



National Programme on ACC Battery Storage

REQUEST FOR PROPOSAL

For

**Selection of Manufacturers for Setting Up 10 GWh
Manufacturing Capacities for Advance Chemistry Cell
(ACC) under the Production Linked Incentive (PLI)
Scheme**

Government of India

Disclaimer

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

This RFP is not an agreement and is neither an offer nor invitation by the Government to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Government 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 may not be appropriate for all persons, and it is not possible for the Government, its employees, or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. 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 and obtain independent advice from appropriate sources.

Information provided in this RFP 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 Government accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Government and its advisors make no representation or warranty and shall have no liability to any person, including any Bidder(s) 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 or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid.

The Government also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder(s) upon the statements contained in this RFP.

The Government 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.

The issue of this RFP does not imply that the Government is bound to select a Bidder(s) or to appoint the Selected Bidder(s), as the case may be, for the Project and the Government reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder(s) 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 Government, or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder(s) and the Government shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder(s) in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

GLOSSARY

Advance Chemistry Cell / ACC	It shall have the definition as prescribed under the Programme Agreement.
AIF	An alternative investment fund as defined in Regulation 2(1)(b) of the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, as may be amended from time to time.
Appointed Date	As defined in the Programme Agreement.
Associate	As defined in Clause 2.2.1(d)
Bank Guarantee	As defined in Clause 2.23.1
Beneficiary Firm	As defined in the Programme Agreement.
Bid	As defined in Clause 1.1.2
Bid Due Date	As defined in Clause 1.1.5
Bid Security	As defined in Clause 1.2.2
Bidder(s)	As defined in Clause 1.1.2
Bidding Documents	As defined in Clause 1.1.5
Bidding Process	As defined in Clause 1.2.1
Central Public Procurement Portal	Shall mean the electronic portal of the Government of India that facilitates all the central government organisations to publish their tenders.
Conflict of Interest	As defined in Clause 2.2.1(c)
Consortium	As defined in Clause 2.2.1(a)
Eligible Bidder	As defined in Clause 1.2.5
Financial Bid	As defined in Clause 1.2.1
Foreign Investment Fund	means any appropriately regulated investment fund which is set up in any country outside India but excludes entities that fall within the 'Negative List'. In this context, the expression "appropriately regulated" means regulation or supervision by the securities market regulator or the banking regulator or other relevant statutory authority of the concerned foreign jurisdiction.
GFR Order	As defined in Clause 2.2.17
GoI	Government of India.
Government	Ministry of Heavy Industries, Government of India.
GWh	Gigawatt hours.
IFRS	As defined in Clause 2.2.5 (a)
Lead Member	As defined in Clause 2.2.10 (b)
LOA	As defined in Clause 2.30.3

Member	Member of a Consortium.
Net Worth	As defined in Clause 2.2.5 (b)
Parent Company	Shall mean a company that holds at least 26% (twenty six percent) of the paid - up equity capital directly or indirectly in the Bidder or in the Member in a Consortium, as the case may be.
Performance Security	As defined in the Programme Agreement.
Price Bid	As defined in Clause 3.3
Programme Agreement	As defined in Clause 2.2.11
Project	As defined in Clause 1.1.3
RFP	Shall mean this request for proposal issued by the Government to the Bidders.
Rs. or INR	Indian Rupee.
Selected Bidder	As defined in Clause 2.30.1
SPV	As defined in Clause 2.2.10
State Government	Shall mean the state governments extending support for the implementation of the Project.
Subject Person	As defined in Clause 2.2.1 (c) (i)
Subsidy	As defined in Clause 1.2.5
Technical Bid	As defined in Clause 1.2.1
Technical Capacity	As defined in Clause 3.2.1
Tie Bidder	As defined in Clause 2.30.2
Tripartite Agreement	As defined in Clause 1.1.3
Ultimate Parent Company	Shall mean a company which owns at least 26% (twenty six percent) equity in the Bidder or Member of a Consortium, (as the case may be) and such Bidder or Member of a Consortium, (as the case may be) shall be under the direct control or indirectly under the common control of such company.

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 above.

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1. INTRODUCTION

1.1 Background

- 1.1.1 The Government of India (“**GoI**”) through the Ministry of Heavy Industries (“**Government**”) intends to develop greenfield giga-scale advance cell manufacturing for various end use applications and promotion of diverse energy sources, to ensure overall energy security for the nation in the long run. The Government has launched and intends to implement the National Programme on Advance Chemistry Cell Battery Storage (“**Programme**”). To achieve this, the Government wishes to select eligible entities to set-up greenfield manufacturing facilities that produce Advance Chemistry Cell (“**ACC / Advance Chemistry Cell**”) as defined under the Programme Agreement.
- 1.1.2 The Government is carrying out a Bidding Process (*defined hereinafter*) and seeks bids (“**Bid**”) as response to this RFP from individuals, LLPs, funds, private entities, public entities or other international entities (hereinafter referred to as “**Bidder(s)**”).
- 1.1.3 The Selected Bidders (*defined hereinafter*) would be entitled to receive fiscal benefits in the form of a cash Subsidy in accordance with the Programme. A Bidder selected through this RFP, to be eligible for this Subsidy, would have to commit to set-up an Advance Chemistry Cell manufacturing facility with Value-Addition (*as defined in the Programme Agreement*) of minimum 25% (twenty-five percent) within 2 (two) years from the Appointed Date and minimum 5 (five) GWh capacity with minimum 60% (sixty percent) Value Addition within 5 (five) years from the Appointed Date, overall at the mother unit level in case of an integrated unit, or at the project level through indigenous manufacturers, in a hub and spoke structure, in accordance with the Programme Agreement (“**Project**”).

The Government shall execute a Programme Agreement with the SPV (as provided in Clause 2.2.11), substantially in the format specified at Appendix XIV hereto. State Governments shall also extend support and provide additional incentives for implementation of the Project, through the execution of a tripartite agreement between the SPV, State Government and the Government (“**Tripartite Agreement**”). The template of the model Tripartite Agreement has been annexed to this RFP at Appendix XV and the Bidders may revise the model Tripartite Agreement (including to seek additional incentives) through direct negotiation with the respective State Government, subject to and in accordance with the provisions of the model Tripartite Agreement. It is clarified that the Government shall have the right to seek amendment to such Tripartite Agreement, agreed to be executed between the Beneficiary Firm and the respective State Government.

- 1.1.4 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services or the Government’s right to amend, alter, change, supplement or clarify the scope of work. Consequently, any omissions, conflicts or contradictions in this RFP 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 Government.
- 1.1.5 The Government shall receive all documents pursuant to this RFP in accordance with the terms set forth herein, as modified, altered, amended and clarified from time to time by the Government (collectively the “**Bidding Documents**”), and all documents shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bid (the “**Bid Due Date**”).

1.2 Brief description of Bidding Process

1.2.1 The Government has adopted a two-envelope single stage selection process (the “**Bidding Process**”) for selection of the Bidder for entitlement to receive Subsidy on the basis of capacity sold by the Beneficiary Firm (including Committed Capacity and Value Addition of Advance Chemistry Cell (*as defined in the Programme Agreement*) in India). The process for evaluating the Bids comprises of evaluation of a technical bid wherein the Bidder shall state its Technical Capacity as specified in Clause 3.2 (“**Technical Bid**”) and a financial bid which shall include the Subsidy (*as defined hereinafter*) quoted by the Bidder (“**Financial Bid**”). Prior to submission of the Bid, the Bidder shall pay to the Government a non-refundable sum of INR 4,50,000 (Rupees four lakh fifty thousand) as the cost of the RFP process. Such payments shall be made to the bank account of the Government, the details of which are set out in Appendix – XII. After the Bidder satisfies the qualification criteria as specified in Clause 2.2.3, in the first stage, a technical evaluation will be carried out as specified in Clause 3.2. Based on this technical evaluation, a list of short-listed Bidders shall be prepared as specified in Clause 3.3.1. In the second stage, a financial evaluation will be carried out as specified in Clause 3.3. Bids will finally be ranked according to their combined technical and financial scores as specified in Clause 3.4. For the purposes of evaluation, in case of a Consortium, only the credentials of the Lead Member (*as defined hereinafter*) shall be considered for satisfying the qualification criteria specified in Clause 2.2.3. The Bidders shall be selected through a transparent short-listing process as provided for under Clause 3 of this RFP. The Bidders are required to submit their Bids on the Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app>. Accordingly, the Selected Bidders will be awarded incentives by Government for carrying out its obligations in relation to the Project in accordance with and under the terms of the Programme Agreement. The Subsidy disbursement shall commence once the proposed Committed Capacity and Value Addition is achieved and sale of the Advance Chemistry Cell begins. It shall be phased-out over a 5 (five) year window, payable quarterly, in accordance with the terms of the Programme Agreement.

1.2.2 A Bidder is required to deposit, along with its Bid, a bid security of INR 10,00,00,000 (Rupees ten crore) (the “**Bid Security**”), refundable no later than 90 (ninety) 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 Programme Agreement.

The Bidders shall provide Bid Security in the form of a Bank Guarantee acceptable to the Government, with a validity period of not less than 270 (two hundred and seventy) 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 Government and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

1.2.3 Details of the process to be followed and the terms thereof are spelt out in this RFP.

1.2.4 In terms of this RFP, a Bidder is required to deposit originals of the following at the address given at Clause 2.15.4:

- (a) A Bid Security in accordance with Clause 1.2.2; and
- (b) A power of attorney for signing the Bid in accordance with Clause 2.2.8.

1.2.5 Bids are invited for the subsidy provided by the Government for implementing the Project (the

“Subsidy”). In this RFP, the term “Eligible Bidder” shall mean the Bidder(s) who has the highest score as provided in Clause 3. Subject to the provisions of Clause 2.6, the Project will be awarded to the Eligible Bidder(s). The Bidder shall specify the amount of Subsidy in its Bid.

