

Selection of Developers by CESC Limited, Kolkata for Setting up of 150 MW ISTS-connected Wind-Solar Hybrid Power Projects in India through Tariff-Based Competitive Bidding with Greenshoe Option up to 150 MW

RfS No. ED(PM)/2024-25/382 dated 08.11.2024

Tender Search Code on ISN-ETS: CESC-2024- TN000002

Addendum-2

19.11.2024

Some Modified Formats of the Rfs No. ED(PM)/2024-25/382 dated 08.11.2024

FORMAT FOR POWER OF ATTORNEY

(Applicable Only in case of Consortium)

(To be provided by each of the other members of the Consortium in favour of the Lead Member)

(To be stamped in accordance with Indian Stamp Act, the Non-Judicial Stamp Paper of Appropriate Value)

KNOW ALL MEN BY THESE PRESENTS THAT M/s _____ having its registered office at _____, _____, and M/s _____ having its registered office at _____, (Insert names and registered offices of all Members of the Consortium) the Members of Consortium have formed a Bidding Consortium named _____ (insert name of the Consortium if finalized) (hereinafter called the 'Consortium') vide Consortium Agreement dated _____ and having agreed to appoint M/s _____ as the Lead Member of the said Consortium do hereby constitute, nominate and appoint M/s _____ a company incorporated under the laws of the Companies Act, 2013 and _____ having _____ its Registered/Head Office _____ at _____ as our duly constituted lawful Attorney (hereinafter called as Lead Member) to exercise all or any of the powers for and on behalf of the Consortium in regard to submission of the response to RfS No.....(herein after RfS)

We, hereby further authorize the said Lead Member to undertake the following acts:

- i) To submit on behalf of Consortium Members response to RfS.
- ii) To do any other act or submit any information and document related to the above response to RfS .

It is expressly understood that in the event of the Consortium being selected as Successful Bidder, this Power of Attorney shall remain valid, binding and irrevocable until the Bidding Consortium achieves execution of PPA.

We, as the Member of the Consortium agree and undertake to ratify and confirm all whatsoever the said Attorney/Lead Member has done on behalf of the Consortium Members pursuant to this Power of Attorney and the same shall bind us and deemed to have been done by us.

IN WITNESS WHEREOF M/s _____, as the Member of the Consortium have executed these presents on this _____ day of _____ under the Common Seal of our company. For and on behalf of Consortium Member

M/s.....

_____ (Signature of person authorized by the board)

(Name Designation Place: Date:)

Accepted

(Signature, Name, Designation and Address of the person authorized by the board of the Lead Member)

Attested

(Signature of the executant)

(Signature & stamp of Notary of the place of execution)

Place:

Date:

Lead Member in the Consortium shall have the controlling shareholding in the Company as defined in Section-6, Definition of Terms of the RfS.

FORMAT FOR BOARD RESOLUTION

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD/COMMITTEE OF DIRECTORS OF..... AT ITS MEETING HELD ON.....

The Board, after discussion, approved the participation in the Bid vide Rfs No.....by passing the following Resolution:

RESOLVED THAT the Board do hereby approves in the participation of the Bid for setting up of 150 MW ISTS-connected Wind-Solar Hybrid Power Projects in India through Tariff-Based Competitive Bidding with Greenshoe Option up to 150 MW vide RfS.No..... as per the Bid document placed before the Board and initialled by the Company Secretary/Director for the purposes of identification;

RESOLVED FURTHER THAT Mr./ Ms. _____, be and are hereby severally authorized to do on our behalf, all such acts, deeds and things necessary in connection with or incidental to Bid as above, including signing, execution and submission of all documents, agreements, papers and provide information/in response to RfS to CESC Limited (CESC), represen in all matters before CESC, and generally dealing with all matters in connection with the said Bid; *(To be provided by the Bidding Company or the Lead Member of the Consortium)*

