

**PROCUREMENT OF SOLAR POWER ON SHORT-TERM BASIS THROUGH  
TARIFF BASED COMPETITIVE BIDDING PROCESS**

**Towards meeting the Renewable Purchase Obligation (RPO)**

**CESC LIMITED (CESC) INVITATION FOR BIDS**

**REQUEST FOR PROPOSAL (RFP)**

**[TENDER NO: ED (PM) 3244]**

**[Event No: CESC/Short/19-20/ET/9]**

**[RA No: CESC/Short/19-20/RA/9]**

S. No.	Event	Date & Time
1.	Publication of Request for Proposal (RfP)/ Activation of Event	28.03.2019
2.	Last date of submission of RfP Bids	04.04.2019 at 17:00 Hrs
3.	Opening of non-financial technical Bids (EMD to reach before opening of non-financial technical Bids)	05.04.2019 at 14:00 Hrs
4.	Opening of IPOs	08.04.2019 at 13:00Hrs
5.	Start of eRA	08.04.2019 at 15:00Hrs

<b>Bids to be submitted through</b>	<b>DEEP e Bidding portal</b>
<b>Office inviting bids &amp; Place of submission of EMD</b>	<b>Executive Director (Power Marketing)</b> CESC Ltd. 1 <sup>st</sup> Floor, CESC House, Chowringhee Square- Kolkata -700001 <b>Phone</b> 03322040486, 03322040468 (O) Fax: 03322368996

## 1. INTRODUCTION AND BACKGROUND

CESC Ltd (CESC), having its registered office at CESC House, Chowringhee Square, Kolkata-700001, a Company incorporated under the Companies Act, 1956/ 2013 and a Distribution Licensee as per provision of the Electricity Act, 2003 is inviting bids for procurement of **Solar** power under Short Term arrangement from the Generators, licensed power traders, State Utilities/Discoms on short term basis for the period from 15.04.2019 to 30.09.2019. The power is being procured to meet the Renewable Purchase Obligation for FY 2019-20.

## 2. E BIDDING FEE

All the Bidders would be able to participate in the e-Bidding events on making payment of the requisite fees of ₹ 500 per MW for the maximum capacity; a Bidder is willing to bid (in single bid or cumulative sum total of multiple bids), to PFC Consulting Limited (PFCCL). The requisite fee plus applicable taxes shall be deposited through the portal by e-Payment Gateway provided by MSTC Ltd. 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 without any interest. The fee deposited by non-Selected Bidder(s) will also be refunded by PFCCL within seven (7) working days of completion of the event without any interest.

## 3. QUANTUM OF POWER

. The Bidder(s) shall be capable of supplying solar **power** as mentioned below to CESC:

Table -1

Requisition No	Contract Period		Slot/ Time Block (hrs)	MW Peak or Maximum Bid Quantum (MW)	Minimum Bid Quantity (in MW)
	From	To			
1	15-Apr-19	30 -Apr- 19	11:00 to 18:00	150	5
2	1-May-19	31-May-19	11:00 to 18:00	200	5
3	1-Jun- 19	20-June -19	11:00 to 18:00	200	5
4	21-June -19	30-June -19	11:00 to 18:00	150	5
5	1-Jul-19	31-Jul-19	11:00 to 18:00	50	5
6	1-Aug-19	31-Aug-19	11:00 to 18:00	50	5
7	1-Sep- 19	30-Sep- 19	11:00 to 18:00	75	5

**Note: The bidder shall not claim RECs for this solar power sold to CESC, as this power is being procured by CESC for fulfillment of RPO obligation.**

The Bidder(s) should be capable to supply **Solar** power to CESC during the contracted period at the delivery point, for which the responsibility will be on the Bidder(s).