1.3 Schedule of Bidding Process

The Government shall endeavour to adhere to the following schedule:

S. No	Event Description	Date
1.	Release of RFP	24-01-2024
2.	Pre-Bid Conference	12-02-2024
3.	Last date for receiving queries from Bidders	04-03-2024
4.	Government response to queries	22-03-2024
5.	Bid Due Date	22-04-2024
6.	Opening of Technical Bid	23-04-2024
7.	Opening of Financial Bid	27-05-2024
8.	Validity of Bid	19-10-2024
9.	Signing of the Programme Agreement	18-10-2024

1.4 Pre-bid Conference:

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

Date: 12.02.2024

Time: 03:00 PM

Venue: Auditorium, 2nd Floor IFCI Tower, Nehru Place, New Delhi 110019

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 Scope of Bid

The Government wishes to receive Bids for selection in order to select eligible Bidders. The Bidder shall be required to submit a Technical Bid and a Financial Bid. The Financial Bid shall only be opened if the Bidder meets the threshold as provided for in Clause 3.1 and Clause 3.2, under the Technical Bid.

2.2 Eligibility of Bidders

2.2.1 For determining the eligibility of Bidders for their shortlisting hereunder, the following shall apply:

- (a) The Bidder for the purpose of shortlisting may be a sole firm/ single entity, AIF, Foreign Investment Fund or a group of entities (the “**Consortium**”), coming together to implement the Project. For the purpose of evaluation, in case of a Consortium, the qualification criteria specified in Clause 2.2.3 must be satisfied by the Lead Member (*as defined hereinafter*) only. However, no Bidder applying individually or as a Member of a Consortium, as the case may be, can be a member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
- (b) A Bidder may be a natural person, private entity, public sector undertaking 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 2.2.10 below.
- (c) 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. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - (i) the Bidder, or its Associate (or any constituent thereof) and any other Bidder 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 20% (twenty percent) of the aggregate issued, subscribed and paid up share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or an Associate is less than 20% (twenty percent) of the aggregate issued, subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by the Government, a bank, insurance company, pension fund or a public financial institution referred to in Section 2(72) of the Companies Act, 2013;

For the purposes of this Clause 2.2.1, indirect shareholding held through 1 (one) or more intermediate persons shall be computed as follows: (A) 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 (B) subject always to sub-clause (A) 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 if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the aggregate issued, 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 or any Associate thereof receives, has received, or has entered into an agreement to receive, any direct or indirect Subsidy, grant, concessional loan, or subordinated debt from any other Bidder, or any Associate thereof or has provided or has entered into an agreement to provide 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 a 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 indirectly or through a common third party/ parties, that puts either or both of them in a position to have access to each other's information, 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 Government 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 2.2.1 shall include each Member of such Consortium and the term Associate with respect to a Bidder shall include an Associate of each Member of that Consortium.

- (d) A Bidder shall be liable for disqualification if any legal, financial, or technical adviser of the Government in relation to the Project is engaged by the Bidder or its Member or any Associate thereof, 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 Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 6 (six) months after the execution of the Programme Agreement.

It is further clarified that a Bidder shall not be disqualified if such Bidder has engaged or engages such legal, financial, or technical advisers for any matters other than

advisory for the Project.

Explanation:

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

For purposes of this RFP, 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 economic or 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.

2.2.2 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial, or technical adviser of the Government 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 6 (six) months from the execution of the Programme Agreement. Notwithstanding the foregoing, such disqualification or forfeiture shall not apply where the Bidder has engaged or engages such legal, financial, or technical advisers for any matters other than advisory for the Project.

2.2.3 To be eligible for short-listing, a Bidder shall fulfil the following conditions of eligibility:

Qualification Criteria:

Net Worth

(a) In case the Bidder is not an AIF or Foreign Investment Fund: The Bidder shall have a minimum Net Worth of INR 225,00,00,000 (Rupees two hundred and twenty-five crore) per GWh.

OR

(b) In case the Bidder is an AIF or Foreign Investment Fund: The Bidder shall have a minimum ACI at the close of the preceding financial year of INR 225,00,00,000 (Rupees two hundred and twenty-five crore) per GWh.¹

Notwithstanding the foregoing, a Bidder may Bid for any capacity if such Bidder has a Net Worth of at least INR 15,00,00,00,000 (Rupees fifteen hundred crore), under and in accordance with the terms of this RFP.

For computing the Financial Capacity of a Bidder, the Financial Capacity of their respective Associate would also be eligible. In case the Associate of an AIF or Foreign Investment Fund is not an AIF or a Foreign Investment Fund, then such Bidder is eligible to claim the Financial

¹ In case a Bidder has issued any fresh equity capital during the current financial year, the same shall be permitted to be added to the Bidder’s Net Worth subject to the statutory auditor of the Bidder certifying to this effect. In case a Bidder has received any fresh capital commitment available for the immediate deployment during the current financial year, the same shall be permitted to be added to the Bidder’s ACI subject to the statutory auditor of the Bidder certifying to this effect.

Capacity of such Associate as set out in Clause 2.2.3 (a).

In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.1, shall be provided.

In case of a Consortium, the aforementioned qualification of the Lead Member, who shall have an equity share of at least 26% (twenty-six per cent) in the SPV, should satisfy the above conditions of eligibility; provided that such Lead Member shall, for a period of 5 (five) years from the Appointed Date, hold equity share capital of not less than 26% (twenty-six per cent) of the subscribed and paid-up equity of the SPV.

2.2.4 Bidders who have participated in the tender dated 22 October 2021 bearing reference no. 01(05)/2019-AEI (19587) issued under the Programme (“**Previous Tender**”) shall be eligible to participate in this Bidding Process, provided that, the maximum capacity that may be allocated to such bidders, inclusive of capacity allocated under the Previous Tender and this RFP, shall not exceed 20 (twenty) GWh.

2.2.5 The Bidder shall enclose with its Bid, to be submitted as per the format at Appendix-I, complete with its Annexes, the following²:

(a) certificate prepared according to the International Financial Reporting Standards (“**IFRS**”) or Generally Accepted Accounting Principles (GAAP) or Indian Accounting Standards (Ind AS) from a statutory auditor specifying the Net Worth of the Bidder, as specified under Clause 2.2.3, as per format at Appendix IV.

For meeting the above qualification criteria, if the data is provided by the Bidder in a foreign currency, equivalent Indian Rupees of Net Worth will be calculated by the Bidder using Reserve Bank of India’s reference rates prevailing on the date of closing of the accounts for the respective financial year.

In case of any currency for which RBI reference rate is not available, Bidders shall convert such currency into US Dollar (USD) as per the exchange rates certified by their banker prevailing on the relevant date and used for such conversion. Equivalent Indian Rupees of Net Worth from USD will then be calculated by the Bidder using Reserve Bank of India’s reference rates prevailing on the date of closing of the accounts for the respective financial year.

(b) certificate(s) from statutory auditors of the Bidder or its Associates specifying the Net Worth of the Bidder, as specified under Clause 2.2.3, as at the close of the preceding financial year for which the Net Worth is required as per latest annual/quarterly financials of the bidder duly audited/reviewed by the statutory auditor, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 2.2.5 (b). For the purposes of this RFP, 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

² 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 2.2.4. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder or its Associate may provide the certificates required under this RFP.

not written off and reserves not available for distribution to equity shareholders.

- (c) an AIF or Foreign Investment Fund may qualify on the basis of minimum investible funds (i.e., immediately available funds for investment and callable capital) subject to the limits of investment in a single investee entity (in the relevant jurisdiction for a Foreign Investment Fund, or the maximum permissible investment limit for an AIF) (as per the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, as may be amended from time to time), as applicable (“**ACI**”). In case of an AIF or Foreign Investment Fund using ACI, ACI would be considered as per the certificate issued by statutory auditor (or such other certificate as filed with the regulator in the relevant jurisdiction) not older than 3 (three) months prior to the Bid Due Date.
- (d) the Technical Bid consisting of the Value Addition and Committed Capacity committed by the Bidder, to the Government, as per format at Appendix V and a Financial Bid comprising the Subsidy quoted by the Bidder as per format at Appendix VI. The Technical Bid shall be evaluated in accordance with Clause 3.2. The Financial Bid shall be evaluated in accordance with Clause 3.3 and the Subsidy shall be payable by the Government to the Selected Bidders per the terms and conditions of this RFP and the provisions of the Programme Agreement.

- 2.2.6 The Bidder shall deposit a Bid Security in accordance with the provisions of this RFP.
- 2.2.7 The validity period of the Bid Security (i.e., the Bank Guarantee submitted) shall not be less than 270 (two hundred and seventy) 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 Government 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 90 (ninety) 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 Programme Agreement.
- 2.2.8 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bid to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney, signed by all the Members of the Consortium (and duly acknowledged by the Lead Member) in favour of the Lead Member as per format at Appendix-III.
- 2.2.9 The Financial Bid shall consist of a Subsidy payable by the Government to the Selected Bidder as per the terms and conditions of this RFP and the provisions of the Programme Agreement.
- 2.2.10 A Selected Bidder shall form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 2013 (the “**SPV**”), to implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:
 - (a) the Bid should contain the information required for each Member of the Consortium;
 - (b) Members of the Consortium shall nominate 1 (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;

- (c) the Bid should include a brief description of the roles and responsibilities of individual Members, particularly with reference to financial and technical obligations;
- (d) an individual Bidder cannot at the same time be Member of a Consortium applying for selection. Further, a Member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for selection;
- (e) the Members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (f) Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix- X (the “**Jt. Bidding Agreement**”), for the purpose of making the application and submitting a Bid in the event of being short-listed. The Jt. 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 RFP, which would enter into the Programme Agreement and subsequently perform all the obligations of the terms of the Programme Agreement, in case the Subsidy under 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) Lead Member of the Consortium undertakes that it shall hold at least 26% (twenty-six per cent) of the subscribed and paid-up equity of the SPV at all times for 5 (five) years after the Appointed Date; and
 - (v) include a statement to the effect that all Members of the Consortium shall be liable jointly and severally for all obligations of the SPV under the Programme Agreement.
- (g) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Government.

