard or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- 3. For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

SECTION B

Request For Proposal

for

Agreement for Procurement of Power

1. INTRODUCTION⁵

1.1 Brief description of Bidding Process

- 1.1.1. The Utility has adopted a two-stage bidding process (collectively referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. The first stage (the "**e-Tender Stage**") of the process involves pre-qualification of interested parties in accordance with the provisions of the Section A and opening of the Bid of the pre-qualified and short-listed Qualified Bidders in accordance with this Section B. At the end of the e-Tender Stage, system will send an email to all Qualified Bidders which are eligible to participate in the second stage of the bidding process. The Bid shall be valid for a period of not less than 120 days (one hundred twenty days) from the Bid Due Date.
- 1.1.2. The Bidding Documents include the draft APP for the Project. Subject to the provisions of Clause 1.1.3, the aforesaid documents and any addenda issued subsequent to this RFP, will be deemed to form part of the Bidding Documents.
- 1.1.3. A Bidder is required to deposit, along with its Bid, a bid security of Rs. 5 lakh (Rupees five lakh) per MW of capacity offered by the Bidder (the "**Bid Security**"), refundable not later than 60 (sixty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the APP. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Utility or may be deposited online through NEFT/IMPS/RTGS payment. The demand draft shall be kept valid for a period not less than 180 (one hundred and eighty) days from the Bid Due Date, by submitting another demand draft before expiry of the existing demand draft and may be further extended as may be mutually agreed between the Utility and the Bidder from time to time. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.1.4. During the Bidding Process, Bidders are invited to examine the Bidding Documents in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Contract including implementation of the Project.
- 1.1.5. Bids are invited for the Project on the basis of a tariff to be offered by a Bidder for and in respect of the Project. For the purposes of evaluation hereunder, the Fixed Charge and Variable Charge shall constitute the tariff for the Power Station (the "**Tariff**"). The Fixed Charge and the Variable Charge shall each be at least 35% of the Tariff. The contract period shall be pre-determined and specified in the Bidding

Documents.

In this RFP, the term “**Lowest Bidder**” shall mean the Bidder who is offering the lowest Tariff.

- 1.1.6. In e-Reverse Auction Stage, the lowest Bid received in the e-Tender Stage shall be displayed to the Bidders on the DEEP Portal and thereafter any subsequent lowest bid in e-Reverse Auction Stage on a real time basis. During the e-Reverse Auction Stage, the Bidders will have the option of reducing the Tariff quoted by them at e-Tender Stage in their Bids in decrements of 1 (one) paise or multiples thereof and to increase/maintain the quantum quoted by them at e-Tender Stage by 1 MW or multiples thereof. At the end of the e-Reverse Auction, lowest bidder will be identified by the system, the system will check all bids received in e-Tender and e-Reverse Auction and identify the Bidder who has quoted the lowest Tariff therein (“**Lowest Bidder**”).
- 1.1.7. Generally, the Lowest Bidder shall be the Selected Bidder. The remaining Qualified Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for any reason or in case the capacity required as per Clause 1.1.1 of the RFQ is not fully met by the Lowest Bidder. All other bidders will be asked to match the Lowest Bid in the system (“**L-1 Matching**”). In L-1 Matching round, the Qualified Bidders will be displayed the bid of the Lowest Bidder (“**Lowest Bid**”) and available quantity, they will be required to input the quantity in MW that they wish to supply at the Lowest Bid. At the end of L-1 Matching round, system will allocate power to bidders in the order as they were at the end of e-Reverse Auction Stage (like L-1, L-2, L-3 cumulative in e-Tender Stage and e-Reverse Auction Stage) for the quantity bid by Lowest Bidder in Bid Stage and other bidders in L-1 Matching. It is hereby clarified that the Utility will not accept the entire capacity offered of the last Lowest Bidder in the order of progression, in the event the Capacity Required gets fulfilled by a part thereof. In the event that none of the other Qualified Bidders match the Bid of the Lowest Bidder, the Utility may, in its discretion, (i) allocate the remaining capacity, if any, after completion of L-1 Matching round to the Bidders at the Tariff quoted cumulative in e-Tender Stage and e-Reverse Auction Stage in the order as they were at the end of L-1 Matching round or (ii) invite fresh Bids from the remaining Qualified Bidders or (iii) annul the Bidding Process. Further, it is clarified that any single Bidder cannot quote part capacity from different power stations.
- 1.1.8. The Supplier shall, in consideration of its investment and services, be entitled to receive a Tariff comprising of Fixed Charge and a Variable Charge.
- 1.1.9. Details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP.

