

INDEX

[illegible]

[illegible]

**Form for Verifying the Petition/ Appeal under Regulations 26 to 30 Gujarat
Electricity Regulatory Commission (Conduct of Business) Regulations, 2004**

Name of the Petitioner /Applicant: MPSEZ Utilities Limited

In the matter of filing of Petition under Section 86 (1) (b) read with Section 63 of the Electricity Act, 2003 alongwith "Guidelines for Procurement of Power by the distribution licensees" issued by the Commission for seeking approval of the quantum and deviations from the Model Bidding documents as per the Ministry of Power's Guidelines dated 06.03.2019 for Procurement of 600 MW Power under Long-Term from Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO).

Sr No	Particulars	Remarks
1	All Petitions/appeal filed before commission shall be typewritten, cyclostyled or printed neatly and legibly on one side of ledger paper and every page shall be consecutively numbered. Wherever possible, Petitions and replies must also be filed with the commission in soft Copy.	
2	Relevant, Provisions of all the central/state act in support of petition / Appeal	
3	General heading should be given	
4	Affidavit in support of the Petition / Appeal	
5	Petition / Appeal is couched in decorous language and does not contain any allegation	
6	Jurisdiction is to be see if pending before any other judicial/Quasi- Judicial Authority (then not to accept the Petition / Appeal)	
7	Petition / Appeal relating to same subject is filed and proceedings before commission is pending such Petition / Appeal from the party should not be accepted	
8	All Petitions / Appeals and replies shall be in five copies along with fee as prescribed by the commission	
9	A copy of Petition / Appeal shall be served to other parties(respondents) simultaneously	
10	Petition / Appeal should be complete in all respect with supporting documents, Any further submission shall be done with prior permission of the commission	
11	Additional information should not change the nature of the Petition / Appeal	
12	Petition / Appeal is to be filed in person or by any authorized person can be sent by Registered post with Vakalatnama in favour of advocate	
13	Acknowledgement will be given by the authorized person of the commission	
14	If above requirements are not fulfilled, secretary can refuse to get it registered and keep in objection. If any objections are not removed in specific time limit , the petition shall stand dismissed (Rule 34)	
15	On finalization of scrutiny, Petition / Appeal shall be numbered and put up before commission for preliminary hearing and admission	

Prepared By:

Approved By:

WORKSHEET

Petition No. _____/2022

MPSEZ Utilities Limited:

Petitioner/s

Coram/Bench(s):

Hon'ble Chairman

Hon'ble Member

Hon'ble Member

[illegible]

[illegible]

To:

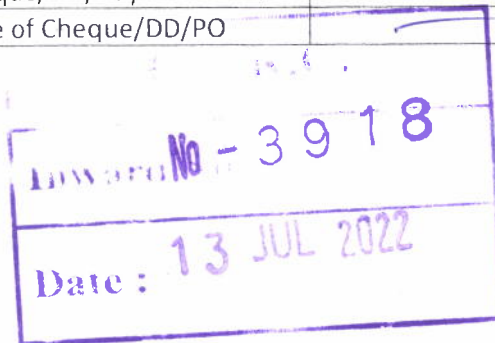
Date: 13/7/2022

Department
GERC, Gandhinagar

Subject: Acceptance of Fees-Reg.

With reference to your Payment Intimation Memo dated 13/7/2022, the stated payment has been credited in the GERC Bank Account [Sub Clause 2 of Clause 3 of the GERC (Fees, Fines & Charges) Regulations, 2005]. The necessary details are as below:

Sl No.	Particulars	Details
1	Name of the Petitioner	MRS. Z. Y. Hilitiy & Mites
2	Money Receipt No.	3176, Rs. 10,000/-
3	Date of MR	13/7/22
4	UTR/Reference No.	AXISON 0142978
5	Date of UTR/Reference	13/7/22
6	Cheque/DD/Pay Order No.	
7	Date of Cheque/DD/PO	



AD (Legal)/Ex (Gen)
Process
PK
13/07/2022

Accounts Department
GERC



Ref: MUL/GERC/MBD/2022-23/12072022

Date: 12th July 2022

To,
The Secretary,
Gujarat Electricity Regulatory Commission (GERC)
6th Floor, GIFT ONE,
Road 5-C, Zone 5, GIFT CITY,
Gandhinagar-382355, Gujarat - India

Sub.: Submission of Petition for seeking approval for Quantum and Deviations in Model Bidding Documents as per the Ministry of Power guidelines dated 06.03.2019 for procurement of Electricity for Long Term

Dear Sir,

We file herewith the application (Original + 4 copies) in respect of the subject matter for kind consideration of the Hon'ble Commission.

Detail of the payment for this application is as below:

Particulars	Details
(1) Name of the Petitioner/Applicant	MPSEZ Utilities Limited
(2) Address of the Petitioner/Applicant	Adani Corporate House, Shantigram, Nr. Vaishno Devi Circle, S.G. Highway, Khodiyar, Navrangpura, Ahmedabad - 382 421
(3) Petition No., if any	
(4) Subject Matter	Submission of Petition for seeking approval for Quantum and Deviations in Model Bidding Documents as per the Ministry of Power guidelines dated 06.03.2019 for procurement of Electricity for Long Term
(5) Details of fee remitted:	
(a) UTR/Transaction No.	AXISCN0154229786
(b) Date of remittance	12-07-2022
(c) Amount remitted	10,000/-
(d) Bank name & Branch	Axis Bank Ltd., Mundra

Kindly acknowledge the receipt of the same.

Thanking you,

Yours Sincerely,

For MPSEZ Utilities Limited


Authorized Signatory

MPSEZ Utilities Limited
(Formerly MPSEZ Utilities Private Limited)
Adani Corporate House, Shantigram,
Nr. Vaishno Devi Circle, S. G. Highway,
Khodiyar, Ahmedabad - 382421
Gujarat, India

Tel +91 79 2555 5801
Fax +91 79 2555 6490
info@adani.com
www.adani.com
CIN: U45209GJ2007PLC051323

Registered Office: Adani Corporate House, Shantigram, Nr. Vaishno Devi Circle, S. G. Highway, Khodiyar, Ahmedabad - 382421, Gujarat, India

To: Deputy Department
GERC, Gandhinagar

Date: 13/7/2022

Subject: Acceptance of Fees-Reg.

With reference to your Payment Intimation Memo dated 13/7/2022 the stated payment has been credited in the GERC Bank Account [Sub Clause 2 of Clause 3 of the GERC (Fees, Fines & Charges) Regulations, 2005]. The necessary details are as below:

Sl No.	Particulars	Details
1	Name of the Petitioner	MPSEZ Utility & Meter
2	Money Receipt No.	3176 RS. 10.000/-
3	Date of MR	13/7/22
4	UTR/Reference No.	AXIION 015429786
5	Date of UTR/Reference	13/7/22
6	Cheque/DD/Pay Order No.	
7	Date of Cheque/DD/PO	

Accounts Department
GERC

**BEFORE THE HON'BLE GUJARAT ELECTRICITY REGULATOR
COMMISSION AT GANDHINAGAR**

Filing No. .

Case No. _____

IN THE MATTER OF

Petition under Section 86(1)(b) read with Section 63 of the Electricity Act, 2003 along with "Guidelines for Procurement of Power by the Distribution Licensees" issued by Hon'ble GERC for seeking approval of the Quantum, and deviations from the Model Bidding documents as per the Ministry of Power guidelines dated 6th March 2019 for Procurement of 600 MW Power under Long Term from Power Stations set up on Design, Build, Finance, Own, and Operate (DBFOO).

AND

IN THE MATTER OF

MPSEZ Utilities Limited,
Adani Corporate House, Shantigram,
Near Vaishno Devi Circle,
S.G Highway, Khodiyar,
Ahmedabad – 382 421

...PETITIONER

THE PETITIONER RESPECTFULLY SHOWETH AS UNDER:

1. MPSEZ Utilities Limited (hereinafter referred to as "**MUL**" or "**Petitioner**") (Formerly known as MPSEZ Utilities Private Limited) is a company incorporated under the Companies Act, 1956 having its registered office at Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S.G. Highway, Khodiyar, Ahmedabad-382 421.
2. The Petitioner has been granted Distribution License by Hon'ble Gujarat Electricity Regulatory Commission (hereinafter referred to as "**Hon'ble GERC**") vide Distribution Licensee No 06 of 2016 pursuant to Suo-Motu petition no 1446 of 2014 dated 17.08.2015 and amendment thereafter for distribution of electricity in the Licensed area.
3. In order to cater to the demand of power in the License area, the Petitioner entered into Long Term Power Purchase Agreement for 50 MW with Thermal Generators and 12 MW with Wind Energy Generator (WEG).
4. In order to provide reliable and quality power to the consumers of the distribution license area, the Petitioner is continuously involved in discussions

with the existing and upcoming consumers, to better serve the needs of consumers of its license area.

5. Based on the discussion with various existing & upcoming consumers, the Petitioner is envisaging a substantial increase in demand in its license area from Oct-2022 onwards. It is expected that demand will be increased from Oct-2022 on account of the expansion of already installed units and the addition of new units in the license area of the Petitioner.
6. Considering the past trend of uncertainty in the short-term power procurement prices and to fulfill universal supply obligation, the Petitioner had filed petition for procurement of medium-term power quantum and deviations under Case no, 2051 of 2022. Hon'ble Commission approved the medium-term power quantum and certain deviations vide its order dated 20.05 2022.
7. Accordingly, MUL issued the bid for procurement of power. However, during Technical Qualification it is revealed that only two bidders offered the full required quantum and other three offered only small quantities. Since the response to the bid is less, MUL has canceled the entire bid process.
8. In view of above, MUL now propose to procure 600 MW power under the long-term basis for 15 years i.e. Oct-2022 to Sep-2037 through a competitive bidding process, extendable with mutual consent up to another 10 years.
9. Further, the Petitioner had proposed certain deviations in the Model Bidding Documents issued by the Ministry of Power (MoP) on 29.01.2019 under its petition Case 2051 filed before Hon'ble Commission. Hon'ble Commission approved all the deviation except 'Settlement of UI charges' vide its order dated 20.05.2022. Under present long term power procurement, MUL is proposing to go ahead with appropriate approved deviations. However, in view of long-term power procurement, there are few more deviations which are envisaged to protect interest of consumers in Petitioner's license area . Vide this petition petitioner is seeking approval for such deviations also.

REGULATORY FRAMEWORK

10. Section 86 (1) (b) of the Electricity Act, 2003 states that the State Commission shall regulate the electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for the purchase of power for distribution and supply. For reference, the excerpt of Section 86 (1)(b) is as follows –

"Section 86. (Functions of State Commission): --- (1) The State Commission

shall discharge the following functions, namely: -

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through

agreements for purchase of power for distribution and supply within the State;"

11. In order to fulfill the duty enshrined in Section 86 (1) (b) of the Electricity Act, 2003, Hon'ble GERC framed the "Guidelines for Procurement of Power by the Distribution Licensees" in the State of Gujarat (hereinafter referred to as "**GERC Guidelines**").
12. Section 42 and 43 of the Electricity Act, 2003, states that **it is the duty of a Distribution Licensee (herein The Petitioner) to ensure electricity supply to the consumers within the licensed area of supply on request.** It is to be noted that Hon'ble GERC vide GERC Guidelines has directed all the Distribution Licensees in the State of Gujarat to follow the procedure laid down in the said guidelines for procurement of power. A copy of GERC Guidelines is marked and annexed as **Annexure - A**
13. As per GERC Guidelines, for procurement of power by the Distribution Licensees (In case of procurement of power through competitive bidding), the Distribution Licensees (herein The Petitioner) shall initiate the process for long-term/medium-term power procurement in accordance with the Ministry of Power's Guidelines for "Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees" (hereinafter referred to as "**MoP Guidelines**") notified by the Ministry of Power on 19.01.2005 and in force from time to time.
14. Furthermore, MoP Guidelines states that if there is any deviation from the Model Bidding Documents, then the same shall be subject to approval by the appropriate Commission (herein Hon'ble GERC). Hon'ble GERC shall approve or require modification to the bid documents within a reasonable time not exceeding 90 days.
15. Ministry of Power vide letter dated 5th March 2019 has issued revised Model Bidding documents and vide resolution dated 6th March 2019, Ministry of Power notified Guidelines for Procurement of Electricity for long Term from Power Stations set up on Design, Build, Finance, Own & Operate (DBFOO) basis which provides as under:
 - a. The aforesaid guidelines provide for Model Bidding Documents comprising Request For Qualification (RFQ), Request For Proposal (RFP) & Model Power Supply Agreement (MPSA).
 - b. The guidelines would be applicable for the purchase of power with a contract period from seven years up to twenty-five years.
 - c. The Tariff determined through the DEEP e-bidding process using e-reverse auction based on these guidelines comprising the Model Bidding Documents shall be adopted by Appropriate Commission in pursuance of the provisions of Section 63 of the Electricity Act, 2003.

- d. Any deviation from the Model Bidding Documents shall be made only with the prior approval of the Appropriate Commission.

Provided, however, that any project-specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.

A copy of the Ministry of Power Letter dated 5th March 2019 & Guidelines dated 6th March 2019 is annexed herewith as **Annexure - B**

16. In view of the above, the Petitioner intends to make certain deviations to Model Bidding Documents to ensure commercial clarity about contractual provisions and to safeguard the interest of the consumers in the Petitioner's License area. Further, certain modifications in the Bid Documents are proposed to align contractual terms in accordance with the prevailing Rules and Regulations and to avoid cost implication on the Petitioner.

17. The Petitioner is seeking the following deviations/modifications in the Model Bidding Documents for simplifications of commercial aspects and to optimize the overall cost of long-term power procurement in the interest of the consumers.

A. Deviations already approved by Hon'ble Commission via order in case no 2051 of 2022 (Deviation approval for Medium Term Bid):

- a. Extension of Contract Period:
- b. Transmission Charges, Losses & Open Access:
- c. Contracted Capacity:
- d. Non-Availability as a consequence of shortage of Fuel:
- e. Cost of Transmission Charges:
- f. Payment Security Mechanism:
- g. Force Majeure:
- h. Dispute Resolution

B. Additional deviations for which approval is sought on account of long-term power procurement under present petition is as Annexure- C:

18. In view of the above, the Petitioner has prepared the list of deviations & modifications sought by the Petitioner in the Model Bidding Document along with rationale for deviations and the same is marked and annexed as **Annexure- C**. The draft bid documents (RFQ, RFP, MPSA) incorporating the above deviations are attached herewith as **Annexure-D**. The Petitioner would like to further submit that the deviations proposed by the Petitioner are in line with the deviations already approved by Hon'ble GERC in its Order dated 20.05.2022 in Case No. 2051 of 2022 for medium-term power procurement and additional deviations are sought to align the document for long term power procurement

since the requirement of power is from Oct-22 onwards as mentioned in Annexure- C.

19. The Petitioner submits that, in accordance with the GERC Guidelines, MoP Guidelines, and MoP notification dated 6th March 2019, the Petitioner has filed the present Petition for approval of power procurement, draft bidding documents, and deviations to the Model Bidding documents as per MoP guidelines for initiating the tender process.

20. The Petitioner submits that, the Hon'ble GERC may accord approval for proposed power procurement quantum, deviations/modifications of the Model bidding documents along with the Draft Bidding Documents to enable the Petitioner to initiate the process for inviting tender.

Prayers:

In the facts and circumstances mentioned above, it is most respectfully prayed that the Hon'ble GERC may be pleased to:

- a. To admit this Petition
- b. To approve the deviations proposed by the Petitioner from the Model Bidding documents issued by MoP as per the guidelines dated 5th March 2019 as per the details stated in the present Petition.
- c. To approve the long-term power procurement for quantum of 600 MW.
- d. To approve the Draft Bidding Documents (RFQ, RFP, and MPSA) as annexed with this Petition.
- e. To condone any inadvertent omissions/errors/shortcomings and permit the Petitioner to make addition/change/modification / alter / this filing and make further submissions as may be required at a future date.
- f. The Petitioner craves relief for filing any further submissions.

Pass any other Order as this Hon'ble GERC may deem fit and appropriate under the fact and circumstances of the case stated above and in the interest of justice.

Date : 12th July, 2022

Place : Ahmedabad

Declaration: The subject matter of above petition has not been raised by the Petitioner before any other competent forum, and that no other competent forum is currently seized of the matter or has passed any order in relation thereto.

For, MPSEZ Utilities Limited

Date: 12th July, 2022

Place: Ahmedabad



(Authorized Signatory)

BEFORE THE HON'BLE GUJARAT ELECTRICITY REGULATORY
COMMISSION AT GANDHINAGAR

S. No. 50551/2022

VIJAY C. SHAH
NOTARY
GOVT. OF INDIA
12 JUL 2022

Filing No. _____

Case No. _____

IN THE MATTER OF

Petition under Section 86(1)(b) read with Section 63 of the Electricity Act, 2003 along with "Guidelines for Procurement of Power by the Distribution Licensees" issued by Hon'ble GERC for seeking approval of the Quantum, and deviations from the Model Bidding documents as per the Ministry of Power guidelines dated 6th March 2019 for Procurement of 600 MW Power under Long Term from Power Stations set up on Design, Build, Finance, Own, and Operate (DBFOO)..

AND

IN THE MATTER OF

MPSEZ Utilities Limited,
Adani Corporate House, Shantigram,
Near Vaishno Devi Circle,
S.G Highway, Khodiyar,
Ahmedabad - 382 421

.. PETITIONER

AFFIDAVIT IN SUPPORT

I, Mehul Rupera, son of Shri Tejpal Shantilal Rupera aged about 47, Director of MPSEZ Utilities Limited, Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S.G Highway, Khodiyar, Ahmedabad - 382 421, do hereby solemnly affirm and state as under:

1. That, I am duly authorized by the Applicant to swear the present affidavit.
2. That, the fact stated in the submission are based on the record and files of the Applicant Company and they are true and correct to my knowledge, information and belief and I believe the same to be true.

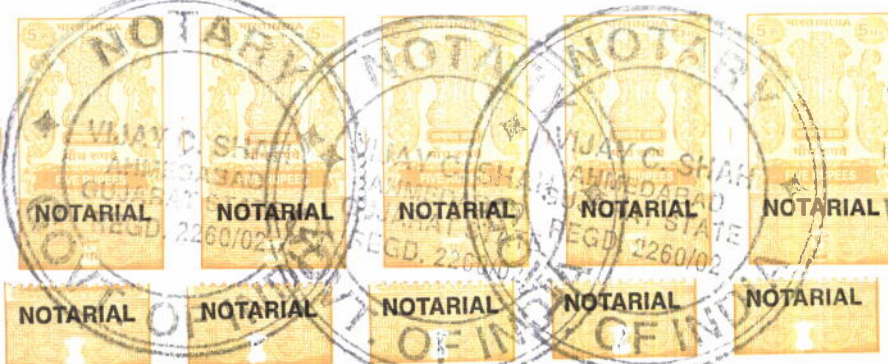
Mehul Rupera
DEPONENT

VERIFICATION

I, Mehul Rupera, son of Shri Tejpal Shantilal Rupera, do hereby verify the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at Ahmedabad on this 12th day of July, 2022

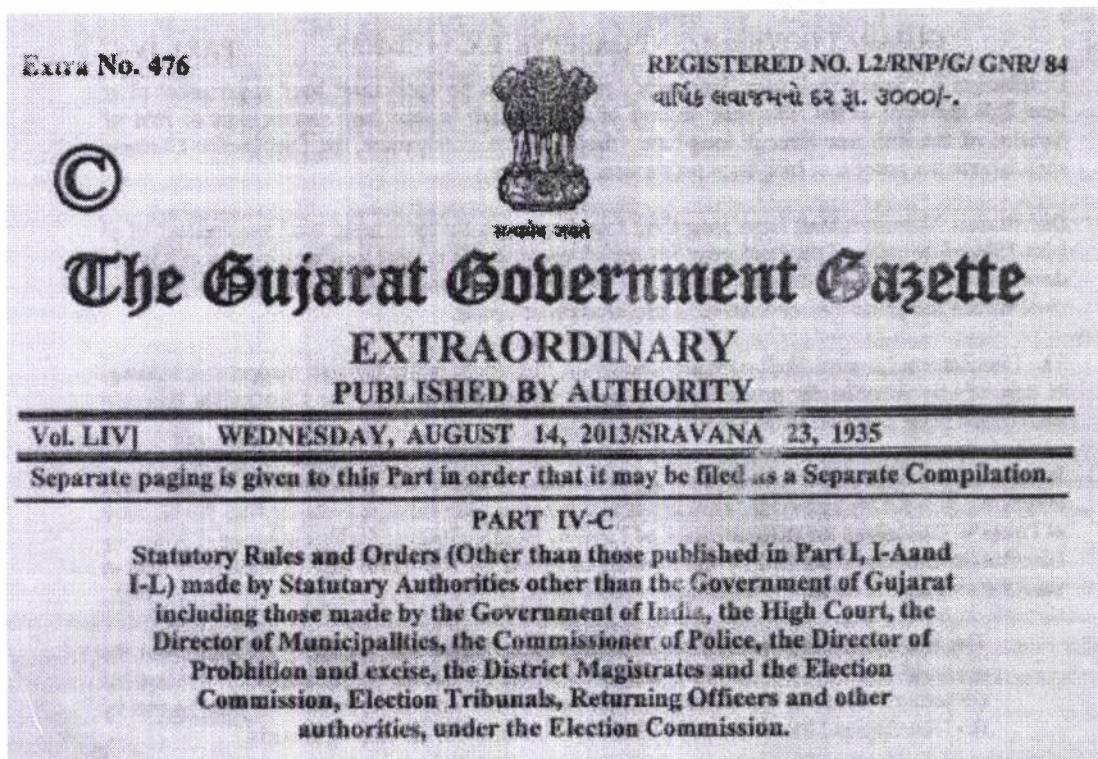
Mehul Rupera
DEPONENT



SOLEMNLY AFFIRMED
BEFORE ME

VIJAY C. SHAH
NOTARY
GOVT. OF INDIA

12 JUL 2022



GUJARAT ELECTRICITY REGULATORY COMMISSION

Guidelines for Procurement of Power by Distribution Licensees

Notification No. 2 of 2013

Preamble

Section 86 (1) (b) of the Electricity Act, 2003, envisages that the State Commission shall regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply. In fulfilment of duty cast upon the Commission as above, the Gujarat Electricity Regulatory Commission frames these guidelines for procurement of power by the Distribution Licensees in the State of Gujarat.

1. Sections 42 and 43 of the Electricity Act, 2003, provide that it is the duty of Distribution Licensee to ensure electricity supply to the consumers within the licensed area of supply on request. The power purchase cost is the major cost element in the aggregate revenue requirement of Distribution Licensees.

2. In order to ensure standardization and reduce subjectivity in power procurement and to protect consumers' interest through a process of transparent and economic procurement of power, the Gujarat Electricity Regulatory Commission (GERC) hereby directs all Distribution Licensees in the State to follow the procedure laid down in these Guidelines for procurement of power.
3. Every year by 31st January, the Distribution licensees shall submit power procurement plan for 5 years which will include:
 - a. Peak load and energy forecasts of their respective license areas for each of the successive 10 years. The peak load and energy forecasts shall be made for the overall Area of Supply.
 - b. Anticipated power supply position for each of the successive five years along with the projections for additional requirement of procurement of power, if any.
 - c. Hourly load duration projection for each of the successive 5 years.
4. Distribution Licensees shall have long-term / medium-term tie up to meet load requirement of at least 75% duration of the fifth year. In case of any shortfall to meet load requirement of 75% of duration of the fifth year through long-term / medium-term arrangement, the Distribution Licensee shall initiate the process of long-term procurement of power.
5. Distribution Licensees shall have long-term / medium-term tie up to meet load requirement of at least 85% of duration of the third year. In case of any shortfall to meet load requirement of 85% of duration of the third year through long-term / medium-term arrangement, the Distribution Licensee shall initiate the process of medium-term procurement of power.

6. The Distribution Licensee shall normally endeavour to procure power through competitive bidding. In case of any proposal for procurement of power through MoU route, the Distribution Licensee shall obtain prior approval of the GERC.
7. In case of procurement of power through competitive bidding, the Distribution Licensees shall initiate the process for long-term / medium-term power procurement in accordance with the Ministry of Power's 'Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees' notified by the Ministry of Power on 19/01/2005 and in force from time to time. As provided in the MoP Guidelines:
 - a. The bid documentation shall be prepared in accordance with the MoP guidelines and the approval of the GERC shall be obtained unless the bid documents are as per the standard bid documents issued by the Central Government. In the latter case, intimation shall be sent by the Distribution Licensee to the GERC about initiation of the bidding process.
 - b. Approval of the GERC shall be sought in the event of any deviations from the bidding conditions contained in the MoP guidelines, and in following the process described in the MoP guidelines.
 - c. Approval of the GERC shall be sought prior to initiating the bidding process with regard to the following aspects:
 - i. For the quantum of capacity / energy to be procured, in case the same exceeds the projected additional demand forecast for the next three years following the year of expected commencement of supply proposed to be procured. Such demand forecast shall be based on the latest available (at the time of issue of RFQ) Electric Power Survey published by the Central Electricity Authority (Both for Case 1 and Case 2).
 - ii. For the transfer price of fuel, in case of fuel specific procurement enquiry, if such price has not been determined by government, government approved mechanism or a fuel regulator (under Case 2).

8. In case of long-term / medium-term procurement of power from generating sources, where tariff is to be determined / adopted by the Central Electricity Regulatory Commission, the Distribution Licensee shall take prior approval of the GERC before entering into any such arrangement.
9. In case of long-term / medium-term procurement of power from generating sources, where tariff is to be determined by the GERC, the Distribution Licensee shall enter into such arrangement or agreement only after getting prior approval of the power purchase agreement.
10. For getting approval of draft PPA, the Distribution Licensee shall submit an application along with the details of quantum of power, justification for selecting a particular source/technology and the draft PPA document.
 - a. The Distribution Licensee shall, within 7 days after registration of the application, publish a notice of his application in at least two daily newspapers, one in English language and one in vernacular language, having wide circulation in the relevant area.
 - b. The suggestions and objections, if any, on the proposal for procurement of power and draft PPA, may be filed before Secretary, GERC, by any person within 30 days of publication of this notice with a copy to the applicant.
 - c. The GERC shall, within ninety (90) days from the date of registration of a complete application and after considering all suggestions and objections received from the public, issue Order approving/rejecting the proposal and draft PPA with such modifications or such conditions as may be specified in that Order.
11. For procurement of power from renewable sources of energy, the Distribution Licensee shall enter into long-term agreement in accordance with the Model PPA to be prescribed by the GERC separately. Approval of the GERC shall be sought in the event of any deviations from the Model PPA.

12. The Distribution Licensee shall submit a copy of the 'power purchase agreement' within 30 days of entering into an agreement for long-term / medium-term procurement of power.
13. Where the Distribution Licensee is to procure power on a short-term basis or there is a shortfall due to any reason whatsoever, or failure in the supply of electricity from any approved source of supply during the year, for any reason whatsoever, the licensee may enter into a short-term arrangement or agreement for procurement of power through power exchanges or through a transparent process of open tendering and competitive bidding.
14. In case of procurement of power through competitive bidding, the Distribution Licensees shall initiate the process for short-term power procurement in accordance with the Ministry of Power's 'Guidelines for Short-Term Procurement of Power by Distribution Licensees through Tariff based bidding process' notified by the Ministry of Power on 15/05/2012 and in force from time to time. As provided in the MoP Guidelines:
 - a. The bid documentation shall be prepared in accordance with the MoP guidelines and the approval of the GERC shall be obtained unless the bid documents are as per the standard bid documents issued by the Central Government.
 - b. Generally no deviation shall be allowed from these Guidelines. However, if it is essential to have the deviation from these Guidelines, the same could be done with the prior approval of the GERC.
 - c. The Procurer(s) shall procure short-term power as per the plan approved by the GERC or appropriate body as may have been constituted for the purpose by the GERC. In such case the Distribution Licensees will intimate about the initiation of the procurement process to the GERC.
 - d. In case procurement of short-term power exceeds the approved annual short-term procurement plan, the Procurer(s) shall obtain prior approval from the

GERC or any appropriate body as may have been constituted for the purpose by the GERC.

15. For procurement on short-term basis, a single-stage bid process by inviting Request for Proposal (RFP) shall be adopted. Procurer or authorized representative shall prepare bid document in line with these Guidelines.

The Procurer shall publish an RFP notice in at least two national newspapers and upload the same on company website to accord it wide publicity. The bidding shall necessarily be by way of competitive bidding.

16. The PPA shall be signed with the selected bidder(s) consequent to the selection process.

- a. After the conclusion of bid process, the Standing Committee constituted for evaluation of RFP bids shall provide appropriate certificate on conformity of the bid process evaluation to the provisions of the RFP document. The Procurer shall provide a certificate on the conformity of the bid process to these Guidelines to the GERC.
- b. If the quantum of power procured and tariff determined are within the overall approval granted by the GERC in Annual Revenue Requirement (ARR) of the respective year, then the same will be considered to have been adopted by the GERC.

In all other cases, the Procurer(s) shall submit a petition to the GERC for adoption of tariff within two days from the date of signing of PPA. The GERC should communicate the decision within seven days from the date of submission of petition.

17. The GERC may permit any Distribution Licensee to make purchase of power without requiring that such purchase be subject to Competitive/Open Process in the event of an unforeseen and an exceptional situation. However, the Distribution Licensee shall not, thereby, be exempted from demonstrating the need and the reason for departure

from a competitive process together with the economic justification for the purchase, the means, whereby, in the absence of competition, the Distribution Licensee proposes to secure the best possible terms and such other information as the GERC may require.