2.2.11 The SPV will be required to enter into an agreement with the Government for availing the Subsidy and specifying the details of implementation of the Project (“**Programme Agreement**”). The SPV shall also enter into a Tripartite Agreement with the Government and the State Government for availing additional incentives as specified in Clause 1.1.3 above.

2.2.12 Any entity which has been barred by the Central Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as Member of a Consortium.

2.2.13 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder

or Consortium Member, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder or Consortium Member. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.13 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 Government for seeking a waiver from the disqualification hereunder and Government 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. The decision of the Government on granting such waiver under this Clause 2.2.13 shall be final and binding on the Bidder or Consortium Member.

2.2.14 The following conditions shall be adhered to while submitting a Bid:

- (a) Bidders 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, Bidders may format the prescribed forms making provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other Associated companies or firms; and
- (c) in responding to the submissions for shortlisting, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below.

2.2.15 While qualification is open to persons from any country, the following provisions shall apply:

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

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

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 Government 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, 2011, or any substitute thereof, as in force on the date of such acquisition. As used in this Clause, the expression “control” shall have the meaning ascribed to it in the Companies Act, 2013.

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

2.2.16 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 3 (three) months of the closing of the latest financial year of a Bidder, for which the audited statements are not available, the Bidder shall submit the annual audited accounts of the previous financial year for which the audited accounts are available. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.2.17 Ministry of Finance, Government of India has issued order dated 23 February 2023 (as attached at Appendix IX of RFP) for qualification of a bidder from a country which shares a land border with India (“**GFR Order**”). As per the GFR Order, any Bidder from a country which shares a land border with India (as defined in the GFR Order) will be eligible to bid under this RFP only if the Bidder is registered with the Competent Authority as specified in the GFR Order. The GFR Order shall apply *mutatis mutandis* to this Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I. The Competent Authority shall be entitled to disqualify a Bidder in accordance with the provisions of the GFR Order at any stage of the Bidding Process.

2.3 Change in composition of the Consortium

2.3.1 Where the Bidder is a Consortium, change in the composition of a Consortium may be permitted by the Government, 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; and
- (c) the new Member(s) expressly adopt(s) the Bid already made on behalf of the Consortium as if it were a party to it originally and is not a Bidder/Member/Associate of any other Consortium bidding for this Project and shall submit all such documents as may be necessary in support of the Bid, including a Power of Attorney as specified in Clause 2.2.8 above.

2.3.2 Approval for change in the composition of a Consortium shall be at the sole discretion of the Government and must be approved in writing.

2.3.3 Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, a Bidder may, within 10 (ten) days after the Bid 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. Upon the occurrence of such removal, the Bidder shall submit necessary documents, as may be required by the Government, evidencing the removal of such Member from its Consortium.

2.4 Number of Bids and Costs thereof

- 2.4.1 No Bidder shall submit more than one Bid for the Project. A Bidder 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. It is further clarified that any of the Parent Company/ Associate /Ultimate Parent Company of the Bidder or Member of a Consortium shall not separately participate directly or indirectly in the Bidding Process. Further, if any Bidder is having a Conflict of Interest with other Bidders participating in the Bidding Process, the Bids of all such Bidders shall be rejected.
- 2.4.2 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 Government will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Acknowledgement by Bidder

- 2.5.1 It shall be deemed that by submitting the Bid, the Bidder has:
- (a) made a complete and careful examination of the RFP;
 - (b) received all relevant information requested from the Government;
 - (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Government; and
 - (d) agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.5.2 The Government 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 RFP or the Bidding Process, including any error or mistake therein or in any information or data given by the Government.

2.6 Right to accept or reject any or all Bids

- 2.6.1 Notwithstanding anything contained in this RFP, the Government reserves the right to accept or 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 there for.
- 2.6.2 The Government 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 Government, the supplemental information sought by the Government for evaluation of the Bid.

If the Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected, at the sole discretion of the Government.

- 2.6.3 The Government reserves the right to verify, in any manner as the Government may deem fit, all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by the Government shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Government there under.

2.7 Change in Ownership

- 2.7.1 By submitting the Bid, the Bidder acknowledges that it was short-listed on the basis of qualification requirements of its Lead Member who shall, until the 5th (fifth) anniversary of the of the Appointed Date, hold equity share capital representing not less than 26% (twenty-six per cent) of the subscribed and paid-up equity of the SPV. 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 Programme Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Programme Agreement, be deemed to be a breach of the Programme Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.7.1 shall apply only when the Bidder is a Consortium.
- 2.7.2 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 the Lead Member whose credentials were taken into consideration for the purposes of short-listing under and in accordance with this RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Government forthwith along with all relevant particulars about the same and the Government may, in its sole discretion, disqualify the Bidder. In the event such change in control occurs after signing of the Programme Agreement, it would, notwithstanding anything to the contrary contained in the Programme Agreement, be deemed to be a breach of the Programme Agreement, and the same shall be liable to be terminated without the Government being liable in any manner whatsoever to the SPV. In such an event, notwithstanding anything to the contrary contained in the Programme Agreement, the Government 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 Government under the Bidding Documents and/ or the Programme Agreement or otherwise.

For the purposes of determining ‘control’ under this Clause 2.7.2., the Government 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, 2011, or any substitute thereof, as in force on the date of such acquisition.

2.8 Cost of Bidding

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

2.9 Verification and Disqualification

- 2.9.1 The Government reserves the right to verify all statements, information and documents submitted by the Bidder in response to this RFP or the Bidding Documents and the Bidder shall, when so required by the Government, 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 Government shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Government thereunder.
- 2.9.2 The Government 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 Government, the supplemental information sought by the Government 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 Eligible Bidder gets disqualified / rejected, then the Government reserves the right to:

- (i) consider the Bids of the remaining Bidder(s) in accordance with this RFP; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Government, including annulment of the Bidding Process.

2.9.3 In case it is found during the evaluation of the Bids, or at any time before signing of the Programme Agreement or after its execution and during the period of subsistence thereof, including the incentives thereby granted by the Government, that one or more conditions for shortlisting 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 the Programme Agreement is yet to be executed, and if the Selected Bidder has already entered into the Programme Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Government to the Selected Bidder or the SPV, as the case may be, without the Government being liable in any manner whatsoever to the Selected Bidder or SPV. In such an event, the Government 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 Government under the Bidding Documents and/ or the Programme Agreement, or otherwise. The decision of the Government to terminate the Programme Agreement and/or disqualify the Bidder shall be final, conclusive, and binding on the Bidder.

B. DOCUMENTS

2.10 Contents of the RFP

This RFP comprises the disclaimer set forth hereinabove, the contents as listed below.

Invitation for Qualification

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

Appendices

- I. Letter comprising the Bid
- II. Power of Attorney for signing of Bid
- III. Power of Attorney for Lead Member of Consortium

- IV. Net Worth of the Bidder
- V. Format for Technical Bid
- VI. Format for Financial Bid
- VII. Bank Guarantee for Bid Security
- VIII. Instructions for Online Submission
- IX. GFR Order
- X. Jt. Bidding Agreement
- XI. Format of Letter of Award
- XII. Details of the bank account for transferring the cost of the RFP process
- XIII. Integrity Pact
- XIV. Draft Programme Agreement
- XV. Draft Tripartite Agreement

2.11 Clarifications

- 2.11.1 Bidders requiring any clarification on the RFP may notify the Government in writing by speed post/ courier/ special messenger or by e-mail in accordance with Clause 1.2. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Government shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. The responses will be sent by e-mail. The Government will forward all the queries and its responses thereto, to all Bidders of the RFP without identifying the source of queries.
- 2.11.2 The Government shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Government reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause 2.11.2 shall be taken or read as compelling or requiring responding to any question or to provide any clarification.
- 2.11.3 The Government may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Government shall be deemed to be part of the RFP. Verbal clarifications and information given by the Government or its employees or representatives shall not in any way or manner be binding on the Government.

2.12 Amendment of RFP

- 2.12.1 At any time prior to the deadline for submission of Bid, the Government may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.12.2 Any Addendum thus issued will be sent in writing to all those who have purchased the RFP and will be put up on the Central Public Procurement Portal on <https://eprocure.gov.in/eprocure/app>.
- 2.12.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Government may, in its sole discretion, extend the Bid Due Date.³

³ While extending the Bid Due Date on account of an addendum, the Government 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.

C. PREPARATION AND SUBMISSION OF BID

2.13 Language

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

2.14 Format and signing of Bid

2.14.1 The Bidder shall provide all the information sought under this RFP on the Central Public Procurement Portal, <https://eprocure.gov.in/eprocure/app> and the Government will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable to rejection.

2.14.2 The Bid shall be submitted at the address and in the manner provided in the RFP including submission of physical copies as provided under Clause 2.15.3 and where applicable, shall be typed or written in indelible ink. It shall be signed by the authorised signatory of the Bidder who shall also initial each page of the Bid (including each Appendix and Annex) 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. The Bid shall contain page numbers and shall be bound together in a manner that does not allow replacement of any page.

2.15 Sealing and Marking of Bids

2.15.1 The Bidder shall submit the Bid in the format specified at Appendix-I, together with the documents specified in Clause 2.15.2, and upload the same to the Central Public Procurement Portal in the prescribed manner as set forth on the website.

2.15.2 The Bidder shall be required to upload the following on the Central Public Procurement Portal:

- (i) Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- (ii) Copy of Power of Attorney for signing the Bid as per the format at Appendix-II;
- (iii) if applicable, copy of the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
- (iv) Net Worth of the Bidder as per the format at Appendix-IV;
- (v) Technical Bid in the format at Appendix-V;
- (vi) Financial Bid in the format at Appendix-VI;
- (vii) Copy of Bid Security in the format at Appendix-VII;

- (viii) Copy of Memorandum and Articles of Association;
- (ix) Copies of Bidder's duly audited balance sheet and profit and loss account for the preceding year accompanied by a certificate from the statutory auditor of the Bidder or its Associate, wherever applicable;
- (x) evidence of payment towards the cost of the RFP process as specified in Clause 1.2.1;
- (xi) executed copy of the integrity pact as per the format at Appendix – XIII; and
- (xii) any other sector or project-specific requirement that may be specified by the Government.