1.1.10. Any queries or request for additional information concerning this RFP shall be submitted in writing by e- mail attaching the queries in Microsoft word file so as to reach the officer designated in Clause 2.13.3 of the RFQ by the specified date. The envelopes/ communication shall clearly bear the following identification/ title:

"Queries/Request for Additional Information: RFP for ***** Project".

2. INSTRUCTIONS TO BIDDERS

A. General

2.1 General Terms of Bidding

- 2.1.1 No Bidder shall submit more than one Bid for the Project from the same Power Station.
- 2.1.2 Unless the context otherwise requires, the terms not defined in this Section B, but defined in Section A of this Bidding Document shall have the meaning assigned thereto in Section A.
- 2.1.3 The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Any variations or deviations found subsequently shall not confer any right on the Bidders, and the Utility shall have no liability whatsoever in relation to or arising out of any variations or deviations detected subsequently.
- 2.1.4 Notwithstanding anything to the contrary contained in this Section B, the detailed terms specified in the draft APP shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the APP.
- 2.1.5 The Bid should be furnished in the format at Appendix–I, clearly indicating the Bid amount in both figures and words, in Indian Rupees, and signed by the Bidder's authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.1.6 The Bid shall consist of a Tariff to be quoted by the Bidder, as per the terms and conditions of this Section B and the provisions of the APP.
- 2.1.7 The Bidder shall deposit a Bid Security as specified in Clause 1.1.3 of this RFP. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of a Bank Guarantee acceptable to the Utility, as per format at Appendix–II or through NEFT/RTGS payment online at DEEP Portal.
- 2.1.8 The validity period of the Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 60 (sixty) days from the Bid Due Date except in the case of the Selected Bidder(s) whose Bid Security shall be retained till it has provided a Performance Security under the APP.

- 2.1.9 The Bidder should submit a Power of Attorney as per the format at Appendix– III, authorising the signatory of the Bid to commit the Bidder.
- 2.1.10 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.11 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.12 The documents including this Section B and all attached documents, provided by the Utility are and shall remain or become the property of the Utility and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.12 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Utility will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.13 This Bidding Document is not transferable.
- 2.1.14 Any award of Contract pursuant to this Section B shall be subject to the terms of Bidding Document.

2.2 Change in Ownership

By submitting the Bid, the Bidder shall be deemed to have acknowledged and agreed that in the event of a change in control of the Bidder and/or the Developer (in case of the Bidder being a Trading Licensee), whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of pre- qualification under and in accordance with Section A, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Utility forthwith along with all relevant particulars about the same and the Utility may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder(s), as the case may be. In the event such change in control occurs after signing of the APP but prior to the Appointed Date of the Project, it would, notwithstanding anything to the contrary contained in the APP, be deemed to be a breach of the APP, and the same shall be liable to be terminated without the Utility being liable in any manner whatsoever to the Supplier. In such an event, notwithstanding anything to the contrary contained in the APP, the Utility shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Utility under the Bidding Documents and/ or the APP or otherwise.

2.3 Cost of Bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Utility will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.4 Verification of information

2.4.1 Bidders are encouraged to submit their respective Bids after familiarizing themselves with the information and physical conditions relevant to the Project, including the transmission capacity, applicable laws and regulations, and any other matter considered relevant by them.

2.4.2 It shall be deemed that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Utility;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Utility relating to any of the matters referred to in Clause 2.4.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.4.1 hereinabove necessary and required for
- (e) submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (f) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.4.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Utility, or a ground for termination of the APP by the Supplier; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.4.3 The Utility shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the Bidding Document or the Bidding Process, including any error or mistake therein or in any information or data given by the Utility.

2.5 Verification and Disqualification

2.5.1 The Utility reserves the right to verify all statements, information and documents submitted by the Bidder in response to the document, the RFQ or RFP and the Bidder shall, when so required by the Utility, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by the Utility shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Utility thereunder.