#### **DELIVERY POINT:**

- a) **Inter-state Bidder**: The delivery point shall be at West Bengal periphery i.e the interconnection point of WBSETCL (West Bengal State Transmission Co. Ltd) and CTU - ER.
- b) **Intra-state Bidder (Outside CESC license Area)**: The delivery point shall be the point of interconnection of the Seller/Bidder with WBSETCL systems where metering system is installed

#### **4. QUALIFICATION CRITERIA**

The qualifying requirements for a Bidder to bid for this tender are as follows:

- i) The Bidder must not quote less than Minimum Bid Quantity, as mentioned in Table -1 above from single source of generation.
- ii) The quantum of power offered by the Bidder shall be firm power for the duration mentioned above. The bidder should have firm and ready capacity to supply his offered quantum of power to CESC as on bid date. Bidder(s) may therefore ensure availability of necessary infrastructure/ground work, before participating in the Bid.
- iii) If Bidder is a Trader, it should submit a copy of valid Category license or equivalent Trading License issued by Appropriate Commission.
- iv) If Bidder is a Trader, it should submit a copy of executed power purchase agreement or an equivalent arrangement for supply of power.
- v) The confirmation of the Renewable (Solar) status of the source of power from the appropriate authority/ agency should be furnished by the Seller/Bidder.

#### **5. TARIFF STRUCTURE**

5.1. The Bidder shall quote the single tariff at the Delivery Point upto three (3) decimals which shall include capacity charge, energy charge, trading margin (in case of Bidder being a Trader), applicable Point of Connection (POC) charges upto Delivery Point and all taxes, duties, cess etc. imposed by Central Govt. / State Govt. / Local bodies. Tariffs shall be designated in Indian Rupees only. The Delivery Point shall be as mentioned above.

5.2. For avoidance of doubt, In case of Inter-state transaction - Intra-state open access charges & losses of Seller state (if any), Seller state SLDC concurrence fees & operating

charges (if any) along with POC injection charges and losses up to the POC interface, RLDC Operating Charges, POC drawl charges and losses, RLDC application fees are on Bidder(s) account. Intra-state open access charges & losses of West Bengal and West Bengal SLDC operating charges are on CESC's account.

In case of Intra-state transaction, CESC shall only bear the WBSETCL charges & losses and West Bengal SLDC Operating charges. All other open access charges & losses (if any) shall be borne by Bidder/Seller.

- 5.3. The tariff should be constant and there shall be no escalation during the contractual period. If Bids are invited for different time slots then tariff may be different for each time slot.
- 5.4. If the power is being supplied through alternate source there shall be no change in tariff structure from that of the original source and any additional charges and losses if any, due to cancellation of existing corridor and booking of new corridor etc., shall be to the account of Bidders. And in case of change of source, seller/bidder shall take prior consent of CESC.
- 5.5. CESC will in no way be liable for any other charges up to delivery point except for the charges of energy delivered at delivery point on the basis of the Regional Energy Accounts (REAs) of the Eastern Regional Power Committee (ERPC) as per the latest open access regulations applicable.

## **6. BIDDING PROCESS**

6.1. CESC has issued an RfP for procurement of power on short term basis as per the details mentioned in clause 3 above and the RfP has been uploaded on the DEEP e-Bidding portal.

### **6.2. EARNEST MONEY DEPOSIT (EMD)/ BANK GUARANTEE (BG)**

6.2.1. The Bidders are required to submit EMD for the maximum capacity which they wish to offer (in single bid or sum total of multiple bids) @ Rs. 30,000/- per MW per month on RTC (30 days, 24 hours) basis and same shall be reduced on pro-rata basis in case bids are invited on hourly basis, in the form of Bank Guarantee /e- Bank Guarantee issued by any Nationalized/Scheduled Bank in favour of "CESC Ltd" or Electronically Transfer through payment gateway provided by MSTC Ltd. in the portal, if available. EMD shall remain valid till 10.05.2019.

For Example: For a requirement of 1 MW for 15 days for 4 hours, the EMD shall be Rs.  $30,000 \times (15 \text{ days} / 30 \text{ days}) \times (4 \text{ hrs} / 24 \text{ hrs}) = \text{Rs. } 2,500/-$

6.2.2. The original EMD needs to be submitted before the opening of the Non-Financial Technical Bid.

6.2.3. The EMD shall be forfeited:

- a. If Bidder withdraws bid during Bid Validity Period except as provided in the RFP.
- b. For non-submission of Contract Performance Guarantee as specified in this RFP document, by Successful Bidder(s).