2.15.3 The Bidder shall deliver hard copies of the following:

- (i) Power of Attorney for signing the Bid as per the format at Appendix-II (including all corporate authorisations such as board resolutions);
- (ii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III; and
- (iii) Bid Security in the format at Appendix–VII.

The envelopes shall clearly bear the following identification:

“Bid for Qualification: **** 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 corner of each of the envelopes.

The Selected Bidder shall deliver the hard copies of all the documents related to the Bid.

2.15.4 Each of the envelopes shall be addressed to:

ATTN. OF:	Mr. Surojit Ghosh
DESIGNATION:	Under Secretary
ADDRESS:	Udyog Bhawan, Ministry of Heavy Industries, New Delhi
TELEPHONE NO:	011-23061340
E-MAIL ADDRESS:	acc.pli-mhi@gov.in

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

2.16 Bid Due Date

2.16.1 Bids should be submitted before 1100 hours IST on the Bid Due Date, at the address provided in Clause 2.15.4 and on the website as specified in Clause 2.15.1 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified in Clause 2.15.4.

2.16.2 The Government may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.12.2 uniformly for all Bidders.

2.17 Late Bids

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

2.18 Modifications/ substitution/ withdrawal of Bids

2.18.1 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 Government prior to the Bid Due Date on the Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app>. No Bid shall be modified, substituted, or withdrawn by the Bidder on or after the Bid Due Date.

2.18.2 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 Government, shall be disregarded.

2.19 Rejection of Bids

2.19.1 Notwithstanding anything contained in this RFP, the Government 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 there for. In the event that the Government rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.19.2 The Government 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.

2.20 Validity of Bids

The Bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Government.

2.21 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the short-listed Bidders shall not be disclosed to any person who is not officially concerned with the Bidding Process or is not a retained professional advisor advising the Government in relation to, or matters arising out of, or concerning the Bidding Process. The Government will treat all information, submitted as part of Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Government 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 Government or as may be required by law or in connection with any legal process.

2.22 Correspondence with the Bidder

Save and except as provided in this RFP, the Government shall not entertain any

correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

D. BID SECURITY

2.23 Bid Security

2.23.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clause 1.2.2 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 INR 1000,00,00,000 (Rupees one thousand crore), in favour of the Government in the format at Appendix–VII (the “**Bank Guarantee**”) and having a validity period of not less than 270 (two hundred seventy) 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 Government 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.

In the context of bank guarantee for Bid Security the details of bank account of the Government are as follows:

Beneficiary Name & Address	Ministry of Heavy Industries, Government of India, Udyog Bhawan, New Delhi-110011 represented by IFCI Ltd. having its registered office at IFCI Tower, 61 Nehru Place, New Delhi-110019
Account Name	IFCI-PLI-ACC
Account No.	5184863459
Account Type	Current Account
Name of the Bank	Central Bank of India
Branch Code	1410
Branch IFSC Code	CBIN0281410
Branch Name	Nehru Place Branch
Branch Address	59, Shakuntala Building, Nehru Place, New Delhi-110019

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

2.23.3 Save and except as provided in Clauses 1.2.2 above, the Bid Security of unsuccessful Bidders will be returned by the Government, 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 Government, and in any case within 90 (ninety) days from the Bid Due Date.

2.23.4 The Selected Bidder’s Bid Security will be returned, without any interest, upon the signing of the Programme Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Government 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 Programme Agreement.

2.23.5 The Government shall be entitled to forfeit and appropriate the Bid Security as damages *inter alia* in any of the events specified in Clause 2.23.6 herein below. The Bidder, by submitting its

Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Government 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. No relaxation of any kind on Bid Security shall be given to any Bidder.

2.23.6 The Bid Security shall be forfeited as damages without prejudice to any other right or remedy that may be available to the Government under the Bidding Documents and/ or under the Programme Agreement, 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;
- (c) a Bidder withdraws its Bid during the period of validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Government;
- (d) the Selected Bidder fails within the specified time limit:
 - (i) to sign and return the duplicate copy of the LOA; or
 - (ii) to sign the Programme Agreement; or
 - (iii) to furnish the Performance Security within the period prescribed therefor in the Programme Agreement; or
- (e) the Selected Bidder, having signed the Programme Agreement, commits any breach thereof prior to furnishing the Performance Security.

2.23.7 It is clarified that in the event that only a single Bid is received, the Government may, in compliance with Applicable Laws, in its discretion and for reasons to be recorded in writing, accept such Bid and declare such Bidder the Selected Bidder, or annul the Bidding Process.

E. EVALUATION PROCESS

2.24 Opening and Evaluation of Bids

2.24.1 Government shall open the Bids at 11:30 AM (IST) on the Bid Due Date, at the place specified in Clause 2.15.4 and in the presence of the Bidders who choose to attend.

2.24.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.18 shall not be opened.

2.24.3 The Government shall subsequently examine and evaluate Bids in accordance with the selection process specified at Clause 1.2 and the criteria set out in Clause 3 of this RFP.

2.24.4 After the evaluation of the Technical Bid, the Government shall prepare a list of shortlisted Bidders in terms of Clause 3 for opening of their Financial Bids. A date, time and venue will be notified to all Bidders for announcing the result of evaluation and opening of Financial Bids. Before opening of the Financial Bids, the list of shortlisted Bidders along with their technical score will be read out. The opening of Financial Bids shall be done in presence of respective representatives of Bidders who choose to be present. The Government will not entertain any

query or clarification from Bidders who fail to qualify at any stage of the selection process. The financial evaluation and final ranking of the Bids shall be carried out in terms of Clauses 3.3 and 3.4.

2.24.5 Any information contained in the Bid shall not in any way be construed as binding on the Government, its agents, successors or assigns, but shall be binding against the Selected Bidders.

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

2.25 Tests of Responsiveness

2.25.1 Prior to evaluation of Bids, the Government shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive if:

- (a) it is received as per format at Appendix-I;
- (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.16.2;
- (c) it is signed, sealed, bound together in hard cover, marked, and accompanied by the documents and information as stipulated in Clauses 2.14 and 2.15;
- (d) it is accompanied by the Bid Security as specified in Clause 2.23;
- (e) it is accompanied by the Power of Attorney as specified in Clause 2.2.8, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.8;
- (f) it contains all the information and documents (complete in all respects) as requested in this RFP;
- (g) it contains information in formats same as those specified in this RFP;
- (h) it does not contain any condition or qualification;
- (i) it is uploaded on the Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app> in accordance with instructions for online submission as specified in Appendix VIII and original thereof are signed, sealed, hard bound and marked as stipulated in Clauses 2.14 and 2.15;
- (j) it is supported with evidence of payment of cost of the RFP process; and
- (k) it is not non-responsive in terms hereof.

2.25.2 The Government 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 Government in respect of such Bid. Provided, however, that the Government 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.

2.26 Clarifications

- 2.26.1 To facilitate evaluation of Bids, the Government may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by the Government for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 2.26.2 If a Bidder does not provide clarifications sought under Clause 2.26.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Government may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Government.

F. QUALIFICATION AND BIDDING

2.27 Short-listing and notification

After the evaluation of Bids, the Government shall announce a list of short-listed Bidders who will be eligible for allocation of capacity under and in accordance with the terms of this RFP. At the same time, the Government shall notify the other Bidders that they have not been short-listed. The Government will not entertain any query or clarification from Bidders who are not awarded capacity under this RFP.

2.28 Submission of Bids

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

Financial Bids of only short-listed Bidders shall be opened by the Government.

2.29 Proprietary data

All documents and other information supplied by the Government or submitted by a Bidder to the Government shall remain or become the property of the Government. 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 Government will not return any Bid or any information provided along therewith.

2.30 Selection of Bidders

- 2.30.1 Subject to the provisions of Clause 2.6, Bidders whose Bids are adjudged as responsive in terms of Clause 3.2 and who achieve the maximum score in accordance with Clause 3.4, subject to a ceiling of 10 (ten) GWh, shall ordinarily be declared as the Selected Bidder(s) (the “**Selected Bidder**”). The Selected Bidders shall be paid the Subsidy quoted in the Price Bid. In the event that the Government rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.30.2 In the event that 2 (two) or more Bidders achieve the same score, (the “**Tie Bidders**”), the Government shall identify the Selected Bidder by draw of lots which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend. For the avoidance of doubt, it is clarified that if sufficient capacity is available for allotment, then such capacity shall be allotted to the Tie Bidders, pro-rated in the ratio of their respective Bids and in such case, there will be no requirement of draw of lots.

- 2.30.3 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Government to the Selected Bidder, as per the format at Appendix XI. 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 Government 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.
- 2.30.4 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Selected Bidder/SPV to execute the Programme Agreement within the period prescribed in Clause 1.3.

3. CRITERIA FOR EVALUATION

3.1 Qualification Criteria

- 3.1.1 A Bidder shall have a minimum Net Worth of INR 225,00,00,000 (Rupees two hundred and twenty-five crore) per GWh of overall Committed Capacity, as per the capacity specified in its Technical Bid for the Financial Year preceding the date of submission of the Bid as per latest annual/quarterly financials of the bidder duly audited/reviewed by the Statutory Auditor. Notwithstanding the foregoing, a Bidder may Bid for any capacity under and in accordance with the terms of this RFP, if the Bidder has a total Net Worth of at least INR 15,00,00,00,000 (Rupees fifteen hundred crore). The Bid must be accompanied by the audited annual reports of the Bidder (of the Lead Member in case of a Consortium) for the Financial Year, preceding the year in which the Bid is made along with a certificate prepared according to the IFRS or GAAP or IND AS from a statutory auditor specifying the Net Worth of the Bidder, as specified under Clause 2.2.3.
- 3.1.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the audited annual accounts for the Financial Year preceding the year for which the audited annual accounts are not being provided.
- 3.1.3 The Bidder must establish the minimum Net Worth specified in Clause 2.2.3 and 2.2.5 (b), and provide details as per format at Annex-I and Annex-II of Appendix-I.
- 3.1.4 Only those Bidders who meet the qualification criteria specified under Clause 2.2.3 and this Clause 3.1, shall qualify for evaluation of their Technical Bid. Bids of entities / consortia who do not meet these criteria shall be rejected.