Gandhinagar
Date: 7th August 2013

Sd/-
(Mukesh Kumar)
SECRETARY

No. 23/17/2013-R&R (Vol-VI)
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, the 05th March, 2019

To

1. The Chairperson, Central Electricity Authority, Sewa Bhavan, R. K. Puram, New Delhi.
2. The Secretary, Central Electricity Regulatory Commission (CERC)/FOR, Chanderlok Building, Janpath, New Delhi.
3. Principal Secretaries/Secretaries (Power/Energy) of all State Governments/UTs.
4. Secretaries of all State Electricity Regulatory Commissions/JERCs
5. Chairman/CMDs of all PSUs under administrative control of Ministry of Power.
6. CMDs/MDs of Discoms/Gencos of all State Governments.
7. DG, Association of Power Producers (APP), New Delhi

Subject: Guidelines and Model Bidding Documents (MBDs) for long term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B(III) and B(IV) of SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) Policy - Reg

Sir/Madam,

I am directed to say that the Model Bidding Documents for procurement of electricity by Distribution Licensees from thermal power generating stations constructed and operated on Design, Build, Finance, Own and Operate (DBFOO) basis, through competitive bidding process were issued under the provisions of Section 63 of the Electricity Act, 2003 on 8th November, 2013. The Guidelines in this regard were also issued on 9th November, 2013. These Guidelines were amended on 16th April 2015. These Guidelines and Model Bidding Documents were further amended on 5th May 2015.

2. Coal linkages Allocation Policy for Power Sector known as 'Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India' (**SHAKTI Policy**) has been issued by the Ministry of Coal on 22nd May 2017.

3. In order to facilitate the use of coal as per Para B (I), B(III) and B(IV) of SHAKTI Policy and it introduce e-bidding process for procurement of power under long term, Ministry of Power is issuing the revised bidding documents comprising of the Model Request for Qualification-DBFOO (the "**MRFQ-DBFOO**"), the Model Request for Proposals- DBFOO (the "**MRFP - DBFOO**") and the Model Power Supply Agreement-DBFOO (the "**MPSA-DBFOO**") (collectively, the "**Model Bidding Documents - DBFOO**"), for long term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents-DBFOO including allocation of coal under B (I, III and IV) of Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India (SHAKTI) Policy. The 'Model Bidding Documents – DBFOO' are enclosed herewith. The Guidelines in this regard are being issued separately.

4. The link for the e-Bidding Portal shall be made available at the website of PFC Consulting Limited (www.pfcclindia.com) and shall also be available on the website of Ministry of Power (www.powermin.nic.in).

5. The soft copy of the Model Bidding Documents- DBFOO is available at the website of Ministry of Power i.e. www.powermin.nic.in under "Current Notices".

Encl: As above

Yours faithfully,



(Debranjana Chattopadhyay)
Under Secretary to Govt. of India
Tele No. 2373 0265

Copy to:

1. All JSs of Ministry of Power/JS&FA & Economic Adviser, Ministry of Power
2. All Directors/DSs of Ministry of Power

Copy for information to: PS to MoSP(I/C) for Power, & NRE, PPS to Secy.(P), PPS to AS(SNS), PS to CE(RR & OM), PS to Dir(R&R)

Copy to: In-charge, NIC Cell for uploading on MOP's website under "Current Notices".



भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग I—खण्ड 1
PART I—Section 1

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 74]

नई दिल्ली, शुक्रवार, मार्च 8, 2019/फाल्गुन 17, 1940

No. 74]

NEW DELHI, FRIDAY, MARCH 8, 2019/PHALGUNA 17, 1940

विद्युत मंत्रालय

संकल्प

नई दिल्ली, 6 मार्च, 2019

डिज़ाइन, निर्माण, वित्त, स्वामित्व और प्रचालन (डीबीएफओओ) के आधार पर स्थापित ताप विद्युत स्टेशनों से विद्युत की दीर्घावधि अधिप्राप्ति और शक्ति (स्कीम फॉर हार्नेसिंग एंड एनोकेटिंग कोयला (कोल) ट्रांसपेरेंसी इन इंडिया) नीति के अंतर्गत बी(I), बी(III) एवं बी(IV) के अंतर्गत कोयला आबंटन सहित मॉडल बोली दस्तावेज़ों के अंतर्गत यथाउपबंधित ईंधन के स्रोत के लिए दिशा-निर्देश और मॉडल बोली दस्तावेज़ (एमबीडीज)।

सं. 23/17/2013-आरएंडआर (खंड-VI) भाग 4.—जबकि केंद्र सरकार विद्युत अधिनियम, 2003 ("अधिनियम") के प्रावधानों के अनुसार विद्युत उत्पादन के सुव्यवस्थित विकास के लिए एक सक्षम नीति और विनियामक वातावरण तैयार करने के लिए प्रतिबद्ध है;

जबकि प्रतिस्पर्धात्मक और पारदर्शी प्रक्रियाओं के माध्यम से विद्युत की अधिप्राप्ति में प्रतिस्पर्धा को बढ़ावा देना केंद्र सरकार, राज्य सरकारों, विद्युत विनियामक आयोगों और वितरण लाइसेंसधारकों के लिए आवश्यक है;

जबकि केंद्र सरकार ने उन विद्युत उत्पादकों से, जो डिज़ाइन, निर्माण, वित्त, स्वामित्व और प्रचालन (डीबीएफओओ) आधार ताप विद्युत स्टेशनों का निर्माण और प्रचालन करने के लिए सहमत हैं, वितरण लाइसेंसधारकों द्वारा विद्युत की दीर्घावधि अधिप्राप्ति के लिए एक मानक संविदात्मक ढांचा तैयार किया है;

जबकि केंद्र सरकार ने दिनांक 08 नवम्बर, 2013 के अपने पत्र सं. 23/17/2011-आरएंडआर (खंड-V), के माध्यम से मॉडल बोली दस्तावेज़ जारी किया है जिसमें मॉडल पात्रता अनुरोध ("एमआरएफक्यू"), मॉडल प्रस्ताव अनुरोध ("एमआरएफपी") और मॉडल विद्युत आपूर्ति करार ("एमपीएसए") (संयुक्त रूप से, "मानक बोली दस्तावेज़") शामिल हैं जिसे

डीबीएफओओ के आधार पर निर्माण और प्रचालित किए गए ताप बिद्युत उत्पाद स्टेशनों से न्यूनतम प्रशुल्क के प्रस्ताव पर आधारित खुली एवं पारदर्शी प्रतिस्पर्धात्मक बोली प्रक्रिया के माध्यम से विद्युत उत्पादकों से बिजली की अधिप्राप्ति के लिए वितरण लाइसेंसधारकों द्वारा अपनाया जाना है। दिशा-निर्देश दिनांक 09 नवम्बर, 2013 को जारी किए गए और उत्तरवर्ती संशोधन दिनांक 16 अप्रैल, 2015 एवं 05 मई, 2015 को जारी किए गए।

कोयला मंत्रालय ने दिनांक 22 मई, 2017 के अपने पत्र सं.23011/15/2016-सीपीडी/सीएलडी के माध्यम से विद्युत क्षेत्र को कोयला लिंकेजों के आबंटन के लिए नीतिगत दिशा-निर्देश- न्यू मोर ट्रांसपेरेंट कोल एलोकेशन पॉलिसी फॉर पावर सेक्टर, 2017-शक्ति (स्कीम फॉर हार्नेसिंग एंड एलोकेटिंग कोयला (कोल) ट्रांसपेरेंटली इन इंडिया) ("शक्ति पॉलिसी" के रूप में संदर्भित) लागू किए हैं।

उपर्युक्त के आधार पर और दीर्घावधि के अंतर्गत विद्युत की अधिप्राप्ति के लिए ई-बिडिंग प्रक्रिया शुरू करने के लिए केंद्र सरकार ने दिनांक 05 मार्च, 2019 के अपने पत्र सं. 23/17/2013-आरएंडआर(खंड-VI) के माध्यम से मॉडल बोली दस्तावेज़ जिसमें शक्ति नीति के पैरा बी(I), बी(III) एवं बी(IV) के अनुसार कोयला के उपयोग को सुकर बनाने के लिए मॉडल अर्हता अनुरोध-डीबीएफओओ ("एमआरएफपी-डीबीएफओओ"), मॉडल प्रस्ताव अनुरोध-डीबीएफओओ ("एमआरएफपी-डीबीएफओओ") और मॉडल विद्युत आपूर्ति करार-डीबीएफओओ ("एमपीएसए-डीबीएफओओ") (संयुक्त रूप से, "मानक बोली दस्तावेज़-डीबीएफओओ") शामिल हैं जिसे डीबीएफओओ के आधार पर निर्माण और प्रचालित किए गए ताप बिद्युत उत्पाद स्टेशनों से न्यूनतम प्रशुल्क के प्रस्ताव पर आधारित खुली एवं पारदर्शी प्रतिस्पर्धात्मक बोली प्रक्रिया के माध्यम से विद्युत उत्पादकों से बिजली की अधिप्राप्ति के लिए वितरण लाइसेंसधारकों द्वारा अपनाया जाना है और शक्ति नीति के बी(I), बी(III) एवं बी(IV) के अंतर्गत कोयला आबंटन सहित मॉडल बोली दस्तावेज़ों के अंतर्गत यथाउपबंधित ईंधन के स्रोत के लिए; पीएफसी कन्सल्टिंग लिमिटेड द्वारा तैयार इलेक्ट्रॉनिक प्लेटफॉर्म (दीप ई-बिडिंग पोर्टल) के माध्यम से जारी किया है।

दीप ई-बिडिंग पोर्टल हेतु लिंक विद्युत मंत्रालय की वेबसाइट (www.powermin.nic.in) पर और पीएफसी कन्सल्टिंग लिमिटेड की वेबसाइट (www.pfcclindia.com) पर उपलब्ध है।

इसलिए, अब विद्युत अधिनियम, 2003 की धारा 63 के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार एतद्वारा इन दिशा-निर्देशों को अधिसूचित करती हैं जिन्हें डीबीएफओओ के आधार पर स्थापित ताप बिद्युत स्टेशनों से विद्युत की अधिप्राप्ति और शक्ति (स्कीम फॉर हार्नेसिंग एंड एलोकेटिंग कोयला (कोल) ट्रांसपेरेंसी इन इंडिया) नीति के अंतर्गत बी(I), बी(III) एवं बी(IV) के अंतर्गत कोयला आबंटन सहित मॉडल बोली दस्तावेज़ों के अंतर्गत यथाउपबंधित ईंधन के स्रोत के लिए दिशा-निर्देश और मॉडल बोली दस्तावेज़ (दिशा-निर्देश) के नाम से जाना जाएगा।

ये दिशा-निर्देश निम्नलिखित निबंधन एवं शर्तों के अधीन रहते हुए इससे संबंधित तारीख से प्रभावी होंगे:

1. यहां ऊपर संदर्भित मॉडल बोली दस्तावेज़-डीबीएफओओ में निर्दिष्ट निबंधन एवं शर्तें, संदर्भ द्वारा इन दिशा-निर्देशों का भाग होगी और इन्हें इसी रूप में माना जाएगा।
2. इन दिशा-निर्देशों का लागू किया जाना उन परियोजनाओं तक ही सीमित होगा जिनका विद्युत आपूर्ति करार के अनुसार किसी एक पक्षकार के विकल्प पर विद्युत आपूर्ति शुरू होने की तारीख से 7 वर्ष की अवधि से अधिकतम 25 वर्ष की अवधि तक, 5 वर्ष के विस्तार के प्रावधान के साथ, विद्युत आपूर्ति के लिए हस्ताक्षर किए गए विद्युत आपूर्ति करार के अनुसार निर्माण एवं प्रचालन किया जाता है।
3. मॉडल बोली दस्तावेज़ों को शामिल करते हुए इन दिशा-निर्देशों के आधार पर बोली प्रक्रिया के माध्यम से निर्धारित प्रशुल्क अधिनियम की धारा 63 के प्रावधानों के अनुसरण में उपयुक्त आयोग द्वारा अपनाया जाएगा।

4. मॉडल बोली दस्तावेजों से कोई विचलन उपयुक्त आयोग के पूर्व अनुमोदन से ही किया जाएगा। बशर्ते कि मॉडल बोली दस्तावेजों में अभिव्यक्त रूप से अनुमति दिए गए किसी परियोजना विशेष संशोधनों का अर्थ मॉडल बोली दस्तावेजों से विचलन के रूप में नहीं लगाया जाएगा।

5. 08 नवम्बर, 2013 को जारी मॉडल बोली दस्तावेजों और उनमें समय-समय पर किए गए संशोधनों सहित 09 नवम्बर, 2013 को जारी 'डिजाइन, निर्माण, वित्त, स्वामित्व और प्रचालन (डीबीएफओओ) आधार पर स्थापित ताप विद्युत स्टेशनों से विद्युत की अधिप्राप्ति के लिए समय-समय पर यथा संशोधित दिशा-निर्देश' एतद्वारा निरस्त किया जाते हैं।

बशर्ते कि इस तारीख से पूर्व हस्ताक्षर किया गया कोई भी करार या की गई कोई भी कार्रवाई 2005/2013/2015 के उक्त दिशा-निर्देशों के ऐसे निरसन द्वारा प्रभावित नहीं होगी और इसके अंतर्गत निरसित दिशा-निर्देशों द्वारा शासित होती रहेंगी।

घनश्याम प्रसाद, मुख्य अभियंता

MINISTRY OF POWER

RESOLUTION

New Delhi, the 6th March, 2019

Guidelines for long term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B(III) and B(IV) of SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) Policy.

No. 23/17/2013-R&R(Vol-VI) Part 4.—Whereas the Central Government is engaged in creating an enabling policy and regulatory environment for the orderly growth of generation of electricity in accordance with the provisions of the Electricity Act, 2003 (the "Act");

Whereas it is incumbent upon the Central Government, State Governments, Electricity Regulatory Commissions and the distribution licensees to promote competition in the procurement of electricity through competitive and transparent processes;

Whereas the Central Government has evolved a standard contractual framework for long term procurement of electricity by the distribution licensees from power producers who agree to construct and operate thermal power generating stations on a 'Design, Build, Finance, Own and Operate ("DBFOO") basis;

Whereas, the Central Government had, vide its letter No. 23/17/2011-R&R(Vol-V) dated 8th November, 2013, issued the Model Bidding Documents comprising the Model Request for Qualification (the "MRFQ"), the Model Request for Proposals (the "MRFP") and the Model Power Supply Agreement (the "MPSA") (collectively, the "Model Bidding Documents") to be adopted by distribution licensees for procurement of electricity from the power producers through a process of open and transparent competitive bidding based on offer of the lowest tariff from thermal power generating stations constructed and operated on DBFOO basis. The Guidelines were issued on 9th November 2013 and subsequent amendments were issued on 16th April 2015 and 5th May 2015.

Ministry of Coal, vide its letter No. 23011/15/2016-CPD/CLD, dated 22nd May 2017, has introduced the policy guidelines for allocation of Coal linkages to Power Sector - New More Transparent Coal Allocation Policy for Power Sector, 2017- SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) (referred as the "SHAKTI Policy").

Based on above and to introduce e-bidding process for procurement of power under long term, the Central Government has, vide its letter No. 23/17/2013-R&R(Vol-VI) dated 5th March, 2109 issued the Model Bidding Documents comprising the Model Request for Qualification - DBFOO (the "MRFQ-DBFOO"), the Model Request for Proposals - DBFOO (the "MRFP - DBFOO") and the Model Power Supply Agreement - DBFOO (the "MPSA- DBFOO") (collectively, the "Model Bidding Documents - DBFOO"), to facilitate the use of coal as per para B (I), B(III) and B(IV) of SHAKTI Policy, to be adopted by distribution licensees for procurement of electricity from the aforesaid power producers through a process of open and transparent competitive bidding based on offer of the lowest tariff from thermal power generating stations constructed and operated on DBFOO basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I, III and IV) of SHAKTI Policy; through an electronic platform (DEEP e-Bidding portal) developed by PFC Consulting Limited.

The link for the DEEP e-Bidding portal is available on the website of Ministry of Power (www.powermin.nic.in) and PFC Consulting Limited (www.pfcclindia.com).

Now, therefore, in exercise of the powers conferred under section 63 of the Electricity Act, 2003, the Central Government hereby notifies these guidelines to be known as the '**Guidelines for Procurement of Electricity from Thermal Power Stations set up on DBFOO Basis and sourcing fuel as provided under Model Bidding Documents including allocation of coal under B (I), B(III) and B(IV) of Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India (SHAKTI) Policy (the "Guidelines")**'.

These Guidelines shall come into effect from the date hereof subject to the following terms and conditions:

1. The terms and conditions specified in the Model Bidding Documents-DBFOO referred to hereinabove shall, by reference, form part of these Guidelines and shall be treated as such.
2. The application of these Guidelines shall be restricted to projects constructed and operated in accordance with a Power Supply Agreement signed for Supply of electricity for a period of 7 years and above upto a period of 25 years from the Date of Commencement of supply of Power with provision of extension of 5 years at the option of either party in accordance with the Power Supply Agreement.
3. The tariff determined through the bidding process based on these Guidelines comprising the Model Bidding Documents shall be adopted by the Appropriate Commission in pursuance of the provisions of section 63 of the Act.
4. Any deviation from the Model Bidding Documents shall be made only with the prior approval of the Appropriate Commission. Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.
5. The 'Guidelines for Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis' issued on 9th November 2013, as amended from time to time, including the Model Bidding Documents issued on 8th November 2013 and amended from time to time thereunder, are hereby repealed.

Provided, however, that any agreements signed or actions taken prior to the date hereof shall not be affected by such repeal of the said Guidelines of 2005/2013/2015 and shall continue to be governed by the Guidelines repealed hereunder.

GHANSHYAM PRASAD, Chief Engineer

Proposed Deviations in Model Bidding Documents (MBDs) for procurement of electricity for Long Term by MPSEZ Utilities Limited (MUL)

The proposed list of deviations required in Model Bidding Documents issued by MoP dated 5th March 2019 for Procurement of electricity on Long Term basis are as under:

A. Fixed Charge for supply prior to COD:

The fuel arrangement has to be done by Bidder based on coal linkage based on CIL/ SCCL.. Further, the date of commencement of supply is defined by Petitioner in the Bid documents. Accordingly, the above provision with regard to payment of fixed charge for supply prior to COD (maximum 365 days) has been deleted.

B. Contracted Capacity:

Based upon discussion with existing & upcoming customers and Developer, Utility is envisaging increase in power demand in its license area which requires long term / medium term power purchase tie-up. However, considering the past experience of delay in development / expansion of established units and materialization of upcoming units, Utility is of the view that additional power would be procured under long term mode with a flexibility to the Utility to vary the contracted capacity. Utility should have the right to reduce the contracted capacity for an Accounting Year 30 days before its commencement and the above-mentioned reduced capacity shall become the contracted capacity for the said Accounting Year. In the event, Utility procures power under long term basis as per Standard Bidding Documents then existing customers will have to bear the additional cost of fixed charges in case of less scheduling of power.

In view of the above, Utility proposes to amend the clause 18.2 of the MPSA to provide flexibility to the Utility to vary the contracted capacity for every accounting year to protect the interest of end consumer. **(Approved by GERC in MPSEZ MT Bidding Documents via order in 2051 of 2022)**

C. Open Capacity:

Bid documents are based on concessional fuel from Coal India / Subsidiaries. Accordingly, concept of Open Capacity from Power Plant at the disposal of Supplier has been deleted in order to ensure availability of contracted capacity with the Petitioner (Utility) and prudent use of concessional fuel.

D. Extension of Contract Period:

Clause 3.2.2 of the MPSA provides for damages to be paid by the Utility to Supplier in case of non-extension of contract after expiry of original period. The said clause may be deleted as the contract period is pre-defined and any extension would be on mutual basis in accordance with the terms & conditions of the tender documents. **(Approved by GERC in MPSEZ MT Bidding Documents via order in 2051 of 2022).**

E. Transmission Charges, Losses & Open Access:

The bid documents may be appropriately revised to clarifying that the Supplier shall be responsible for timely making application for Short/ Medium Term/Long Term Open Access. Further, for ensuring uniformity in transmission charges & losses to be quoted by bidder(s), it may be clarified that Utility shall pre-specify the Gujarat InSTS & ISTS transmission charges (in Rs/unit) (based on prevailing Long Term /Medium Term Open Access charges grossed up at 90%) and transmission losses for Gujarat InSTS & ISTS network (100 %) to be quoted by the Bidder while submitting the bid. Whereas, the Projects connected

with Gujarat STU network shall quote transmission charges & losses of Gujarat STU network only as such projects would not be incurring transmission charges & losses of ISTS network for supply of power to the Utility.

It is to humbly submit that the above clarification & modification would enable evaluation of bids from various Projects at uniform level, provide transparency with regard to applicability of Gujarat InSTS & ISTS transmission charges as well as pass through of the transmission charges & losses during the contract period in addition to clarity on responsibility of open access. **(Approved by GERC in MPSEZ 300MW MT Bidding Document, Order no 2051 of 2022)**

It is further clarify that, In case, Utility pays the transmission charges on behalf of supplier, the supplier shall reimburse same to Utility or shall adjust the same from monthly energy Bills. **(Additional)**

F. Non-Availability as a consequence of shortage of Fuel in minimum fuel stock:

As per clause 21.4.2 of the MPSA, in case of non-availability as a consequence of shortage of fuel caused by an event of Force Majeure, for the purpose of payment of Fixed Charges, deemed availability to extent of 70% of Non-Availability shall be considered. As the responsibility as well as risk for assured supply of fuel thereof is on the account of Supplier/Bidder, the provision with regard to deemed availability to the extent of 70% for payment of fixed charge to Supplier may be deleted. **(Approved by GERC in MPSEZ MT Bidding Documents via order in 2051 of 2022)**

G. Billing & Payment:

Monthly Invoice to be raised by the Supplier by 5th day of the month. Utility entitled to 1% rebate for payment within 5 days of submission of invoice. MBD does not provide clarification with regard to Regional

Energy Account & State Energy Account which is essential for energy accounting and settlement. Further, there is no mention of Supplementary Invoice towards Change in Law, other claims etc.

In order to provide clarification with regard to raising of Monthly Invoice / Supplementary Invoice and discount for early payment, following modifications have been carried out by Petitioner.

- (a) Clarification regarding Regional and State Energy Account for raising of Energy Invoices
- (b) Definition added: Supplementary Invoice - means an Invoice other than a Monthly Invoice raised by any of the Parties in accordance with provisions under this Agreement
- (c) Clarification: The Payment Due Date of 30 days applicable to Monthly Invoice shall also be applicable for the Supplementary Invoice

H. Station Heat Rate:

All plants (irrespective of commissioning status) would be required to demonstrate that the actual SHR is equal to or below the SHR pre- specified by the Petitioner while inviting the bid after carrying out the stipulated tests. PSA also provides for adjustment in fixed charge in case of variation in SHR with reference to pre-specified / actual SHR in accordance with the provisions of the PPA.

As per the provision of MBD, the Petitioner is required to pre-specify the Station Heat Rate for the purpose of participation by the prospective bidders. In order to encourage better participation from all categories of units including sub-critical, Petitioner has pre- specified the SHR as 2450 kcal/kwh which shall have to be taken into-consideration by the bidders while submitting the bids.

I. Payment Security Mechanism:

The ~~Model Bidding Documents~~ vide clause 23.1 provides for establishment of Default Escrow Agreement and Deed of Hypothecation by the Utility in addition to Letter of Credit equal to 20% of annual capacity charge payable by Utility for a month. To avoid implementation of multiple payment security mechanism and its associated cost, under the arrangement, the Utility intends to seek deviation towards removal of Default Escrow Agreement and Deed of Hypothecation as payment security mechanism to Supplier / Bidder. In lieu of the same, it is proposed to increase the amount of Letter of Credit equivalent to one month Tariff (at Normative Availability) for first year and for subsequent years at average monthly payment for previous year to ensure adequate risk coverage to Supplier. (Approved by GERC in MPSEZ MT Bidding Documents via order in 2051 of 2022)

J. Force Majeure:

There are various provisions of MPSA with regard to Force Majeure conditions and sharing of cost implications thereof has to be deleted in order to avoid any unfettered cost implication on Utility as the same would be more relevant in power tie-up under long term basis. The details of clauses which are proposes to be deleted is as under:

- (i) Clause 28.2(d) – This clause is regarding delay or failure of an oversea contractor to deliver equipment in India. The said clause may be deleted as the same would not be relevant in the present tender proposed to be floated by the Utility wherein participation would be pre-dominantly from operational projects.

- (ii) Clause 28.4(a) – As per this clause, any Change in Law event shall be considered as Political Event under Force Majeure if consequences thereof cannot be dealt with under Article 34 (Change in Law) and its impact in financial terms exceed the sum specified in Article 34.1. To avoid interpretational dispute like whether it qualify under Change in Law or Force Majeure and its consequential implications on the Utility, the Utility intends to delete the same.
- (iii) Clause 28.7.1(b) – This clause for reimbursement of Force Majeure costs attributable to Political Event by the Utility to Supplier may be deleted as Political Event is different and distinct for different bidders considering different situations. The impact of Political Event occurrence as Force Majeure as per the Model Bidding Documents may vary from project to project wherein the suppliers are different. Therefore, Utility proposes that cost implication on account of such Political Event as Force Majeure shall be borne by the supplier.
- (iv) Clause 28.11 – This clause provides relief for Unforeseen Events i.e. upon occurrence of an unforeseen event, parties may refer the matter to Conciliation Tribunal for appropriate relief / remedy including costs, expense, revenues of Power Station etc. By allowing relief to Supplier on account of unforeseen events may lead to dispute / litigations and consequential impact including cost on the Utility. Accordingly, since the tender is being invited on medium term basis and risk /obligation with regard to fuel arrangement being on Supplier / Bidder, the Utility intends to take a deviation and delete the above provision in order to avoid any unfettered cost implication on Utility. **(Approved by GERC in MPSEZ MT Bidding Documents via order in 2051 of 2022)**

K. Dispute Resolution:

As per MPSA, dispute if not settled mutually shall be referred to Conciliation and then Arbitration. While any dispute under applicable laws if required to be adjudicated by Commission, be submitted before Commission.

In order to ensure adjudication of dispute under the contractual arrangement by Appropriate Commission, the Utility intends to delete the provision with regard to conciliation and arbitration and clarified that any dispute if not resolved amicably may be referred to adjudication by Appropriate Commission for all purpose. **(Approved by GERC in MPSEZ MT Bidding Documents via order in 2051 of 2022)**

L. Delayed Payments:

Ministry of Power has notified Electricity Late Payment Surcharge Rules 2021 on 22.02.2021. As per the Rules, all such PPA executed after the date of notification rules shall incorporate provisions with regard to rate of interest for late payment surcharge.

Accordingly, Petitioner has appropriately modified the Clause 38.4 of the PSA - Delayed Payments as per the above Rules notified by Ministry of power.

M. Other project specific modifications:

In addition to above deviations / modifications, the Petitioner has carried out minor project specific modifications in the bid documents for ensuring clarity in operational aspects, the details of which is as under:

- a. Obligation of Open Access, Supply of contracted capacity at Delivery Point.
- b. Compliance / activities to be carried out by projects which are already operational as on Bid Due Date.
- c. Clarification with regard to applicability of provisions under the tender documents for both category of projects i.e. Type 1 (units that are commercial operationalized before Schedule Supply Commencement Date) and Type 2 (New Projects that are yet to be commercially operationalized)

In view of the above brief detail of required deviations, Clause-wise detailed deviation in the MBD for procurement of power (MSPA) is tabulated for your kind perusal:

Table-1

Clause No.	Clause as per MBD for RFP			Proposed Clause			Rationale for Modifications / Deviation
1.1.1 RFQ & RFP	Clause pertaining to "Background (1.1)"			Utility solicits bids from the following types of Projects: Type 1: Projects / Units that are already commercially operationalized before Schedule Supply Commencement Date Type 2: New Projects that are yet to be commercially operationalized as on Schedule Supply Commencement Date			As the Power is envisaged from Oct-2022, bids from Projects which are on the verge of commissioning or already commissioned.
1.1.1 RFQ & RFP	Capacity Required (in MW)	Minimum Capacity not less than 25% (twenty-five per cent) of Capacity Required (in MW)	Period when supply must commence	Capacity Required (in MW)	Minimum Capacity (in MW)	Period when supply must commence	In order to enable power supply from Oct-2022.
				600 MW	100 MW	Oct-2022	

Clause No.	Clause as per MBD for RFP			Proposed Clause	Rationale for Modifications / Deviation
	***	***	[36] months from Appointed Date		
2.2.1 (a) of RFQ	The Applicant for pre-qualification may be a single entity or a group of entities (the "Consortium"), coming together to implement the Project.			The Applicant for pre-qualification may be a single entity or a group of entities (the "Consortium"), coming together to implement the Project <u>or supply power from commissioned or part commissioned projects.</u>	The modifications has been carried out as projects / units already operationalized before Schedule Supply Commencement Date are also eligible to participate
2.2.1 (e) (vi)	New Clause			The Applicant has already achieved COD, can participate through attached COD certificate only.	
Appendix- II RFQ & Appendix – III RFP	Power of Attorney for signing of Application and Bid ... 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			... 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 <u>already commissioned / proposed or being developed by the *** (the "Utility")</u> including but not limited to signing and submission of all applications ...	Clause modified to provide clarity to the Bidders.