2.5.2 The Utility reserves the right to reject any Bid and appropriate the Bid Security if

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by the Utility, the supplemental information sought by the Utility for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If such disqualification / rejection occurs after the Bids have been opened and the Lowest Bidder gets disqualified / rejected, then the Utility reserves the right to:

- (i) invite the remaining Qualified Bidders to submit their Bids in accordance with Clause 4.4; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Utility, including annulment of the Bidding Process.

2.5.3 In case it is found during the evaluation or at any time before signing of the APP or after its execution and during the period of subsistence thereof, including the Contract thereby granted by the Utility, that one or more of the pre-qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Supplier either by issue of the LOA or entering into of the APP, and if the Selected Bidder has already been issued the LOA or has entered into the APP, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this Section B, be liable to be terminated, by a communication in writing by the Utility to the Selected Bidder or the Supplier, as the case may be, without the Utility being liable in any manner whatsoever to the Selected Bidder or Supplier. In such an event, the Utility shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Utility under the Bidding Documents and/ or the APP, or otherwise.

B. DOCUMENTS

2.6 Contents of the RFP

- 2.6.1 This RFP comprises the Glossary, Disclaimer, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.8.

Invitation for Bids

Section 1.	Introduction
Section 2.	Instructions to Bidders
Section 3.	Evaluation of Bids
Section 4.	Miscellaneous

Appendices

- I. Letter comprising the Bid
- II. Bank Guarantee for Bid Security
- III. Power of Attorney for signing of Bid

- 2.6.2 The draft APP provided by the Utility as part of the Bidding Documents shall be deemed to be part of this Document.

2.7 Clarifications

- 2.7.1 Bidders requiring any clarification on the RFP may notify the Utility in writing [online at the DEEP Portal or by speed post/courier and e-mail attaching the queries in Microsoft word file in accordance with Clause 1.1.9]. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3 of the RFQ. The Utility shall endeavour to respond to the queries within the period specified therein, but no later than 7 (seven) working days prior to the Bid Due Date. The responses will be sent by e-mail. The Utility will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.
- 2.7.2 The Utility shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Utility reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Utility to respond to any question or to provide any clarification.
- 2.7.3 The Utility may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Utility shall be deemed to be part of the Bidding Document. Verbal clarifications and information given by Utility or its employees or representatives shall not in any way or manner be binding on the Utility.

2.8 Amendment of RFP

- 2.8.1 At any time prior to the Bid Due Date, the Utility may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.8.2 Any Addendum issued hereunder will be in writing and shall be available at the DEEP Portal. The Bidders are advised to check the DEEP Portal for any amendments or notifications.
- 2.8.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Utility may, in its sole discretion, extend the Bid Due Date.

C. PREPARATION AND SUBMISSION OF BIDS

2.9 Format and Signing of Bid

- 2.9.1 The Bidder shall provide all the information sought under this RFP. The Utility will evaluate only those Bids that are received in the required formats on the DEEP Portal and complete in all respects.
- 2.9.2 The Bid shall be uploaded and submitted only on the DEEP Portal, signed by a valid digital signature of the authorized signatory of the Bidder. No hard copies of the same shall be separately submitted, unless as otherwise provided herein. All documents shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.

2.10 Sealing and Marking of Bids

- 2.10.1 The Bidder shall submit the Bid in the format specified herein at the DEEP Portal only.
- 2.10.2 The documents accompanying the Bid shall be submitted in original to the designated contact mentioned at Clause 2.12.3 of the RFQ. The documents shall include:
 - (a) Letter comprising the Bid at Appendix-I;
 - (b) Bid Security in the format at Appendix-II;
 - (c) Power of Attorney for signing of Bid in the format at Appendix-III; and
 - (d) A copy of draft APP with each page initialed by the person signing the Bid in

pursuance of the Power of Attorney referred to in Clause (c) hereinabove.

2.10.3 A true copy of the documents accompanying the Bid, as specified in Clause 2.10.2 (a), (b), (c) and (d) above, shall be uploaded together and a copy of draft APP as specified in Clause 2.10.2 (d) shall be uploaded separately. The pages in copy shall be numbered serially and every page shall be initialled in blue ink by the authorised signatory of the Bidder.