3.2 Evaluation of Technical Bids

- 3.2.1 In the first stage, the Technical Bid will be evaluated on the basis of the Value Addition (*as defined in the Programme Agreement*) committed by the Bidder, and the Committed Capacity (*as defined in the Programme Agreement*) committed by the Bidder (the “**Technical Capacity**”). Only those Bidders who commit Value Addition of at least 25% (twenty-five percent) within 2 (two) years from the Appointed Date and minimum 60% (sixty percent) Value Addition within 5 (five) years from the Appointed Date, and installation of ACC manufacturing capacity between 5 (five) GWh to 10 (ten) GWh, within 5 (five) years from the Appointed Date, shall qualify for further consideration and shall be ranked from highest to the lowest on the basis of their technical score (ST).
- 3.2.2 An illustrative example of ranking based on Value Addition and capacity phasing for two entities has been illustrated below:

Technical Bid (80%)		Financial Bid (20%)
1. Phasing for Value Addition (70%)	2. Committed Capacity (GWh) (30%)	3. Subsidy Benchmark (20%)

Year	Quarter	Weight	Bidder X	Bidder Y	Weight	Bidder X	Bidder Y	Bidder X	Bidder Y
Year 1	1	5	-	-	5	-	-		
	2	5	-	-	5	-	-		
	3	5	-	-	5	-	-		
	4	5	-	-	5	-	-		
Year 2	1	4	-	-	4	-	-		
	2	4	-	-	4	-	-		
	3	4	-	-	4	-	-		
	4	4	25%	30%	4	1	1		
Year 3	1	3	30%	40%	3	3	2		
	2	3	30%	40%	3	3	2		
	3	3	30%	40%	3	3	2		
	4	3	30%	40%	3	3	2		
Year 4	1	2	40%	50%	2	4	3		
	2	2	40%	50%	2	4	3		
	3	2	40%	50%	2	4	3		
	4	2	40%	50%	2	4	3		
Year 5	1	1	70%	60%	1	5	5		
	2	1	70%	60%	1	5	5		
	3	1	70%	60%	1	5	5		
	4	1	70%	60%	1	5	5		
Weight			=SumProduct of Weight and Value addition for X = 10.60	=SumProduct of Weight and Value addition for Y = 12.40		=SumProduct of Weight and Committed Capacity X = 92	=SumProduct of Weight and Committed Capacity Y = 72	1800	2000
Standardized			0.8548	1.0000		1.0000	0.7826	1.0000	0.9000

SCORING:

- Technical Score: Company X = (70% x 0.8548) + (30% x 1.0000) = 0.8984
 - Technical Score: Company Y = (70% x 1.0000) + (30% x 0.7826) = 0.9348
 - Financial Score: Company X = 1.0000
 - Financial Score: Company Y = 0.9000
- ❖ Overall score for Company X = 80% x 0.8984 + 20% x 1.0000 = 0.9187
 - ❖ Overall score for Company Y = 80% x 0.9348 + 20% x 0.9000 = 0.9278

The total score is calculated by weighting the scores and adding them as per the formula and instructions specified above. The Bidder achieving the highest combined score will be allocated the capacity first.

3.3 Evaluation of Financial Bids

- 3.3.1 The qualified Bidders shall be short-listed for financial evaluation in the second stage. The financial evaluation will be carried out as per this Clause 3.3. Each Price Bid will be assigned a financial score (SF) as specified in this Clause 3.3.
- 3.3.2 The Financial Bid shall comprise a Subsidy to be quoted by the Bidder in accordance with the provisions of the Programme Agreement. It is clarified that the amount of Subsidy quoted by the Bidder, shall be subject to a ceiling of INR 2000 (Rupees two thousand) per KWh. Any Bid that has quoted Subsidy over INR 2000 (Rupees two thousand) shall be rejected.
- 3.3.3 For financial evaluation, the Subsidy indicated in the Financial Bid will be considered. The Government will determine whether the Financial Bids are complete, unqualified, and unconditional. The amount of Subsidy indicated in the Financial Bids shall be deemed as final. The lowest Financial Bids (AL) will be given a financial score (SF) of 1.0 point. The financial scores of other Bids will be computed as follows:

$SF = AL/A$ (A = amount of Subsidy indicated in the Financial Bid)

INR Per KWh		Energy Density (Wh/Kg)				
		≥ 50	≥ 125	≥ 200	≥ 275	≥ 350
Cycle Life	≥ 1000	-	-	-	A	$A^{*(1.2)}$
	≥ 2000	-	-	A	$A^{*(1.2)}$	$A^{*(1.2^2)}$
	≥ 4000	-	A	$A^{*(1.2)}$	$A^{*(1.2^2)}$	$A^{*(1.2^3)}$
	≥ 10000	A	$A^{*1.2}$	$A^{*(1.2^2)}$	$A^{*(1.2^3)}$	$A^{*(1.2^4)}$

Note: It is expressly clarified that the ACCs manufactured shall have a minimum technical specifications viz. Energy Density and Cycle Life as provided in the shaded regions.

- 3.3.4 An illustrative example of ranking based on the Subsidy quoted by two Bidders under their Financial Bid has been illustrated below:

Price Bid (INR/KWh)		
Cash Subsidy		
	Bidder X	Bidder Y
Subsidy	1800	2000
Standardized	1	0.9

SCORING:

Bidder's Score: $100\% \times \text{minimum quoted base Subsidy benchmark} / \text{quoted base Subsidy benchmark of respective Bidder}$

- Financial Score for Company X = 1.00
- Financial Score for Company Y = 0.90

- 3.3.5 The Bidders shall also *inter alia* take into consideration the phasing down of base Subsidy benchmark that has been submitted in the Bid. Year wise fixed phasing of base Subsidy (benchmark amount) shall be as follows:

FY	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Reduction	0%	0%	0%	0%	10%	20%	40%
Year on year effective phasing of base Subsidy (benchmark amount)	100%	100%	100%	100%	90%	72%	43%

The lowest quoted base Subsidy is benchmarked and given the maximum financial score of 100%. The formula for determining the scores of all other proposals is calculated as following:

3.4 Final Evaluation

3.4.1 The Bids will finally be ranked according to their combined technical (ST) and financial (SF) scores as follows:

$$S = ST \times Tw + SF \times Fw$$

Where S is the combined score, and Tw and Fw are weights assigned to Technical Bid and Financial Bid, which shall be 0.80 and 0.20, respectively.

3.4.2 The Bidders shall be ranked on the basis of their Bids and the Advance Chemistry Cell capacities shall be allocated in order of their ranking, with the Bidder ranked 1st (first) being allocated the capacity first, and the remaining capacities shall be allocated to the Bidder ranked 2nd (Second), so on and so forth till a cumulative capacity of 10 (ten) GWh per year has been allocated.

It is clarified that shortlisted Bidders that are not successful in securing allocation in the 10 (ten) GWh cumulative capacity shall be placed under a waiting list in the order of ranking. In case of Bidder(s) that are allocated capacity withdraws prior to the execution of the Programme Agreement, the available capacity shall be allocated to the Bidders in such waiting list in the priority of their ranking.

3.4.3 SCORING:

- Overall score for Company X = 80% x 0.8984 + 20% x 1.0000 = 0.9187
- Overall score for Company Y = 80% x 0.9348 + 20% x 0.9000 = 0.9278

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 Programme Agreement and Tripartite Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Programme Agreement or the Tripartite Agreement, the Government may reject a Bid, withdraw the LOA, or terminate the Programme Agreement or Tripartite Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, as the case may be, if it determines that the Bidder, 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 Government 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 Government under the Bidding Documents and/ or the Programme Agreement / Tripartite Agreement, or otherwise.
- 4.2 Without prejudice to the rights of the Government under Clause 4.1 hereinabove, if a Bidder is found by the Government to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or RFP issued by the Government during a period of 2 (two) years from the date on which such Bidder is found by the Government 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 Government who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Government, 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, any person in respect of any matter relating to the Project or the LOA, who at any time has been or is a financial or technical adviser of the Government 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 Government 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 A Pre-Bid Conference of the interested parties shall be convened at the designated date, time and place. Only those persons who have purchased the RFP document shall be allowed to participate in the Pre-Bid Conference. Bidders who have downloaded the RFP document from the Central Public Procurement Portal (www.eprocure.gov.in/eprocure/app) should transfer to bank account of IFCI Limited (as detailed at Appendix XII) the amount specified in Clause 1.2.1 towards the cost of the RFP process, through their representative attending the conference. A maximum of 3 (three) 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, the Bidders will be free to seek clarifications and make suggestions for consideration of the Government. The Government shall endeavor 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 New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Government, 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) shortlist or not shortlist any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the Government by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Government, 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 this RFP 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 Bid

(Refer Clause 2.15.2)

To,

Date:

.....
.....
.....

Sub: Bid for the.....Project

Dear Sir,

With reference to your RFP document dated , I/we, having examined the document and understood its contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

1. I/ We acknowledge that the Government will be relying on the information provided in the Bid and the documents accompanying such Bid of the Bidders for the aforesaid Project, and we certify that all information provided in the Bid and in Annexes I and II is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals. I/We will be solely responsible for any errors, omissions, or misstatements in our Bid submission.
2. This statement is made for the express purpose of qualifying as a Bidder for the aforesaid Project.
3. I/ We shall make available to the Government any additional information it may find necessary or require supplementing or authenticate the qualification statement.
4. I/ We acknowledge the right of the Government 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.
5. I/ We certify that in the last 3 (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.
6. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the RFP document, including any Addendum issued by the Government;
 - (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 RFP documents;
 - (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 document, in respect of any tender or request for proposal issued by or any agreement entered into with the Government or any other public sector enterprise or any government, Central or State;

- (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
 - (e) the undertaking given by us along with the Bid in response to the RFP document for the Project were true and correct as on the date of making the Bid and are also true and correct as on the Bid Due Date and I/ We shall continue to abide by them.
7. 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 2.6.1 of the RFP document.
 8. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the qualification criteria and meet(s) all the requirements as specified in the RFP document and am/ are qualified to submit a Bid.
 9. 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 shortlisting.
 10. 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.
 11. 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 GoI or convicted by a court.
 12. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government or any entity controlled by it, from participating in any project, and no bar subsists as on the date of Bid.
 13. 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 RFP, we shall intimate the Government of the same immediately.
 14. The Statement of Legal Capacity as per format provided at Annex-II in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of Consortium, as per format provided at Appendix II and III respectively of the RFP, are also enclosed.
 15. I/ We offer a Bid Security of Rs..... (Rupees only) to the Government in accordance with the RFP document.