Clause No.	Clause as per MBD for RFP	Proposed Clause	Rationale for Modifications / Deviation								
	and submission of all applications,										
3.5.2 RFP	The Bid for the Project shall, therefore, comprise the Fixed Charge and Fuel Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder.	The Bid for the Project shall, therefore, comprise the Fixed Charge, <u>Transmission Cost</u> (Charges and Losses) and Fuel Charge which shall be specified separately (<u>as per Appendix-I of RFP</u>), and the Bidder seeking the lowest Tariff shall be the Selected Bidder.	The modification has been carried out to evaluate bids on landed cost basis i.e. after adding cost towards transmission of power for delivering Contracted Capacity at Delivery Point								
Appendix I – RFP Sr. 23	I/ We offer a Capacity of ***MW from (Capacity, Name and address of the Project) which conforms to clause 1.1.4 of the RFQ- DBFOO	I/ We offer a Capacity of ***MW (<u>at Delivery Point</u>) from (Capacity, Name and address of the Project) which conforms to clause 1.1.4 of the RFQDBFOO	As per the commercial arrangement under the Bid Documents, Supplier is required to make available the Contracted Capacity at Delivery Point. Accordingly, this modification has been carried out.								
Appendix-I-RFP	[A tariff comprising a Fixed Charge of Rs.... and paise \$ per kWh (Rupees.... and paise....) and a Fuel Charge comprising of (a) Rs. and paise \$ per kWh (Rupees and paise) per kWh on account of cost of Fuel, (b) Rs and paise \$ per kWh (Rupees.... and paise) per kWh on account of transportation, (c) Rs. and paise \$ (Rupees and paise) per	Addition of Bid Format under RFP:	In order to provide clarity with regards to the components of bid to be quoted as well as sharing of various costs, an illustrative bid format has been added in the Bid Documents. Additional Clarification/ Instructions with regards to								
		<table><tr><th>Bid Parameters</th><th>Unit</th></tr><tr><td>1. Fxed Charges for the base year</td><td>Per kWh</td></tr><tr><td>2. Fuel Charge =Sum of (a)+(b)+(c)</td><td></td></tr><tr><td>a) Cost of Fuel</td><td>Per kWh</td></tr></table>		Bid Parameters	Unit	1. Fxed Charges for the base year	Per kWh	2. Fuel Charge =Sum of (a)+(b)+(c)		a) Cost of Fuel	Per kWh
		Bid Parameters		Unit							
		1. Fxed Charges for the base year		Per kWh							
2. Fuel Charge =Sum of (a)+(b)+(c)											
a) Cost of Fuel	Per kWh										

Clause No.	Clause as per MBD for RFP	Proposed Clause		Rationale for Modifications / Deviation
	kWh on account of washing, (d) Rs. and paise \$ (Rupees and paise) per kWh on account of crushing charges, and (e) Rs. and paise \$ (Rupees and paise) per kWh on account of Other Charges]	b) Cost of Trasportaion	Per kWh	submission of bids have also been incorporated.
		c) Cost of Washing	Per kWh	
		3. Transmission Cost = Sum (a)+(b)+(c)+(d)		
		a) ISTS Transmission Charges	Per kWh	
		b) ISTS Transmission Losses (for drawal State) ISTS Transmission Losses (For Drawal State)	In % Per kWh	
		c) ISTS Transmission Charges	Per kWh	
		d) InSTS Transmission Losses	In %	
		InSTS Transmission Losses	Per kWh	

Clause No.	Clause as per MBD for RFP	Proposed Clause	Rationale for Modifications / Deviation
		Total Tariff = Sum of Per kWh (1)+(2)+(3) The additional clarifications incorporated are separately attached in this document.	

Table-2

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
2.1 (a)	[construction,] operation and maintenance of the Power Station in accordance with the provisions of this Agreement	<u>Designing, engineering, financing, procurement,</u> construction (in case of new Projects), operation and maintenance of the Power Station in accordance with the provisions of this Agreement	The Clause is modified to consider both Type-1 and Type-2 projects.
3.1.1	Provided that the Utility shall, at any time no earlier than 3 (three) years, but no later than 2 (two) years prior to completion of the aforesaid Contract Period of [()] years, upon issuing a notice to this effect to the Supplier, be entitled to an extension of 5 (five) years in the Contract Period under and in	Provided that the Utility shall, at any time no earlier than 1 (one) year, but no later than 6 (six) months prior to completion of the aforesaid Contract Period of 15 (Fifteen) years, upon issuing a notice to this effect to the Supplier, be entitled to an extension of 10 (five) years in the Contract Period	The Contract Period envisaged under the tender is 15 years. Accordingly, the time period with regard to decision for extension has been reduced for aligning the same with contract period

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	accordance with the provisions of Clause 31.4. Provided that the Supplier shall, at any time no earlier than 3 (three) years, but no later than 2 (two) years prior to completion of the aforesaid Contract Period of [()] years, upon issuing a notice to this effect to the Utility, be entitled to an extension of 5 (five) years in the Contract Period under and in accordance with the provisions of Clause 31.4.	under and in accordance with the provisions of Clause 31.4. Provided that the Supplier shall, at any time no earlier than 3 (three) years, but no later than 2 (two) years prior to completion of the aforesaid Contract Period of [()] years, upon issuing a notice to this effect to the Utility, be entitled to an extension of 5 (five) years in the Contract Period under and in accordance with the provisions of Clause 31.4.	
3.2.2	Extension of Contract Period Notwithstanding anything to the contrary contained in this Agreement, save and except the extension of Contract Period specified in the Proviso of Clause 3.1.1 and in Clause 31.4, in the event that extension of the Contract Period due to the Supplier in accordance with the provisions of this Agreement is not granted by the Utility for any reason, the Utility shall, within 30 (thirty) days of the expiry of this Agreement, pay to the Supplier a lump sum amount computed	To be deleted	As the contract period is pre-defined, the provision with regard to damages to be paid by the Utility to Supplier in case of non extension of contract after original period has been deleted.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	in accordance with this Clause 3.2.2 in lieu of the Fixed Charge that would have been payable to the Supplier if the Contract Period were extended in accordance with this Agreement. For computation of the aforesaid lump sum amount payable hereunder, the Fixed Charge due and payable for and in respect of the last month of the Contract Period shall be deemed as the base and the amount so determined shall be reduced by 5% (five per cent) for the following month and the same computation shall be repeated for every subsequent month for the purposes hereof. For the avoidance of doubt and by way of illustration, if the Fixed Charge for the last month of the Contract Period is Rs. 1 crore (Rupees one crore) and the period of foregone extension is 2 (two) months, the amount payable for and in respect of the first and second months shall be a sum of Rs. 95 lakh (Rupees ninety five lakh) and Rs. 90.25 lakh (Rupees ninety point two five lakh) respectively. It is further clarified that payment for a part month shall be		

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	computed on a proportionate basis. The Parties further agree that the payment of such amount shall be deemed to form part of the Secured Obligations and may be recovered by the Supplier under and in accordance with Article 23.		
4.1.2 (a)	Executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 23.1;	<u>Opened and Submitted the Letter of Credit in accordance with Payment Security Mechanism under this agreement.</u>	Utility has proposed to remove Default Escrow Agreement and Deed of Hypothecation as payment security
4.1.2 (b)	Executed the Deed of Hypothecation in accordance with the provisions of Clause 23.1.2	To be deleted	mechanism to Supplier / Bidder and in lieu of the same amount of Letter of Credit to be opened by Utility has been increased equivalent to one month energy bill at normative availability to ensure adequate risk coverage to Supplier. The same will avoid multiple payment security mechanism under the arrangement and associated cost thereof taking into consideration that contract period is 25 years.
4.1.3 (J)	The Conditions Precedent required to be satisfied by the Supplier within a	The clause has been modified as under:	Various operational projects are likely to participate. As

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	period of 180 (one hundred and eighty) days from the date of this Agreement: (j) submitted evidence of the commissioning of the Power Station, including details of the Installed Capacity and the Station Heat Rate of the Power Station.	J. in case of Type 1 projects commissioned as on Bid Due Date submitted evidence of the commissioning of the Power Station, including details of installed Capacity and the Station Heat Rate of Power Station and Undertaking of compliance to all the norms, permits and guidelines as notified by Govt. of India as on Bid Due Date including revised norms specified by Ministry of Environmental and Forest, Govt. of India vide notification dated 7.12.2015 & subsequent amendments thereof. Utility shall not be liable for any cost implication towards thereof. In case of Type 2 projects, submitted an Undertaking for compliance to all the norms, permits and guidelines as notified by Govt. of India as on Bid Due Date including, revised norms specified by Ministry of Environmental and Forest, Govt. of India vide notification dated 7.12.2015 & subsequent amendments thereof. Utility shall not be liable for any cost	the compliance met for environment norms could be different based on technology and CAPEX incurred, the tariff component to be quoted by any bidder would in a manner reflect the extent of cost incurred. In order to remove anomaly towards the same and to have parity in bids, the condition has been incorporated that the cost towards meeting the environment norms specified as on Bid Due Date shall have to borne by Bidders only and Utility shall not be liable for any cost implication

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
		implication towards thereof.	
5.1.4	Availability of the Power Station to its full capacity shall, in respect of any hour, mean the capacity of the Power Station to the extent it is offered by the Supplier for producing and supplying electrical energy equal to [950 (nine hundred and fifty)] kWh per mega watt of Contracted Capacity over a period of one hour, after accounting for auxiliary consumption, and transmission losses upto the Point of Grid Connection.....	Availability of the Power Station to its full capacity shall, in respect of any hour, mean the capacity of the Power Station to the extent it is offered by the Supplier for producing and supplying electrical energy equal to [950 (nine hundred and fifty)] kWh per megawatt of Contracted Capacity at <u>Delivery Point</u> over a period of one hour, after accounting for auxiliary consumption, and transmission losses.....	As per the commercial arrangement under the Bid Documents, Supplier is required to make available the Contracted Capacity at Delivery Point. Accordingly, this modification has been carried out.
5.1.5 (a)	The Supplier shall..... make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws. Non-grant of long term open access shall be mutually decided by the Utility and Supplier shall	The clause is modified as under: (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits <u>including Open Access</u> , other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws. <u>Supplier shall apply for grant of long-term / medium term / short term open access for supply of Contracted</u>	The modification has been undertaken to have clarity with regard to obligation for open access for supplying contracted capacity at Delivery point and commercial aspects in case of delay in grant of long term / medium term / short term open access by CTU and/or STU.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	apply for grant of long-term open access for Contracted Capacity;	<u>Capacity. Non-grant of long term / medium term/ short term open access shall be mutually decided by the Utility and Supplier. In case of delay in grant of long-term / medium term/ short term open access on ISTS and/or InSTS network by the CTU and/or STU, the same may be considered for appropriate time period extension for fulfilment of supplier obligations under this clause, provided that such reasons for delay are not attributable to the Supplier;</u>	
5.5	Obligations relating to transmission charges The Supplier shall be liable for payment of all charges, due and payable under Applicable Laws, for inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that inter-state and intra-state transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of inter-state and intra-state transmission shall, subject to the provisions of Clause 21.4.3,	Obligations relating to transmission charges The Supplier shall be liable for payment of all charges, due and payable under Applicable Laws, for inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that inter-state and intra-state transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any failure of inter-state and intra-state transmission shall, subject to the provisions of Clause 21.4.3, be borne	The clarification has been incorporated in order to have clarity with regard to applicability of National & State level transmission charges and pass through of variation after bid due-date.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	be borne by the Supplier. The Parties further agree that the obligation of the Supplier to pay the regulated charges for transmission of electricity shall be restricted to the tariffs and rates applicable on the Bid Date for and in respect of 80% (eighty per cent) of the Contracted Capacity and any differential arising from revision of the regulated tariffs and rates thereafter shall be payable or recoverable, as the case may be, by the Utility. The Parties also agree that the regulated charges applicable for transmission of electricity referred to hereinabove as on the Bid Date shall be deemed to be Rs. (Rupees) for and in respect of 80% (eighty per cent) the Contracted Capacity, which charges shall at all times be due and payable by the Supplier.	by the Supplier. The Parties further agree that the obligation of the Supplier to pay the regulated charges for transmission of electricity shall be restricted to the tariffs and rates applicable on the Bid Date for and in respect of the 100% (hundred per cent) of Contracted Capacity <u>to be made available at Delivery Point and variation thereafter in Gujarat Intra-State & inter-State Transmission Charges as determined by Gujarat Electricity Regulatory Commission & National Load Despatch Centre in accordance with Regulation notified by State / Central Commission and specified by Utility</u> and any differential arising from revision of the regulated tariffs and rates thereafter shall be payable or recoverable, as the case may be, by the Utility. The Parties also agree that the regulated charges applicable for transmission of electricity referred to hereinabove as on the Bid Date shall be deemed to be Rs. (Rupees) for and in respect of the 100 % (hundred percent) Contracted Capacity <u>to be made available at Delivery Point</u>, which charges shall at all times be due and	

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
		payable by the Supplier. <u>For avoidance of doubt, it is clarified that all intra-state transmission charges of the State where project is located shall be borne by the Supplier throughout the contract period.</u>	
5.6.1	The Supplier shall be liable for the transmission losses in all inter-state and intrastate transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any transmission losses on inter-state and intra-state transmission lines shall be borne by the Supplier. The Parties further agree that the obligation of the Supplier to bear the transmission losses shall be restricted to the level of losses determined by the Central Commission as on the Bid Date for this Project and any differential (higher or lower) arising from revision in the level of losses thereafter by the Central Commission shall be borne by the Utility.	The Supplier shall be liable for the transmission losses in all inter-state and intra-state transmission of electricity from the Point of Grid Connection to the Delivery Point. For the avoidance of doubt, the Parties expressly agree that transmission of electricity shall be undertaken solely at the risk and cost of the Supplier and all liabilities arising out of any transmission losses on inter-state and intra-state transmission lines shall be borne by the Supplier. The Parties further agree that the obligation of the Supplier to bear the transmission losses shall be restricted to the level of losses <u>notified by the Gujarat State Load Despatch Centre & National Load Despatch Centre in accordance with Regulation notified by State / Central Commission and specified by Utility</u> determined by the Central Commission as on the Bid Date for this Project and any differential (higher or	The clarification has been incorporated in order to have clarity with regard to applicability of National & State level transmission charges and pass through of variation after bid due-date.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
		lower) arising from revision in the level of losses thereafter by the <u>Gujarat SLDC / State Commission / Central Commission (For Gujarat Intra-State & Inter-State Transmission System)</u> shall be borne by the Utility. <u>For avoidance of doubt, it is clarified that all intra-state transmission losses of the State where project is located shall be borne by the Supplier throughout the contract period.</u>	
5.6.2	The Supplier represents and warrants that it has ascertained and assessed the applicable transmission losses from the Point of Grid Connection to the Delivery Point as determined by the Appropriate Commission for and in respect of the Bid Date, and expressed in the form of their proportion to the electricity supplied hereunder at the Point of Grid Connection. The Supplier acknowledges, agrees and undertakes that the product of such transmission losses (expressed in kWh) and the Tariff shall be due and payable by the Supplier to the Utility and shall be adjusted in the relevant Monthly Invoice. For the avoidance of doubt and by way of illustration, the Parties agree	The Supplier represents and warrants that it has ascertained and assessed the applicable transmission losses from the Point of Grid Connection to the Delivery Point as <u>notified by the Gujarat State Load Despatch Centre & National Load Despatch Centre in accordance with Regulation notified by State / Central Commission</u> determined by the Appropriate Commission for and in respect of the Bid Date, and expressed in the form of their proportion to the electricity supplied hereunder at the Point of Grid Connection. <u>For avoidance of doubt, it is to clarify that the same shall be applicable in accordance with Sr. 34 of the Appendix I of RFP. The Supplier</u>	The clarification has been incorporated in order to have clarity with regard to applicability of National & State level transmission losses and pass through of variation after bid due-date.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	that if the transmission losses in any month are equivalent to 1 (one) lakh units and the Tariff payable for that month is Rs. 3 (Rupees three) per kWh, an amount of Rs. 3,00,000/- (Rupees three lakh) shall be due and payable by the Supplier to the Utility and shall be adjusted in the Monthly Invoice for that month.	acknowledges, agrees and undertakes that the product of such transmission losses (expressed in kWh) and the Tariff shall be due and payable by the Supplier to the Utility and shall be adjusted in the relevant Monthly Invoice. For the avoidance of doubt and by way of illustration, the Parties agree that if the transmission losses in any month are equivalent to 1 (one) lakh units and the Tariff payable for that month is Rs. 3 (Rupees three) per kWh, an amount of Rs. 3,00,000/- (Rupees three lakh) shall be due and payable by the Supplier to the Utility and shall be adjusted in the Monthly Invoice for that month.	
5.8	Obligations relating to taxes The Supplier shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Power Station. Provided, however, that all payments made by the Supplier with respect to service tax, value added tax, general sales tax or electricity duty, if any, levied on or in respect of the supply of electricity to the Utility under this	Obligations relating to taxes The Supplier shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Power Station. Provided, however, that all payments made by the Supplier with respect to service tax, value added tax, general sales tax or electricity duty, if any, levied on or in respect of the supply of electricity to the Utility under this	Bidder is required to factor in all the cost component while submitting the bid and there shall not be separate reimbursement towards taxes, duties etc. unless the same is qualifying under Change in Law (Article 34 of MSPA).

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	Agreement shall be reimbursed by the Utility upon receipt of particulars thereof.	Agreement shall be reimbursed by the Utility upon receipt of particulars thereof. <u>For avoidance of doubt, it is clarified that the Tariff quoted should be inclusive of all Taxes, Duties, Cesses etc. as applicable on Bid Due Date and any variation in the same after the Bid Due Date shall be subject to adjustment, in accordance with the provision of Change in Law.</u>	
5.10	Not Available in MBD	<u>Obligations relating to Open Access</u> The Supplier shall be responsible for timely making application for Short Term / Medium Term / Long Term Open Access. It is to clarify that all applicable charges (SLDC, RLDC, Open Access charges etc.) for delivery of contracted capacity at Delivery Point shall be on account of Supplier. Further, the obligations towards payment of transmission charges & losses for supply upto Delivery Point shall be on the account of Supplier. In case, Utility pay the transmission charges on behalf of Supplier, the Supplier shall be responsible for reimbursing same to Utility or Utility is authorized to adjust the same from monthly Energy Bills. In case of power flow under Short term/ Medium Term	The clarification has been incorporated with regard to: -Responsibility of Open Access -Obligation to bear cost towards applicable charges (SLDC, RLDC, Open Access etc.) -Reimbursement / adjustment in case transmission charges are paid by Utility on behalf of Supplier to STU/CTU

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
		<u>open access, transmission charges towards long term Open Access would not be payable to Supplier by Utility.</u>	
6.1.2 (c) & (e)	(c) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Power Station; (e) undertake rehabilitation and resettlement of persons affected by construction of the Power Station and bear all costs and expense in respect thereof, save and except as otherwise provided in this Agreement; and	(c) Clause Omitted (e) Clause Omitted	The provision has been deleted as not relevant in the present bid framework.
6.1.3	The Utility shall provide and facilitate non- discriminatory open access to its network for enabling the Supplier to supply electricity to Buyers in the licence area of the Utility in accordance with the provisions of sections 42 and 49 of the Act.	Clause Omitted	The provision has been deleted as not relevant in the present bid framework.
9.4.1	Performance Guarantee The Supplier shall, for the performance of its obligations hereunder during the Operation Period, be deemed to provide to the Utility upon occurrence of COD,	Performance Guarantee The Supplier shall, for the performance of its obligations hereunder during the Operation Period, be deemed to provide to the Utility upon occurrence of COD,	Utility has proposed to remove Default Escrow Agreement / Account, therefore, clause is suitably modified.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	an irrevocable and unconditional guarantee pursuant to the provisions of this Clause 9.4 (the "Performance Guarantee"), for a sum equivalent to the Fixed Charge due and payable by the Utility to the Supplier for Normative Availability in respect of a period of 15 (fifteen) days in accordance with the provisions of this Agreement. The Performance Guarantee shall constitute the first and exclusive charge on all amounts due and payable by the Utility to the Supplier, and the Utility shall be entitled to enforce the Performance Guarantee by making a deduction from the amounts due and payable by it to the Supplier in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Supplier upon occurrence of Supplier Default shall be	an irrevocable and unconditional guarantee pursuant to the provisions of this Clause 9.4 (the "Performance Guarantee"), for a sum equivalent to the Fixed Charge due and payable by the Utility to the Supplier for Normative Availability in respect of a period of 15 (fifteen) days in accordance with the provisions of this Agreement. The Performance Guarantee shall constitute the first and exclusive charge on all amounts due and payable by the Utility to the Supplier, and the Utility shall be entitled to enforce the Performance Guarantee by making a deduction from the amounts due and payable by it to the Supplier in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Supplier upon occurrence of Supplier Default shall be liable to appropriation hereunder.	

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	liable to appropriation hereunder.		
10.4	For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Supplier hereunder shall be reimbursed by the Utility. It is also agreed that the Utility shall procure that the instructions hereunder are issued by it or the concerned Government Instrumentality within a reasonable period so as to enable the Supplier to continue its Construction Works with such modifications as may be deemed necessary.	For the avoidance of doubt, it is agreed that any Reasonable expenses incurred by the Supplier hereunder shall <u>not</u> be reimbursed by the Utility. It is also agreed that the Utility shall procure that the instructions hereunder are issued by it or the concerned Government Instrumentality within a reasonable period so as to enable the Supplier to continue its Construction Works with such modifications as may be deemed necessary.	The Clause modified to provide clarity to the Bidders
11.2.1	The Supplier shall complete construction of the Power Station as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-C. The [1,050th (one thousand and fiftieth)] day from the Appointed Date shall be the scheduled date for completion of the Power Station (the "Scheduled Completion Date")	The Supplier shall complete construction of the Power Station as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-C. Following clarification added: For projects which are already operational, the Supplier shall ensure conformity to the Specifications and Standards in addition to other	The clarification has been added for applicable compliance by projects which are operational.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
		compliance as required under this Agreement latest by Scheduled Supply Completion Date as per the Agreement.	
11.2.3	Construction of the Power Station. The clause provides for achievement of construction milestones by projects and timely completion of project activities for commencement of power supply under the agreement. <i>The entire clause is not reproduced here for sake of brevity.</i>	New Clause 11.2.3 added: Type 1 Projects shall be required to undertake & ensure all necessary activities to commence supply of power in accordance with the timelines & obligation under this Agreement. In the event of delay, unless such failure has occurred due to reasons attributable to the Utility, the Supplier shall pay Damages to the Utility at the amount specified at Clause 14.2 of Article 14 of this Agreement. For the avoidance of doubt, the Parties agree that in the event COD does not occur within 120 (one hundred and twenty) days from the Scheduled Supply Commencement Date specified under this agreement, unless the delay is on account of reasons attributable to the Utility or due to Force Majeure, the Utility shall be entitled to terminate this Agreement	The clause is provided for Type 1 projects (i.e. projects operational as on Bid Due Date) The provision incorporated to have in place consequential implication on Supplier (in line with the eventuality provided for under construction projects) in case of delay in commencement of power supply in accordance with the timelines provided under the Agreement.
13.6	Phased Completion of Power Station	Clause deleted	As the Power is envisaged from Oct-2022, bids from

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
			Projects which are on the verge of commissioning or already commissioned. In view of above, the provision with regard to phased completion of power station is proposed to be deleted to avoid discrepancy & disputes.
14.1.2	In the event COD is achieved prior to the Scheduled Completion Date, the Fixed Charge due and payable to the Supplier for the period prior to the Scheduled Completion Date shall be [70% (seventy per cent)] of the Base Fixed Charge specified in Clause 21.2.1. Provided, however, that no payment on account of Fixed Charge hereunder shall be due or payable for any period prior to [365 (three hundred and sixty five)] days from the Scheduled Completion Date.	Clause deleted	The supply of power under the Agreement i.e. Supply Commencement Date is pre-informed. Accordingly, the provision with regard to receiving early supply and payment of fixed cost thereof is proposed to be deleted.
14.2	Subject to the provisions of Clause 11.2, if COD does not occur prior to the 61 st (sixty first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the	Subject to the provisions of Clause 11.2, if COD does not occur prior to the 61 st (sixty first) day after the Scheduled Completion Date / <u>Scheduled Supply Commencement Date</u> , unless the delay	The clarification added for aligning fixed charge annual reduction as per Scheduled Supply Commencement Date

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	Utility or due to Force Majeure, the Supplier shall pay Damages to the Utility in a sum calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each day until COD is achieved.	is on account of reasons attributable to the Utility or due to Force Majeure, the Supplier shall pay Damages to the Utility in a sum calculated at the rate of 0.5% (zero point five per cent) of the amount of Performance Security for delay of each day until COD is achieved.	
18.2	Contracted Capacity Pursuant to the provisions of this Agreement, the Supplier shall dedicate a generating capacity of *****MW to the Utility as the capacity contracted hereunder (the "Contracted Capacity") and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement.	Contracted Capacity Pursuant to the provisions of this Agreement, the Supplier shall dedicate a generating capacity of *****MW to the Utility. <u>However, Utility has the right to reduce the contracted capacity based on its demand with prior written notice not later than 30 days prior to commencement of every Accounting Year. The said reduced capacity shall become the contracted capacity for the said Accounting Year for all the purposes as the capacity contracted hereunder (the "Contracted Capacity") and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement.</u> <u>Further the Parties agree that the Utility may also seek additional Contracted Capacity during any Accounting Year by</u>	As the increase in demand is forecasted based on expansion of existing units and materialization of new units, therefore, any delay in expansion / installation of unit may vary the demand drastically. Hence, in order to avoid the burden of fixed charges on end consumers for non / less utilization of contracted capacity, Utility proposes this modification to have some flexibility in case of change in demand. This mechanism will also protect the interest of Supplier as Supplier can sell the balance / non-contracted quantum to third party without any

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
		<u>giving a 30 days prior written notice to the Seller.</u>	obligation under this agreement.
18.4	The Parties expressly acknowledge and agree that save and except as provided in Clause 18.4.2, 20% of the Contracted Capacity and the Committed Capacity, as the case may be, shall be available to the Supplier for production and supply of electricity to any person, in accordance with Applicable Laws and this Agreement (the "Open Capacity".....	Clause deleted	Fuel Supply is based on allocated coal supplied by CIL/SCCL. Accordingly, concept of Open Capacity from Power Plant at the disposal of Supplier has been deleted in order to ensure availability of contracted capacity with Utility and prudent use of concessional fuel.
21.2.4 8	The Initial Fixed Charge shall be deemed to be the Base Fixed Charge for the Accounting Year in which COD occurs.....	21.2.4. The Initial Fixed Charge shall be deemed to be the Base Fixed Charge for the Accounting Year in which <u>Scheduled Supply Commencement Date</u> occurs	The clarification added for aligning fixed charge annual reduction as per Scheduled Supply Commencement Date
21.3	if (a) the Bid Date occurs in February 2015; (b) COD occurs in May 2019; and (c) WPI increases by 20% (twenty per cent) between January 31, 2015 and January 31, 2019, the Indexed Fixed Charge for the Accounting Year commencing from April 1, 2019 shall be	if (a) the Bid Date occurs in February 2015; (b) Scheduled Supply Commencement Date occurs in May 2019; and (c) WPI increases by 20% (twenty per cent) between January 31, 2015 and January 31, 2019, the Indexed Fixed Charge for the	The clarification added for aligning fixed charge annual revision as per Scheduled Supply Commencement Date

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	106% (one hundred and six per cent) of the Base Fixed Charge for that Accounting Year.	Accounting Year commencing from April 1, 2019 shall be 106% (one hundred and six per cent) of the Base Fixed Charge for that Accounting Year.	
21.4.2	Upon occurrence of a shortfall in the Minimum Fuel Stock, Availability shall be deemed to be reduced in accordance with the provisions of Clause 21.5.2 and the Non-Availability arising as a consequence thereof shall, for the purposes of payment of Fixed Charge, be deemed to be Availability to the extent of 70% (seventy per cent) of the Non-Availability hereunder. For the avoidance of doubt, the Parties expressly agree that if Fuel Shortage is caused by an action or omission attributable to the Supplier, it shall not be reckoned for the purposes of computing Availability hereunder. By way of illustration, the Parties agree that in the event the Non-Availability arising on account of shortfall in supply of Fuel is determined to be 50% (fifty per cent), the Supplier shall, with respect to the Non-Availability arising on account thereof in accordance with the provisions of Clause 21.5.2, be entitled to a Fixed Charge as if	Upon occurrence of a shortfall in the Minimum Fuel Stock, Availability shall be deemed to be reduced in accordance with the provisions of Clause 21.5.2	As per the Utility's Bid Documents, the responsibility as well as risk for assured supply of fuel/arrangement thereof is on the Supplier/Bidder. Thus, the provision with regard to deemed availability to the extent of 30% in the event of non-availability arising as a consequence of Force Majeure event, for payment of fixed charge to Supplier has been deleted.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	the Availability is equivalent to 70% (seventy per cent) of such Non-Availability. For the avoidance of doubt, the Parties agree that the Supplier shall not be liable to pay the Damages specified in Clause 21.6.2 if Non-Availability shall arise as referred to in this Clause 21.4.2.		
21.4.4	The obligations of the Utility to pay Fixed Charges in any Accounting Year shall in no case exceed an amount equal to the Fixed Charge due and payable for and in respect of the Normative Availability of 90% (ninety per cent) computed with reference to the entitlement of the Utility in Contracted Capacity (the "Capacity Charge"). Provided, however, that in the event of Despatch of the Power Station beyond such [72% (Seventy two per cent)], Incentive shall be payable in accordance with the provisions of Clause 21.6.1. For the avoidance of doubt, the Capacity Charge referred to herein shall be equal to and computed with reference to the maximum Availability of [72% (Seventy two per cent)] ²⁶ of the Contracted Capacity.	The obligations of the Utility to pay Fixed Charges in any Accounting Year shall in no case exceed an amount equal to the Fixed Charge due and payable for and in respect of the Normative Availability of 90% (ninety per cent) computed with reference to the entitlement of the Utility in Contracted Capacity (the "Capacity Charge"). Provided, however, that in the event of Despatch of the Power Station beyond such [90% (ninety per cent)], Incentive shall be payable in accordance with the provisions of Clause 21.6.1. For the avoidance of doubt, the Capacity Charge referred to herein shall be equal to and computed with reference to the maximum Availability of [90% (ninety per cent)] ²⁶ of the Contracted Capacity.	