6.2.4. The EMD shall be refunded to the unsuccessful Bidders within 10 days of expiry of Bid validity period.

6.2.5. The EMD of the Successful Bidder(s) shall be refunded after furnishing the Contract Performance Guarantee (CPG).

### **6.3. BID SUBMISSION**

6.3.1. Tenders are to be submitted online through the DEEP e-Bidding portal. All the documents uploaded by the CESC form an integral part of the contract. Bidders are required to upload all the documents as asked for in the RfP, through the above website within the stipulated date and time as given in the RfP. The Bidder shall carefully go through the RfP and prepare the required documents and upload the scanned documents in Portable Document Format (PDF) to the portal in the designated locations of Technical Bid.

6.3.2. The documents uploaded shall be digitally signed using the Digital Signature Certificate (DSC). Bidders should take note of all the addendum/corrigendum related to the RfP and upload the latest documents as part of the Bid.

6.3.3. The process of e-Bidding shall be conducted online, in accordance with the provisions laid herein. Each e-Bidding event shall comprise of two parts i.e. e- Tender and e-Reverse Auction. To participate in the event each Bidder will have to specify the source(s) of power for that particular bid. Each bid will have only one price per requisition accompanied by total quantum of power, the Bidder intends to supply and minimum threshold quantum acceptable to the Bidder. However, the Bidder shall have the option to choose the requisition of an event in which it intends to participate. Each of the bid will have to be signed by the Digital Signature of the Bidder.

6.3.4. Bidders shall be required to submit separate non-financial technical Bid and Financial Bids i.e. Initial Price Offer (IPO) through e-Bidding portal. The Bidder will have the option to indicate their minimum threshold quantity and the same would be considered for allocation of power to the Bidder(s). The non-financial Bids shall contain the acceptance of general terms and conditions without any deviation and information about the sources from which the Bidder shall supply the power. Bidders shall also be required to furnish necessary EMD/Bank Guarantee along with the Bids. The Bidders can revise their IPOs before date and time of submission of RFP.

6.3.5. The IPO shall be strictly as per the format prescribed in the RfP and shall be unconditional. The conditional price bid shall be summarily rejected.

## **7. VALIDITY OF TENDER AND OFFER**

7.1. The validity period of offer of Bidder shall be till 17:00 hrs of 5<sup>th</sup> May 2019.

## **8. CONDITIONAL AND INCOMPLETE TENDER**

8.1. Conditional and incomplete tenders are liable to be rejection.

## **9. OPENING AND EVALUATION OF BID**

9.1 Lowest valid rate of the tender cum reverse auction price should normally be accepted. CESC reserves the right to reject any or all bids or to accept any bid, at its sole discretion, without assigning any reasons whatsoever thereof and without any liability.

9.2 Technical proposals will be opened by CESC or his authorized representative electronically from the website stated above, using their Digital Signature Certificate.

9.3 Technical proposals for those tenders whose original copies of DD/BC/BG towards EMD and who have deposited the E-Bidding Fee have been received will only be opened. Proposals corresponding to which original copy of DD/BC/BG towards tender fee & EMD has not been received, will not be opened and will stand rejected.

9.4 Decrypted (transformed into readable formats) documents of the Statutory and Non-statutory Covers will be downloaded for the purpose of evaluation.

9.5 CESC or its authorised representative can seek clarifications/documents required in connection with technical bid. After acceptance of the non-financial technical Bids, the Financial Bids, Initial Price offer (IPO) shall be opened as per the procedures specified in the Bid document.

9.6 In the event, if two or more Bidders quote the same amount of Tariff during IPO and e-Reverse Auction stage, the time of submission of bid will be the deciding factor for their ranking.

## **10. ELIMINATION OF BIDDERS**

10.2 The elimination of the Bidders shall be done by the following method:

- i) After the opening of Initial Price Offers, the system will rank the Bidders according to their price bids. The Bidder with the highest price bid in IPO stage will be called the H1 Bidder. The system will then analyze all the quantities offered by the Bidders in the IPO stage. If the total quoted quantity is greater than twice the Requisitioned Quantity, the Highest Bidder (H1) will be eliminated provided that the total quoted quantity after elimination is not less than or equal to twice the Requisitioned Quantity.