16. The Bid Security in the form of a Bank Guarantee is attached.
17. In the event of my/ our being declared as the Selected Bidder, I/ we agree to execute the Programme Agreement 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.
18. The Subsidy has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Programme Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project.
19. The documents accompanying the Bid, as specified in the RFP document, have been submitted by uploading the scanned copies on the Central Public Procurement Portal for e-Procurement.
20. 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 is not awarded to me/ us or our Bid is not opened or rejected.
21. The Bid has been quoted by me/ us after taking into consideration all the terms and conditions stated in the RFP and all the conditions that may affect the implementation of the Project.
22. I/ We understand that the selected Bidder is an existing [*individual / LLP / fund / private entity / public entity / other international entities*] incorporated under applicable law.
23. 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 Government in connection with the selection of Bidders, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above-mentioned Project and the terms and implementation thereof.
24. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not a wilful defaulter to any lender, and that there are no major litigation pending or threatened against us which could cast a doubt on our ability or the suitability to undertake the Project.
25. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
26. I/ We certify that in terms of the RFP, my/our average Net Worth (in accordance with the RFP) is Rs. (Rupees.....).
27. I/ We shall keep this offer valid till [***].

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

Yours faithfully,

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

Place: Name and seal of the Bidder/ Lead Member

ANNEX-I

Particulars of the Bidder

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 Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
4. Particulars of the Authorised Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role	Percentage of equity in the Consortium
1.			
2.			
nth.			

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

Consortium:

Name of Bidder/ Member of Consortium:

No.	Criteria	Yes	No
1.	Has the Bidder/ constituent of the Consortium been barred by the Central/ State Government, or any entity controlled by it, from participating in any project?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid?		

7. A statement by the Bidder 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):

ANNEX-II

Statement of Legal Capacity

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

To,

Date:

.....
.....
.....

Dear Sir,

We hereby confirm that we/ our Members in the Consortium (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that (insert Member's name) will act as the Lead Member of our Consortium.⁴

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 RFP. 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.....

⁴ Please strike out whichever is not applicable.

ANNEX-III

Undertaking Statement of Legal Capacity

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

To,

Date:

.....
.....
.....

Dear Sir,

I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I/We hereby certify that this bidder is not from such a country and is eligible to be considered.

OR

I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I/We certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I/We hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached]

OR

I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I/We certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I/We hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached]

OR

I/We have read the clause regarding restrictions on procurement from a bidder having transfer of technology arrangement; I/We certify that this bidder does not have any transfer of technology arrangement requiring registration with the Competent Authority.

OR

I/We have read the clause regarding restrictions on procurement from a bidder having transfer of technology arrangement; I/We certify that this bidder has valid registration to participate in this procurement. [Where applicable, evidence of valid registration by the Competent Authority shall be attached]

OR

I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares

a land border with India; I/We certify that this vendor or bidder is not from such a country and does not have any specified transfer of technology from such a country or, if from such a country or if having specified transfer of technology from such a country has been registered with the Competent Authority; I/We hereby certify that this vendor or bidder fulfils all requirements in this regard and is eligible to be considered for procurement on Government e-Marketplace (GeM). [Where applicable, evidence of valid registration by the Competent Authority shall be attached]⁵

Yours faithfully,

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

For and on behalf of.....

⁵ Please strike out whichever is not applicable.

APPENDIX-II

Power of Attorney for signing of Application and Bid⁶

(Refer Clause 2.2.8)

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 shortlisting and submission of our Bid for the by the (the “Government”) including but not limited to signing and submission of all applications, Bids and other documents and writings, participate in Pre-Bid and other conferences and providing information/ responses to the Government, representing us in all matters before the Government, signing and execution of all contracts including the undertakings consequent to acceptance of our Bid, and generally dealing with the Government 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 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 2....

For

(Signature, name, designation, and address)

Witnesses:

1.

(Notarised)

2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

⁶ To be submitted in original.

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-III

Power of Attorney for Lead Member of Consortium⁷

(Refer Clause 2.2.8)

Whereas the (“the **Government**”) has invited Bids from interested parties for the Project (the “**Project**”).

Whereas, XXXX (collectively the “**Consortium**”) ⁸ being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) 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 M/s having our registered office at, (hereinafter collectively referred to as the “**Principals**”) ⁹ 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 shortlisting 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, 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 Government, 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 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.

⁷ To be submitted in original.

⁸ Please mention the details of all the Members of the Consortium.

⁹ Please mention the details of all the Members of the Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2.....

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

Witnesses:

- 1.
- 2.

.....

(Executants)

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

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.*
- *Also, 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

Net Worth of the Bidder

(Refer 2.2.3 (a) and 2.2.5 (a))

(in Rs.)

Bidder Type and Name (Name of Associate if the Net Worth is considered for Associate)	Registration Number/ Incorporation number of bidder (Associate if the Net Worth is considered for the Associate)	Net Worth (Rs. Crore)
Single entity Bidder / Lead Member of Consortium		

Name of the audit firm:

Seal of the audit firm:

Instructions:

1. 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).
2. The Net Worth provided shall be for the latest completed financial year, preceding the bidding. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, please refer to Clause 2.2.16 of the RFP.
3. The Bidder shall provide an auditor's certificate specifying the Net worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 2.2.5 (b) of the RFP.

In the event that credit is being taken for the experience of an Associate, as defined in Clause 2.2.1, Bidders should also provide a certificate in the format below:

Certificate from the Statutory Auditor/ Company Secretary regarding Associate[§]

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 Bidder/ Consortium Member/ Associate*) is held, directly or indirectly[‡], by..... (*name of Associate/ Bidder/ Consortium Member*). By virtue of the aforesaid shareholding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.1 of the RFP.

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

{ Describe the shareholding of the Bidder/ Consortium Member and the Associate. In the event the Associate is under common control with the Bidder/ Consortium Member, the relationship may be

Name of the audit firm:

Seal of the audit firm:

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

[§] In the event that the Bidder/ 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 shareholding, the intervening companies in the chain of ownership should also be Associates i.e., the shareholding in each such company should be more than 50% in order to establish that the chain of “control” is not broken.

APPENDIX-V

Format for Technical Bid

(Refer Clause 2.2.5 (d))

To

Date:

.....
.....
.....

Tel:

Fax:

Sub: "Bid for Qualification: ** Project"**

Dear Sir,

1. With reference to your RFP 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 hereby submit our Technical Bid, details of which have been provided in Annex I of this Appendix V.
3. I/We agree to keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
4. I/We agree and undertake to abide by all the terms and conditions of the RFP document. In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Member

ANNEX-I

Technical Bid

I/We (*Name of the Bidder*) hereby submit our Technical Bid, as follows:

Technical Bid					
		Committed Value Addition (%)		Committed Capacity (GWh)	
Year	Quarter	Weight	Committed Value Addition (%)	Weight	Committed Capacity (GWh)
Year 1	1	5		5	
	2	5		5	
	3	5		5	
	4	5		5	
Year 2	1	4		4	
	2	4		4	
	3	4		4	
	4	4		4	
Year 3	1	3		3	
	2	3		3	
	3	3		3	
	4	3		3	
Year 4	1	2		2	
	2	2		2	
	3	2		2	
	4	2		2	
Year 5	1	1		1	
	2	1		1	
	3	1		1	
	4	1		1	
Weight					

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

APPENDIX-VI

Format for Financial Bid

(Refer Clause 2.2.5 (d))

To

Date:

.....
.....
.....

Tel:

Fax:

Sub: “Bid for Qualification: ** Project”**

Dear Sir,

1. With reference to your RFP 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 hereby submit our Price Bid and quote the Subsidy for the Project as Rs. [***] /kWh.
3. I/We agree to keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
4. I/We agree and undertake to abide by all the terms and conditions of the RFP document. In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Member

B.G. No. Dated:

APPENDIX-VII

Bank Guarantee for Bid Security

(Refer Clause 2.2.6)

1. In consideration of you,, having its office at....., (hereinafter referred to as the “**Government**”, 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 [*name of the Bidder*] a [*individual / LLP / fund / private entity / public entity / other international entity as registered under applicable law*] 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 (hereinafter referred to as “**the Project**”) pursuant to the RFP document dated issued in respect of the Project and other related documents including without limitation the draft Programme Agreement (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 1.2.2 of the RFP document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Government an amount of Rs. 10,00,00,000 (Rupees ten crore only) (hereinafter referred to as the “**Guarantee**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Government stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Government is disputed by the Bidder or not, merely on the first demand from the Government stating that the amount claimed is due to the Government by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. (Rupees only).
4. This Guarantee shall be irrevocable and remain in full force for a period of 270 (two hundred and seventy) 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 Government 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 Government 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 Government that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Government 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 Government shall be entitled to treat the Bank as the principal debtor. The Government shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Government, and the Bank shall not be released from its liability under these presents by any exercise by the Government 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 Government or any indulgence by the Government to the said Bidder 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 the Government 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 the Government 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 the Government 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). The Bank shall be liable to pay the said amount or any part thereof only if the Government serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [(indicate date falling 270 days after the Bid Due Date)].