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
21.4.5	Pursuant to the provisions of Clause 11.4.4, the Supplier shall not, for and in respect of any day, be entitled to receive payment of Fixed Charge for Availability exceeding [72% (Seventy Two per cent)] thereof, and in the event it supplies electricity to the Utility in excess of such [72% (seventy two per cent)], such excess supply shall be eligible only for payment of Fuel Charge, save and except the payment of Incentive due under the provisions of Clause 21.4.4.	Pursuant to the provisions of Clause 11.4.4, the Supplier shall not, for and in respect of any day, be entitled to receive payment of Fixed Charge for Availability exceeding [90% (Ninety per cent)] thereof, and in the event it supplies electricity to the Utility in excess of such [90% (Ninety per cent)], such excess supply shall be eligible only for payment of Fuel Charge <u>excluding cost of transmission charges,</u> save and except the payment of Incentive due under the provisions of Clause 21.4.2.	As per the Bid Documents, the Availability as well as Incentive / Damages shall be worked out on Monthly Basis and shall be trued up at the end of Accounting Year (in accordance with Clause 21.6.3 of PPA). Thus, the word "for and in respect of any day" has been deleted for clarity. As Supplier / Bidder would be recovering full transmission charge upon declaring normative availability (90%), the transmission charge would not be payable in case of scheduling above 90%.
21.9.1	The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties, save and except the taxes and duties specified in Clause 21.9.2. It is further agreed that the Supplier shall pay all taxes and duties, including the taxes and duties specified in Clauses 21.9.2, in accordance with Applicable Laws.	The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties, save and except the taxes and duties specified in Clause 11.8.2. It is further agreed that the Supplier shall pay all taxes and duties, including the taxes and duties specified in Clauses 21.9.2, in accordance with Applicable Laws.	As per the Utility's Bid Documents, bids are invited based on allocated coal supplied by CIL/SCCL. As per the terms of Bid Documents, Bidder(s) are required to factor in all the applicable taxes, duties etc. while submitting the bid and
21.9.2	The Tariff and Incentives payable by the Utility under this Article 21 shall be	The Tariff and Incentives payable by the Utility under this Article 21 shall be	

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	exclusive of Service Tax, Electricity Duty, Value Added Tax or General Sales Tax, Custom Duty on Fuel or any replacement thereof, if applicable, and any Service Tax, Electricity Duty, Value Added Tax or General Sales Tax and Custom Duty on fuel thereon shall be paid by the Supplier and reimbursed by the Utility upon submission of necessary particulars by the Supplier.	exclusive <u>inclusive</u> of Service Tax, Electricity Duty, Value Added Tax or General Sales Tax, Custom Duty on Fuel or any replacement thereof, if applicable, and any Service Tax, Electricity Duty, Value Added Tax or General Sales Tax and Custom Duty on fuel thereon shall be paid by the Supplier and reimbursed by the Utility upon submission of necessary particulars by the Supplier.	there shall not be any separate reimbursement towards taxes, duties etc. unless the same is qualifying under Change in Law (Article 34 of PPA). The clarification is added to ensure compliance with prevailing laws.
21.9.3	Any payment to be made by the Utility shall be subject to any tax deduction at source, if required to be made by the Utility as per Applicable Laws.	Any payment to be made by the Utility shall be subject to any tax deduction / <u>collection</u> at source, if required to be made by the Utility as per Applicable Laws.	
21.10.1, 21.10.2 & 21.10.3	Commencing from the month following the month in which COD occurs, the Supplier shall, for by the 5th (fifth) day of for such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Utility, an invoice in the agreed form (the "Monthly Invoice") signed by the authorised signatory of the Supplier setting out the computation of the Fixed Charge and Fuel Charge to be	Commencing from the month following the month in which COD occurs, the Supplier shall, <u>upon issuance of Regional Energy Account (REA) / State Energy Account (SEA) certifying the availability and energy scheduled</u> for such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Utility, an invoice in the agreed form (the "Monthly Invoice") signed by the	The proposed modification to Billing mechanism is for providing clarification with regard to raising of invoice and payment due date.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	paid by the Utility to the Supplier in respect of the immediately preceding month in accordance with the provisions of this Agreement. 21.10.2 The Supplier shall, with each Monthly Invoice submit..... (j) adjustments, if any, on account of revision of the transmission charges referred to in Clause 5.5; (k) proportionate adjustment on account of transmission losses to be determined in accordance with Clause 5.6; 21.10.3 The Utility shall, within 30 (thirty) days of receipt of a Monthly Invoice in accordance with Clause 21.10.1 (the "Payment Due Date"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, save and except any amounts which it determines as not	authorised signatory of the Supplier setting out the computation of the Fixed Charge and Fuel Charge to be paid by the Utility to the Supplier in respect of the immediately preceding month in accordance with the provisions of this Agreement. <u>The Supplier may raise the Monthly Invoice through email (during office hours) / courier / hand delivery. In case, the Monthly Invoice is raised through email, it shall be ensured that the original invoice is received by the Utility within 5 working days from the date of invoice raised. In case of non-receipt of original invoice as per above timelines, the date of receipt of Invoice shall stand revised to the date of receipt of original invoice by Utility. Either Party may raise an Invoice on the other Party (Supplementary Invoice) for payment / adjustment / recovery in accordance with the provisions of this Agreement.</u> (j) adjustments, if any, on account of revision of the <u>inter-state & Intra-state</u>	The proposed modification is for clarification regarding adjustment in transmission charge & losses and

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	payable or disputed (the "Dispute Amounts")	transmission charges referred to in Clause 5.5 <u>and in accordance with Clause 21.13</u>; (k) proportionate adjustment on account of inter-state & intra State transmission losses to be determined in accordance with Clause 5.6.... The Utility shall, within 30 (thirty) days of receipt of a Monthly Invoice in accordance with Clause 21.10.1 (the "Payment Due Date"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, save and except any amounts which it determines as not payable or disputed (the "Disputed Amounts"). <u>The aforesaid Payment Due Date shall also be applicable for the Supplementary Invoice. It is to clarify that Date of receipt of Invoice shall be considered as T0 and Due Date for Payment shall be T0+30 days.</u>	submission of coal consumption statement as per the document. The proposed modification to Billing mechanism is for providing clarification with regard to Supplementary Invoice and Payment Due Date.
22.1.1		Note added for Clarification: Note: Conversion of fuel into	Clause added to provide clarity with regard to SHR consideration and working of

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
		electricity shall be computed on the basis of the Station Heat Rate which must conform to predetermined specifications. The agreement also provides for incentives in the form of an enhanced Fixed Charge if the Supplier is able to improve on the pre-specified Station Heat Rate for ensuring greater efficiency in the interest of saving fuel.	incentives when the actual SHR is superior to pre-specified SHR.
22.13	Not available in MBD	<u>Cost of Transmission Charge shall be payable upto Normative Availability level i.e. 90% in line with Clause 21.4.4 of this Agreement even in the cases when actual energy scheduled in a month is more than normative availability (90%). In the case where the availability declared by the Supplier is less than the Normative Availability during a month, then Supplier shall be obliged to bear the cost of transmission charge for shortfall i.e. difference between Normative Availability & Actual Availability. Whereas, in the case when Utility schedules power less than the availability actually declared by the Supplier during the month, Utility shall be obliged to bear the cost of transmission</u>	Cost of Transmission Charge is a part of Fuel Charge which would be payable to Supplier by Utility as per actual despatch of electricity. As per the CERC Sharing of Inter-State Transmission Charges and Losses Regulation 2020, the bill for transmission charges for Long Term Open Access would be raised on the Buyer i.e. Utility while in case of flow of power under Short Term Open access no additional charges would be payable in case of application of open access on behalf of Utility.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
		<u>charge to the extent of difference between lower of Actual or Normative Availability less Energy Scheduled by Utility.</u> It is further clarify that, after connectivity and GNA regulations, 2021 becomes effective,. In case, Utility pay the transmission charges on behalf of supplier, the supplier shall reimburse same to Utility or Utility shall adjust the same from monthly energy Bills.	Accordingly, the Utility has added a new provision (Clause 21.13) wherein it is clarified that in case the Utility schedules less power than availability actually declared by Supplier, Utility shall reimburse/ adjust the cost of transmission charge to the extent of normative availability or actual availability whichever is lower. The linking of recovery of transmission charges will ensure declaration of adequate availability by the Supplier and avoid cost burden on Utility towards transmission charges in case project is unavailable for the Utility for procurement of power. Modification also has been done considering GNA regulations.
23.1	Default Escrow Account	To be deleted	Utility in the bid documents has removed the Default Escrow Agreement and Deed of Hypothecation as payment
23.2.1	The Utility shall, no later than 30 (thirty) days prior to the likely date of the COD, provide to the Supplier, an unconditional,	The Utility shall, no later than 30 (thirty) days prior to the likely date of the COD , provide to the Supplier, an unconditional,	

Clause No.	Clause as per MBD for MPSCA	Proposed Clause	Rationale for Modifications / Deviation
	revolving and irrevocable letter of credit for an amount equivalent to the Minimum Monthly Payment (the "Letter of Credit"), which may be drawn upon by the Supplier for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-L and shall come into effect on the COD and shall be modified once every year to reflect the revision in Fixed Charges in accordance with the provisions of this Agreement.	revolving and irrevocable letter of credit for an amount equivalent to <u>one month Energy Bill at normative availability</u> the Minimum Monthly Payment (the "Letter of Credit"), which may be drawn upon by the Supplier for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-L and shall come into effect on the COD and shall be modified once every year to reflect the revision in Fixed Charges accordance with the provisions of this Agreement.	security mechanism to Supplier / Bidder and in lieu of the same has increased the amount of Letter of Credit equivalent to one month energy bill at normative availability to ensure adequate risk coverage to Supplier
23.2.2	The Letter of Credit shall be procured by the Utility from a bank where at least 30% (thirty per cent) of the Utility's total monthly Revenues are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.	The Letter of Credit shall be procured by the Utility from a bank where at least 30% (thirty per cent) of the Utility's total monthly Revenues are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility.	
23.2.3	In the event of Utility's failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the	In the event of Utility's failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the	Utility has proposed to remove Default Escrow Agreement /

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	relevant Payment Due Date occurs, the Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Default Escrow Bank shall, without any reference to the Utility, pay the amount due upon the Supplier presenting the following documents, namely:	relevant Payment Due Date occurs, the Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Default Escrow Bank shall, without any reference to the Utility, pay the amount due upon the Supplier presenting the following documents, namely:	Account, therefore, clause is suitably modified
23.3.1	In the event the Supplier is unable to recover its Tariff through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Supplier shall have the right to sell the whole or part of the Contracted Capacity to any Buyer for recovery of its dues from the Utility. For the avoidance of doubt, the Parties expressly agree that the Supplier shall be entitled to appropriate the revenues from sale hereunder for recovering the Tariff due and payable to it for sale of such Contracted Capacity to the Utility and the surplus remaining, if any, shall be	In the event the Supplier is unable to recover its Tariff through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Supplier shall have the right to sell the whole or part of the Contracted Capacity to any Buyer for recovery of its dues from the Utility. For the avoidance of doubt, the Parties expressly agree that the Supplier shall be entitled to appropriate the revenues from sale hereunder for recovering the Tariff due and payable to it for sale of such Contracted Capacity to the Utility and the surplus remaining, if	Utility has proposed to remove Default Escrow Agreement / Account, therefore, clause is suitably modified.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	appropriated for recovery of its dues from the Utility	any, shall be appropriated for recovery of its dues from the Utility	
23.3.3	Supply of electricity to the Utility in accordance with the provisions of this Agreement shall be restored no later than 7 (seven) days from the day on which the Utility pays, or is deemed to have paid, the arrears due to the Supplier in accordance with the provisions of this Agreement, restores the Default Escrow Account and renews the Letter of Credit.	Supply of electricity to the Utility in accordance with the provisions of this Agreement shall be restored no later than 7 (seven) days from the day on which the Utility pays, or is deemed to have paid, the arrears due to the Supplier in accordance with the provisions of this Agreement, restores the Default Escrow Account and renews the Letter of Credit.	Utility has proposed to remove Default Escrow Agreement / Account, therefore, clause is suitably modified
23.4	Payment Security for Termination The Parties agree and acknowledge that upon Termination and on failure of the Utility to make the Termination Payment within 30 (thirty) days of demand by the Supplier, Revenues equal to the Maximum Monthly Payment, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month and paid to the Supplier until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Utility expressly agrees and undertakes that 30% (thirty	Payment Security for Termination The Parties agree and acknowledge that upon Termination and on failure of the Utility to make the Termination Payment within 30 (thirty) days of demand by the Supplier, Revenues equal to the Maximum Monthly Payment, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, amount shall be appropriated every month <u>from the Letter of Credit submitted by Utility</u> and paid to the Supplier until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Utility expressly agrees and undertakes	Utility has proposed to remove Default Escrow Agreement / Account, therefore, clause is suitably modified

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	per cent) of its total monthly Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for an in respect of the Termination Payment is fully discharged.	that 30% (thirty per cent) of its total monthly Revenues shall continue to be deposited into its account with the Default Escrow Bank <u>Letter of Credit shall be replenished</u> until its liability for an in respect of the Termination Payment is fully discharged.	
24.5	-----	New Clause 24.5 added: The clause regarding obligation of the Supplier to ensure proportionate availability of power from the allocated capacity / project has been incorporated. The clause is separately attached herewith at the end of this document for reference.	The clause has been incorporated in line with the provisions of Standard Bidding Documents notified by Govt. of India in 2006-07 for Projects selected through competitive bidding. The same is to safeguard the interest of the Utility by ensuring proportionate availability of power.
28.2 (d)	Any delay or failure of an overseas contractor to deliver equipment in India [or to supply Fuel from an overseas Captive Mine], if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the	To be deleted	The same being not relevant under the present bid to be invited by Utility and has been deleted to avoid any consequential implication thereof.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	[Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] by such contractor;		
28.4 (a)	Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 34 and its effect, in financial terms, exceeds the sum specified in Clause 34.1;	To be deleted	In order to avoid the interpretational disputes for apportionment / pass through of cost whether qualifying under Change in Law or Force Majeure, the above clause has been deleted as the contract period is pre-determined.
28.7.1	Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Contracted Capacity of the Power Station (the "Force Majeure Costs") shall be allocated and paid as follows: a. upon occurrence of a Non-Political Event and Indirect Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; and	Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Contracted Capacity of the Power Station (the "Force Majeure Costs") shall be allocated and paid as follows: (a) upon occurrence of a Non-Political Event, and Indirect Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; and (b) upon occurrence of a Political Event, all Force Majeure Costs attributable to	It is proposed to modify the clause in order to avoid unfettered cost implication on Utility on account of Political Event.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	b. upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Utility to the Supplier. For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Tariff, revenues from sale of electricity to other Distribution Licensees and Buyers, or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.	such Political Event shall be <u>borne by</u> reimbursed by the Utility to the Supplier. For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Tariff, revenues from sale of electricity to other Distribution Licensees and Buyers, or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.	
28.11	Relief for Unforeseen Events	To be deleted	It is anticipated that the provision with regard to relief to Supplier on account of unforeseen events may lead to dispute / litigation and consequential impact thereof including cost. Therefore, it is proposed to delete the above provision for

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
			tie up of power on long term basis.
31.2.1(b)	the Utility has failed to make any payment to the Supplier, and the Supplier is unable to recover any unpaid amounts through the Default Escrow Account and the Letter of Credit, within the period specified in this Agreement; or	the Utility has failed to make any payment to the Supplier, and the Supplier is unable to recover any unpaid amounts through the Default Escrow Account and the Letter of Credit, within the period specified in this Agreement; or	Utility has proposed to remove Default Escrow Agreement / Account, therefore, clause is suitably modified
36.2	Conciliation	To be deleted	In order to ensure adjudication of disputes under the contractual arrangement by Appropriate Commission in accordance with the provisions of Electricity Act, the provision with regard to conciliation and arbitration are proposed to be deleted.
36.3	Arbitration	To be deleted	
36.4.1	In the event a Dispute is required under Applicable Laws to be adjudicated upon by the Commission, such Dispute shall, instead of reference to arbitration under Clause 36.3, be submitted for adjudication by the Commission in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt,	The clause has been modified as under: <u>Where any Dispute arising out of or in connection with this Agreement is not resolved mutually then such Dispute shall be submitted to adjudication by Appropriate Commission and the Commission may refer the matter for Arbitration as provided under Sec 86 of the Electricity Act. For disputes beyond</u>	In order to ensure adjudication of disputes under the contractual arrangement by Appropriate Commission, Utility proposes to take the deviation and deleted the provision with regard to conciliation and arbitration. Further, clarification has been added that any dispute if not

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal, if any, against such adjudication has been decided by the appellate tribunal, or no such appeal has been preferred within the time specified in the Applicable Law.	<u>the power conferred upon Appropriate Commission, such disputes shall be subject to the jurisdiction of the High Courts.</u>	resolved amicably may be referred to adjudication by Appropriate Commission for all purpose. Article 36 has been appropriately amended by Utility in the draft bid document.
36.4.2	Where any dispute is referred by the Commission to be settled through arbitration, the procedure specified in Clause 36.3 shall be followed to the extent applicable.	To be deleted	
36.5	Adjudication by a tribunal In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Supplier and the Utility, all Disputes arising after such constitution shall, instead of reference to arbitration or adjudication under Clauses 36.3 and 36.4 respectively, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.	To be deleted	As stated above, any dispute if not resolved amicably may be referred to adjudication by Appropriate Commission. Hence, the provision 36.5 regarding adjudication by a tribunal is proposed to be deleted.
38.4	Delayed Payments	Delayed Payments	

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	38.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof. 38.4.2. Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.	38.4.1.The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a <u>base</u> rate equal to 5% (five per cent) above the <u>Bank Rate for the first month of delay</u>, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof. <u>For avoidance of doubt, "Bank Rate" means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, and in the absence of marginal cost of funds based lending</u>	Ministry of Power has notified Electricity Late Payment Surcharge Rules 2021 on 22.02.2021. The provision with regard to rate / interest towards Late Payment Surcharge for delayed payment has been appropriately modified as per the above Rules notified by Ministry of Power.

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
		<u>rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify:</u> <u>38.4.2.The rate of interest for the period of delay for the successive months of default shall increase by 0.5 percent for every month of delay provided that such rate shall not be more than 3 percent higher than the base rate at any time: Provided that if the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years;</u> <u>38.4.3.All payments shall be first adjusted towards interest for Delayed Payments and thereafter, towards monthly charges, starting from the longest overdue bill.</u>	
Definition	"Bank Rate" means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934	Definition modified as under: "Bank Rate" means the marginal cost of funds based lending rate for one year of the State Bank of India, as	The definition for Bank Rate has been appropriately modified as per business practises of linking with Marginal Cost of Funds

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	or any replacement of such Bank Rate for the time being in effect	applicable on the 1st April of the financial year in which the period lies, and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify ;	Based Lending rate fixed by SBI from time to time.
Definition	"Deed of Hypothecation"	To be deleted	Utility has proposed to remove Default Escrow Agreement / Account, therefore, definition needs to be deleted.
Definition	"Default Escrow Account"	To be deleted	
Definition	"Default Escrow Agreement"	To be deleted	
Definition	"Default Escrow Bank"	To be deleted	
Definition	"Delivery Point" means any point in the intra-state Grid where the electricity supplied under this Agreement is received by the Utility;	"Delivery Point" means any point in the intra-state Grid <u>MUL periphery in Gujarat</u> where the electricity supplied under this agreement is received by Utility.	For the purpose of clarity.
Definition	"Maximum Monthly Payment"	To be deleted	Not relevant, hence needs to be deleted.
Definition	"Minimum Monthly Payment"	To be deleted	
Definition	Supplementary Invoice - New Definition added	"Supplementary Invoice" means an Invoice other than a Monthly Invoice raised by any of the Parties in accordance with provisions under this Agreement.	The Clause added to provide clarity to the Bidders
Definition	Scheduled Supply Commencement Date - New Definition added	Scheduled Supply Commencement Date shall be the date as specified by the Utility; from which the Supplier shall be required to commence supply	Clause added to provide clarity regarding time limit for compliance of conditions by all the projects for

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
		of Contracted Capacity at Delivery Point on commercial basis in accordance with the provisions under this Agreement i.e. September- 2023	commencing supply by this Date
Definition	"Secured Obligations" means: (a) the amounts due to the Default Escrow Bank from the Utility in relation to the Letter of Credit; (b) obligations of the Utility for payment of Tariff and Incentives under and in accordance with this Agreement; and (c) obligation of the Utility to make Termination Payment under and in accordance with this Agreement upon termination thereof;	"Secured Obligations" means: (a) the amounts due to the Default Escrow Bank from the Utility in relation to the Letter of Credit; (b) obligations of the Utility for payment of Tariff and Incentives under and in accordance with this Agreement; and (c) obligation of the Utility to make Termination Payment under and in accordance with this Agreement upon termination thereof;	Utility has proposed to remove Default Escrow Agreement / Account and Deed of Hypothecation, therefore, definition needs to be deleted.
Definition	"Taxes" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Power Station charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in	"Taxes" means any Indian taxes including excise duties, customs duties, goods & services tax, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Power Station charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties	The Clause modified to provide clarity to the Bidders

Clause No.	Clause as per MBD for MPSA	Proposed Clause	Rationale for Modifications / Deviation
	relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;	and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income	
Schedule-D	Performance Security Sr. 11 - This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of two years from the date hereof or until it is released earlier by the Utility pursuant to the provisions of the Agreement.	Performance Security Sr. 11 This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of two years <u>six months</u> from the date hereof or until it is released earlier by the Utility pursuant to the provisions of the Agreement	The modification has been done in order to align the time period with Clause 9.3 – Release of Performance Security
Schedule-J	Default Escrow Agreement (Please compare clause with GUVNL)	To be deleted	Utility has proposed to remove Default Escrow Agreement / Account and Deed of Hypothecation, therefore, definition needs to be deleted.
Schedule-K	Deed of Hypothecation	To be deleted	

Additional Details for Sr. 13: Details added at Appendix – I of RFP – Sr. 34

Bid parameters	Unit	Rs and paise (in two decimals)
Fixed Charge for the base year ----- (1)	per kWh	
Fuel Charge = Sum of (a)+(b)+(c) ----- (2)		
(a) Cost of Fuel	Per kWh	
(b) Cost of transportation	Per kWh	
(c) Cost of Washing	Per kWh	
Transmission Cost = Sum of (a) + (b) + (c) + (d) ----- (3)		
(a) ISTS Transmission Charges* (for Drawal State)	Per kWh	
(b) ISTS Transmission Losses* (for Drawal State)	In %	
ISTS Transmission Losses (for Drawal State)	Per kWh	
(c) InSTS Transmission Charges*	Per kWh	
(d) InSTS Transmission Losses*	In %	
InSTS Transmission Losses	Per kWh	
Total Tariff = Sum of (1) + (2) + (3)	per kWh	

**To be pre-specified by Utility prior to bid submission date*

Additional clarifications regarding submission of bid:

- i. **Utility to pre-specify transmission charges in Rs./unit (ISTS network) to be quoted by Bidder while submitting the bid online on DEEP Portal while variation thereafter shall be adjusted in tariff as per the Bid Documents.**
- ii. **Utility to pre-specify transmission losses (in %) (ISTS & InSTS network) for the purpose of online bid submission by bidders on DEEP Portal while variation thereafter shall be adjusted in tariff as per the Bid Documents. Transmission losses (in Rs./unit) is to be quoted by Bidder based on ISTS losses (in %) pre- specified by Utility.**
- iii. **In the DEEP Portal bid field of "Cost of Fuel in Rs per Kwh", Bidder to input single figure after summing "Cost of Fuel" & "Cost of Washing". While both this components have to be separately quoted and submitted as per the Appendix-1 of the RFP (i.e. Letter comprising the Bid)**
- iv. **Intra-State Transmission charges & losses for the host State ~~(other than the state of Gujarat)~~ wherein Generator / Bidder is located, if any applicable from time to time, shall be on the account of Generator / Bidder at all times during the contract tenure. Further, all applicable charges (SLDC, RLDC, Open Access charges etc.) for delivery of contracted capacity at Delivery Point shall be on account of Supplier at all times during the contract tenure. Bidders are advised to factor in such costs in the tariff. No separate reimbursement / adjustment shall be allowed under Contract. To avoid doubt: All charges up to delivery point shall be born by bidder only during tenure of bid.**

Additional Details for Sr. 50 – Provision 24.5 added in MPSA regarding Proportionate Availability

24.5. Proportionate Availability

24.5.1. The Supplier shall comply with the provisions of the applicable Law regarding Availability including, in particular, to the provisions of the ABT and Grid Code relating to intimation of Availability and the matters incidental thereto.

24.5.2. In case the Contracted Capacity of a Unit/Contracted Capacity as a whole is a part of the installed capacity of a power station; in the event of Availability from the Project in a Settlement Period being less than 100%, the capacity available to Utility for despatch shall be reduced proportionately. However, the Supplier has the option to offer more than such reduced capacity for despatch by Utility but not lower than such "Proportionate Availability". The Supplier shall prove such Proportionate Availability by using readings of meters at Generators for each Settlement Period and Energy Output of the Project up to Contracted Capacity.

24.5.3. In case the Supplier fails to establish Utility's proportionate right as per provisions of this Agreement, the Supplier shall be liable to be penalised. Such penalty shall be higher of: (a) twice the Fixed Charge; and (b) the entire sale revenue accrued from Buyers. For the avoid of doubt, no Fixed Charge or any amount in lieu thereof shall be due or payable to the Supplier for and in respect of any electricity sold hereunder. In case the Supplier is unable to maintain the schedule for ensuring proportionate availability due to restrictions imposed by Regulatory Authority, the Utility may, upon request of the Supplier relax the applicability of provisions of Proportionate Availability.

Model

**Request For Qualification – Design, Build,
Finance, Own and Operate (MRFQ - DBFOO)**

**Invitation for e-Tender for Long Term
Procurement of Electricity on DEEP Portal**

For

Power Supply Agreement -DBFOO

**Ministry of Power
Government of India**

[Date of Issuance]

GLOSSARY

[Allocated Coal Linkage]	[Details to be inserted by the Utility in case the source of coal is provided by the
Applicant(s)	As defined in Clause 1.2.1
Application	As defined in the Disclaimer
Application Due Date	As defined in Clause 1.1.5
Associate	As defined in Clause 2.2.9
Bids	As defined in Clause 1.2.3
Bid Due Date	As defined in Clause 1.2.3
Bid Security	As defined in Clause 1.2.4
Bidders	As defined in Clause 1.1.1
Bidding Documents	As defined in Clause 1.2.3
Bidding Process	As defined in Clause 1.2.1
Bid Stage	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
Capacity Required	As defined in Clause 1.1.1
CIL	As defined in Clause 1.2.8
Conflict of Interest	As defined in Clause 2.2.1(c)
Consortium	As defined in Clause 2.2.1(a)
Eligible Experience	As defined in Clause 3.2.1
Eligible Projects	As defined in Clause 3.2.1
Financial Capacity	As defined in Clause 2.2.2 (B)
Government	Government of India/State
Joint Bidding Agreement	As defined in Clause 2.2.6(g)
Lead Member	As defined in Clause 2.2.6 (c)
LOA	Letter of Award
Lowest Bidder	As defined in Clause 1.2.8
Member	Member of a Consortium
Net Worth	As defined in Clause 2.2.4 (ii)
PSA-DBFOO	As defined in Clause 1.1.2
PPP	Public Private Partnership
Qualification	As defined in Clause 1.2.
Qualification Stage	As defined in Clause 1.2.1
Re. or Rs. or INR	Indian Rupee
Request for Proposals - DBFOO or RFP - DBFOO	As defined in Clause 1.2.1
Request for Qualification – DBFOO or RFQ - DBFOO	As defined in the Disclaimer
SCCL	As defined in Clause 1.2.8
SPV	As defined in Clause 2.2.6
Supplier	As defined in Clause 1.1.2
Tariff	As defined in Clause 1.2.8
Technical Capacity	As defined in Clause 2.2.2 (A)
Threshold Technical Capacity	As defined in Clause 2.2.2 (A)
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 herein.