2.10.4 The Bidders shall send the hard copy of all the original documents stated at Clause 2.10.2 in an envelope clearly indicating the name and address of the Bidder, addressed to the designated contact mentioned at Clause 2.12.3 of the RFQ.

Such hard copies should reach the aforementioned address within [5 days] after the opening of the Application in accordance with Clause 1.3 of the RFQ. The Bidders are notified that in case of any discrepancy in the documents uploaded online at the DEEP Portal and the hard copies submitted in accordance with this Clause 2.10.4, the documents uploaded online shall prevail.

2.10.5 If the Bids are not uploaded and signed as instructed above, the Utility assumes no responsibility for rejection of the Bid submitted and consequent losses, if any, suffered by the Bidder.

2.10.6 Bids submitted by fax or e-mail shall not be entertained and shall be rejected.

2.10.7 In the Bid stage, all Bidders after uploading on the DEEP Portal the Application and the Bid as per the RFP and digitally signing the same must click on 'Final submit' button to finally submit their Application and Bid, without clicking the 'Final submit' button the system will not consider the Application or the Bid.

2.11 Bid Due Date

2.11.1 Bids should be submitted online latest by the Bid Due Date and time specified on the DEEP Portal in the manner and form as detailed in this Section B. A system generated email shall be sent to the Bidder as a receipt thereof.

2.11.2 The Utility may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.8 uniformly for all Bidders.

2.12 Late Bids

Applications will not be accepted for submission at the DEEP Portal after the time specified on the Bid Due Date.

2.13 Contents of the Bid

2.13.1 The Bid shall be furnished in the format at Appendix–I and shall consist of a Tariff to be quoted by the Bidder. The Bidder shall specify in Indian Rupees the Tariff to undertake the Project in accordance with this RFP and the provisions of the APP.

2.13.2 Generally, the Project will be awarded to the Lowest Bidder after the completion of process under Clause 1.1.6 above.

2.13.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this Section B.

2.13.4 The draft APP shall be deemed to be part of the Bid.

2.14 Modifications/ Substitution/ Withdrawal of Bids

2.14.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that such modification, substitution or withdrawal is made prior to the Bid Due Date. The DEEP Portal shall provide the option to Bidders, after submission of the Bid as per this Bidding Document, to withdraw and delete Bids. Clicking on withdraw Bid, will withdraw the Bidder's Bid and no further submission will be allowed whatsoever. While clicking on Delete Bid, will delete all the encrypted data saved on the DEEP Portal and the Bidder may submit fresh Bids prior to the Bid Due Date.

2.14.2 However notwithstanding this Clause, all Bids submitted in L1 Matching round will be considered final and cannot be modified after the bid has been accepted by the system. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

2.14.3 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Utility, shall be disregarded.

2.15 Rejection of Bids

2.15.1 Notwithstanding anything contained in this Section B, the Utility reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Utility rejects or annuls all the Bids, it may, in its discretion, invite all Qualified Bidders to submit fresh Bids hereunder.

2.15.2 The Utility reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.16 Validity of Bids

The Bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Utility.

2.17 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Utility in relation to, or matters arising out of, or concerning the Bidding Process. The Utility will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Utility may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the Utility or as may be required by law or in connection with any legal process.

2.18 Correspondence with the Bidder

Save and except as provided in this Section B, the Utility shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

B. BID SECURITY

2.19 Bid Security

2.19.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.7 and 2.1.8 hereinabove in the form of a bank guarantee or e-bank guarantee issued by a nationalized bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crores (Rs. one thousand crore), in favor of the Utility in the format at Appendix-II (the "Bank Guarantee") and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.

2.19.2 Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Utility and payable at Kolkata (the "**Demand Draft**") or may be payable online to Utility through NEFT/IMPS/RTGS payment. The Utility shall not be liable to pay any interest on the Bid Security deposit so made and the same

shall be interest free.

2.19.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Utility as non-responsive.

2.19.4 Save and except as provided in Clauses 1.1.3 above, the Bid Security of unsuccessful Bidders will be returned by the Utility, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Utility, and in any case within 60 (sixty) days from the Bid Due Date. Where Bid Security has been paid by demand draft, the refund thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Utility give the name and address of the person in whose favour the said demand draft shall be drawn by the Utility for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

2.19.5 The Selected Bidder's Bid Security will be returned, without any interest, upon the Supplier signing the APP and furnishing the Performance Security in accordance with the provisions thereof. The Utility may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the APP.