- ii) The elimination process will be done for each of the requisition separately. One event may have more than one requisition.

## **11. E - REVERSE AUCTION (e-RA)**

- 11.1 The shortlisted Bidders after elimination will be intimated individually by system generated emails only.
- 11.2 The Reverse auction should start within 120 minutes of opening of Initial Price Offers and shall continue for a period of next 120 minutes without any extension (automatic or otherwise). 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 are received which is lower than the prevailing lowest price bid.
- 11.3 During the Reverse Auction the Bidders will have the option of reducing the tariff quoted by them in decrements of one paise or multiples thereof and to increase the quantum quoted by them by 1 MW or multiples thereof. During the Reverse Auction the prevailing Lowest Tariff would be visible to all the Bidders.
- 11.4 The Bidders will have the option to increase the quantum of power upto corresponding to the value of EMD submitted along with IPO, but decrease the Tariff during the e- Reverse Auction process.

## **12. ISSUANCE OF LETTER OF AWARD (LOA)**

- 12.1 The Bidder after the e-RA process will be ranked in accordance with the tariff offered in ascending order. The list would also include the name, quantum offered and tariff quoted by those qualified Bidder(s) who have not changed the quantum of power and tariff from IPO stage to e-RA stage. The Bidder(s), in order of their rankings, offering the quantum of power upto the requisitioned capacity would be the Successful Bidder(s).
- 12.2 CESC shall procure power from the Successful Bidders in the order of their rankings decided on the basis of tariff quoted by them until the entire Requisitioned Capacity is met.
- 12.3 CESC shall have the right to issue Letter of Award (LoA) to the Successful Bidder(s) [Selected Bidder(s)] in the same order to fulfill its requirement, which can be lower than the Requisitioned Capacity but not less than the quantum of Lowest Bidder. In the event CESC rejects or annuls all the Bids, it may go for fresh Bids hereunder.
- 12.4 In case the Selected Bidder(s) is allocated a quantity of power less than the minimum threshold quantum mentioned by it, it shall have the option to exit without forfeiting the EMD.
- 12.5 In case the LOA is issued but Selected Bidder(s) is/are not in a position to fulfill the

requirement, being selected in another bidding process the EMD/CPG shall be forfeited as the case may be.

- 12.6 After selection, a Letter of Award (the “LOA”) shall be issued, in duplicate, by CESC to the Selected Bidder(s) and the Selected Bidder(s) shall, 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(s) is not received by the stipulated date, CESC may, unless it consents for extension of time for submission thereof, forfeit the EMD of such Bidder as Damages on account of failure of the Selected Bidder(s) to acknowledge the LOA.

### **13. CONTRACT AWARD AND CONCLUSION**

- 13.1 After acknowledgement of the LOA by the Selected Bidder(s), CESC shall cause the Selected Bidder(s) to execute the PPA. The Selected Bidder(s) shall not be entitled to seek any deviation, modification or amendment in the PPA. CESC would appropriate the EMD of such Bidder as Damages on account of failure of the Selected Bidder(s) to execute the PPA.

### **14. RIGHT TO ACCEPT / REJECT THE BID:**

- 14.1 Lowest valid rate of the tender cum reverse auction price should normally be accepted. CESC reserves the right to reject any or all bids or to accept any bid, at its sole discretion, without assigning any reasons whatsoever thereof and without any liability.

### **15. CONTRACT PERFORMANCE GUARANTEE (CPG)**

- 15.1 The Successful Bidder(s) shall furnish CPG within 7 days from the date of selection of Successful Bidder(s) for an amount calculated at **Rs. 2 lac** per MW per month (30 days, 24 hours) of contract period or part thereof. The CPG for the procurement of power on hourly basis shall be calculated on pro-rata basis as per the example given above for calculating EMD.
- 15.2 The CPG shall be in the form of BG issued by any Nationalized/Scheduled Bank and valid for the period of Contract with a claim period of 1 month after the expiry of contract period.
- 15.3 In the event, the CPG is not furnished within the stipulated date, the EMD submitted against the Notification shall be forfeited.
- 15.4 The CPG provided by the Successful Bidder(s) shall be forfeited for non-performing the contractual obligations. The CPG should be released within 30 days after completion of Contract Period.