FURTHER RESOLVED THAT pursuant to the provisions of the Companies Act, 2013 and such other applicable laws, read with the Memorandum and Articles of Association of the Company, approval of the Board be and is hereby accorded to invest in in the Project and Mr./ Ms. _____, be and are hereby severally authorized to determine the nature and quantity of investment as may be required for the project under RfS;

[Note: In the event the Bidder is a Bidding Consortium, in place of the above resolution at Sl. No. 2, the following resolutions are to be provided]

FURTHER RESOLVED THAT pursuant to the provisions of the Companies Act, 2013, as applicable and compliance thereof and as permitted under the Memorandum and Articles of Association of the Company, approval of the Board be and is hereby accorded to invest (-----%) equity [*Insert the % equity commitment as specified in Consortium Agreement*] including the additional investment to the extent becoming necessary towards the total equity share required for participation in the Project (To be provided by each Member of the Bidding Consortium including Lead Member such that total equity is 100%) (not required in case of the bidder is a sole bidder);

FURTHER RESOLVED THAT approval of the Board be and is hereby accorded to contribute such additional amount over and above the percentage limit (specified for the Lead Member in the Consortium Agreement) to the extent becoming necessary towards the total equity share in the Project Company, obligatory on the part of the Consortium pursuant to the terms and conditions contained in the Consortium Agreement dated _____ executed by the Consortium as per the provisions of the RfS.
[To be passed by the Lead Member of the Bidding Consortium]

RESOLVED FURTHER THAT any Director or the Company Secretary be and is hereby authorised to issue the certified copy of the Resolution to CESC or to such authority as may be required from time to time.”

Certified True Copy

(Signature, Name and Stamp of Company Secretary)

Notes:

- 1) This certified true copy should be submitted on the letterhead of the Company, signed by the Company Secretary/ Director.
- 2) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.
- 3) This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to the Companies Act, 2013 as applicable may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing Company and the authorizations granted therein are true and valid.

FORMAT FOR CONSORTIUM AGREEMENT

(To be stamped in accordance with Stamp Act, the Non-Judicial Stamp Paper of Appropriate Value)

THIS Consortium Agreement (“Agreement”) executed on this Day of _____ Two Thousand between M/s _____ [Insert name of Lead Member] a Company incorporated under the laws of _____ and having its Registered Office at _____ (hereinafter called the “Member-1”, which expression shall include its successors, executors and permitted assigns) and M/s _____ a Company incorporated under the laws of _____ and having its Registered Office at _____ (hereinafter called the “Member-2”, which expression shall include its successors, executors and permitted assigns), M/s _____ a Company incorporated under the laws of _____ and having its Registered Office at _____ (hereinafter called the “Member-n”, which expression shall include its successors, executors and permitted assigns), [The Bidding Consortium should list the details of all the Consortium Members] for the purpose of submitting response to RfS and execution of Power Purchase Agreement (in case of award), against RfS No. _____ dated _____ issued by CESC Limited a Company incorporated under the Companies Act, 2013, and having its Registered Office at _____.

WHEREAS, each Member individually shall be referred to as the “Member” and all of the Members shall be collectively referred to as the “Members” in this Agreement.

WHEREAS CESC desires to purchase Power under RfS for _____ (insert title of the RfS);

WHEREAS, CESC had invited response to RfS vide its Request for Selection (RfS) dated _____

WHEREAS the RfS stipulates that in case response to RfS is being submitted by a Bidding Consortium, the Members of the Consortium will have to submit a legally enforceable Consortium Agreement in a format specified by CESC wherein the Consortium Members have to commit equity investment of a specific percentage for the Project.

NOW THEREFORE, THIS AGREEMENT WITNESSTH AS UNDER:

In consideration of the above premises and agreements all the Members in this Bidding Consortium do hereby mutually agree as follows:

1. We, the Members of the Consortium and Members to the Agreement do hereby unequivocally agree that Member-1 (M/s _____), shall act as the Lead Member as defined in the RfS for self and agent for and on behalf of Member-2, _____ Member-n and to submit the response to the RfS.
2. The Lead Member is hereby authorized by the Members of the Consortium and Members to the Agreement to bind the Consortium and receive instructions for and on their behalf.