Signed and Delivered by Bank

By the hand of Mr./Ms, itsand authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

APPENDIX- VIII

Instructions for Online Submission

Guidelines for hassle free Bid Submission

Instructions to Bidders for the e-submission of the Bids online through the Central Public Procurement Portal for e-Procurement [***]

Non submission of bids due to any reasons within due date / time following due process prevalent at that time in the portal for which bidder shall be held solely responsible. Neither National Informatics Centre nor concerned Procuring Entity will be held responsible for the same in any manner.

The following information helps bidders in overcoming last minute hassles and guide towards successful bid submission.

1. **System readiness:**

- (a) Bidders are advised to keep ready well in advance, their computer system in order like Original Operating System having sufficient RAM, high speed internet connectivity like broad band, with network providing static IP (avoid using mobile data/network), right internet browser, right Java Runtime Environment, unrestricted access to the eProcurement portal from the bidder computer system. Bidders are also advised to procure and keep ready well in advance valid Digital Signature Certificate (Signing) of Class III issued by CA under CCA India.
- (b) To know about prevalent system requirements, portal enrollment and online bidding and other procedures, bidders can avail Help Desk facility. Bidders are also advised to refer FAQs, Bidder Manual Kit, System Malfunction Procedure available on the portal in addition to the instructions provided in the Tender.

2. **Portal Enrollment/registration:**

- (a) Bidders are advised to complete well in advance online enrollment / registration in the portal by following due process prevalent at that time.

3. **Bid Submission:**

- (a) The server time (which is displayed on the bidders' dashboard) shall be considered as the standard time for referencing the deadlines for submission of the document by the bidders.
- (b) Bidder, in advance, should go through the notice inviting tender / advertisement, tender & its related document(s) carefully to understand the requirements of the tender and various documents that are required to be submitted as part of the bid.
- (c) In case of any clarifications pertaining to the tender, bidders are advised to check with concerned procuring authority in advance so that they can participate in the tender well within scheduled due date/time. Regarding any clarifications on the technical related matter in using the portal, same may kindly be get clarified from help desk facility or any other established technical support mechanism prevalent at that time.

- (d) Bidder, in advance should get ready with the required bid document(s) having correct file format / acceptable file name / optimal file size that are acceptable for online bid submission.
- (e) Generally, the permitted file format in the portal are pdf / xls / rar/ dwf/ jpg formats. File name should not contain special characters like &,comma etc. File size of the bid documents can be reduced by scanning of bid documents with 100 dpi with black and white option and also some time it may require to increase local Java Runtime Environment memory at bidder end computer, while uploading bid document having huge size.
- (f) Mail/SMSs alerts are in-built in the eProcurement portal as an additional feature to inform procuring entities as well as bidders on various events that are happening in the portal. However, delivery of such mail/sms to concerned individual will always depends on the configuration of individual account in the portal, receiver's mail / sms server, mail box / mobile and other factors. Hence, bidders are also advised to visit the website/portal regularly till bid submission due date/time to keep themselves updated and to act upon with respect to changes/modification deemed fit in any manner carried out in the tender by concerned procuring authority.
- (g) As bidder have been provided with the facility to submit bid documents at any time and also resubmit any number of times till bid submission due date/time, bidders are advised to submit their bid complete in all respect (free from virus/uncorrupted file/ correct file format/ right file size capable enough to upload from the bidder system) well in advance before the last date/time of the bid submission to avoid the last minute hassles.
- (h) Most importantly bidders are advised to get an acknowledgement containing Bid ID along with other vital information indicating successful submission of bids from the portal by following due process (like Freezing of Bid).
- (i) If a bidder withdraws their already submitted bid against a tender in the portal, then the bidder will not be allowed to participate in the same tender once again.
- (j) The bid documents submitted by the bidders are encrypted using PKI Technology involving digital signature certificates of pre-designated bid openers of the procuring entity to ensure the secrecy of the data. The encrypted bids are stored safely and securely in the server. Only designated bid openers shall be able to decrypt and open the bid on or after the pre-defined bid opening date/time. These assure bidders that their bids are kept confidential, safe and secure.
- (k) Bidders are advised to complete the online payment (if applicable) for Tender Fee, EMD and other fees well in advance at least one day in advance prior to the bid submission due date/time.
- (l) In case exemption is claimed on account of Tender Fee/EMD/others, then the bidders are advised to doubly check all entries and ensure exemption details are correctly entered. The exemption details cannot be changed once it is confirmed by clicking on "Confirm" button or any process prevalent at that time and leaving that page.
- (m) As the banker of the bidder will take their own time for payment processing / clearing, the bidder can use the "Payment Verification" button or any other process prevalent at that time to check the completion of the online payment process from the bank to the eProcurement portal. Only upon successful receipt of online payment, bidder can be able to freeze / finally

submit their bid to the procuring entity and get bid acknowledgment regarding successful bid submission.

- (n) All users have to note that after logging into the portal, if the user is not doing anything in the portal i.e idle for more than 20 minutes continuously then the system will automatically logout the user and they will have to login again to carry out any activity in the portal.

APPENDIX- IX

GFR Order

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

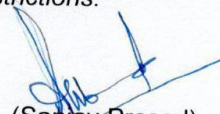
161, North Block,
New Delhi
23rd July, 2020

Office Memorandum

Subject: Insertion of Rule 144 (xi) in the General Financial Rules (GFRs), 2017

Rule 144 of the General Financial Rules 2017 entitled 'Fundamental principles of public buying', has been amended by inserting sub-rule (xi) as under:

Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.



(Sanjay Prasad)
Joint Secretary (PPD)
Email ID: js.pfc2.doe@gov.in
Telephone: 011-23093882

To,
(1) Secretaries of All Ministries/ Departments of Government of India
(2) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

No.F.7/10/2021-PPD (1)
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division

264-C, North Block, New Delhi.
23.02.2023.

Order (Public Procurement No. 4)

Subject: Restrictions under Rule 144(xi) of the General Financial Rules (GFRs), 2017.

Attention is invited to Order (Public Procurement No. 1) issued vide F.6/18/2019-PPD dated 23.07.2020, Order (Public Procurement No. 2) issued vide F.6/18/2019-PPD dated 23.07.2020, Order (Public Procurement No. 3) issued vide F.6/18/2019-PPD dated 24.07.2020, Office Memorandum (OM) No. F.18/37/2020-PPD dated 08.02.2021, OM No. F.12/1/2021-PPD(Pt.) dated 02.03.2021 and OM No. F.7/10/2021-PPD dated 08.06.2021. In this regard, the following is hereby ordered under Rule 144(xi) (as amended vide OM No. F.7/10/2021-PPD dated 23.02.2023) on the grounds stated therein, in supersession to all of the above mentioned Orders/ clarifications:

Requirement of registration:

2. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in **Annexure I**.
3. Any bidder (including an Indian bidder) who has a Specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in **Annexure I**.
4. The requirement of registration for cases covered by paragraph 2 above has been applicable since 23.07.2020. The requirement of registration for bidders covered by paragraph 3 above will be applicable for all procurements where tenders are issued/ published after 01.04.2023.
5. In tenders issued after 23.07.2020 or 01.04.2023, as the case may be, the provisions of requirement of registration of bidders and of other relevant provisions of this Order shall be incorporated in the tender conditions.

Applicability:

6. Apart from Ministries/ Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, the Order shall also be applicable

- a) to all Autonomous Bodies;
 - b) to all public sector banks and public sector financial institutions;
 - c) to all Central Public Sector Enterprises;
 - d) to all procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings; and
 - e) Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof.
7. This order will not be applicable for cases falling under **Annexure II**.

Definitions:

8. "*Bidder*" for the purpose of the Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
9. "*Tender*" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
10. "*Transfer of Technology*" means dissemination and transfer of all forms of commercially usable knowledge such as transfer of know-how, skills, technical expertise, designs, processes and procedures, trade secrets, which enables the acquirer of such technology to perform activities using the transferred technology independently. (Matters of interpretation of this term shall be referred to the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade, and the interpretation of the Committee shall be final.)
11. "*Specified Transfer of Technology*" means a transfer of technology in the sectors and/ or technologies, specified in paragraph 15, occurring on or after 23.07.2020.
12. "*Bidder (or entity) from a country which shares a land border with India*" for the purpose of the Order means
- (a) An entity incorporated, established or registered in such a country; or
 - (b) A subsidiary of an entity incorporated, established or registered in such a country; or
 - (c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - (d) An entity whose beneficial owner is situated in such a country; or
 - (e) An Indian (or other) agent of such an entity; or
 - (f) A natural person who is a citizen of such a country; or

(g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

13. *Beneficial owner* for the purposes of Para 12 (d) will be as under:

(i) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.

Explanation:-

a. "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;

b. "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

(ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

(iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

(iv) Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

(v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

14. "*Agent*" for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.

[Note:

i. A person who procures and supplies finished goods from an entity from a country which shares a land border with India will, regardless of the nature of his legal or commercial relationship with the producer of the goods, be deemed to be an Agent for the purpose of this Order.

ii. However, a bidder who only procures raw material, components etc. from an entity from a country which shares a land border with India and then manufactures or converts them into other goods will not be treated as an Agent.]

Sensitive Sectors/ Technologies (relevant only for the provisions on ToT arrangements):

15. (i) Certain sectors and technologies have been identified as sensitive from the national security point of view. The sectors listed in Schedule I to this Order are considered Category-I sensitive sectors. The sectors listed in Schedule II to this Order are considered Category-II sensitive sectors. The technologies listed in Schedule III are considered sensitive technologies.

(ii) For Category-I sensitive sectors, bidders with ToT arrangement in any technology with an entity from a country which shares a land border with India shall require registration.

(iii) For Category-II sensitive sectors, bidders with ToT arrangement in the sensitive technologies listed in Schedule III, with an entity from a country which shares a land border with India shall require registration.