2.19.6 The Utility shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.19.7 herein below. The Bidder, by submitting its Bid pursuant to this Section B, shall be deemed to have acknowledged and confirmed that the Utility will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this Section B. No relaxation of any kind on Bid Security shall be given to any Bidder.

2.19.7 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Utility under the Bidding Documents and/ or under the APP, or otherwise, if:

- a. a Bidder submits a non-responsive Bid;
- b. a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this Section B;
- c. a Bidder withdraws its Bid during the period of Bid validity as specified in this SECTION B and as extended by mutual consent of the respective Bidder(s) and the Utility;
- d. the Selected Bidder fails within the specified time limit-

- i. to sign and return the duplicate copy of LOA;
 - ii. to sign the APP; or
 - iii. to furnish the Performance Security within the period prescribed therefor in the APP; or
- e. the Selected Bidder, having signed the APP, commits any breach thereof prior to furnishing the Performance Security.

3. EVALUATION OF BIDS

3.1 Opening and Evaluation of Bids

- 3.1.1 The Utility shall open the Bids at **** hours on the Bid Due Date.
- 3.1.2 The Utility will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Clause 3.
- 3.1.3 To facilitate evaluation of Bids, the Utility may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.2 Tests of responsiveness

- 3.2.1 Prior to evaluation of Bids, the Utility shall determine whether each Bid is responsive to the requirements of this Section B. A Bid shall be considered responsive only if:
 - a. it is received as per the format at Appendix-I;
 - b. it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.11.1;
 - c. it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.9 and 2.10;
 - d. it is accompanied by the Bid Security as specified in Clause 1.1.3;
 - e. it is accompanied by the Power(s) of Attorney as specified in Clause 2.1.9;
 - f. it contains all the information (complete in all respects) as requested in this Section B and/or Bidding Documents (in formats same as those specified);
 - g. it does not contain any condition or qualification; and
 - h. it is not non-responsive in terms hereof.
- 3.2.2 The Utility reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Utility in respect of such Bid. Provided, however, that the Utility may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.

4. e-Reverse Auction

4.1 After the opening of the Bids of the Bidders who have qualified in the evaluation of their Applications, the system will rank the Bidders according to their Tariffs quoted in their Bids. The Bidder with the highest Tariff in the Bid will be called the “H1 Bidder”. The system will then analyze all the capacity of electricity (in MW) offered by the Bidders in the e-Tender Stage. If the total quoted capacity is greater than twice the Capacity Required by the Utility, the H1 Bidder will be eliminated provided that the total quoted capacity after elimination is not less than or equal to twice the Capacity Required.

4.2 The shortlisted Bidders after elimination in e-Tender stage will be intimated individually by system generated emails only. The e-Reverse Auction shall start within 120 minutes of opening of the RFP bids and shall continue for a period of next 120 minutes with auto extension of 10 minutes, as applicable.

Provided that during the last 10 (ten) minutes before the scheduled close time of e-Reverse auction, if a price bid is received which is lower than the lowest prevailing price bid recorded in the system during e-Reverse auction, the close time of e-Reverse auction will be automatically extended by 10 (ten) minutes from the time of the last price bid received. This process of auto extension will continue till there is a period of 10 (ten) minutes during which no price bid is received which is lower than the prevailing lowest price bid.

4.3 During the e-Reverse Auction Stage, the Bidders will have the option of reducing the Tariff quoted by them at e-Tender Stage in their Bids in decrements of 1 (one) paise or multiples thereof and to increase/maintain the quantum of capacity quoted by them at e-Tender Stage by 1 MW or multiples thereof.

4.4 After the completion of e-Reverse Auction, the prevailing lowest Tariff would be visible to all the Bidders (“**Lowest Tariff**”) and a time period of 30 minutes shall be given to all the Bidders qualified at e-Tender Stage for matching the Lowest Tariff (“**L-1 Matching**”). The Bidders matching the Lowest Tariff will also be required to give the break-up of the Tariff. The list after completion of L-1 Matching would also include the name, quantum offered and Tariff quoted by those qualified Bidder(s) who have not changed the quantum of electricity and Tariff from e-Tender stage to e-Reverse Auction stage.