### **16. POWER PURCHASE AGREEMENT (PPA)**

- 16.1 PPA proposed to be entered with the Selected Bidder(s) would have following necessary details on:



16.1.1 Risk allocation between parties;

16.1.2 Force Majeure Events shall mean the occurrence of any of the following events:-

16.1.2.1 Any restriction imposed by RLDC/SLDC in scheduling of power due to breakdown of Transmission/Grid constraint shall be treated as Force Majeure without any liability on either side.

16.1.2.2 Any of the events or circumstances, or combination of events and circumstances such as act of God, exceptionally adverse weather conditions, lightning, flood, cyclone, earthquake, volcanic eruption, fire or landslide or acts of terrorism causing disruption of the system.

16.1.2.3 The contracted power will be treated as deemed reduced for the period of transmission constraint. The non/part availability of transmission corridor should be certified by the concerned RLDC/SLDC.

16.1.2.4 CESC would return the CPG in case of non-availability of transmission corridor during the contract period.

## **17. OPEN ACCESS:**

17.1 SCHEDULING PROCEDURE: The scheduling and dispatch of the energy shall be coordinated with respective RLDC(s)/SLDC(s) as per provisions of IEGC and framework of ABT and decisions of RLDC.

17.2 BOOKING OF TRANSMISSION CORRIDORS: The successful bidder(s) shall apply for booking of the open access transmission corridor to nodal RLDC/SLDC. He shall be fully responsible for the timely filing of open access application before the nodal RLDC and coordinating with the relevant RLDC / SLDC so as to get the timely booking of the open access corridor. The energy shall be scheduled and dispatched as per the relevant provisions of CERC regulations for Short term open access and Procedure for reservation of Transmission Capacity for short-term open access customers (Inclusive of all the amendments till date). Since Solar power is infirm power, so open access application to be filed by the bidder may be with varying quantum (in MW) in different time slots. The successful bidder(s) shall apply for the contracted quantum and the period and duration of time as per the LOA. If the Bidder/seller fails to apply for the contracted quantum for the period and duration of time as mentioned in LOA, then CESC would forfeit the EMD/CPG of such Seller/Bidder.

Booking shall be done under advance / FCFS reservation in such a manner so as to get the maximum quantum from the shortest route.

Once the open Access is approved by the nodal agency the same will be final and subject to any revision /change only after mutual consent in writing.

## **18. CHANGE IN LAW – CHANGE IN LAW SHALL INCLUDE**

18.1 Any change in transmission charges and open access charges

18.2 Any change in taxes (excluding income tax), duties, cess or introduction of any tax, duty, cess made applicable for supply of power by the Bidder.

## **19. BILLING CYCLE**

19.1 Bidders to raise energy bill(s) on monthly basis or at the end of Contract Period whichever is earlier for the energy scheduled at Delivery Point.

## **20. BILLING**

- i. Bidders/Sellers will raise energy bills on monthly basis or at the end of the Contract Period, whichever is earlier, to the Executive Director (Power Marketing), CESC Ltd, 1<sup>st</sup> Floor CESC House, Chowringhee Square, Kolkata-700001 for the energy scheduled at the delivery point during a calendar month or as informed otherwise based on data of concerned RLDC/SLDC along with complete details of the power scheduled at the delivery point and/or other documents/ information, as may be required for bill verification.
- ii. Final monthly adjustment bill will be raised based on REA/SEA issued by the concerned RPC/Energy Account issued by SLDC/STU.
- iii. The bills for liquidated Damages for the month shall be raised only after end of that month based on REA/SEA.
- iv. A certificate from appropriate authority/agency confirming the Renewable (Solar) status of the energy / power supplied to CESC under the agreement to be submitted along with energy bill. In case of non-submission of the said certificate the energy bill shall be not considered to be received for making payment.