3. Notwithstanding anything contrary contained in this Agreement, the Lead Member shall always be liable for the equity investment obligations of all the Consortium Members i.e. for both its own liability as well as the liability of other Members.
4. The Lead Member shall be liable and responsible for ensuring the individual and collective commitment of each of the Members of the Consortium in discharging all of their respective equity obligations. Each Member further undertakes to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged in this Agreement.
5. Subject to the terms of this Agreement, the share of each Member of the Consortium in the issued equity share capital of the Project Company is/shall be in the following proportion:

Name	Percentage
Member 1	---
Member 2	---
Member n	---
Total	100%

6. We acknowledge that after the execution of PPA, the combined shareholding in the SPV/Project Company shall not fall below 51% (fifty one percent) at any time prior to 1 (one) year after the SCSD, except with the prior approval of CESC.
7. The Lead Member, on behalf of the Consortium, shall inter alia undertake full responsibility for liaising with Lenders or through internal accruals and mobilizing debt resources for the Project, and ensuring that the Seller achieves Financial Closure and commencement of power supply in terms of the PPA.
8. In case of any breach of any equity investment commitment by any of the Consortium Members, the Lead Member shall be liable for the consequences thereof.
9. Except as specified in the Agreement, it is agreed that sharing of responsibilities as aforesaid and equity investment obligations thereto shall not in any way be a limitation of responsibility of the Lead Member under these presents.
10. It is further specifically agreed that the financial liability for equity contribution of the Lead Member shall not be limited in any way so as to restrict or limit its liabilities. The Lead Member shall be liable irrespective of its scope of work or financial commitments.

11. This Agreement shall be construed and interpreted in accordance with the Laws of India and courts at Kolkata alone shall have the exclusive jurisdiction in all matters relating thereto and arising thereunder.
12. It is hereby further agreed that in case of being selected as the Successful Bidder, the Members do hereby agree that they shall furnish the Performance Guarantee in favour of CESC in terms of the RfS.
13. It is further expressly agreed that the Agreement shall be irrevocable and shall form an integral part of the Power Purchase Agreement (PPA) and shall remain valid until the expiration or early termination of the PPA in terms thereof, unless expressly agreed to the contrary by CESC.
14. The Lead Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Members respectively from time to time in the response to RfS.
15. It is hereby expressly understood between the Members that no Member at any given point of time, may assign or delegate its rights, duties or obligations under the PPA except with prior written consent of CESC.
16. This Agreement
 - a) has been duly executed and delivered on behalf of each Member hereto and constitutes the legal, valid, binding and enforceable obligation of each such Member;
 - b) sets forth the entire understanding of the Members hereto with respect to the subject matter hereof; and
 - c) may not be amended or modified except in writing signed by each of the Members and with prior written consent of CESC.
17. All the terms used in capitals in this Agreement but not defined herein shall have the meaning as per the RfS and PPA.

IN WITNESS WHEREOF, the Members have, through their authorized representatives, executed these presents on the Day, Month and Year first mentioned above.

For M/s _____[Member 1]

(Signature, Name & Designation of the person authorized vide Board Resolution
Dated _____)

Witnesses:

<p>1) Signature</p> <p>Name:</p> <p>Address:</p>	<p>2) Signature</p> <p>Name:</p> <p>Address:</p>
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For M/s _____ [Member 2]

(Signature, Name & Designation of the person authorized vide Board Resolution Dated _____)

Witnesses:

<p>1) Signature -----</p> <p>Name:</p> <p>Address:</p>	<p>2) Signature -----</p> <p>Name:</p> <p>Address:</p>
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For M/s _____ [Member n]

(Signature, Name & Designation of the person authorized vide Board Resolution
Dated _____) Witnesses:

1) Signature ----- Name: Address:	(2) Signature ----- Name: Address:
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Signature and stamp of Notary of the place of execution