TABLE OF CONTENTS

Sl. No.	Contents	Page No.
	Glossary	iii
	Disclaimer	vii
1	Introduction	1
1.1	Background	1
1.2	Brief description of Bidding Process	2
1.3	Schedule of Bidding Process	6
1.4	Pre-Application Conference	6
2	Instructions to Applicants	7
2A	General	7
2.1	Scope of Application	7
2.2	Eligibility of Applicants	7
2.3	Change in composition of the Consortium	14
2.4	Number of Applications and costs thereof	14
2.5	Site visit and verification of information	15
2.6	Acknowledgement by Applicant	15
2.7	Right to accept or reject any or all Applications/ Bids	15
2B	Documents	16
2.8	Contents of the RFQ-DBFOO	16
2.9	Clarifications	17
2.10	Amendment of RFQ-DBFOO	17
2C	Preparation and Submission of Application	17
2.11	Language	17
2.12	Format and signing of Application	18
2.13	Sealing and marking of Applications	18
2.14	Application Due Date	19
2.15	Late Applications	19
2.16	Modifications/ substitution/ withdrawal of Applications	19
2D	Evaluation Process	20
2.17	Opening and Evaluation of Applications	20
2.18	Confidentiality	21
2.19	Tests of responsiveness	21
2.20	Clarifications	22
2E	Qualification and Bidding	22

	2.21	Notification of pre-qualified Applicants	22
	2.22	Submission of Bids	22
	2.23	Proprietary data	23
	2.24	Correspondence with the Applicant	23
3	Criteria for Evaluation		24
	3.1	Evaluation parameters	24
	3.2	Technical Capacity for purposes of evaluation	24
	3.3	Details of Experience	26
	3.4	Financial information for purposes of evaluation	26
	3.5	Pre-qualification of Applicants	26
4	Fraud and Corrupt Practices		27
5	Pre-Application Conference		29
6	Miscellaneous		30
	Appendices		
I	Format for Application		32
	Annex – I	Details of Applicant	35
	Annex – II	Technical Capacity of Applicant	37
	Annex – III	Financial Capacity of Applicant	39
	Annex – IV	Details of Eligible Projects	41
	Annex – V	Statement of Legal Capacity	46
	Annex- VI	Particulars of the Power Station	47
II	Format for Power of Attorney for signing of Application and Bid		48
III	Format for Power of Attorney for Lead Member of Consortium		50
IV	Format for Joint Bidding Agreement for Consortium		53
V	Guidelines of the Department of Disinvestment		60
VI	Information Memorandum		62
VII	Details of Allocated Coal Linkage		
VIII	List of Application Specific Provisions		63
IX	List of Project-specific provisions		65

DISCLAIMER

The information contained in this Request for Qualification-DBFOO (the “**RFQ-DBFOO**”) document or subsequently provided to Applicant(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 Applicant(s) on the terms and conditions set out in this RFQ-DBFOO and such other terms and conditions subject to which such information is provided.

This RFQ-DBFOO is not an agreement and is neither an offer nor invitation by the Utility to the prospective Applicants or any other person. The purpose of this RFQ-DBFOO is to provide interested parties with information that may be useful to them in the formulation of their application for qualification pursuant to this RFQ-DBFOO (the “**Application**”). This RFQ-DBFOO 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 Applicant may require. This RFQ-DBFOO 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 RFQ-DBFOO. The assumptions, assessments, statements and information contained in this RFQ-DBFOO may not be complete, accurate, adequate or correct. Each Applicant 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 RFQ-DBFOO and obtain independent advice from appropriate sources.

Information provided in this RFQ-DBFOO to the Applicant(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 Applicant 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 RFQ-DBFOO or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFQ-DBFOO and any assessment, assumption, statement or information contained therein or deemed to form part of this RFQ-DBFOO or arising in any way with pre-qualification of Applicants 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 Applicant upon the statements contained in this RFQ-DBFOO.

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 RFQ.

The issue of this RFQ-DBFOO does not imply that the Utility is bound to select and pre-qualified Applications for Bid Stage 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 Applicant shall bear all its costs associated with or relating to the preparation and submission of its Application 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. All such costs and expenses will remain with the Applicant and the Utility shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Application, regardless of the conduct or outcome of the Bidding Process.

[Name of Utility]

1. INTRODUCTION^s

1.1 Background¹

- 1.1.1 The MPSEZ Utility Private Limited (the “Utility”) is/are engaged in the distribution of electricity and as part of this endeavour, the Utility has decided to procure electricity on a long term basis from Power Station (the “Project”) through Public-Private Partnership (the “PPP”) on Design, Build, Finance, Own and Operate (the “DBFOO”) basis by sourcing fuel [Bidder is expected to source linkage coal from CIL/SCCL]², and has, therefore decided to carry out the Bidding Process for selection of a corporate entity(ies) as 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 Documents.

Brief particulars of the Project are as follows:

A. Utility solicits bids from the following types of Projects:

- a. Type-1: Projects / Units that are already commercially operationalized before Schedule Supply Commencement Date
- b. New Projects that are yet to be commercially operationalized as on Schedule Supply Commencement Date.

B.

Capacity Required (in MW)	Minimum Capacity (in MW)	Period when supply must commence
600 MW	100 MW	October- 2022

The Utility intends to pre-qualify suitable Applicants (the “Bidders”) who will be eligible for participation in the Bid Stage, for awarding the Project through an open competitive bidding process in accordance with the procedure set out herein.

- 1.1.2 The Bidder(s) who are issued Letter of Award (LoA) (the “Selected Bidder(s)”) shall accept the LoA (the “Successful Bidder”). The Successful Bidder, who is either a company incorporated under the Companies Act, 1956/2013 or undertakes to incorporate as such prior to execution of the Power Supply Agreement-DBFOO (the “Supplier”) shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the power station under and in accordance with the provisions of a long term agreement for supply of Electricity (the “Power Supply Agreement- DBFOO” or the “PSA- DBFOO”) 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.

⁵Instructions for Applicants

Note 1: The provisions in curly brackets shall be suitably modified by the Applicants after the RFQ - DBFOO is issued. (See Appendix-VIII)

Note 2: Blank spaces contain formats that are to be used by the Applicants after the RFQ- DBFOO is issued. (See Appendix-VIII)

Note 3: Footnotes marked "\$" in the relevant Clauses of the RFQ-DBFOO are for guidance of the Applicants. In case of Appendices, the footnotes marked "\$" or in other non-numerical characters shall be omitted by the Applicants while submitting their respective Applications. (See Appendix-VIII)

¹ Instructions for customisation of this document by the Utility

This Model Request for Qualification - DBFOO (the "MRFQ - DBFOO") may be customised for project-specific use in accordance with the instructions below:

Note I: Serially numbered footnotes in this RFQ - DBFOO are for guidance of the Utility and should be omitted from the RFQ - DBFOO before it is issued to prospective Applicants. (See Appendix-IX)

Note II: All project-specific provisions in this RFQ-DBFOO have been enclosed in square parenthesis and may be modified, as necessary, before issuing the RFQ - DBFOO to prospective Applicants. The square parenthesis should be removed after carrying out the required modification. (See Appendix-IX)

Note III: The asterisks in this RFQ- DBFOO should be substituted by project-specific particulars before issuing the RFQ- DBFOO to prospective Applicants. (See Appendix-IX)

Note IV: Notes I, II, III and IV shall be omitted prior to issue of this RFQ- DBFOO.

² To be modified as per the source of fuel selected by the Utility.

- 1.1.3 The scope of work will broadly include designing, financing, operation and maintenance of the Power Station and supply of power in accordance with the terms of the PSA.
- 1.1.4 All Applicants shall indicate the particulars of their power station in the form specified at Annex-VI of Appendix-I and at National e-Bidding Portal (“**DEEP Portal**”) developed by PFC Consulting Ltd. Applicants may Bid for the capacity specified in Clause 1.1.1, or a part thereof, not being less than 25% (twenty five per cent) of such capacity. Provided, however, that the Utility may, in its sole discretion, accept only those Bids which match the lowest Bid.
- 1.1.5 The Utility shall receive Applications pursuant to this RFQ - DBFOO 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 “**Application 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 “**Qualification Stage**”) of the process involves qualification (the “**Qualification**”) of interested parties/ consortia who make an Application in accordance with the provisions of this RFQ - DBFOO (the “**Applicant**”, which expression shall, unless repugnant to the context, include the Members of the Consortium). Prior to making an Application, the Applicant shall pay to the Utility a sum of Rs 10,000 (Rupees ten thousand) as the cost of the RFQ - DBFOO process.³ At the end of this stage, the Utility will announce a list of suitable pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the “**Bid Stage**”) comprising Request for Proposals (the “**Request for Proposals-DBFOO**” or “**RFP-DBFOO**”).

Government of India has issued guidelines (see Appendix-V) for qualification of Bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Utility shall be entitled to disqualify an Applicant in accordance with the aforesaid guidelines at any stage of the Bidding Process. Applicants must satisfy themselves that they are qualified to Bid, and should give an undertaking to this effect in the form at Appendix-I.

- 1.2.2 All the Applicants 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 for which the Applicant is willing to bid, to PFC Consulting Limited (PFCCL). The requisite fee shall be deposited through NEFT/IMPS/RTGS after adding the

³ The cost of RFQ-DBFOO may be determined at the rate of Rs. 10,000 for every 100 MW of capacity to be procured. Thus, the cost of an RFQ-DBFOO document for a project of 200 MW shall be Rs. 20,000.

applicable taxes. After the completion of the Bidding Process, only Selected 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 In the Qualification Stage, Applicants would be required to furnish all the information specified in this RFQ - DBFOO . Only those Applicants that are pre-qualified by the Utility shall be invited to submit their Bids for the Project. The Utility is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are, therefore, advised to familiarise themselves with the terms of the Model PSA - DBFOO that will govern the structure of this Project. The said Model PSA - DBFOO has been notified by the Government of India under section 63 of the Electricity Act 2003 for tariff based bidding by the Utilities.
- 1.2.4 In the Bid Stage, the Bidders will be called upon to submit their financial offers (the "Bids") in DEEP Portal in accordance with the RFP-DBFOO and other documents to be provided by the Utility (collectively the "Bidding Documents"). The Bidding Documents for the Project will be provided to every Bidder on payment of [Rs. 100,000 (Rs. one lakh only)]⁵. The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of Bids (the "Bid Due Date").
- 1.2.2 In terms of the RFP-DBFOO, a Bidder will be required to deposit, along with its Bid, a Bid security of [Rs 5 lakh (Rupees five lakh) per MW of maximum capacity offered by the Bidder]⁴ (the "Bid Security"), refundable no later than [120 (One Hundred Twenty) days] from the Bid Due Date, except in the case of the Successful Bidder whose Bid Security shall be retained till it has provided a Performance Security under the PSA-DBFOO. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Utility⁵. 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.
- 1.2.5 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 in the RFP-DBFOO, 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. It is hereby clarified that the Utility will not accept the entire capacity offered of the

⁵ The actual amount will be indicated in the RFP-DBFOO

⁴ The Utility may, if deemed necessary, prescribe a higher bid security not exceeding Rs. 7.5 lakh per MW. It may also reduce the bid security, but not less than Rs 3 lakh per MW, in any case.

⁵ The format for the bank guarantee has been published as part of the Model RFP-DBFOO document

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 Bidders match the Bid of the Lowest Bidder, the Utility may, in its discretion, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be. Further, it is clarified that any single Bidder cannot quote part capacity from different stations.

- 1.2.6 During the Bid Stage, 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.
- 1.2.7 As part of the Bidding Documents, the Utility will provide a draft PSA-DBFOO and other information pertaining/ relevant to the Project available with it.
- 1.2.8 Bids will be invited for the Project 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 PSA-DBFOO forming part of the Bidding Documents. For the purposes of bidding hereunder, the Fixed Charge and Fuel Charge will constitute the tariff for the Power Station (the “**Tariff**”). The element of coal transportation and transit losses may vary from case to case and shall also form part of the Fuel Charge by way of adjustment. The contract period shall be pre-determined, and will be indicated in the draft PSA-DBFOO. The Project shall be awarded to the Bidder quoting the lowest Tariff.

Explanation⁵

- [(a) Since the Bidder is expected to source linkage coal from Coal India Limited (the “**CIL**”)/Singareni Collieries Company Limited (“**SCCL**”) or a subsidiary thereof from the Allocated Coal Linkage and including Coal Linkage as per SHAKTI Policy [arranged by the Utility]⁶, the cost of Fuel which shall be included in the Fuel Charge shall be a „pass through“ in accordance with the terms of the PSA- DBFOO. However, the element of coal transportation and transit losses may vary from case to case and shall affect the Fuel Charge offered by each Bidder. The Bid for the Project shall, therefore, comprise the Fixed Charge and Fuel Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder. The Base Fixed Charge shall not be more than 70% of the Tariff and the Base Fuel Charge shall not be more than 50% of the Tariff.]

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

⁵ Depending upon the choice of Fuel source, only the applicable Sub-clause may be retained and the remaining Sub-clauses should be omitted. However, in case the Fuel to be procured under Sub-clause (a) is to be supplemented by imported Fuel, the Utility may retain both Sub-clause (a) and Sub-clause (c), the ceiling of Base Fixed Charge and Base Fuel Charge as mentioned in sub-clause (a) will prevail.

⁶ To be retained if allocated coal linkage is arranged by utility as per Shakti policy

⁷ The Gross Calorific Value (GCV) as quoted in the coal auction would in normal circumstances be used as a reference GCV for the purpose of determining the quantum of coal required for power generation. However, in the event of variation in actual value of GCV of mined coal, if any, claimed by the Bidders, such variation may be allowed based on joint sampling and testing of mined coal in accordance with the provisions of PSA-DBFOO.

⁸ The Utility shall indicate, in advance to all the prospective Bidders, in consultation with the Appropriate Commission, the upper ceiling of Fixed Charges in terms of Rs/kWh towards the Fixed/Capacity Charges.

⁹ Cost of Fuel shall be regulated by the ROM price of coal quoted in the Bid for the year in which the Bidder will commence supply of power and shall not exceed the ROM price of the coal quoted for said blocks during the Coal Mine/Blocks auction on the basis of which the Coal Mine/Blocks has been awarded to the Bidder along with escalation as per provisions of the Model Tender Document (for Power Sector) for the said Coal Mine/Blocks issued by Ministry of Coal, Government of India. In addition to this, the Bidder will be eligible to recover an amount of Rs. 100/metric tonne, as per the Model Tender Document (for Power Sector) issued by Ministry of Coal, Government of India. For subsequent years, the ROM price and Rs. 100 per metric tonne shall be escalable as per provisions of Model Tender Document (for Power Sector) issued by Ministry of Coal, Government of India. However, the quoted Additional Premium, if any, shall not be reckoned for the purpose of the determination of tariff of electricity as per provisions of Model Tender Document (for Power Sector) issued by Ministry of Coal, Government of India.

¹⁰ The Utility shall specify the components of the „Other charges“ as deemed fit.

¹¹ The Utility shall specify benchmark rates which should not be more than that of CIL, Railway freight rates, benchmarks determined, if any, by CERC/SERC or by any other Appropriate Authority. Where there are multiple such benchmarks available, the Utility will be free to adopt the most appropriate benchmark.

¹² The Utility shall specify the cost of transportation along with distance from Coal Mine/Blocks to the Power Plant for rail, road and other modes separately.

¹³ The Utility shall specify the value of each components of the „Other Charges“ as deemed fit.

¹⁴ The Utility shall specify an indicative cost based on approximate market prices.

¹⁵ The chosen figure may be retained by the Utility prior to invitation of Bids and the remaining figures shall be omitted.

¹⁶ A substitute Index, if any, may be specified by the Utility prior to invitation of Bids.

- 1.2.9 [The Selected Bidder shall surrender the proportionate quantity of any existing Letter of Assurance /Fuel Supply Agreement to the supplier of the coal, not being the Letter of Assurance/ Fuel Supply Agreement arranged by the Utility, corresponding to the tenure of the Letter of Assurance /Fuel Supply Agreement arranged by the Utility.]¹⁸ Further and other details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.
- 1.2.10 Any queries or request for additional information concerning this RFQ - DBFOO shall be submitted in writing by speed post/ courier/ special messenger and e-mail attaching the queries in microsoft word file so as to reach the officer designated in Clause 2.13.3 by the specified date. The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information: RFQ - DBFOO for *** Project".

1.3 Schedule of Bidding Process

The Utility shall endeavour to adhere to the following schedule:

Event Description		Date
<u>Qualification Stage</u>		
1.	Last date for receiving queries	[25 days from date of RFQ - DBFOO]
2.	Pre-Application Conference	[30 days from date of RFQ - DBFOO]
3.	Utility response to queries latest by	[35 days from date of RFQ - DBFOO]

¹⁷ The Utility shall specify the ceiling, but it may, in its discretion, also specify the floor for the Fuel Charge.

¹⁸ To be retained only if choice of Fuel source is through Allocated Linkage Coal provided by Utility.

- | | | |
|----|--|--|
| 4. | Application Due Date | [45 days from date of RFQ - DBFOO] |
| 5. | Announcement of Pre-qualified Applicants | Within 15 days of Application Due Date |

	<u>Bid Stage</u>	<u>Estimated Date</u>
1.	Sale of Bid Documents	[To be specified]
2.	Last date for receiving queries	[To be specified]
3.	Pre-Bid Conference – 1	[To be specified]
4.	Utility response to queries latest by	[To be specified]
5.	Pre-Bid Conference – 2	[To be specified] ¹⁹
6.	Bid Due Date	[To be specified]
7.	Opening of Bids	On Bid Due Date
8.	Letter of Award (LOA)	Within 30 days of Bid Due Date
9.	Validity of Bids	120 days of Bid Due Date
10.	Signing of PSA-DBFOO	Within 30 days of award of LOA

1.4. Pre-Application Conference

The date, time and venue of the Pre-Application Conference shall be:

Date: ***

Time: ***

Venue: ***

¹⁹ In case of complex projects, the number of Pre-Bid Conferences could be two or more.

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Application

- 2.1.1 The Utility wishes to receive Applications for Qualification in order to pre-qualify experienced and capable Applicants for the Bid Stage.
- 2.1.2 Pre-qualified Applicants may be subsequently invited to submit the Bids for the Project.

2.2 Eligibility of Applicants

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

(a) The Applicant for pre-qualification may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project or supply power from commissioned or part commissioned projects. However, no applicant applying individually or as a member of a Consortium, as the case may be, can be member of another Applicant. The term Applicant used herein would apply to both a single entity and a Consortium.

(b) An Applicant may be a natural person, private entity, [government-owned entity] or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.

(c) An Applicant shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified⁵. An Applicant shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- (i) the Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Applicant, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its Member or Associate is less than 5 per cent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub- section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for

⁵ The provisions of sub-clauses (i), (iii) and (v) shall not apply to government companies.

computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Applicant is also a constituent of another Applicant; or
- (iii) such Applicant, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant, its Member or any Associate thereof; or
- (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
- (v) such Applicant, or any Associate thereof has a relationship with another Applicant, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Application of either or each other; or
- (vi) such Applicant, or any Associate thereof has participated as a consultant to the Utility in the preparation of any documents, design or technical specifications of the Project.

(d) An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Utility in relation to the Project is engaged by the Applicant, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Applicant, its Member or Associate in the past but its assignment expired or was terminated prior to the Application Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Explanation: In case an Applicant is a Consortium, then the term Applicant as used in this Clause 2.2.1, shall include each Member of such Consortium.

[(e) Other eligibility conditions shall include the following:²⁰

- (i) The Applicant should be in possession of at least one-half of the land required for the Power Station;

²⁰ Other project-specific conditions of eligibility or restrictions, if any, may be stated here, such as a limit on the number of projects that may be awarded to an entity, including its Associates.

- (ii) The Applicant should have obtained environmental and forest clearance for the Power Station;
- (iii) The Applicant should have commenced construction of the Power Station;
- (iv) The Applicant has access to an assured supply of Fuel; and
- (v) Only Applicants who agree and undertake to procure the boilers, turbines, and generators of their Projects from manufacturing facilities situate in India and owned and operated in India by an Indian company, a foreign company or a joint venture between an Indian and foreign company shall be eligible hereunder.²¹²²
- (vi) The Applicant who has already achieved COD, is eligible to participate through COD certificate only in lieu of (i) to (iii) & (v) above.

2.2.2 To be eligible for pre-qualification, an Applicant shall fulfill the following conditions of eligibility:

(A) **Technical Capacity:** For demonstrating technical capacity and experience (the “Technical Capacity”), the Applicant shall, over the past 5 (five) financial years preceding the Application Due Date, have:

- (i) paid for, or received payments for, construction of Eligible Project(s); and/or
- (ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1; and/or
- (iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1,

such that the sum total of the above is more than [Rs..... (Rupees.....)]²³ for every MW of capacity offered by the Applicant hereunder (the “Threshold Technical Capacity”).

(B) **Financial Capacity:** The Applicant shall have a minimum Net Worth (the “Financial Capacity”) equivalent to Rs. 1.5 crore (Rupees one crore and fifty lakh) per MW of capacity offered by the Applicant) at the close of the preceding financial year.

In case of a Consortium, the combined technical capacity and net worth of those Members, who shall have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project²⁴, hold equity share capital not less than: (i)

²¹ This Clause will not apply to projects where the required equipment has already been ordered on or before the date of issue of this Model RFQ-DBFOO.

²² The conditions may be specified depending upon the date of commencement of power supply. In case such date is prior to the third anniversary of the date of this RFQ-DBFOO, all the aforesaid conditions should be specified.

²³ The minimum amount to be filled shall be Rs. 5 crores (Rs five crore)

²⁴ The term Commercial Operation Date (COD) as used in the Power Supply Agreement -DBFOO is not to be construed as the COD of the Power Station but COD as defined under Article 13 and 14 of the Power Supply Agreement -DBFOO.

26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and
(ii) 5% (five per cent) of the Total Project Cost as per the PSA-DBFOO.

- 2.2.3 **O&M Experience:** The Applicant shall either enter into an agreement for entrusting its operation & maintenance (O&M) obligations to an entity having the requisite experience or undertake O&M through qualified and experienced staff of its own.
- 2.2.4 The Applicants shall enclose with its Application, to be submitted as per the format at Appendix-I, complete with its Annexes, the following⁵:
- (i) Certificate(s) from statutory auditors of the Applicant or its Associate or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 years in respect of the projects specified in paragraph 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Applicant (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
 - (ii) certificate(s) from statutory auditors of the Applicant or its Associates specifying the Net Worth of the Applicant, 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 2.2.4 (ii). For the purposes of this RFQ - DBFOO, net worth (the “Net Worth”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders.
- 2.2.5 The Applicant should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Application to commit the Applicant. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.
- 2.2.6 Where the Applicant is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 1956/ 2013 (the “SPV”), to execute the PSA-DBFOO and implement the Project. In case the Applicant is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:
- (a) Number of members in a consortium shall not exceed 6 (six), but information sought in the Application may be restricted to 4 (four) members in the order of their equity contribution;
 - (b) subject to the provisions of sub-clause (a) above, the Application should contain

⁵In 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 2.2.4 (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- DBFOO.

the information required for each member of the Consortium;

- (c) members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;
- (d) the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) an individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;
- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Joint Bidding Agreement**”), for the purpose of making the Application and submitting a Bid in the event of being pre-qualified. The Joint Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:
 - i. convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFQ - DBFOO , which would enter into the PSA-DBFOO and subsequently perform all the obligations of the Supplier in terms of the PSA-DBFOO, in case the contract to undertake the Project is awarded to the Consortium;
 - ii. clearly outline the proposed roles and responsibilities, if any, of each member;
 - iii. commit the minimum equity stake to be held by each member;
 - iv. commit that each of the members, whose experience will be evaluated for the purposes of this RFQ - DBFOO , shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV and (ii) 5% (five per cent) of the Total Project Cost as per the Power Supply Agreement-DBFOO.
 - v. members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the first anniversary of the commercial operation date of the Project; and

- vi. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Supplier in relation to the Project until the [Financial Close]²⁵ of the Project is achieved in accordance with the PSA-DBFOO; and
- (h) except as provided under this RFQ - DBFOO and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Utility.

2.2.7 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, either individually or as member of a Consortium.

2.2.8 An Applicant including any Consortium Member or Associate 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 Applicant, Consortium Member or Associate, 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 Applicant, Consortium Member or Associate. Provided, however, that where an Applicant claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.8 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.

2.2.9 In computing the Technical Capacity and Net Worth of the Applicant/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

For purposes of this RFQ - DBFOO, Associate means, in relation to the Applicant/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Applicant/ Consortium Member (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

2.2.10 The following conditions shall be adhered to while submitting an Application:

- (a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the

²⁵ For existing Power Stations this shall be replaced by "COD"

prescribed forms making due provision for incorporation of the requested information;

- (b) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification;
- (c) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (d) in case the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.11 [While Qualification is open to persons from any country, the following provisions shall apply:

- (a) Where, on the date of the Application, 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital in an Applicant or its Member is held by persons resident outside India or where an Applicant or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Application, there is an acquisition of 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Applicant or its Member;

then the Qualification of such Applicant or in the event described in sub clause (b) above, the continued Qualification of the Applicant shall be subject to approval of the Utility from national security and public interest perspective. The decision of the Utility in this behalf shall be final and conclusive and binding on the Applicant.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Utility shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.]²⁶

The Applicant shall promptly inform the Utility of any change in the shareholding, as above, and failure to do so shall render the Applicant liable for disqualification from the Bidding Process.

2.2.12 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within three months of the closing of the latest

²⁶ The provisions of this Clause 2.2.11 may be modified from time to time in accordance with the extant instructions of the Government.

financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, 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 Applicant in the course of its normal business.

2.3 Change in composition of the Consortium

2.3.1 Change in the composition of a Consortium will not be permitted by the Utility during the Qualification Stage.

2.3.2 Where the Bidder^f is a Consortium, change in the composition of a Consortium may be permitted by the Utility during the Bid Stage, only where:

- (a) the application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date;
- (b) the Lead Member continues to be the Lead Member of the Consortium;
- (c) the substitute is at least equal, in terms of Technical Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification criteria for Applicants; and
- (d) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not an Applicant/Member/Associate of any other Consortium bidding for this Project.

2.3.3 Approval for change in the composition of a Consortium shall be at the sole discretion of the Utility and must be approved by the Utility in writing.

2.3.4 The modified/ reconstituted Consortium shall submit a revised Joint Bidding Agreement before the Bid Due Date.

2.3.5 Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, an Applicant may, within 10 (ten) days after the Application Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

2.4 Number of Applications and costs thereof

2.4.1 No Applicant shall submit more than one Application for the Project. An applicant applying individually or as a member of a Consortium shall not be entitled to submit another Application either individually or as a member of any Consortium, as the case may be.

^f The option of change in composition of the Consortium which is available under Clause 2.3.2 may be exercised by any Applicant who is pre-qualified either as a Consortium or as a single entity. In the case of a single entity Applicant adding a Consortium Member at the Bid Stage, the single entity Applicant shall be the Lead Member of the Consortium. Provided, however, that no member of such Consortium shall be an Applicant or the member of a Consortium which has been pre-qualified.

- 2.4.2 The Applicants shall be responsible for all of the costs associated with the preparation of their Applications and their participation in the Bid 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.

2.5 Site visit and verification of information

Applicants are encouraged to submit their respective Applications after familiarising themselves with the information and physical conditions relevant to the Project, including the transmission capacity, the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.6 Acknowledgement by Applicant

- 2.6.1 It shall be deemed that by submitting the Application, the Applicant has:

- (a) made a complete and careful examination of the RFQ - DBFOO ;
- (b) received all relevant information requested from the Utility;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFQ - DBFOO or furnished by or on behalf of the Utility relating to any of the matters referred to in Clause 2.5 above; and
- (d) agreed to be bound by the undertakings provided by it under and in terms hereof.

- 2.6.2 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 the RFQ - DBFOO or the Bidding Process, including any error or mistake therein or in any information or data given by the Utility.

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

- 2.7.1 Notwithstanding anything contained in this RFQ - DBFOO , 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.

- 2.7.2 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 Applicant does not provide, within the time specified by the Utility, the supplemental information sought by the Utility for evaluation of the Application.

If the Applicant/Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. 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) invite the remaining Bidders to match the Lowest Bidder/ submit their Bids in accordance with the RFP-DBFOO; or
- (b) take any such measure as may be deemed fit in the sole discretion of the Utility, including annulment of the Bidding Process.

2.7.3 In case it is found during the evaluation or at any time before signing of the PSA-DBFOO 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 Applicant, or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Supplier either by issue of the LOA or entering into of the PSA-DBFOO, and if the Applicant/SPV has already been issued the LOA or has entered into the PSA-DBFOO, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ - DBFOO , be liable to be terminated, by a communication in writing by the Utility to the Applicant, without the Utility being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Utility may have under this RFQ - DBFOO , the Bidding Documents, the PSA-DBFOO or under applicable law.

2.7.4 The Utility reserves the right to verify all statements, information and documents submitted by the Applicant in response to the RFQ - DBFOO . Any such verification or lack of such verification by the Utility shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Utility thereunder.

B. DOCUMENTS

2.8 Contents of the RFQ - DBFOO

This RFQ - DBFOO comprises the glossary; disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

Invitation for Qualification

- Section 1. Introduction
- Section 2. Instructions to Applicants
- 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. Power of Attorney for Lead Member of Consortium
- IV. Joint Bidding Agreement for Consortium

- V. Guidelines of the Department of Disinvestment
- VI. Information Memorandum
- VII. Details of Allocated Coal Linkage
- VII. List of Application-specific provisions

2.9 Clarifications

- 2.9.1 Applicants requiring any clarification on the RFQ - DBFOO may notify the Utility in writing by speed post/ courier/ special messenger and by e-mail attaching the queries in microsoft word file in accordance with Clause 1.2.10. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Utility shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Application Due Date. The responses will be sent by e-mail. The Utility will forward all the queries and its responses thereto, to all purchasers of the RFQ - DBFOO without identifying the source of queries.
- 2.9.2 The Utility shall endeavour to respond to the questions raised or clarifications sought by the Applicants. 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.
- 2.9.3 The Utility may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicants. All clarifications and interpretations issued by the Utility shall be deemed to be part of the RFQ - DBFOO . Verbal clarifications and information given by Utility or its employees or representatives shall not in any way or manner be binding on the Utility.