5. SELECTION OF BIDDER

- 5.1 Subject to the provisions of Clause 2.15.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2.1 and who quotes the Lowest Tariff offered to the Utility after Bid Stage, in conformity with the provisions of Clause 4.8 shall be declared as the selected Bidder(s) (the "**Selected Bidder(s)**"). In the event that the Utility rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 5.2 In the event that two or more Bidders quote the same Tariff for (a) the full Capacity Required; (b) one full Capacity Required and other part of the Capacity Required; (c) Capacity totalling more than the Capacity Required; and (d) Capacity totalling to the Capacity Required; (e) equal capacity offered but not upto full quantum and Capacity totaling more than the Capacity Required (the "**Tie Bidders**"), the Utility shall identify the Selected Bidder under (a) the time of submission of the Bid will be the deciding factor for their ranking with the Bidder submitting the Bid earlier given the priority; under (b) by declaring the Bidder who has offered full Capacity Required as the Selected Bidder; under (c) by declaring the Bidder with maximum Capacity as first Selected Bidder and other Bidder as second Selected Bidder with remaining Capacity under (d) by declaring both the Bidders as the Selected Bidder with respective Capacity and under (e) the time of submission of the Bid will be the deciding factor for their ranking with the Bidder submitting the Bid earlier will be declared as first Selected Bidder for full Capacity offered and other Bidder as second Selected Bidder with remaining Capacity.
- 5.3 In the event that the Lowest Bidder withdraws or is not selected for any reason in the first instance or the capacity required is not met by the Lowest Bidder (the "**first round of bidding**"), the Utility may invite all the remaining Qualified Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Lowest Bidder (the "**second round of bidding**"). If in the second round of bidding (i.e. L-1 Matching), only one Qualified Bidder matches the Lowest Bidder, it shall be the Selected Bidder. If two or more Qualified Bidders match the said Lowest Bidder in the second round of bidding, then the Bidder whose Bid was lower as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth lowest Bidders in the first round of bidding offer to match the said Lowest Bidder in the second round of bidding, the said third lowest Bidder shall be the Selected Bidder. It is hereby clarified that the Utility will not accept the entire capacity offered of the last Lowest Bidder in the order of progression, in the event the Capacity Required gets fulfilled by a part thereof. The Bidder will have the option to indicate their minimum threshold quantity and the same would be considered for allocation of electricity to the Selected Bidder(s).

- 5.4 In the event that no Qualified Bidder offers to match the Lowest Bidder in the second round of bidding as specified in Clause 4.3, the Utility may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Qualified Bidders except the Lowest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Qualified Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are lower than the Bid of the second lowest Bidder in the first round of bidding.
- 5.5 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Utility to the Selected Bidder and the Selected Bidder shall, within 7 (seven) working days of the issuance of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Utility may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 5.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Supplier to execute the APP within the period prescribed in Clause 1.1.3 of the RFQ. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the APP.

5.6A Omitted.

5.7 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Utility makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Utility and/ or their employees/ representatives on matters related to the Bids under consideration.

5.8 Bid Parameter

- 5.8.1 The Bid shall comprise the Tariff offered by the Bidder for production and supply of electricity to the Utility in accordance with the provisions of the APP. The Fixed Charge and the Variable Charge shall each be at least 35% of the Tariff. The Tariff comprising the Bid shall be offered in accordance with the provisions of Clause

5.8.2 Supply from Hydro-electric Power Station

The Bidder shall quote a Variable Charge comprising the generating cost of electricity, the transmission charges and the transmission losses. Based on its Bid, a lumpsum tariff shall be paid to the Supplier comprising of (a) a Variable Charge, and
(b) a Fixed Charge as per the provisions of Clause 12.3.1 of the APP. The Tariff shall be revised as per the terms of the APP. The Bid for the Project shall, therefore, comprise the Fixed Charge and the Variable Charge and the Bidder seeking the lowest Tariff shall be the Selected Bidder.