Further, if the Selected bidder fails to submit the said certificate for any Contract Period, then the energy/power supplied by Selected bidder for such Contract Period shall be settled at **lower** of Rs. 3.00/kwh or average rate (calculated as for respective Contract Period during 1100 to 1800 hrs) of E1 bid area for Day Ahead Market (DAM) discovered on India Energy Exchange (IEX), irrespective of the Tariff mentioned in the PPA.

## **21. PAYMENT**

21.1 CESC will make the payment to Selected Bidder within 7 (seven) working days (due date) from the date of receipt of the energy bills in the office of Executive Director (Power Marketing), CESC Ltd, 1st Floor CESC House, Chowringhee Square, Kolkata-700001 subject to submission of certificate by Selected Bidder from appropriate authority/ agency confirming the Renewable (Solar) status of the energy / power supplied to CESC under the

agreement. In the event of the due date of payment being a Bank/Discoms holiday, the next working day shall be considered as the due date of payment. In case of timely payment by CESC, adjustment for the admissible rebate as per the clause described hereinafter, shall be made while making the payment against the energy bills.

21.2. Bidder shall raise bills on account of Open Access charges paid to nodal RLDC on behalf of CESC to CESC. CESC shall reimburse the amount to Successful Bidder (s) within 7 (Seven) days from the date of receipt of bill. In the event of the due date of payment being a Bank/Discoms holiday, the next working day shall be considered as the due date of payment

21.3 CESC may be required to provide revolving Letter of Credit (LC) equivalent to 100% of the weekly energy corresponding to Contracted Capacity at the tariff indicated in PPA. LC shall be opened prior to commencement of supply of power.

## **22. REBATE ON PAYMENT**

A rebate @ 2 % shall be applicable on payment of energy bills if payment is made within 7 (Seven) working days from the date of receipt of bill. No rebate shall be applicable on payment of Open Access & Liquidated damages Bills.

## **23. LATE PAYMENT SURCHARGE**

A surcharge of 1.25% (One Point Two Five Percent) per month shall be applied on all payments, outstanding after 30 days for the period of non-payment beyond the due date. This surcharge would be calculated on a day-to-day basis for each day of the delay. Any disputes raised by CESC on the energy bills shall not be treated as outstanding.

## **24. PAYMENT OF LIQUIDATED DAMAGES FOR FAILURE TO SUPPLY THE INSTRUCTED CAPACITY**

- i. Both the parties would ensure that actual scheduling does not deviate by more than 15% of the contracted power as per the approved open access on monthly basis or actual period (if period is less than a month) during Contracted Period.
- ii. In case deviation from CESC side is more than 15% of contracted energy for which open access has been allocated on monthly basis or actual period (if period is less than a month) during Contracted Period, CESC shall pay compensation at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% while continuing to pay open access charges as per the contract.
- iii. In case deviation from Bidder side is more than 15% of contracted energy for which open access has been allocated on monthly basis or actual period (if period is less than a month) during Contracted Period, Bidder shall pay compensation to CESC at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% in the energy supplied and pay for the open access charges to the extent not availed by the CESC.

- iv. In case of revision / cancellation / surrender of approved open access corridor, the party seeking revision / cancellation of open access corridor shall bear all the open access charges as applicable under Inter-State Open Access Regulations from the injection point till the point of drawl i.e CESC's interconnection with WBSETCL applicable due to such surrender/ cancellation.
- v. In case of revision / cancellation / surrender of the booked open access corridor, the refund received from the ERLDC shall be paid back to CESC within 7 days of its receipt from ERLDC by successful bidder.
- vi. Either party shall raise bill towards liquidated Damage. For any Liquidated Damage payable by CESC/Bidder as per above, bill shall be raised by Bidder/CESC as the case may be and payment shall be made within 30 working days from the date of receipt of bill.