2.10 Amendment of RFQ - DBFOO

- 2.10.1 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 an Applicant, modify the RFQ - DBFOO by the issuance of Addenda.
- 2.10.2 Any Addendum thus issued will be sent in writing to all those who have purchased the RFQ - DBFOO .
- 2.10.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the Utility may, in its sole discretion, extend the Application Due Date.⁵

C. PREPARATION AND SUBMISSION OF APPLICATION

2.11 Language

The Application and all related correspondence and documents in relation to the

⁵ While extending the Application Due Date on account of an addendum, the Utility shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Application Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Applicant 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 Applicant. 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.

2.12 Format and signing of Application

- 2.12.1 The Applicant shall provide all the information sought under this RFQ - DBFOO . 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.**
- 2.12.2 The Applicant shall prepare 1 (one) original set of the Application (together with the documents required to be submitted pursuant to this RFQ - DBFOO) and clearly marked as "ORIGINAL". In addition, the Applicant shall submit 1 (one) copy of such Application and documents, which shall be marked as "COPY". The Applicant shall also provide 2 (two) soft copies thereof on a Compact Disc (CD). In the event of any discrepancy between the original and the copy, the original shall prevail.
- 2.12.3 The Application and its copy shall be typed or written in indelible ink it shall be signed by the authorised signatory of the Applicant who shall also initial each page of the Application (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 and shall be bound together in a manner that does not allow replacement of any page.

2.13 Sealing and Marking of Applications

- 2.13.1 The Applicant shall submit the Application in the format specified at Appendix-I, together with the documents specified in Clause 2.13.2, and seal it in an envelope and mark the envelope as "APPLICATION". The Applicant shall seal the original and the copy of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.13.2 and 2.13.3.
- 2.13.2 Each envelope shall contain:
 - (i) **Application in the prescribed format (Appendix-I) along with Annexes and supporting documents;**
 - (ii) **Power of Attorney for signing the Application as per the format at Appendix-II;**
 - (iii) **if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;**

- (iv) copy of the Joint Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;
- (v) copy of Memorandum and Articles of Association, if the Applicant is a body corporate, and if a partnership then a copy of its partnership deed;
- (vi) copies of Applicant's duly audited balance sheet and profit and loss account for the preceding five years; and
- (vii) 2 (two) soft copies of the Application on a Compact Disc (CD) [; and [(viii) any other project-specific requirement that may be specified by the Utility].

Each of the envelopes shall clearly bear the following identification:

“Application for Qualification: *** Project”

and shall clearly indicate the name and address of the Applicant. In addition, the Application Due Date should be indicated on the right hand corner of each of the envelopes.

2.13.3 Each of the envelopes shall be addressed to:

ATTN. OF:	Mr***
DESIGNATION:	***
ADDRESS:	***
FAX NO:	***
E-MAIL ADDRESS:	***

2.13.4 If the envelopes are not sealed and marked as instructed above, the Utility assumes no responsibility for the misplacement or premature opening of the contents of the Application and consequent losses, if any, suffered by the Applicant.

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

2.14 Application Due Date

2.14.1 Applications should be submitted latest by *** hours IST on the Application Due Date, at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFQ - DBFOO . A receipt thereof should be obtained from the person specified in Clause 2.13.3.

2.14.2 The Utility may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Applicants.

2.15 Late Applications

Applications received by the Utility after the specified time on the Application Due Date shall not be eligible for consideration and shall be summarily rejected.

2.16 Modifications/ substitution/ withdrawal of Applications

- 2.16.1 The Applicant may modify, substitute or withdraw its Application after submission, provided that written notice of the modification, substitution or withdrawal is received by the Utility prior to the Application Due Date. No Application shall be modified, substituted or withdrawn by the Applicant on or after the Application Due Date.
- 2.16.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.13, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.
- 2.16.3 Any alteration/ modification in the Application or additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Utility, shall be disregarded.

D. EVALUATION PROCESS

2.17 Opening and Evaluation of Applications

- 2.17.1 The Utility shall open the Applications at *** hours IST on the Application Due Date, at the place specified in Clause 2.13.3 and in the presence of the Applicants who choose to attend.
- 2.17.2 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.
- 2.17.3 The Utility will subsequently examine and evaluate Applications in accordance with the provisions set out in Section 3.
- 2.17.4 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the Utility. Applicants 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.
- 2.17.5 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 Applicant if the Project is subsequently awarded to it on the basis of such information.
- 2.17.6 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.
- 2.17.7 If any information furnished by the Applicant 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 Experience Score of the Applicant.
- 2.17.8 In the event that an Applicant claims credit for an Eligible Project, and such claim is determined by the Utility as incorrect or erroneous, the Utility shall reject such claim and exclude the same from computation of the Experience Score, and may

also, while computing the aggregate Experience Score of the Applicant, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, the Utility reserves the right to reject the Application and/ or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the pre-qualified Applicants 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.

2.19 Tests of responsiveness

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

- (a) it is received as per format at Appendix-I.
- (b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.14.2;
- (c) it is signed, sealed, bound together in hard cover, and marked as stipulated in Clauses 2.12 and 2.13;
- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);
- (e) it contains all the information and documents (complete in all respects) as requested in this RFQ - DBFOO ;
- (f) it contains information in formats same as those specified in this RFQ - DBFOO ;
- (g) it contains certificates from its statutory auditors⁵ in the formats specified at Appendix-I of the RFQ - DBFOO for each Eligible Project;
- (h) it contains an attested copy of the receipt of the Utility towards the cost of the RFQ - DBFOO process as specified in Clause 1.2.1;

⁵ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.19.1 (g). 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-DBFOO.

- (i) it is accompanied by the Joint Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);
- (j) it does not contain any condition or qualification; and
- (k) it is not non-responsive in terms hereof.

2.19.2 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 Applicant to rectify any infirmities or omissions if the same do not constitute a material modification of the Application.

2.20 Clarifications

2.20.1 To facilitate evaluation of Applications, the Utility may, at its sole discretion, seek clarifications from any Applicant 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.

2.20.2 If an Applicant does not provide clarifications sought under Clause 2.20.1 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 Applicant shall be barred from subsequently questioning such interpretation of the Utility.

E. QUALIFICATION AND BIDDING

2.21 Notification of prequalified Applicants

After the evaluation of Applications, the Utility would announce a list of pre-qualified Applicants (Bidders) who will be eligible for participation in the Bid Stage. The Utility would notify the pre-qualified Applicants asking to remit the required amount within a week as the cost of procuring the RFP-DBFOO documents. At the same time, the Utility would notify the other Applicants that they have not been pre-qualified. The Utility will not entertain any query or clarification from Applicants who fail to qualify.

2.22 Submission of Bids

The Bidders will be requested to submit a Bid in the form and manner to be set out in the Bidding Documents.

Only pre-qualified Applicants shall be invited by the Utility to submit their Bids for the Project. The Utility is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants 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 pursuant to invitation that may be issued by the Utility.

2.23 Proprietary data

All documents and other information supplied by the Utility or submitted by an Applicant to the Utility shall remain or become the property of the Utility. Applicants 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.

2.24 Correspondence with the Applicant

Save and except as provided in this RFQ - DBFOO , the Utility shall not entertain any correspondence with any Applicant in relation to the acceptance or rejection of any Application.

3. CRITERIA FOR EVALUATION

3.1 Evaluation parameters

3.1.1 Only those Applicants who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Section 3. Applications of firms/ consortia who do not meet these criteria shall be rejected.

3.1.2 The Applicant'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 following categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects as stipulated in Clauses 3.2.3 and 3.2.4 (the "**Eligible Projects**"):

Category 1: Project experience on Eligible Projects in power sector that qualify under Clause 3.2.3

Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 3.2.3

Category 3: Construction experience on Eligible Projects in power sector that qualify under Clause 3.2.4

Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 3.2.4

For the purpose of this RFQ - DBFOO :

(i) power sector would be deemed to include generation, transmission and distribution of electricity; and

(ii) core sector would be deemed to include coal mining, telecom, ports, airports, railways, metro rail, highways and bridges, industrial parks/ estates, logistic parks, pipelines, irrigation, water supply, sewerage and real estate development.⁵

3.2.2 Eligible Experience in respect of each category shall be measured only for Eligible Projects.

3.2.3 For a project to qualify as an Eligible Project under Categories 1 and 2:

⁵ Real estate development shall not include residential flats unless they form part of a real estate complex or township which has been built by the Applicant.

- (a) It should have been undertaken as a project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;
- (b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed;
- (c) the capital cost of the project should be more than [Rs. 100 crore (Rs. one hundred crore)]; and
- (d) the entity claiming experience shall, during the last 5 (five) financial years preceding the Application Due Date, have (i) paid for development of the project (excluding the cost of land), and/or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from transmission/distribution systems, highways, airports, ports and railway infrastructure, and/or (iii) collected and appropriated the revenues from sale of electricity produced by it, but shall not include revenues from sale or provision of goods or services such as, gas, petroleum products, telecommunications or fare/freight revenues and other incomes of the company owning the Project or revenues from sale of electricity by a distribution company.

3.2.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Applicant should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Application Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, payments/receipts of less than [Rs. 100 crore (Rs. one hundred crore)]²⁷ shall not be reckoned as payments/receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn- key construction contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder.

3.2.5 The Applicant shall quote experience in respect of a particular Eligible Project under any one category only, even though the Applicant (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.

3.2.6 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

²⁷ This amount should be determined as specified in Clause 3.2.3 (c).

3.3 Details of Experience

- 3.3.1 The Applicant should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Application Due Date.
- 3.3.2 The Applicants must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.
- 3.3.3 The Applicant should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.

3.4 Financial information for purposes of evaluation

- 3.4.1 The Application must be accompanied by the Audited Annual Reports of the Applicant (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Application is made.
- 3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 3.4.3 The Applicant 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.

3.5 Pre-Qualification of Applicants

- 3.5.1 The credentials of eligible Applicants shall be measured in terms of their Experience. The sum total of the Experience for all Eligible Projects shall be the „Aggregate Experience“ of a particular Applicant. In case of a Consortium, the Aggregate Experience of each of its Members, who have an equity share of at least 26% in such Consortium, shall be summed up for arriving at the combined **Aggregate Experience** of the Consortium. The Applicants who are fulfilling the requirements of the RFQ - DBFOO subject to the provisions under clause 2.7 of RFQ - DBFOO will be pre-qualified by the Utility.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants 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 Applicant if it determines that the Applicant 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 Applicant 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 Applicant shall not be eligible to participate in any tender or RFQ - DBFOO issued by the Utility during a period of 2 (two) years from the date such Applicant 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 PSA- DBFOO or arising there from, 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 sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the PSA-DBFOO, as the case may be, any person in respect of any matter relating to the Project or the LOA or the PSA-DBFOO, 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 Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-APPLICATION CONFERENCE

- 5.1 A Pre-Application conference of the interested parties shall be convened at the designated date, time and place. Only those persons who have purchased the RFQ - DBFOO document shall be allowed to participate in the Pre- Application conference. Applicants who have downloaded the RFQ - DBFOO document from the Utility's website (www.**) should submit a Demand Draft for the amount specified in Clause 1.2.1 towards the cost of RFQ - DBFOO process through their representative attending the conference. A maximum of three representatives of each Applicant shall be allowed to participate on production of authority letter from the Applicant.
- 5.2 During the course of Pre-Application conference, the Applicants 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.

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 Applicant in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Applicant and/ or to consult with any Applicant 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 Applicant; 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 Applicant.
- 6.3 It shall be deemed that by submitting the Application, the Applicant 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.

Appendices

APPENDIX I

Letter Comprising the Application for Pre-Qualification
(Refer Clause 2.13.2)

Dated:

To,

[The ***,

 ***]

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

Dear Sir,

With reference to your RFQ - DBFOO document dated ..., I/we, having examined the RFQ - DBFOO 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 Applicants for the aforesaid project, and we certify that all information provided in the Application and in Annexes I to VI 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 development, construction, operation and maintenance of the aforesaid Project and for sale of power 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/ any of the Consortium Members or our/ their Associates 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:

- (a) I/ We have examined and have no reservations to the RFQ - DBFOO document, including any Addendum issued by the Utility;
- (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFQ - DBFOO document;
- (c) 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 the RFQ - DBFOO document, in respect of any tender or request for proposal issued by or any agreement entered into with the Utility or any other public sector enterprise or any government, Central or State; and

- (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFQ - DBFOO 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 invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the RFQ - DBFOO document.

9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the Net Worth criteria and meet(s) all the requirements as specified in the RFQ - DBFOO document and are/ is qualified to submit a Bid.

10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates 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.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.⁷

14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines forming part of the RFQ - DBFOO at Appendix-V is enclosed.

15. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government/ State Government or any

⁷ In case the Applicant is unable to provide the certification specified in para 13, 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.

entity controlled by it, from participating in any project (BOT or otherwise), and no bar subsists as on the date of Application.

16. 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 this RFQ - DBFOO , we shall intimate the Utility of the same immediately.

17. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFQ - DBFOO document, and duly signed, is enclosed. The power of attorney for signing of Application and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFQ - DBFOO , are also enclosed.

18. I/ We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the PSA-DBFOO.

19. I/ We hereby confirm that we are in compliance of/ shall comply with the O&M requirements specified in Clause 2.2.3.

20. 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 Applicants, 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.

21. I/ We agree and undertake to abide by all the terms and conditions of the RFQ - DBFOO document.

22. {I/We hereby undertake that in the event the Bidder is selected as the Selected Bidder, I/We shall surrender the proportionate quantity of any existing Letter of Assurance /Fuel Supply Agreement to the supplier of the coal, not being the Letter of Assurance/ Fuel Supply Agreement arranged by the Utility, corresponding to the tenure of the Letter of Assurance /Fuel Supply Agreement arranged by the Utility.}\$

23. I/We offer a Capacity of {...MW} from {Capacity, Name and address of the Project} which conforms to clause 1.1.4 of the RFQ - DBFOO out of the Capacity Required of {... MW} given under clause 1.1 of the RFQ - DBFOO .

24. I/ We certify that in terms of the RFQ - DBFOO , my/our Net worth is Rs. ... crore (Rupees ... crore).

25. I/ We certify that in terms of the RFQ - DBFOO , my/our Threshold Technical Capacity under clause 2.2.2 (A) of the RFQ - DBFOO is Rs ... crore (Rupees ...crore).

{25. I/We agree and undertake to be jointly and severally liable for all the obligations of the Supplier under the PSA-DBFOO till occurrence of Financial Close in accordance with the PSA-DBFOO.}\$

^{\$} To be retained only if source of fuel is from Allocated Coal Linkage arranged by the Utility.

^{\$} Omit if the Applicant is not a Consortium.

In witness thereof, I/ we submit this application under and in accordance with the terms of the RFQ - DBFOO document.

Yours faithfully,

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

Place: Name and seal of the Applicant/ Lead Member

Appendix I
Annex-I

ANNEX-I

Details of the Applicant

1. (a) Name:
- (b) Country of incorporation:
- (c) Address of the corporate headquarters and its branch office(s), if any, in India:
- (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Particulars of individual(s) who will serve as the point of contact/ communication for the Applicant:
 - (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 Applicant:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:
5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Application.

- (c) Information regarding the role of each Member should be provided as

per table below:

Appendix I
Annex-I

Sl. No.	Name of Member	Role* {Refer Clause 2.2.6(d)} [§]	Percentage of equity in the Consortium {Refer Clauses 2.2.6(a), (c) & (g)}
1.			
2.			
3.			
4.			

* The role of each Member, as may be determined by the Applicant, should be indicated in accordance with instruction 4 at Annex-IV.

6. The following information shall also be provided for the Applicant, including each Member of the Consortium:

Name of Applicant/ member of Consortium:

Sl. No.	Criteria	Yes	No
1.	Has the Applicant/ constituent of the Consortium 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 Applicant/ constituent of the Consortium 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?		

7. A statement by the Applicant and each of the Members of its Consortium (where applicable) or any of their Associates 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):

[§] All provisions contained in curly parenthesis shall be suitably modified by the Applicant to reflect the particulars relating to such Applicant.

ANNEX-II

Technical Capacity of the Applicant[@]*(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ - DBFOO)*

Applicant type #	Member Code*	Project Code**	Cate- gory ^s	Eligible Experience* (Equivalent Rs. crore) ^{ss}			Experience (In Rs. Crore)
				Payments made/ received for construction of Eligible Projects in Categories 3 and 4	Payments made for developm ent of Eligible Projects in Categorie s 1 and 2	Revenues appropriate d from Eligible Projects in Categories 1 and 2	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Single entity Applicant		a					
		b					
		c					
		d					
Consortium Member 1		1a					
		1b					
		1c					
		1d					
Consortium Member 2		2a					
		2b					
		2c					
		2d					
Consortium Member 3		3a					
		3b					
		3c					
		3d					
Consortium Member 4		4a					
		4b					
		4c					
		4d					
Aggregate Experience =							

① Provide details of only those projects that have been undertaken by the Applicant under its own name and/ or by an Associate specified in Clause 2.2.9 and/ or by a project company eligible under Clause 3.2.3(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.2.3(c) and for Categories 3 and 4, include only those projects where the payments made/received exceed the amount specified in Clause 3.2.4. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Applicant may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Applicant with such Associate, in terms of Clause 2.2.9, shall be provided.

** Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.*

***Refer Annex-IV of this Appendix-I. Add more rows if necessary.*

§ Refer Clause 3.2.1.

¥ In the case of Eligible Projects in Categories 1 and 2, the figures in columns 6 and 7 may be added for computing the Experience Score of the respective projects. In the case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included while computing the Experience Score of an Eligible Project.

§§ For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees [60(sixty)] to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Application Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

ANNEX-III

Financial Capacity of the Applicant*(Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.4 of the RFQ - DBFOO)***(In Rs. crore[§])**

Applicant type^{ss}	Member Code[£]	Net Worth[€]
(1)	(2)	(3)
Single entity Applicant		
Consortium Member 1		
Consortium Member 2		
Consortium Member 3		
Consortium Member 4		
TOTAL		

Name & address of Applicant's Bankers:[§] For conversion of other currencies into rupees, see note below Annex-II of Appendix-I[£] For Member Code, see instruction 4 at Annex-IV of this Appendix-I.[€] The Applicant should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.9.^{ss} An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Applicant may be ignored.

Instructions:

1. The Applicant/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Application Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Applicant or Consortium Members and its/ their Associates where the Applicant is relying on its Associate's financials;
 - (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 mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
3. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.
4. In the case of a Consortium, a copy of the Joint Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFQ - DBFOO document.
5. The Applicant shall provide an Auditor's Certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.4 (ii) of the RFQ - DBFOO document.

ANNEX-IV

Details of Eligible Projects*(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ - DBFOO)*

Project Code:		Member Code:	
Item	Refer	Particulars of the Project	
(1)	Instruction	(3)	
Title & nature of the project			
Category	5		
Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or(c) revenues appropriated	6		
Entity for which the project was constructed/ developed	7		
Location			
Project cost	8		
Date of commencement of project/ contract			
Date of completion/ Commissioning	9		
Equity shareholding (with period during which equity was held)	10		
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	15		

Instructions:

- Applicants are expected to provide information in respect of each Eligible Project in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.2.3 and 3.2.4 of the RFQ - DBFOO , as the case may be. Information provided in this section is intended to serve as a back up for information provided in the Application. Applicants should also refer to the Instructions below.

Appendix I
Annex-IV

- 2 For a single entity Applicant, the Project Codes would be a, b, c, d etc. In case the Applicant is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
- 3 A separate sheet should be filled for each Eligible Project.
- 4 Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Applicant or its Member, write "Associate" along with Member Code.
- 5 Refer to Clause 3.2.1 of the RFQ - DBFOO for category number.
- 6 The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Application Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.2.12). For Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.2.3(c). In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 3.2.4. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
- 7 In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Utility/ Agency (i.e. contract grantor, counter party to PSA-DBFOO, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
- 8 Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.2.3 and 3.2.4
- 9 For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
- 10 For Categories 1 and 2, the equity shareholding of the Applicant, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.2.3).
- 11 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double

Appendix I
Annex-IV

counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.

12. Certificate from the Applicant's statutory auditor⁵ or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Applicant/ Member/Associate may provide the requisite certification.
13. If the Applicant is claiming experience under Categories 1 & 2^f, it should provide a certificate from its statutory auditor in the format below:

Certificate from the Statutory Auditor regarding PPP projects ^Φ

Based on its books of accounts and other published information authenticated by it, this is to certify that (*name of the Applicant/Member/Associate*) is/ was an equity shareholder in (*title of the project company*) and holds/held Rs. cr. (Rupees..... crore) of equity (which constitutes.....% ^ε of the total paid up and subscribed equity capital) of the project company from (*date*) to.....(*date*)^g. The project was/is likely to be commissioned on..... (*date of commissioning of the project*).

We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which Rs. cr. (Rupeescrore) of capital expenditure was incurred during the past five financial years as per year-wise details noted below:

.....
.....

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 3.2.1 and 3.2.3 (d) of the RFQ - DBFOO during the past five financial years were Rs. cr. as per year-wise details noted below:

.....
.....

Name of the audit firm:

Seal of the audit firm:(Signature, name and designation of the authorised signatory) Date:

⁵ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

^f Refer Clause 3.2.1 of the RFQ-DBFOO.

^Φ Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

^ε Refer instruction no. 10 in this Annex-IV.

^g In case the project is owned by the Applicant company, this language may be suitably modified to read: "It is certified that (*name of Applicant*) constructed and/ or owned the (*name of project*) from (*date*) to(*date*)."

14. If the Applicant is claiming experience under Category 3 & 4*, it should provide a certificate from its statutory auditors or the client in the format below:

Certificate from the Statutory Auditor/ Client regarding construction works^Φ

Based on its books of accounts and other published information authenticated by it, {this is to certify that (name of the Applicant/Member/Associate) was engaged by (title of the project company) to execute (name of project) for (nature of project)}^Ψ. The construction of the project commenced on (date) and the project was/ is likely to be commissioned on (date, if any). It is certified that.....(name of the Applicant/ Member/ Associate) received/paid Rs. cr. (Rupees crore) by way of payment for the aforesaid construction works.

We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which the Applicant/Member/Associate received/paid Rs. cr. (Rupees..... crore), in terms of Clauses 3.2.1 and 3.2.4 of the RFQ - DBFOO , during the past five financial years as per year-wise details noted below:

.....
.....

*{It is further certified that the payments/ receipts indicated above are restricted to the share of the Applicant who undertook these works as a partner or a member of joint venture/ consortium.}**

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation of the authorised signatory).

Date:

* Refer Clauses 3.2.1 and 3.2.4 of the RFQ-DBFOO.

^Φ Provide Certificate as per this format only. Attach Explanatory notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

^Ψ In case the Applicant owned the Eligible Project and engaged a contractor for undertaking the construction works, this language may be modified to read: " this is to certify that (name of Applicant/ Member/ Associate) held 26% or more of the paid up and subscribed share capital in the.....(name of Project company) when it undertook construction of the (name of Project) through(name of the contractor).

* This certification should only be provided in case of jobs/ contracts, which are executed as part of a partnership/ joint venture/ consortium. The payments indicated in the certificate should be restricted to the share of Applicant in such partnership/ joint venture/ consortium. This portion may be omitted if the contract did not involve a partnership/ joint venture/ consortium. In case where work is not executed by partnership/ joint venture/ consortium, this paragraph may be deleted.

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.9, the Applicant should also provide a certificate in the format below:

Certificate from Statutory Auditor/ Company Secretary regarding Associate ^s

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of *(name of the Applicant/ Consortium Member/ Associate)* is held, directly or indirectly[£], by *(name of Associate/ Applicant/ Consortium Member)*. By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.9 of the RFQ - DBFOO .

A brief description of the said equity held, directly or indirectly, is given below:

{Describe the share-holding of the Applicant/ Consortium Member and the Associate. In the event the Associate is under common control with the Applicant/ Consortium Member, the relationship may be suitably described and similarly certified herein }

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of Date: the authorised signatory).

16. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score.[®]

^s In the event that the Applicant/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

[£] In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of "control" is not broken

[®] Refer Clause 3.2.6 of the RFQ-DBFOO.

ANNEX-V

Statement of Legal Capacity

(To be forwarded on the letterhead of the Applicant/ Lead Member of Consortium)

Ref. Date:

To,

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the Application) satisfy the terms and conditions laid out in the RFQ - DBFOO document.

We have agreed that ... (insert member's name) will act as the Lead Member of our consortium.

We have agreed that ... (insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf^s and has been duly authorized to submit the RFQ - DBFOO . 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

** Please strike out whichever is not applicable.*



ANNEX- VI

Particulars of the Power Station

1. Location of Power Station (Specify place, district and state):

- | | | | |
|--|---------------------------------|------------------------------------|-----|
| 2. No. of Units and Installed capacity of each unit (in MW): | <u>Existing</u>
No.
Units | of Installed
Capacity(in
MW) | COD |
|--|---------------------------------|------------------------------------|-----|

- | | | | |
|--|---------------------------------|------------------------------------|-----|
| | <u>Proposed</u>
No.
Units | of Installed
Capacity(in
MW) | COD |
|--|---------------------------------|------------------------------------|-----|

3. Quantum of power contracted with other purchasers, if Any (in MW):
4. Details Of surplus capacity (in MW):
5. Land for Power Station
 - (i) Total requirement (in ha):
 - (ii) Land in Possession (in ha):
6. Status of environment and forest clearance:
7. Source of Fuel and Status of assured supply of Fuel:
8. Status of construction:
9. Status and source of procurement of equipment:

Signature:
Name:
Designation:
Date:
Place:

APPENDIX II

Power of Attorney for signing of Application and Bid^s*(Refer Clause 2.2.5)*

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/ the Lead Member of our Consortium 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 already commissioned / 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 Power Supply Agreement -DBFOO 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 Power Supply Agreement -DBFOO 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

Witness:

1.

2.

Witnesses:

1.

2

(Notarised)

⁵ To be submitted in original.

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 Applicant should submit for verification the extract of the charter documents and documents such as a board 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 Applicant.*
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 Applicants 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 Apostille certificate.*

APPENDIX III

Power of Attorney for Lead Member of Consortium⁵*(Refer Clause 2.2.5)*

Whereas the *** (“the Utility”) has invited applications from interested parties for the *** Project (the “Project”).

Whereas,,, and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Qualification-DBFOO document (RFQ - DBFOO), Request for Proposal-DBFOO (RFP-DBFOO) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s Bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We,.... having our registered office at, M/s..... having our registered office at, M/s. having our registered office at, and having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process and, in the event the Consortium is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its Bid for the Project, including but not limited to signing and submission of all applications, Bids and other documents and writings, participate in Bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Consortium and generally to represent the Consortium in all its dealings with the Utility, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s Bid for the Project and/ or upon award thereof till the Power Supply Agreement -DBFOO is entered into with the Utility.

AND 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,

⁵ To be submitted in original.
MRFQ-DBFOO/March 2019

Appendix III

Page 2

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/ Consortium.

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

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

For
(Signature)

...
(Name & Title)

Affixation of Common Seal

Witness:

1.

2.

Witnesses:

1.

2.

....

(Executants)

(To be executed by all the Members of the Consortium)

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. *Also, wherever required, the Applicant should submit for verification the extract*

of the charter documents and documents such as a board 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 Applicant.

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 Applicants 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 Apostille certificate.*

APPENDIX IV

Joint Bidding Agreement for Consortium*(Refer Clause 2.13.2)**(To be executed on Stamp paper of appropriate value)*

THIS JOINT BIDDING AGREEMENT is entered into on this the day of
20....

AMONGST

1. {..... Limited, a company incorporated under the Companies Act, 1956/2013⁷} and having its registered office at..... (hereinafter referred to as the **"First Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {..... Limited, a company incorporated under the Companies Act, 1956/2013} and having its registered office at (hereinafter referred to as the **"Second Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {..... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at.....(hereinafter referred to as the **"Third Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

4. {..... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at.....(hereinafter referred to as the **"Fourth Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)}[§]

The above mentioned parties of the FIRST, SECOND, {THIRD and FOURTH} PART are collectively referred to as the **"Parties"** and each is individually referred to as a **"Party"**

WHEREAS,

⁷ A Bidder who is registered abroad may substitute the words, viz. "a company registered under the Companies Act, 1956" by the words, viz. "a company duly organized and validly existing under the laws of the jurisdiction of its incorporation". A similar modification may be made in Recital 2, as necessary.

[§] The number of Parties will be shown here, as applicable, subject however to a maximum of 6 (six).
MRFQ-DBFOO/March 2019

- (A) *****, established/incorporated under the Indian Companies Act, 1956, represented by its [Chairman] and having its principal offices at *****(hereinafter referred to as the “Utility” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the “Applications”) by its Request for Qualification No. dated (the “RFQ - DBFOO ”) for pre-qualification of Bidders for development and operation of ***** Project (the “Project”)through public private partnership.
- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFQ - DBFOO document and other Bid Documents in respect of the Project, and
- (C) It is a necessary condition under the RFQ - DBFOO document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFQ - DBFOO .

2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “SPV”) under the Indian Companies Act, 2013 for entering into a Power Supply Agreement-DBFOO (the “PSA-DBFOO”) with the Utility and for performing all its obligations as the Supplier in terms of the PSA-DBFOO. If an SPV has been incorporated by the Utility prior to the Bid Due Date, the Parties undertake to transfer all shares of the SPV through a share purchase agreement.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the PSA-DBFOO when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be {the Technical Member of the Consortium;}
- {{(c) Party of the Third Part shall be the Financial Member of the Consortium; and}}
- {{(d) Party of the Fourth Part shall be the Operation and Maintenance Member / Other Member of the Consortium.}}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFQ - DBFOO, RFP-DBFOO and the PSA-DBFOO, till such time as the Financial Close for the Project is achieved under and in accordance with the PSA-DBFOO.

6. Shareholding in the SPV

- 6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:
Second Party:
{Third Party:}
{Fourth Party:}

- 6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and network have been reckoned for the purposes of pre-qualification of Applicants for the Project in terms of the RFQ - DBFOO .