6. MISCELLANEOUS

- 6.1. The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which the Utility has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2. The Utility, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/ or evidence submitted to the Utility by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3. It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Utility, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 6.4. The Section B and Section A are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Section B, in the event of any conflict between them the priority shall be in the following order:
- (a) the Section B;
 - (b) the Section A.

i.e. the Section B at (a) above shall prevail over the Section A at (b) above.

APPENDIX – I

Letter comprising the Bid

(Refer Clauses 2.1.5 and 2.13 in section B, signed copy to be submitted to Utility and uploaded with Bid)

Dated:

[The,

.....

.....

Sub: Bid for..... Project

Dear Sir,

1. With reference to your Bidding Document dated, comprising of the RFQ & RFP, I/we, having examined the Bidding Document and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Utility will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Supplier for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Supplier for the development, construction, operation and maintenance of the aforesaid Project and for sale of electricity to the Utility.
4. I/ We shall make available to the Utility any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Utility to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we and the Developer (to be inserted in case of a Trading Licensee being the Bidder) have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:

7.1 I/ We have examined and have no reservations to the Bidding Document,

including any Addendum issued by the Utility; and

- 7.2 I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4 of Section A of the Bidding Document, in respect of any tender or Section B issued by or any agreement entered into with the Utility or any other public sector enterprise or any government, Central or State; and
- 7.3 I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of Section A of the Bidding Document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
- 7.4 the undertakings given by us along with the Application in response to the Section A for the Project were true and correct as on the date of making the Application and are also true and correct as on the Bid Due Date and I/we shall continue to abide by them.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.15 of Section B of the Bidding Document.
9. I/ We believe that we satisfy the Net Worth criteria and meet the requirements as specified in Section A of the Bidding Document.
10. Omitted.
11. I/We declare that the Developer is not a Bidder or Member of any other Bidder applying for pre-qualification where I/We as Trading Licensee am/are applying for pre-qualification. [§]
12. I/ We certify that in regard to matters other than security and integrity of the country, we {and the Developer (to be inserted in case of a Trading Licensee being the Bidder)} have not been convicted by a Court or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
13. I/ We further certify that in regard to matters relating to security and integrity of the country, we {and the Developer (to be inserted in case of a Trading Licensee being the Bidder)} have not been charge-sheeted by any agency of the Government or convicted by a Court.
14. I/ We further certify that no investigation by a regulatory authority is pending either against us {and the Developer (to be inserted in case of a Trading Licensee being the Bidder)} or against our CEO or any of our directors/ managers/ employees[§].

§ Applicable only if the Applicant is a Trading Licensee.

§ In case the Applicant is unable to provide the certification specified in para 14, it may precede the paragraph by the words, viz. "Except as specified in Schedule **** hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Application. The Utility will consider the contents of such Schedule

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Utility of the same immediately.
16. I/ We acknowledge and agree that in the event of a change in control of Bidder {and/or the Developer (to be inserted in case of a Trading Licensee being the Bidder) whose Technical Capacity and Financial Capacity} was taken into consideration for the purposes of pre-qualification under and in accordance with Section A, I/We shall inform the Utility forthwith along with all relevant particulars and the Utility may, in its sole discretion, disqualify or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the APP but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the APP shall be liable to be terminated without the Utility being liable to us in any manner whatsoever.
17. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Utility in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above-mentioned Project and the terms and implementation thereof.
18. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a APP in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
19. I/ We have studied all the Bidding Documents carefully and also surveyed the Site. We understand that except to the extent as expressly set forth in the APP, we shall have no claim, right or title arising out of any documents or information provided to us by the Utility or in respect of any matter arising out of or relating to the Bidding Process including the award of Contract.
20. I/ We offer a Bid Security of Rs..... (Rupees.....only) to the Utility in accordance with Section B of the Bidding Document.
21. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.¹⁹
22. The documents accompanying the Bid, as specified in Clause 2.10.2 of Section B of the Bidding Document, have been submitted online at the e-Bidding Portal.

and determine whether or not the exceptions/disclosures are of a nature that could cast a doubt on the ability or suitability of the Applicant to undertake the Project.

¹⁹ In case the Bid Security is submitted online, a receipt of the same shall be submitted.

23. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Document. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Contract is not awarded to me/us or our Bid is not opened or rejected.
24. The Tariff has been quoted by me/us after taking into consideration all the terms and conditions stated in the bidding document, draft APP, our own estimates of costs and revenues, and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.
25. I/ We agree and undertake to abide by all the terms and conditions of the Bidding Document.
26. I/ We undertake to feed electric supply into the grid at a point that is economical and efficient, as determined by the RLDC or SLDC, as the case may be.
27. I/ We undertake to bear the transmission charges and transmission losses upto the point of delivery of electricity to the Utility from out of the Tariff offered below and in accordance with the terms to be set forth in the APP.
28. I/We offer a Capacity of {...MW} from {Capacity, Name and address of the Project} which conforms to Clause 1.1.4 of Section A of the Bidding Document out of the Capacity Required of {... MW} given under Clause 1.1.1 of Section A of the Bidding Document.
29. I/ We shall keep this offer valid for 120 (one hundred twenty) days from the Bid Due Date specified in the Bidding document.
30. I/ We hereby submit the following Bid²⁰ and offer, as on the Bid Due Date, in accordance with the provisions of the APP and Clause 4.8 of this RFP: ²¹

(a) A Tariff of Rs....and paise...[§] (Rupees....and paise...) per kWh comprising a Fixed Charge of Rs....and paise....[§] (Rupees....and paise....) per kWh and a Variable Charge of Rs.....and paise.....[§] (Rupeesand paise) per kWh

In witness thereof, I/we submit this Bid under and in accordance with the terms of this document.

Yours faithfully,

Place:

Date: (Signature, name and designation of the Authorised signatory)

Name and seal of
Bidder
/

APPENDIX – II

Bank Guarantee for Bid Security (Refer Clauses 2.1.7 and 2.19.1)

B.G. No. Dated:

1. In consideration of you, *****, having its office at *****, (hereinafter referred to as the “Utility”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of(a company registered under the Companies Act, 1956/2013) and having its registered office at ((hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the Project (hereinafter referred to as the “Project”) pursuant to the Bidding Document dated issued in respect of the Project and other related documents including without limitation the draft Agreement for Procurement of Power (the “APP”) (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.1.7 read with Clause 2.1.8 of Section B of the Bidding Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Document (including the RFP) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Utility an amount of Rs. ***** (Rupees ***** only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Utility stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Utility is disputed by the Bidder or not, merely on the first demand from the Utility stating that the amount claimed is due to the Utility by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. ***** (Rupees ***** only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Utility and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Utility shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Utility that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Utility and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Utility shall be entitled to treat the Bank as the principal debtor. The Utility shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Utility, and the Bank shall not be released from its liability under these presents by any exercise by the Utility of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Utility or any indulgence by the Utility to the said Bidder or by any change in the constitution of the Utility or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which

shall be deemed to have been duly authorised to receive the said notice of claim.

10. It shall not be necessary for the Utility to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Utility may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Utility in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to executethis Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank"s liability under this Guarantee shall be restricted to Rs. *** crore (Rupees ***** crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Utility serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days from the Bid Due Date)].

Signed and Delivered by Bank
By the hand of Mr./Ms, its .. and authorised official.

(Signature of the Authorised Signatory)
(Official Seal)

APPENDIX – III
Power of Attorney for signing of Bid
(Refer Clause 2.1.9)

Know all men by these presents, We, ... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./Ms (Name), son/daughter/wife of ... and presently residing at, who is presently employed with us and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the

***** Project proposed or being developed by the ***** (the "Utility") including but not limited to signing and submission of all applications, Bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Utility, representing us in all matters before the Utility, signing and execution of all contracts including the Agreement for Procurement of Power (APP) and undertakings consequent to acceptance of our Bid, and generally dealing with the Utility in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the APP with the Utility.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, ..., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20...

For.....

(Signature, name, designation and address)

Affixation of Common Seal

Witnesses

:

1.

SBD/Medium Term/ FOO/ 29.01.2019

2.

Accepted

Notarised

(Signature, name, designation and address of the Attorney)

Notes:

- 1. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common sealaffixed in accordance with the required procedure.*
- 2. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ powerof attorney in favour of the person executing this Power of Attorney for the delegationof power hereunder on behalf of the Bidder.*
- 3. For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate*