## **25. COMMUNICATION**

- a. All parties shall rely of written communication only.
- b. The Bid submitted by the Bidder and all correspondence and documents relating to the bid shall be written in English Language.
- c. CESC reserves the right to ask for the additional information from the Bidder through e-mail / fax only. The e-mail id gunjan.thakre@rp-sg.in, soumya.sarkar@rp-sg.in, ranajit,bhattacharya@rp-sg.in; will be used.

## **26. GOVERNING LAW**

- 26.1 All matters arising out of or in conjunction with the Bid Document and/or the bidding process shall be governed by and construed in accordance with Indian law and the Courts of Kolkata, West Bengal shall have exclusive jurisdiction.

## **27. DISCLAIMER**

- 27.1 Neither CESC nor its employees shall be liable to any Bidder or any other person under any law including the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise, or be incurred, or suffered, in connection with the bid, or any other information supplied by or on behalf of CESC or its employees. For the avoidance of doubt it is expressly clarified that this Bid Document is an offer to bid and its subject to the award of LoA / PPA by CESC and acceptance of the LoA / PPA by the selected Bidder will be construed as acceptance of terms and Condition.

## **28. DISPUTE RESOLUTION**

- 28.1 All differences or disputes between the parties arising out of or in connection with this matter shall be settled through the statutory provisions under the Electricity Act 2003. Where any dispute arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, such

dispute shall be adjudicated by the Appropriate Commission.

- 28.2 All other disputes shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996.
- 28.3 Notwithstanding any legal dispute, disagreement or difference, the parties here to, continue to perform the respective obligations under power purchase agreement.

## **FORMAT OF THE UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE FOR EMD**

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution.)

In consideration of CESC Ltd, having its registered office at CESC House, Chowringhee Square, Kolkata 700 001(hereinafter referred as CESC) for procurement of Solar power during the period 15.04.2019 to 30.09.2019 on short term basis, issued the RfP Notice invitation for Bids vide RfP Notice No. ....Dated XX.03.2019) and we ..... being a Bidder, in response to the said Notice, undertake to deposit EMD as per the terms of the RfP, the \_\_\_\_\_ (name of any Nationalized/Scheduled Bank) hereby agrees unequivocally, irrevocably and unconditionally to pay “CESC Ltd” (hereinafter referred to as “Procurer”) at Kolkata forthwith on demand in writing from CESC/ Procurer on behalf of “CESC Ltd”, any amount up to and not exceeding Rs. \_\_\_\_\_ /- (Rupees \_\_\_\_\_ only), on behalf of .....(Bidder).

This guarantee shall be valid and binding on this Bank up to 10.05.2019 and shall not be terminable by notice or any change in the constitution of the Bank or the term of contract or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between concerned parties.

Our liability under this Guarantee is restricted to Rs. \_\_\_\_\_ /- (Rupees \_\_\_\_\_ only). Our Guarantee shall remain in force until 10.05.2019. The CESC/Procurer shall be entitled to invoke this Guarantee until 10.05.2019.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand by the Procurer, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by the Bidder or any other person.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

In order to give full effect to this Guarantee, CESC shall be entitled to treat the Bank as the principal debtor. CESC 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 fulfillment 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 CESC, and the Bank shall not be released from its liability under these presents by any exercise by CESC 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 CESC or any indulgence by

CESC to the said Bidder or by any change in the constitution of CESC 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.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Procurer shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against Bidder, to take any claim against or any demand on Bidder or to give any notice to the Bidder to enforce any security held by the Procurer or to exercise, levy or enforce any distress, diligence or other process against the Bidder.

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.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Procurer and may be assigned, in whole or in part, (whether absolutely or by way of security) by Procurer to any entity to whom the Procurer is entitled to assign its rights and obligations.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. \_\_\_\_\_ /- (Rupees \_\_\_\_\_ only), and it shall remain in force till 28.02.2019. We are liable to pay the guaranteed amount or any part thereof under this BANK GUARANTEE only if the Procurer serves upon us a written claim or demand.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Power of Attorney No. \_\_\_\_\_

For

\_\_\_\_\_ (Insert name of the Bank)

Banker's Stamp and Full Address.

Dated this \_\_\_\_\_ day of \_\_\_\_\_