- 6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.
- 6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operation date of the Project.
- 6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the PSA-DBFOO.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is

otherwise applicable to such Party; or

- (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the PSA-DBFOO, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Utility to the Bidder, as the case may be.

9. Miscellaneous

- 9.1 This Joint Bidding Agreement shall be governed by laws of India.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Utility.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED For and on behalf of LEAD MEMBER by: (Signature) (Name)	(Designation) (Address) SIGNED, SEALED AND DELIVERED For and on behalf of THIRD PART
--	---

(Signature)

SIGNED, SEALED AND DELIVERED

(Name)

SECOND PART

(Designation)

(Signature)

(Address)

(Name)

In the presence of:

(Designation)

1.

(Address)

2.

SIGNED, SEALED AND DELIVERED

For and on behalf of

FOURTH PART

(Signature)

(Name)

(Designation)

(Address)

Notes:

1. The mode of the execution of the Joint Bidding Agreement 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. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

APPENDIX V²⁸**Guidelines of the Department of Disinvestment***(Refer Clause 1.2.1)*

No. 6/4/2001-DD-II
 Government of India
 Department of Disinvestment

Block 14, CGO Complex
 New Delhi.

Dated 13 July, 2001.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.

²⁴ These guidelines may be modified or substituted by the Government from time to time.

- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government

APPENDIX- VI
INFORMATION MEMORANDUM

[APPENDIX – VII]²⁹
Details of the Allocated Coal Linkage

[Details to be provided with respect to Location of Coal Mine and Quality of Coal]

²⁹ To be retained only if coal linkage is provided by the Utility.
MRFQ-DBFOO/March 2019

APPENDIX- VIII

LIST OF APPLICATION SPECIFIC PROVISIONS⁵**1. Clauses and appendices with non-numerical footnotes**

1. Clause 1.2.3: Brief description of Bidding Process
2. Clause 1.2.8 (d): Brief description of Bidding Process
3. Clause 2.2.1(C): Eligibility of Applicants
4. Clause 2.2.2 (B): Eligibility of Applicants: Financial Capacity
5. Clause 2.2.4 (i): Eligibility of Applicants
6. Clause 2.10.3 : Amendment of RFQ - DBFOO
7. Clause 2.19.1 (g): Tests of responsiveness
8. Clause 3.2.1 (ii): Technical Capacity for purposes of evaluation
9. Appendix I: Letter Comprising the Application for Pre-Qualification: Para 13 and 22
10. Appendix I, Annex-I: Details of Applicant (Table to Para 5(c))
11. Appendix I, Annex-II: Technical Capacity of the Applicant
12. Appendix I, Annex-III: Financial Capacity of the Applicant
13. Appendix I, Annex-IV: Details of Eligible Projects: Para 12
14. Appendix I, Annex-IV: Details of Eligible Projects:
 - (a) Certificate from the Statutory Auditor regarding PPP projects
 - (b) Certificate from the Statutory Auditor/ Client regarding construction works, and
 - (c) Certificate from Statutory Auditor/ Company Secretary regarding Associate
15. Appendix IV: Joint Bidding Agreement: Recital, Para 4
16. Appendix VI: List of Bid-specific clauses

2. Clauses and appendices with curly brackets

1. Clause 1.2.3: Brief description of Bidding Process
2. Appendix I: Letter Comprising the Application for Pre-Qualification: Para 22
3. Appendix I, Annex I: Details of Applicant (Table to Para 5(c), Column 3)
4. Annex-IV, Appendix I: Form of Certificate from the Statutory Auditor/ Client regarding construction works
5. Appendix IV: Joint Bidding Agreement

3. Clauses and appendices with blank spaces

1. Appendix I: Letter Comprising the Application for Pre-Qualification: Para 1 and 21
2. Appendix I, Annex-IV: Details of Eligible Projects: Certificate from the Statutory Auditor regarding PPP project.
3. Appendix I, Annex-IV: Details of Eligible Projects: Certificate from the Statutory Auditor/ Client regarding construction works

⁵ This Appendix-VIII contains a list of clauses and appendices that would need to be suitably modified for reflecting applicant-specific provisions. This Appendix-VIII may, therefore, be included in the RFQ-DBFOO document to be issued to prospective Applicants. The blank spaces in Appendices may be filled up by the Applicant and the footnotes maybe deleted when it submits its Application.

4. Appendix I, Annex-IV: Details of Eligible Projects: Certificate from Statutory Auditor/ Company Secretary regarding Associate
5. Appendix I, Annex-V: Statement of Legal Capacity
6. Appendix I, Annex-VI: Particulars of the Power Station
7. Appendix II :Power of Attorney for signing of Application
8. Appendix III: Power of Attorney for Lead Member of Consortium
9. Appendix IV: Joint Bidding Agreement: Recitals

APPENDIX- IX

LIST OF PROJECT SPECIFIC PROVISIONS³⁰**1. Clauses and appendices with serially numbered footnotes**

1. Clause 1.1: Background (Footnote No. 1)
2. Clause 1.1.1: Background (Footnote No. 2,3 and 4)
3. Clause 1.1.4: Background (Footnote 5)
4. Clause 1.2.1: Brief description of Bidding Process (Footnote No.6)
5. Clause 1.2.4: Brief description of Bidding Process (Footnote No.7 and 8)
6. Clause 1.2.8: Brief description of Bidding Process (Foot note No. 9,10,11,12 and 13)
7. Clause 1.3 : Schedule of Bidding Process (Footnote No. 14)
8. Clause 2.2.1 (e): Eligibility of Applicants (Footnote No. 15 and 16)
9. Clause 3.2.4: Technical Capacity for purposes of evaluation (Footnote No. 17)
10. Clause 3.2.6: Table 3.2.6: Factors for Experience across categories (Footnote No. 18)
11. Clause 3.5.2: Pre-Qualification of Applicants (Footnote No. 19)
12. Appendix IV: Joint Bidding Agreement: Clause 6.6, Shareholding in the SPV (Footnote No. 20)
13. Appendix V: Guidelines of the Department of Disinvestment (Footnote No. 21)
14. Appendix VII Details of the Allocated Coal Linkage
15. Appendix VIII: List of project-specific clauses (Footnote No. 22)

2. Clauses and appendices with square parenthesis

1. Glossary: Definition of BOO, CIL
2. Index: Appendix V: Guidelines of the Department of Disinvestment
3. Title of the Utility
4. Clause 1.1.1: Background
5. Clause 1.1.4: Background
6. Clause 1.2.4: Brief description of Bidding Process
7. Clause 1.2.8: Brief description of Bidding Process
8. Clause 1.3: Schedule of Bidding Process
9. Clause 2.2.1 (b) and (e): Eligibility of Applicants
10. Clause 2.2.2 (A): Eligibility of Applicants (Technical Capacity)
11. Clause 2.13.2 (vii): Sealing and Marking of Applications

³⁰ This Appendix-IX contains a list of clauses and appendices that would need to be suitably modified, prior to issue of the RFQ-DBFOO document, for reflecting project-specific provisions. This Appendix-IXF should be omitted before issuing the RFQ-DBFOO document to prospective Applicants.
MRFQ-DBFOO/March 2019

12. Clause 2.19.1(h): Tests of responsiveness
13. Clause 3.2.3 (c): Technical Capacity for purposes of evaluation
14. Clause 3.2.4 : Technical Capacity for purposes of evaluation
15. Clause 5.1: Pre-Application Conference
16. Clause 6.1: Miscellaneous
17. Appendix I: Letter Comprising the Application for Pre-Qualification
(Address line Para 14 and 18)
18. Appendix I, Annex-I: Details of Applicant (Table below sub clause(d))
19. Appendix I, Annex-II: Technical Capacity of the Applicant (Footnotes)
20. Appendix IV: Joint Bidding Agreement: Recitals
21. Appendix IV: Joint Bidding Agreement: Clause 6.6

3. Clauses and appendices with asterisk

- | | | |
|-----|---|----------------|
| 1. | Definition of Government | Glossary: |
| 2. | Background | Clause 1.1.1: |
| 3. | 1.2.4, 1.2.8 and 1.2.10: Brief description of Bidding Process | Clause |
| 4. | Sealing and Marking of Applications | Clause 2.13.2: |
| 5. | Letter Comprising the Application for Pre-Qualification | Appendix I: |
| 6. | Annex-II: Technical Capacity of the Applicant | Appendix I, |
| 7. | Annex-V: Statement of Legal Capacity | Appendix I, |
| 8. | Power of Attorney for signing of Application | Appendix II: |
| 9. | Power of Attorney for Lead Member of Consortium | Appendix III: |
| 10. | Joint Bidding Agreement: Recitals, Para A | Appendix IV: |

Model

Request For Proposal – Design, Build, Finance, Own and Operate (MRFP-DBFOO) Invitation for e-Tender for Long Term Procurement of Electricity on DEEP Portal

for

Power Supply Agreement

**Ministry of Power
Government of India**

[Date of Issuance]

TABLE OF CONTENTS

S. No.	Contents	Page No.
	Letter of Invitation	v
	Disclaimer	vii
	Glossary	ix
1	Introduction	1
1.1	Background	1
1.2	Brief description of Bidding Process	2
1.3	Schedule of Bidding Process	4
1.4	Pre Bid Conference	4
2	Instructions to Bidders	5
A	General	5
2.1	General terms of Bidding	5
2.2	Change in composition of the Consortium	8
2.3	Change in Ownership	9
2.4	Cost of Bidding	9
2.5	Site visit and verification of information	10
2.6	Verification and Disqualification	10
B	Documents	11
2.7	Contents of the RFP-DBFOO	11
2.8	Clarifications	12
2.9	Amendment of RFP-DBFOO	12
C	Preparation and Submission of Bids	13
2.10	Format and Signing of Bid	13
2.11	Sealing and Marking of Bids	13
2.12	Bid Due Date	14
2.13	Late Bids	14
2.14	Contents of the Bid	14
2.15	Modifications/ Substitution/ Withdrawal of Bids	15
2.16	Rejection of Bids	15
2.17	Validity of Bids	15
2.18	Confidentiality	15
2.19	Correspondence with the Bidder	16

D	Bid Security	16
2.20	Bid Security	16
3	Evaluation of Bids	18
3.1	Opening and Evaluation of Bids	18
3.2	Tests of responsiveness	18
3.3	Selection of Bidder	18
3.4	Contacts during Bid Evaluation	20
3.5	Bid Parameter	20
4	Fraud and Corrupt Practices	23
5	Pre-Bid Conference	25
6	Miscellaneous	26
	Appendices	
I	Letter comprising the Bid	28
II	Bank Guarantee for Bid Security	33
III	Power of Attorney for signing of Bid	36
IV	Power of Attorney for Lead Member of Consortium	38
V	Guidelines of the Department of Disinvestment	41
VI	Details of the Allocated Coal Linkage	
VII	List of Bid-Specific Provisions	43
VIII	List of Project-Specific Provisions	44

Model
Request for Proposal-DBFOO (RFP-DBFOO)

[NAME AND ADDRESS OF THE UTILITY]

LETTER OF INVITATION

Dated

To,

.....

.....

.....

Sub: RFP-DBFOO for *** Project

Dear Sir,

Pursuant to your application in response to our Request for Qualification-DBFOO for the above said project (the "RFQ-DBFOO"), you were pre-qualified as a Bidder, and asked vide our letter dated to remit the fee for RFP-DBFOO document (the "RFP-DBFOO") within a week. We acknowledge your remittance of [Rs. 100,000 (Rs. one lakh only)]¹ as the cost of procuring the RFP-DBFOO documents, which are enclosed.

You are requested to participate in the Bid Stage and submit your financial proposal (the "Bid") for the aforesaid project in accordance with the RFP-DBFOO.

Please note that the [Utility] reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever.

Thanking you,

Yours faithfully,

(Signature, name and designation of the Signatory)

¹ To be fixed at the rate of Rs 50,000 (Rupees fifty thousand) for every 100 MW of capacity to be procured. The Utility may, in its discretion, increase this amount by upto 50% thereof.
MRFP-DBFOO/ February 2019

DISCLAIMER

The information contained in this Request for Proposal-DBFOO ("RFP-DBFOO") 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 in this RFP-DBFOO and such other terms and conditions subject to which such information is provided.

This RFP-DBFOO 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 RFP-DBFOO is to provide interested parties with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP-DBFOO. This RFP-DBFOO 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 RFP-DBFOO 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 RFP-DBFOO. The assumptions, assessments, statements and information contained in the Bidding Documents, 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 RFP-DBFOO and obtain independent advice from appropriate sources.

Information provided in this RFP-DBFOO 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 Applicant 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 RFP-DBFOO or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP-DBFOO and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP-DBFOO or arising in any way for participation in this Bid Stage.

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 RFP-DBFOO.

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 RFP-DBFOO.

The issue of this RFP-DBFOO does not imply that the Utility is bound to select a Bidder 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 Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its 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 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 Bid, regardless of the conduct or outcome of the Bidding Process.

	GLOSSARY	
[Allocated Coal Linkage]	[Details to be inserted by the Utility in case the source of coal is provided by the Utility]	
Associate	As defined in Clause 2.1.14	
Bank Guarantee	As defined in Clause 2.20.1	
Bid(s)	As defined in Clause 1.2.2	
Bidders	As defined in Clause 1.2.2	
Bidding Documents	As defined in Clause 1.1.7	
Bid Due Date	As defined in Clause 1.1.7	
Bidding Process	As defined in Clause 1.2.1	
Bid Security	As defined in Clause 1.2.4	
Bid Stage	As defined in Clause 1.2.1	
[CIL	As defined in Clause 3.5.2]	
Conflict of Interest	As defined in Clause 2.1.14	
Contract	As defined in Clause 1.1.5	
Damages	As defined in Clause 2.1. 14	
DBFOO	As defined in Clause 1.1.1	
Demand Draft	As defined in Clause 2.20.2	
Government	Government of *****	
Lowest Bidder	As defined in Clause 1.2.6	
LOA	As defined in Clause 3.3.5	
Member	Member of a Consortium	
PSA-DBFOO	As defined in Clause 1.1.2	
PPP	Public Private Partnership	
Project	As defined in Clause 1.1.1	
Re. or Rs. or INR	Indian Rupee	
Request for Proposals-DBFOO or RFP-DBFOO	As defined in the Disclaimer	
Request for Qualification-DBFOO or RFQ-DBFOO	As defined in Clause 2.1.2	
SCCL	As defined in Clause 3.5.2	
Selected Bidder	As defined in Clause 3.3.1	
Supplier	As defined in Clause 1.1.2	
Tariff	As defined in Clause 1.2.6	
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. The words and expressions beginning with capital letters and not defined herein, but defined in the RFP-DBFOO, shall, unless repugnant to the context, have the meaning ascribed thereto therein.

Invitation for Proposal

[Name of Utility]

1. INTRODUCTION⁵

1.1 Background²

- 1.1.1 The MPSEZ Utility Private Limited (the “Utility”) is/are engaged in the distribution of electricity and as part of this endeavour, the Utility has decided to procure electricity on a long term basis from a power station (the “Project”) through Public Private Partnership (the “PPP”) on Design, Build, Finance, Own and Operate (the “DBFOO”) basis by sourcing fuel [Bidder is expected to source linkage coal from CIL/SCCL]]³, and has decided to carry out the Bidding Process for selection of a corporate entity as 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 Documents.

Brief particulars of the Project are as follows:

A. Utility solicits bids from the following types of Projects:

- a. Type-1: Projects / Units that are already commercially operationalized before Schedule Supply Commencement Date
- b. New Projects that are yet to be commercially operationalized as on Schedule Supply Commencement Date.

B.

Capacity Required (in MW)	Minimum Capacity (in MW)	Period when supply must commence
600 MW	100 MW	October -2022

- 1.1.2 The Bidder(s) who are issued Letter of Award (LoA) (the “Selected Bidder(s)”) shall accept the LoA (the “Successful Bidder”). The Successful Bidder, who is either a company incorporated under the Companies Act, 1956/2013 or undertakes to incorporate as such prior to execution of the Power Supply Agreement (the “Supplier”), shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Power Station for production of electricity and supply thereof under and in accordance with the provisions of a long-term agreement for supply of power (the “Power Supply Agreement-DBFOO” or the “PSA-DBFOO”) to be entered into between the Selected Bidder and the Utility in the form provided by the Utility as part of the Bidding Documents pursuant hereto.

⁵ Instructions for Bidders

Note 1: The provisions in curly brackets shall be suitably modified by the Bidders after the RFP-DBFOO is issued. (See Appendix-VII)

Note 2: Blank spaces contain formats that are to be used by the Bidders after the RFP-DBFOO is issued. (See Appendix-VII)

Note 3: Footnotes marked "3" in the relevant Clauses of the RFP-DBFOO are for guidance of the Bidders. In case of Appendices, the footnotes marked "3" or in other non-numerical characters shall be omitted by the Bidders while submitting their respective Bids. (See Appendix-VII)

² Instructions for customization of this document by the Utility

This Model Request for Proposal-DBFOO (the "RFP-DBFOO") may be customised for project-specific use in accordance with the instructions below:

Note I: Serially numbered footnotes in this RFP-DBFOO are for guidance of the Utility and should be omitted from the RFP-DBFOO before it is issued to prospective Bidders. (See Appendix-VIII)

Note II: All project-specific provisions in this RFP-DBFOO have been enclosed in square parenthesis and may be modified, as necessary, before issuing the RFP-DBFOO to prospective Bidders. The square parenthesis should be removed after carrying out the required modification. (See Appendix-VIII)

Note III: The asterisks in this RFP-DBFOO should be substituted by project-specific particulars before issuing the RFP-DBFOO to prospective Bidders. (See Appendix-VIII)

Note IV: Notes I, II, III and IV shall be omitted prior to issue of this RFP-DBFOO.

³ To be modified as per the source of fuel selected by the Utility.

- 1.1.3 The scope of work will broadly include designing, financing, construction, operation and maintenance of the Power Station and supply of power in accordance with the terms in the PSA-DBFOO.
- 1.1.4 Bidders may Bid for the the capacity specified in Clause 1.1.1, or a part thereof, not being less than 25% (twenty five per cent) of such capacity at National e-Bidding Portal ("**DEEP Portal**") developed by PFC Consulting Ltd.. Provided, however, that the Utility may, in its sole discretion, accept only those Bids which match the lowest Bid.
- 1.1.5 The PSA-DBFOO sets forth the detailed terms and conditions for grant of the contract to the Supplier, including the scope of the Supplier's services and obligations (the "**Contract**").
- 1.1.6 The statements and explanations contained in this RFP-DBFOO are intended to provide a better understanding to the Bidders about the subject matter of this RFP-DBFOO and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Supplier set forth in the PSA-DBFOO or the Utility's rights to amend, alter, change, supplement or clarify the scope of work, the Contract to be awarded pursuant to this RFP-DBFOO or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP-DBFOO are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Utility.
- 1.1.7 The Utility shall receive Bids pursuant to this RFP-DBFOO in accordance with the terms set forth in this RFP-DBFOO and other documents to be provided by the Utility pursuant to this RFP-DBFOO, as modified, altered, amended and clarified from time to time by the Utility (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").

1.2 Brief description of Bidding Process

- 1.2.1 The Utility has adopted a two-stage process (collectively referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. The first stage (the "**Qualification Stage**") of the process involved pre-qualification of interested parties/ Consortia in accordance with the provisions of the RFQ-DBFOO. At the end of the Qualification Stage, the Utility pre-qualified Applicants are eligible for participation in this second stage of the Bidding Process (the "**Bid Stage**") comprising Request for Proposal-DBFOO.

The Government of India has issued guidelines (see Appendix-V of RFP-DBFOO) for qualification of Bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Utility shall be entitled to disqualify an Applicant in accordance with the aforesaid guidelines at any

stage of the Bidding Process. Applicants must satisfy themselves that they are qualified to Bid, and should give an undertaking to this effect in the form at Appendix-I

- 1.2.2 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 for which the Applicant 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 Selected 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 In the Bid Stage, the aforesaid pre-qualified Applicants, including their successors, (the "Bidders", which expression shall, unless repugnant to the context, include the Members of the Consortium) are being called upon to submit their financial offers (the "Bids") in accordance with the terms specified in the Bidding Documents. The Bid shall be valid for a period of not less than 120 days (one hundred and twenty days) from the Bid Due Date.
- 1.2.4 The Bidding Documents include the draft PSA-DBFOO for the Project [which is enclosed/ which will be provided to the Bidders on or near about ***]⁴. Subject to the provisions of Clause 2.1.3, the aforesaid documents and any addenda issued subsequent to this RFP-DBFOO Document, will be deemed to form part of the Bidding Documents.
- 1.2.5 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]⁵ (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 PSA-DBFOO. 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. The demand draft shall be kept valid for a period not less than 180 (one hundred and eighty) days 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.
- 1.2.6 During the Bid Stage, 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.

⁴ The PSA should either be provided along with the RFP-DBFOO or at least 45 days before the Bid Due Date and 21 days before the Pre-Bid Conference.

⁵ The Utility may, if deemed necessary, prescribe a higher bid security not exceeding Rs. 7.5 lakh per MW. It may also reduce the bid security, but not less than Rs 3 lakh per MW, in any case.

- 1.2.7 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 Fuel Charge will constitute the tariff for the Power Station (the "Tariff"). The contract period shall be pre-determined and specified in the Bidding Documents.

In this RFP-DBFOO, the term "Lowest Bidder" shall mean the Bidder who is offering the lowest Tariff.

- 1.2.8 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 in Clause 3 of this RFP-DBFOO, 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 is not fully met by the Lowest 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. In the event that none of the other Bidders match the Bid of the Lowest Bidder, the Utility may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process. Further, it is clarified that any single Bidder cannot quote part capacity from different stations.
- 1.2.9 The Supplier shall, in consideration of its investment and services, be entitled to receive a Fixed Charge and a Fuel Charge.
- 1.2.10 Details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP-DBFOO.
- 1.2.11 Any queries or request for additional information concerning this RFP- DBFOO shall be submitted in writing and e-mail attaching queries or request in microsoft word File to the officer designated in Clause 2.11.5 below. The envelopes/ communication shall clearly bear the following identification/ title:

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

1.3 Schedule of Bidding Process

The Utility shall endeavour to adhere to the following schedule:

Event Description	Date
1. Last date for receiving queries	[25 days from the date of RFP-DBFOO]
2. Pre-Bid Conference-1	[To be specified]
3. Utility response to queries latest by	[35 days from the date of RFP-DBFOO]
4. [Pre-Bid Conference-2] ⁶	[To be specified]
5. Bid Due Date	[To be specified]

⁶ In case of complex projects, the number of Pre-Bid Conference could be more than two. For repetitive projects, one pre-Bid conference would suffice.

- | | |
|--------------------------|---|
| 6. Opening of Bids | On Bid Due Date [at least 45 days from the date of RFP-DBFOO] |
| 7. Letter of Award (LOA) | Within 30 days of Bid Due Date |
| 8. Validity of Bids | 120 days of Bid Due Date |
| 9. Signing of PSA-DBFOO | Within 30 days of award of LOA |

1.4 Pre-Bid Conference

The date, time and venue of the Pre-Bid Conference shall be:

Date: ***

Time: ****

Venue: ***

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. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.
- 2.1.2 Unless the context otherwise requires, the terms not defined in this RFP-DBFOO, but defined in the Request for Qualification document for the Project (the “RFQ-DBFOO”) shall have the meaning assigned thereto in the RFQ-DBFOO.
- 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 RFP-DBFOO, the detailed terms specified in the draft PSA-DBFOO 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 PSA-DBFOO.
- 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 authorised 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 RFP-DBFOO and the provisions of the PSA-DBFOO.
- 2.1.7 The Bidder shall deposit a Bid Security as specified in Clause 1.2.4 of this RFP-DBFOO. 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.
- 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 whose Bid Security shall be retained till it has provided a Performance Security under the PSA-DBFOO.
- 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 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix– IV.
- 2.1.11 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.12 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.13 The documents including this RFP-DBFOO 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 2.1.13 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.
- 2.1.14 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Utility shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Utility and not by way of penalty for, *inter alia*, the time, cost and effort of the Utility, including consideration of such Bidder’s proposal (the “**Damages**”), without prejudice to any other right or remedy that may be available to the Utility under the Bidding Documents and/ or the PSA-DBFOO or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act 2013. For the purposes of this Clause 2.1.14, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the

shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Bid of either or each other; or
- (vi) such Bidder or any Associate thereof has participated as a consultant to the Utility in the preparation of any documents, design or technical specifications of the Project.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.14, shall include each Member of such Consortium.

For purposes of this RFP-DBFOO, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

- 2.1.15 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Utility in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the PSA-DBFOO. In the event any such adviser is engaged by the Selected Bidder or Supplier, as the case may be, after issue of the LOA or

execution of the PSA-DBFOO for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the PSA-DBFOO and without prejudice to any other right or remedy of the Utility, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Utility may have thereunder or otherwise, the LOA or the PSA-DBFOO, as the case may be, shall be liable to be terminated without the Utility being liable in any manner whatsoever to the Selected Bidder or Supplier for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to Application Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of this Project.

2.1.16 This RFP-DBFOO is not transferable.

2.1.17 Any award of Contract pursuant to this RFP-DBFOO shall be subject to the terms of Bidding Documents.

2.1.18 [Other Bid conditions shall include:***]⁷

2.2 Change in composition of the Consortium

2.2.1 Where the Bidder is a Consortium, change in composition of the Consortium may be permitted by the Utility during the Bid Stage, only where:

- (a) the Lead Member continues to be the Lead Member of the Consortium;
- (b) the substitute is at least equal, in terms of Technical Capacity or Financial Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification criteria for Applicants; and
- (c) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not an Applicant/Member/ Associate of any other Consortium bidding for this Project.

2.2.2 Approval for change in the composition of a Consortium shall be at the sole discretion of the Utility and must be approved by the Utility in writing. The Bidder must submit its application for change in composition of the Consortium no later than 15 (fifteen) days prior to the Bid Due Date.

2.2.3 The modified/ reconstituted Consortium shall submit a revised Jt. Bidding Agreement and a Power of Attorney, substantially in the form at Appendix-IV, prior to the Bid Due Date.

2.2.4 The option of change in composition of the Consortium which is available

⁷ Other Project specific conditions of bidding or restrictions, if any, may be stated here, such as a limit on the number of projects which may be awarded to a Bidder.

under Clause 2.2.1 may be exercised by any Bidder who is either a Consortium or a single entity. In the case of a single entity Bidder adding a Consortium Member at the Bid Stage, the single entity Bidder shall be the Lead Member of the Consortium. Provided, however, that no member of such Consortium shall be a Bidder or the member of a Consortium which has been pre-qualified.

2.3 Change in Ownership

2.3.1 By submitting the Bid, the Bidder acknowledges that it was pre-qualified on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members who shall, until the 2nd (second) anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Supplier; and (ii) 5% (five per cent) of the Total Project Cost specified in the PSA-DBFOO. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the PSA-DBFOO, and a breach hereof shall, notwithstanding anything to the contrary contained in the PSA-DBFOO, be deemed to be a breach of the PSA-DBFOO and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.3.1 shall apply only when the Bidder is a Consortium.

2.3.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of pre-qualification under and in accordance with the RFQ-DBFOO, 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, as the case may be. In the event such change in control occurs after signing of the PSA-DBFOO but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the PSA-DBFOO, be deemed to be a breach of the PSA-DBFOO, 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 PSA-DBFOO, 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 PSA-DBFOO or otherwise.

2.4 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.

2.5 Site visit and verification of information

2.5.1 Bidders are encouraged to submit their respective Bids after familiarising themselves with the information and physical conditions relevant to the Project, including the transmission capacity, the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.5.2 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 2.5.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (e) 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 2.5.1 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 PSA-DBFOO by the Supplier;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.3 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 RFP-DBFOO, RFQ-DBFOO, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Utility.

2.6 Verification and Disqualification

2.6.1 The Utility reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFQ-DBFOO, the RFP-DBFOO or the Bidding Documents 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.

2.6.2 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 the Bidder is a Consortium, then the entire Consortium and each Member may be disqualified / rejected. 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 Bidders to submit their Bids in accordance with Clauses 3.3.3 and 3.3.4; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Utility, including annulment of the Bidding Process.

2.6.3 In case it is found during the evaluation or at any time before signing of the PSA-DBFOO 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 PSA-DBFOO, and if the Selected Bidder has already been issued the LOA or has entered into the PSA-DBFOO, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP- DBFOO, 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 PSA-DBFOO, or otherwise.

B. DOCUMENTS

2.7 Contents of the RFP-DBFOO

2.7.1 This RFP-DBFOO 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 Bids

- Section 1. Introduction
- Section 2. Instructions to Bidders

Section 3.	Evaluation of Bids
Section 4.	Fraud and Corrupt Practices
Section 5.	Pre-Bid Conference
Section 6.	Miscellaneous

Appendices

- I. Letter comprising the Bid
- II. Bank Guarantee for Bid Security
- III. Power of Attorney for signing of Bid
- IV. Power of Attorney for Lead Member of Consortium
- V. Guidelines of the Department of Disinvestment
- VI. Details of the Allocated Coal Linkage
- VII. List of Bid-Specific Provisions

- 2.7.2 The draft PSA-DBFOO provided by the Utility as part of the Bidding Documents shall be deemed to be part of this RFP-DBFOO.

2.8 Clarifications

- 2.8.1 Bidders requiring any clarification on the RFP-DBFOO may notify the Utility in writing by speed post/courier/special messenger and by e-mail attaching the queries in microsoft word file in accordance with Clause 1.2.10. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Utility shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) 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.

- 2.8.2 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 Bidding Documents. 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 RFP-DBFOO

- 2.9.1 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-DBFOO by the issuance of Addenda.
- 2.9.2 Any Addendum issued hereunder will be in writing and shall be sent to all the Bidders.

- 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 Date⁵.

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

- 2.10.1 The Bidder shall provide all the information sought under this RFP-DBFOO. The Utility will evaluate only those Bids that are received in the required formats and complete in all respects.

- 2.10.2 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised 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 initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.

2.11 Sealing and Marking of Bids

- 2.11.1 The Bidder shall submit the Bid in the format specified at Appendix-I, and seal it in an envelope and mark the envelope as "BID".

- 2.11.2 The documents accompanying the Bid shall be placed in a separate envelope and marked as "Enclosures of the Bid". The documents shall include:

- (a) Bid Security in the format at Appendix-II;
- (b) Power of Attorney for signing of Bid in the format at Appendix-III;
- (c) If applicable, the Power of Attorney for Lead Member of Consortium in the format at Appendix-IV; and
- (d) A copy of the draft PSA-DBFOO with each page initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (b) hereinabove.

- 2.11.3 A true copy of the documents accompanying the Bid, as specified in Clause 2.11.2 (a), (b) and (c) above, shall be bound together in one hard cover and a copy of the draft PSA-DBFOO as specified in Clause 2.11.2 (d) shall be bound in another hard cover. The pages in each hard cover shall be numbered serially and every page shall be initialed in blue ink by the authorised signatory of the Bidder. This copy of the documents shall be placed in a separate envelope and marked "Copy of Documents".

- 2.11.4 The three envelopes specified in Clauses 2.11.1, 2.11.2 and 2.11.3 shall be placed in an outer envelope, which shall be sealed. Each of the four envelopes shall clearly bear the following identification:

⁵ While extending the Bid Due Date on account of an addendum, the Utility shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Bid Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

“Bid for the * Project”**

and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

2.11.5 Each of the envelopes shall be addressed to:

ATTN. OF:	Mr. ***
DESIGNATION	***
ADDRESS:	***
FAX NO:	***
E-MAIL ADDRESS	***

2.11.6 If the envelopes are not sealed and marked as instructed above, the Utility assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

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

2.12 Bid Due Date

2.12.1 Bids should be submitted latest by * hours IST on the Bid Due Date at the address provided in Clause 2.11.5 in the manner and form as detailed in this RFP-DBFOO. A receipt thereof should be obtained from the person specified at Clause 2.11.5.**

2.12.2 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.

2.13 Late Bids

Bids received by the Utility after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.14 Contents of the Bid

2.14.1 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) [and US cents]⁸ the Tariff to undertake the Project in accordance with this RFP-DBFOO and the provisions of the PSA-DBFOO.

2.14.2 Generally, the Project will be awarded to the Lowest Bidder.

2.14.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP-DBFOO.

⁸ In case of imported fuel, the Fuel Charge is to be quoted in US cents as per provisions of Clause 3.5.2 of RFP-DBFOO
MRFP-DBFOO/ March 2019

2.14.4 The draft PSA-DBFOO shall be deemed to be part of the Bid.

2.15 Modifications/ Substitution/ Withdrawal of Bids

2.15.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Utility prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

2.15.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.11, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

2.15.3 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.

2.16 Rejection of Bids

2.16.1 Notwithstanding anything contained in this RFP-DBFOO, 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 eligible Bidders to submit fresh Bids hereunder.

2.16.2 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.

2.17 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.

2.18 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.

2.19 Correspondence with the Bidder

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

D. BID SECURITY

2.20 Bid Security

- 2.20.1 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 issued by a nationalised bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. one thousand crore), in favour 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 nationalised 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.
- 2.20.2 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 [Ahmedabad] (the “**Demand Draft**”). The Utility shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.20.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Utility as non-responsive.
- 2.20.4 Save and except as provided in Clauses 1.2.4 and 1.2.5 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.
- 2.20.5 The Selected Bidder’s Bid Security will be returned, without any interest, upon the Supplier signing the PSA-DBFOO 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 PSA-DBFOO.
- 2.20.6 The Utility shall be entitled to forfeit and appropriate the Bid Security as Damages *inter alia* in any of the events specified in Clause 2.20.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP-DBFOO, 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 RFP-DBFOO. No relaxation of any kind on Bid Security shall be given to any Bidder.

2.20.7 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 PSA-DBFOO, 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 RFP-DBFOO;
- (c) a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP-DBFOO 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 PSA-DBFOO; or
 - (iii) to furnish the Performance Security within the period prescribed therefor in the PSA-DBFOO; or
- (e) the Selected Bidder, having signed the PSA-DBFOO, 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, at the place specified in Clause 2.11.5 and in the presence of the Bidders who choose to attend.
- 3.1.2 The Utility will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 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 RFP-DBFOO. 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 2.12.2;
 - (c) it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.10 and 2.11;
 - (d) it is accompanied by the Bid Security as specified in Clause 2.1.7;
 - (e) it is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.9 and 2.1.10, as the case may be;
 - (f) it contains all the information (complete in all respects) as requested in this RFP-DBFOO 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.

3.3 Selection of Bidder

- 3.3.1 Subject to the provisions of Clause 2.16.1, 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 in conformity with the provisions of Clause 3.5 shall be declared as

the selected Bidder (the "**Selected Bidder**"). 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.

- 3.3.2 In the event that two or more Bidders quote the same amount of Tariff for (a) the full Capacity Required; (b) one full Capacity Required and other part of the Capacity Required; (c) Capacity totaling more than the Capacity Required and (d) Capacity totaling to the Capacity Required (the "**Tie Bidders**"), the Utility shall identify the Selected Bidder under (a) by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend; 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 and under (d) by declaring both the Bidders as the Selected Bidder with respective Capacity.
- 3.3.3 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 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, only one Bidder matches the Lowest Bidder, it shall be the Selected Bidder. If two or more 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.
- 3.3.4 In the event that no Bidder offers to match the Lowest Bidder in the second round of bidding as specified in Clause 3.3.3, the Utility may, in its discretion, invite fresh Bids (the "**third round of bidding**") from all Bidders except the Lowest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the 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.
- 3.3.5 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) days of the receipt 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.
- 3.3.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it

shall cause the Supplier to execute the PSA-DBFOO within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the PSA-DBFOO.

- 3.3.7 [The Selected Bidder shall surrender the proportionate quantity of any existing Letter of Assurance /Fuel Supply Agreement to the supplier of the coal, not being the Letter of Assurance/ Fuel Supply Agreement arranged by the Utility, corresponding to the tenure of the Letter of Assurance /Fuel Supply Agreement arranged by the Utility.]⁹

3.4 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.

3.5 Bid Parameter

- 3.5.1 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 PSA-DBFOO. The Tariff comprising the Bid shall be offered in accordance with the provisions of Clause 3.5.2.¹⁰
- 3.5.2 [(a) Since the Bidder is expected to source linkage coal from Coal India Limited (the “CIL”) / Singareni Collieries Company Limited (“SCCL”) or a subsidiary thereof] from the Allocated Coal Linkage and including Coal Linkage as per SHAKTI Policy [arranged by the Utility]¹¹, the cost of Fuel which shall be included in the Fuel Charge shall be a „pass through“ in accordance with the terms of the PSA-DBFOO. However, the element of coal transportation and transit losses may vary from case to case and shall affect the Fuel Charge offered by each Bidder. The Bid for the Project shall, therefore, comprise the Fixed Charge, Transmission Cost (Charges and Losses) and Fuel Charge, which shall be specified separately (As per Appendix-I of RFP), and the Bidder seeking the lowest Tariff shall be the Selected Bidder. The Base Fixed Charge shall not be more than 70% of the Tariff and the Base Fuel Charge shall not be more than 50% of the Tariff.]

⁹ To be retained only if choice of Fuel source is through Allocated Linkage Coal provided by Utility.

¹⁰ Depending upon the choice of Fuel source, only the applicable Sub-clause may be retained and the remaining Sub-clauses should be omitted. However, in case the Fuel to be procured under Sub-clause (a) is to be supplemented by imported Fuel, the Utility may retain both Sub-clause (a) and Sub-clause (c)), the ceiling of Base Fixed Charge and Base Fuel Charge as mention in sub-clause (a) will prevail.

¹¹ To be retained if allocated coal linkage is arranged by utility as per Shakti policy

¹² The Gross Calorific Value (GCV) as quoted in the coal auction would in normal circumstances be used as a reference GCV for the purpose of determining the quantum of coal required for power generation. However, in the event of variation in actual value of

GCV of mined coal, if any, claimed by the Bidders, such variation may be allowed based on joint sampling and testing of mined coal in accordance with the provisions of PSA-DBFOO.

¹³ The Utility shall indicate, in advance to all the prospective Bidders, in consultation with the Appropriate Commission, the upper ceiling of Fixed Charges in terms of Rs/kWh towards the Fixed/Capacity Charges.

¹⁴ Cost of Fuel shall be regulated by the ROM price of coal quoted in the Bid for the year in which the Bidder will commence supply of power and shall not exceed the ROM price of the coal quoted for said blocks during the Coal Mine/Blocks auction on the basis of which the Coal Mine/Blocks has been awarded to the Bidder along with escalation as per provisions of the Model Tender Document (for Power Sector) for the said Coal Mine/Blocks issued by Ministry of Coal, Government of India. In addition to this, the Bidder will be eligible to recover an amount of Rs. 100/metric tonne, as per the Model Tender Document (for Power Sector) issued by Ministry of Coal, Government of India. For subsequent years, the ROM price and Rs. 100 per metric tonne shall be escalable as per provisions of Model Tender Document (for Power Sector) issued by Ministry of Coal, Government of India. However, the quoted Additional Premium, if any, shall not be reckoned for the purpose of the determination of tariff of electricity as per provisions of Model Tender Document (for Power Sector) issued by Ministry of Coal, Government of India.

¹⁵ The Utility shall specify the components of „Other charges“ as deemed fit.

¹⁶ The Utility shall specify benchmark rates in advance which should not be more than that of CIL, Railway freight rates, benchmarks determined, if any, by CERC/SERC or by any other Appropriate Authority. Where there are multiple such benchmarks available, the Utility will be free to adopt the most appropriate benchmark.

¹⁷ The Utility shall specify the cost of transportation along with distance from Coal Mine/Blocks to the Power Plant for rail, road and other modes separately.

¹⁸ The Utility shall specify the values of each components as the „Other Charges“ as deemed fit.

¹⁹ The Utility shall specify an indicative cost based on approximate market prices.

²⁰ The chosen figure may be determined and retained by the Utility prior to invitation of Bids and the remaining figures shall be omitted.

²¹ A substitute Index, if any, may be specified by the Utility prior to invitation of Bids.

²² The Utility shall specify the ceiling, but it may, in its discretion, also specify the floor for the Fuel Charge.

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 and subsequent to the issue of the LOA and during the subsistence of the PSA- DBFOO. Notwithstanding anything to the contrary contained herein, or in the LOA or the PSA-DBFOO, the Utility may reject a Bid, withdraw the LOA, or terminate the PSA-DBFOO, as the case may be, without being liable in any manner whatsoever to the Bidder or Supplier, as the case may be, if it determines that the Bidder or Supplier, as the case may be, 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. 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 PSA-DBFOO, or otherwise.
- 4.2 Without prejudice to the rights of the Utility under Clause 4.1 hereinabove and the rights and remedies which the Utility may have under the LOA or the PSA-DBFOO, or otherwise if a Bidder or Supplier, as the case may be, 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, or after the issue of the LOA or the execution of the PSA-DBFOO, such Bidder or Supplier shall not be eligible to participate in any tender or RFP-DBFOO issued by the Utility during a period of 2 (two) years from the date such Bidder or Supplier, as the case may be, 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 practices, 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 PSA-DBFOO or arising there from, 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 the Clause 2.1.15 of this RFP-DBFOO, engaging in any manner whatsoever, **whether during the Bidding Process or after the issue of the LOA or after the execution of the PSA-DBFOO, as the case may be, any person in respect of any matter relating to the Project or the LOA or the PSA-DBFOO, 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 CONFERENCE

- 5.1 Pre-Bid conferences of the Bidders shall be convened at the designated date, time and place. Only those persons who have purchased the RFP-DBFOO document shall be allowed to participate in the Pre-Bid Conferences. A maximum of five representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.2 During the course of Pre-Bid conference(s), 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.

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 Bidding Documents and RFQ-DBFOO are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFP-DBFOO, in the event of any conflict between them the priority shall be in the following order:
- (a) the Bidding Documents;
 - (b) the RFQ-DBFOO.
- i.e. the Bidding Documents at (a) above shall prevail over the RFQ-DBFOO at (b) above.

Appendices

APPENDIX – I

Letter comprising the Bid
(Refer Clauses 2.1.5 and 2.14)

Dated:

[The ***,

***]

Sub: Bid for *** Project

Dear Sir,

With reference to your RFP-DBFOO document dated ***, I/we, having examined the Bidding Documents 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 power 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/ any of the Consortium Members⁵ or our/ their Associates 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:
 - (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Utility; and

⁵ All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant.
 MRFP-DBFOO/ March 2019

⁴ If the Bidder is not a Consortium, the provisions applicable to Consortium may be omitted.

- (b) I/ We do not have any conflict of interest in accordance with Clauses 2.1.14 and 2.1.15 of the RFP-DBFOO document; and
 - (c) 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 the RFP-DBFOO document, in respect of any tender or request for proposal issued by or any agreement entered into with the Utility or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP-DBFOO, 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
 - (e) the undertakings given by us along with the Application in response to the RFQ-DBFOO 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 2.16 of the RFP-DBFOO document.
 9. I/ We believe that we/ our Consortium satisfy(s) the Net Worth criteria and meet(s) the requirements as specified in the RFQ-DBFOO document.
 10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.
 11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law 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.
 12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
 13. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our

directors/ managers/ employees.⁴

14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forming part of the RFP-DBFOO at Appendix-V is enclosed.
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 undertake that our Consortium was pre-qualified on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Supplier; and (ii) 5% (five per cent) of the Total Project Cost specified in the PSA-DBFOO. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the PSA-DBFOO in respect of Change in Ownership.
17. I/ We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of pre-qualification under and in accordance with the RFQ-DBFOO, I/We shall inform the Utility forthwith along with all relevant particulars and the Utility may, in its sole discretion, disqualify our Consortium 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 PSA-DBFOO 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 PSA-DBFOO shall be liable to be terminated without the Utility being liable to us in any manner whatsoever.
18. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the PSA-DBFOO. In case where the Utility has already established an SPV for the Project, the Selected Bidder shall acquire the entire equity thereof.
19. 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.

⁴ In case the Bidder is unable to provide the certification regarding any pending investigation as specified in para 13, 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 Bidder for Award hereunder.

20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a PSA-DBFOO 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.
21. 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 PSA-DBFOO, 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.
22. {I/We hereby undertake that in the event the Bidder is selected as the Selected Bidder, I/We shall surrender the proportionate quantity of any existing Letter of Assurance /Fuel Supply Agreement to the supplier of the coal, not being the Letter of Assurance/ Fuel Supply Agreement arranged by the Utility, corresponding to the tenure of the Letter of Assurance /Fuel Supply Agreement arranged by the Utility.}\$
23. I/ We offer a Capacity of ***MW (at Delivery Point) from (Capacity, Name and address of the Project) which conforms to clause 1.1.4 of the RFQ-DBFOO out of the Capacity Required of ***MW given under clause 1.1 of the RFQ-DBFOO.
24. I/ We offer a Bid Security of Rs.*** lakhs (Rupees *** lakhs only) to the Utility in accordance with the RFP-DBFOO Document.
25. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.
26. The documents accompanying the Bid, as specified in Clause 2.11.2 of the RFP-DBFOO, have been submitted in a separate envelope and marked as "Enclosures of the Bid".
27. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. 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.
28. The Tariff has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP-DBFOO, draft PSA-DBFOO, 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.
29. I/ We agree and undertake to abide by all the terms and conditions of the RFP-DBFOO document.
30. {We, the Consortium Members agree and undertake to be jointly and severally

\$ To be retained only if source of fuel is from Allocated Coal Linkage arranged by the Utility.
MRFP-DBFOO/ March 2019

liable for all the obligations of the Supplier under the PSA-DBFOO till occurrence of Financial Close in accordance with the PSA-DBFOO.}

31. 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.
32. 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 Power Supply Agreement.
33. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP-DBFOO.
34. I/ We hereby submit the following Bid and offer, as on the Bid Due Date, in accordance with the provisions of the Power Supply Agreement and Clause 3.5 of this RFP-DBFOO-

Bid parameters	Unit	Rs and paise (in two decimals)
Fixed Charge for the base year ----- (1)	per kWh	
Fuel Charge = Sum of (a)+(b)+(c)----- (2)		
(a) Cost of Fuel	Per kWh	
(b) Cost of transportation	Per kWh	
(c) Cost of Washing	Per kWh	
Transmission Cost = Sum of (a) + (b) +(c) + (d) ----- (3)		
(a) ISTS Transmission Charges* (for Drawal State)	Per kWh	
(b) ISTS Transmission Losses* (for Drawal State)	In %	
ISTS Transmission Losses (for Drawal State)	Per kWh	
(c) InSTS Transmission Charges*	Per kWh	
(d) InSTS Transmission Losses*	In %	
InSTS Transmission Losses	Per kWh	
Total Tariff = Sum of (1) + (2) + (3)	per kWh	

**To be pre-specified by Utility prior to bid submission*

{I/we hereby submit that we would be sourcing the coal from coal linkage allocated vide Letter of Assurance /FSA _____dated _____(copy enclosed).The notified price as per Letter of Assurance /FSA is Rs. _____per MT and GCV of _____kCal/Kg.}\$

- [34. I/ We hereby submit that we would be sourcing the coal from coal mine allocated vide MoC vesting order No.....dated (copy enclosed).The ROM price as per allotment is Rs..... per MT and GCV of kCal/Kg. For bid year, based on escalation formula as per Model Tender document (Power Sector) issued by Ministry of Coal, ROM price applicable is Rs./MT and escalated value of Rs.100 /MT is worked out to be Rs./MT.]

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

Yours faithfully,

Date: (Signature, name and designation of the Authorised signatory)
Place: Name and seal of Bidder/Lead Member

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, or modified as necessary to reflect Bidder-specific particulars.

⁵ Paise may be quoted only in whole numbers.

⁵⁵ For the purposes of evaluation of the Bids, US cents shall be converted into Indian Rupees using the mean of the buying and selling rate quoted by the State Bank of India on the closing of the working day preceding the Bid Due Date.

⁶ Cents may be quoted upto two decimal points.

²³ Omit the option which is not applicable.

⁵ Applicable only if the Applicant is sourcing fuel from Coal through CIL/SCCL under option (a) of Clause 4.8.2 of this RFP-DBFOO.

APPENDIX – II

Bank Guarantee for Bid Security*(Refer Clauses 2.1.7 and 2.20.1)*

B.G. No.

Dated:

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 ... (and acting on behalf of its Consortium) (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 on DBFOO basis (hereinafter referred to as "the Project") pursuant to the RFP-DBFOO Document dated ... issued in respect of the Project and other related documents including without limitation the draft Power Supply Agreement ("PSA- DBFOO") (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 the RFP-DBFOO Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP-DBFOO Document) 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 fulfill 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 fulfillment 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 fulfill 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 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 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 execute this 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/ the Lead Member of our Consortium 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 already commissioned /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 Power Supply Agreement 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 Power Supply Agreement 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

Witness

- 1.
- 2.

Witnesses:

- 1.
- 2.

Accepted

Notarised

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

Notes:

- *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.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board 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.*
- *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 Apostille certificate.*

APPENDIX – IV

Power of Attorney for Lead Member of Consortium*(Refer Clause 2.1.10)*

Whereas the *** (the “Utility”) has invited Bids from pre-qualified parties for the *** Project (the “Project”).

Whereas, ..., and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal-DBFOO and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s Bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, ..., having our registered office at ..., M/s. ..., having our registered office at ..., and M/s. ..., having our registered office at ..., (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s. ..., having its registered office at ..., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process and, in the event the Consortium is awarded the Contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its Bid for the Project, including but not limited to signing and submission of all applications, Bids and other documents and writings, accept the Letter of Award, participate in Bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Consortium and generally to represent the Consortium in all its dealings with the Utility, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s Bid for the Project and/ or upon award thereof till the Power Supply Agreement is entered into with the Utility.

AND 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/ Consortium.

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

For

(Signature, Name & Title)

For

(Signature, Name & Title)

For

(Signature, Name & Title)

(Executants)

(To be executed by all the Members of the Consortium)

Witnesses:

1.

2.

Affixation of Common Seal

Witness

Notes:

- *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.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board 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.*
- *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*

Appendix - IV

Page 3

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.

APPENDIX – V²⁴

Guidelines of the Department of Disinvestment
(Refer Clause 1.2.1)

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment

Block 14, CGO Complex
New Delhi.

Dated 13th July 2001.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for Bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like Net Worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the Bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with

²⁴ These guidelines may be modified or substituted by the Government from time to time.

it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

- (e) The disqualification criteria would come into effect immediately and would apply to all Bidders for various disinvestment transactions, which have not been completed as yet.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The Bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

[APPENDIX – VI]²⁵
Details of the Allocated Coal Linkage

[Details to be provided with respect to Location of Coal Mine and Quality of Coal]

²⁵ To be retained only if coal linkage is provided by the Utility.

APPENDIX- VII

List of Bid-Specific Provisions[§]**A. Clauses with currency-based footnotes**

1. Introduction.
2. Clause 2.9.3: Amendment of RFP-DBFOO

Note: The above footnotes marked “\$” shall not be deleted. They shall remain in the RFP-DBFOO to be issued to the prospective Bidders.

B. Appendices with non-numeric footnotes

All non-numeric footnotes shall be retained in the RFP-DBFOO for guidance of the Bidders. These shall be omitted by the Bidders while submitting their respective Bids.

C. Appendices where curly brackets are used

1. Appendix-I: Letter comprising the Bid: Paragraph 28.

Note: The curly brackets should be removed after the provisions contained therein are suitably addressed by the Bidders.

D. Appendices with blank spaces

All blank spaces in Appendices shall be retained in the RFP-DBFOO. These shall be filled up when the format of the respective Appendix is used.

[§] This Appendix-VII contains a list of clauses and appendices that would need to be suitably modified for reflecting Bidder-specific provisions. This Appendix-VII may, therefore, be included in the RFP-DBFOO document to be issued to prospective Bidders. The blank spaces in Appendices may be filled up by the Bidder and the footnotes may be deleted when it submits its proposal.

APPENDIX-VIII

List of Project-Specific Provisions²⁶**A. Clauses and appendices with serially numbered footnotes**

1. Letter of Invitation (Footnote No. 1)
2. Clause 1.1: Background (Footnote No. 2)
3. Clause 1.1.1: Background (Footnote No. 3 and 4)
4. Clause 1.1.4: Background (Footnote No. 5)
5. Clause 1.2.3: Brief description of Bidding Process (Footnote No. 6)
6. Clause 1.2.4: Brief description of Bidding Process (Footnote No. 7)
7. Clause 1.3: Schedule of Bidding Process (Footnote No. 8)
8. Clause 2.1.18: General terms of Bidding (Footnote No. 9)
9. Clause 3.5.1: Bid Parameter (Footnote No. 10)
10. Clause 3.5.2: Bid Parameter: (Footnote No. 11, 12, 13 and 14)

***Note:** The Clauses to which these Footnotes relate also include square parenthesis or asterisks which may be addressed simultaneously. Such square parenthesis or asterisks have not been listed in (B) or (C) below.

B. Clauses with square parenthesis

1. Glossary: Definition of CIL.
2. Clause 1.1.1: Background.
3. Clause 1.2.5: Brief description of Bidding Process.
4. Clause 1.2.6: Brief description of Bidding Process.
5. Clause 2.20.2: Bid Security.

C. Clauses with asterisks

1. Glossary: Definition of Government.
2. Clause 1.1.1: Background.
3. Clause 1.2.10: Brief description of Bidding Process.
4. Clause 1.4: Pre-Bid Conference.
5. Clause 2.11.4: Sealing and Marking of Bids.
6. Clause 2.11.5: Sealing and Marking of Bids.

²⁶ This Appendix-VIII contains a list of clauses and appendices that would need to be suitably modified, prior to issue of the RFP-DBFOO document, for reflecting project-specific provisions. This Appendix-VIII should be omitted before issuing the RFP-DBFOO document to prospective Bidders.

D. Appendices with serially numbered Footnotes (Fn)

1. Appendix-I: Letter comprising the Bid (Fn. 15).
2. Appendix-V: Guidelines of the Department of Disinvestment (Fn. 16).
3. Appendix-VI: Details of the Allocated Coal Linkage
4. Appendix-VIII: List of Project-specific provisions.

E. Appendices with square parenthesis

1. Appendix-I: Letter comprising the Bid: Paragraph 32.
2. Appendix-II: Bank Guarantee for Bid Security: Paragraphs 9 and 13.



**Public Private Partnership
in
Generation of Electricity**

**MODEL POWER SUPPLY AGREEMENT –
Design, Build, Finance, Own and Operate
(MPSA-DBFOO)**

**Ministry of Power
Government of India**

Contents

PART I

Preliminary

	Recitals	1
1	Definitions and Interpretation	3
1.1	Definitions	3
1.2	Interpretation	3
1.3	Measurements and arithmetic conventions	6
1.4	Priority of agreements, clauses and schedules	6

PART II

The Supply Contract

2	Scope of the Project	9
2.1	Scope of the Project	9
3	Grant of Supply Contract	10
3.1	The Supply Contract	10
3.2	Extension of Contract Period	11
3.3	Substitution of the Utility	11
4	Conditions Precedent	13
4.1	Conditions Precedent	13
4.2	Damages for delay by the Utility	14
4.3	Damages for delay by the Supplier	15
4.4	Commencement of Contract Period	15
4.5	Deemed Termination upon delay	15
5	Obligations of the Supplier	16
5.1	Obligations of the Supplier	16
5.2	Obligations relating to Project Agreements	18
5.3	Obligations relating to Change in Ownership	19
5.4	Obligations relating to operation of the Power Station	19
5.5	Obligations relating to transmission charges	19
5.6	Obligations relating to transmission losses	19
5.7	Obligations relating to SLDC and RLDC charges	20
5.8	Obligations relating to taxes	20
5.9	Obligations relating to reporting requirements	20
6	Obligations of the Utility	21
6.1	Obligations of the Utility	21
7	Representations and Warranties	22
7.1	Representations and warranties of the Supplier	22
7.2	Representations and warranties of the Utility	24
7.3	Disclosure	24

8	Disclaimer	25
8.1	Disclaimer	25
 PART III		
Development and Operations		
9	Performance Security	27
9.1	Performance Security	27
9.2	Appropriation of Performance Security	27
9.3	Release of Performance Security	28
9.4	Performance Guarantee	28
9.5	Appropriation of Performance Guarantee	28
9.6	References to Performance Security	28
 10	 Site of the Project	 30
10.1	The Site	30
10.2	Line ROW	30
10.3	Access rights of the Utility and others	30
10.4	Geological and archaeological finds	30
 11	 Construction of the Power Station	 32
11.1	Obligations in respect of construction	32
11.2	Construction of the Power Station	32
 12	 Monitoring of Construction	 34
12.1	Quarterly progress reports	34
12.2	Inspection	34
12.3	Delays during construction	34
12.4	Video recording	34
 13	 Completion Certificate	 35
13.1	Tests	35
13.2	Completion Certificate	35
13.3	Provisional Certificate	35
13.4	Synchronisation	36
13.5	Completion of Incomplete Works	36
13.6	Phased completion of Power Station	36
 14	 Entry into commercial service	 38
14.1	Commercial Operation Date (COD)	38
14.2	Damages for delay	38
14.3	Sale of electricity prior to COD	38
 15	 Operation and Maintenance	 40
15.1	O&M obligations of the Supplier	40
15.2	Maintenance Requirements	41
15.3	Maintenance Manual	41
15.4	Maintenance Programme	41
15.5	Safety, breakdowns and accidents	41

15.6	De-commissioning due to Emergency or Forced Outage	41
15.7	Unit closure	42
15.8	Unscheduled Maintenance	42
15.9	Damages for breach of maintenance obligations	43
15.10	Restoration of loss or damage to the Power Station	43
15.11	Modifications to the Power Station	43
15.12	Excuse from performance of obligations	43
15.13	Safety Requirements	44
16	Monitoring of Operation and Maintenance	45
16.1	Monthly status reports	45
16.2	Inspection	45
16.3	Remedial Measures	45
17	Key Performance Indicators	46
17.1	Key Performance Indicators	46
17.2	Availability	46
17.3	Monthly status report	46
17.4	ISO certification	46
18	Allocation of Capacity	47
18.1	Installed Capacity	47
18.2	Contracted Capacity	47
18.3	Committed Capacity	47
18.4	Open Capacity	47
18.5	Sale of unutilised Committed Capacity	48
18.6	Substitute Supply	48
18.7	Merchant Capacity	49
19	Utility's Engineer	50
19.1	Appointment of Utility's Engineer	50
19.2	Duties and functions	50
19.3	Remuneration	50
19.4	Termination of appointment	51
19.5	Authorised signatories	51
19.6	Excuse from appointment of Utility's Engineer	51
19.7	Interim arrangement	51

PART IV

Financial Covenants

20	Financial Close	54
20.1	Financial Close	54
20.2	Termination due to failure to achieve Financial Close	54
21	Tariff	55
21.1	Tariff	55
21.2	Base Fixed Charge	55
21.3	Indexed Fixed Charge	56
21.4	Computation of Fixed Charge	56