(iv) In Category-II sensitive sectors, the Secretary (or an officer not below the rank of Joint Secretary to Government of India, so authorized by the Secretary) of the Ministry/ Department of the Government of India is empowered, after due consideration, to waive the requirement of registration for a particular item/ application or a class of items/ applications from the requirement of registration, even if included in Schedule III. The Ministry/ Department concerned shall intimate the Department for Promotion of Industry and Internal Trade (DPIIT) and National Security Council Secretariat (NSCS) of their decision to waive the requirement of registration. Ministries/ Departments of the Government of India are not required to consult the DPIIT/ NSCS before deciding and are only required to intimate the decision to DPIIT/ NSCS. If any point is raised by DPIIT/ NSCS, it should be considered in future procurements; ongoing procurement for which the waiver was granted need not be interrupted or altered.

16. Based on security considerations, a Ministry/ Department in a Category II sensitive sector or other Ministries/ Departments may recommend to DPIIT inclusion of any other technology in the list of sensitive technologies, either generally or for their Ministry/ Department.

Sub-contracting in works contracts

17. In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in paragraph 12 above. This shall not apply to sub-contracts already awarded on or before 23.07.2020.

[Note: Procurement of raw material, components, etc. does not constitute sub-contracting.]

Certificate regarding compliance

18. An undertaking shall be taken from bidders in the tender documents (**Annexure III**) that the extant guidelines for participation in the tenders (which should include conditions for implementation of this Order) have been complied with. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for debarment and further legal action in accordance with law.

Validity of registration

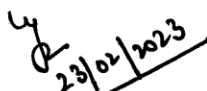
19. In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

Government e-Marketplace (GeM)

20. GeM shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

Model Clauses/ Certificates

21. Model Clauses and Model Certificates which may be inserted in tenders/ obtained from Bidders are given at Annexure-III. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc.


(Kanwalpreet)
Director(PPD)

Tel.No. 2309 3811; email: kanwal.irss@gov.in

To

1. Secretaries of all Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
2. Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect to public enterprises.
3. Secretary, Department of Financial Services with a request to immediately reiterate these orders in respect to public sector and public sector financial institutions.
4. Secretary DPIIT with a request to take action as provided under Annexure I.
5. Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi.
6. CEO/ GeM with a request to ensure implementation of this order on GeM.

Schedule I**List of Category-I Sensitive sectors:**

Sr.No.	Sector
(i)	Atomic Energy
(ii)	Broadcasting/ Print and Digital Media
(iii)	Defence
(iv)	Space
(v)	Telecommunications

Schedule II**List of Category-II Sensitive sectors:**

Sr.No.	Sector
(i)	Power and Energy (including exploration/ generation/ transmission/ distribution/ pipeline)
(ii)	Banking and Finance including Insurance
(iii)	Civil Aviation
(iv)	Construction of ports and dams & river valley projects
(v)	Electronics and Microelectronics
(vi)	Meteorology and Ocean Observation
(vii)	Mining and extraction (including deep sea projects)
(viii)	Railways
(ix)	Pharmaceuticals & Medical Devices
(x)	Agriculture
(xi)	Health
(xii)	Urban Transportation

Schedule-III**List of Sensitive Technologies:**

Sr.No.	Sensitive Technologies
(i)	Additive Manufacturing (e.g. 3D Printing)
(ii)	Any equipment having electronic programmable components or autonomous systems (e.g. SCADA systems)
(iii)	Any technology used for uploading and streaming of data including broadcasting, satellite communication etc.
(iv)	Chemical Technologies
(v)	Biotechnologies including Genetic Engineering and Biological Technologies
(vi)	Information and Communication Technologies
(vii)	Software

ANNEXURE I

Competent Authority and Procedure for Registration

- A. The Competent Authority for the purpose of registration under this order shall be/ continue to be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)*. [This Committee was already constituted under Order (Public Procurement) No.1].
- B. The Registration Committee shall have the following members*:
- i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
 - iv. With effect from 01.04.2023, an officer (ordinarily not below the rank of Joint Secretary) representing the National Security Council Secretariat.
- C. DPIIT shall lay down the method of application, format etc. for such bidders as covered by the Order.
- D. On receipt of an application seeking registration from a bidder covered by Para 2 and 3 of this order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- E. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- F. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- G. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by the Central Government and its bodies specified in para 6 of this order, but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.
- H. The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will

not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.

- I. For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.

[*Note:

(i) In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government. However, the requirement of political and security clearance as per para D shall remain and no registration shall be granted without such clearance.

(ii) Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.]

ANNEXURE II

Special Cases

- A. In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in this order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
- B. This order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.
- C. This order will not apply to bidders (or entities) from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given on the website of the Ministry of External Affairs.
- D. Procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration.

ANNEXURE III

Model Clause/ Certificate/ Undertaking to be inserted in tenders etc.

[While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.

The conditions relating to specified ToT (as shown in italics) should be incorporated only in the tenders which attract the restrictions due to specified ToT.]

A. Model Clauses for Tenders (including tenders issued manually or any electronic portal including GeM):

I. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority. *Further, any bidder (including bidder from India) having specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India, shall also require to be registered with the same competent authority.*

II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

III. "Bidder (or entity) from a country which shares a land border with India" for the purpose of this Order means: -

- (a) An entity incorporated, established or registered in such a country; or
- (b) A subsidiary of an entity incorporated, established or registered in such a country; or
- (c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
- (d) An entity whose beneficial owner is situated in such a country; or
- (e) An Indian (or other) agent of such an entity; or
- (f) A natural person who is a citizen of such a country; or
- (g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

IV. The beneficial owner for the purpose of (iii) above will be as under:

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation—

a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;

b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

VII. The registration shall be valid at the time of submission of bid and at the time of acceptance of bid.

VIII. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution

Model Certificate for Tenders:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works involving possibility of sub-contracting:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any

work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model additional certificate by Bidders in the cases of specified ToT:

"I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that this bidder does not have any ToT arrangement requiring registration with the competent authority."

OR

"I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that this bidder has valid registration to participate in this procurement."

B. Model Certificate for GeM (to be taken by the GeM from seller during registration on GeM. GeM should also obtain this certificate from all existing bidders as soon as possible):

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country and does not have any specified Transfer of Technology (ToT) from such a country or, if from such a country or if having specified ToT from such a country has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

APPENDIX-X

Joint Bidding Agreement

(Refer Clause 2.2.10 (g))

(To be executed on Stamp paper of appropriate value)

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

AMONGST

1., a (*individual / LLP / fund / private entity / public entity / other international entity*) incorporated under applicable law 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., a (*individual / LLP / fund / private entity / public entity / other international entity*) incorporated under applicable law 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. { (*individual / LLP / fund / private entity / public entity / other international entity*) incorporated under applicable law and having its registered office at (hereinafter referred to as the “**XXXX Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}¹⁰

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

WHEREAS,

(A) The Government of India “**GoI**” through the Ministry of Heavy Industries, for the Programme for Advance Chemistry Cell Manufacturing and having its principal offices at [***] (hereinafter referred to as the “**Government**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) has invited applications (the “**Applications**”) by its Request for Proposal No.....dated (the “**RFP**”) for short-listing/selection of Bidders for the Project (the “**Project**”).

(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 RFP document and other Bid documents in respect of the Project, and

¹⁰ Please note that details of all the Members of the Consortium are required to be included in the Jt. Bidding Agreement.

- (C) It is a necessary condition under the RFP 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 RFP.

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 as the Selected Bidder and is awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act, 2013 for entering into a Programme Agreement with the Government and for performing all its obligations as the Beneficiary Firm in terms of the Programme Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles that the 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 Programme Agreement when all the obligations of the SPV shall become effective.

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 RFP and the Programme Agreement, till such time as the Appointed Date for the Project is achieved under and in accordance with the Programme Agreement.

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:

{XXXX 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 5th (fifth) anniversary of the Appointed Date, be held by the Party of the First Part whose qualification under the qualification criteria has been reckoned for the purposes of qualification and short listing of Bidders for the Project in terms of the RFP.
- 6.3 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Programme Agreement.

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, judgment, 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 Appointed Date of the Project is achieved under and in accordance with the Programme Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not prequalified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not shortlisted or upon return of the Bid Security by the Government 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 Government.

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

SIGNED, SEALED AND DELIVERED SIGNED, SEALED AND DELIVERED

For and on behalf of
LEAD MEMBER by:

SECOND PART:

(Signature)
(Name)
(Designation)
(Address)
(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED SIGNED, SEALED AND DELIVERED

For and on behalf of XXXX PART

(Signature)
(Name)
(Designation)
(Address)
(Signature)
(Name)
(Designation)
(Address)

In the presence of:

- 1.
- 2.

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- XI

Format for Letter of Award

(Refer Clause 2.30.3)

To
.....
.....
.....

Date:

Tel:

Fax:

Sub: Issuance of Letter of Award (the “**LOA**”) - Request for Proposal (“**RFP**”) for setting up an Advance Chemistry Cell manufacturing facility with domestic value-addition of minimum 25% (twenty-five percent) within 2 (two) years from the Appointed Date at the Mother Unit level and minimum 5 (five) GWh capacity with minimum 60% (sixty percent) Value Addition within 5 (five) years from the Appointed Date, overall at the mother unit level in case of an integrated unit, or at the project level, through indigenous manufacturers, in a hub and spoke structure, in conformity with the Technical Bid (“**Project**”).

Dear Sir,

Pursuant to the conclusion of the Bid evaluation process, we are pleased to inform you that the Bid of [***] is declared as the Selected Bidder for implementing the Project having quoted a Subsidy of INR [***] in their Financial Bid dated [***]. As per Clause 2.30.3 of the RFP, we are issuing this LOA and the same is subject to the following conditions:

1. That [insert name of Bidder] unconditionally accepts the LOA and shall record on the duplicate copy of the LOA, “Accepted Unconditionally”, under the signature of the Authorized Signatory of [insert name of Bidder] and return such copy to the Government within 7 (seven) days of issue of this LOA.
2. That [insert name of Bidder] shall achieve completion of various activities as stipulated in the RFP including but not limited to:
 - (a) Incorporate a special purpose vehicle (“**SPV**”) for execution of the Programme Agreement and implementation of the Project within [***] days from the date of this LOA.
 - (b) Within [***] days of the receipt of the LOA, execute the Tripartite Agreement.
 - (c) Within [***] days of the receipt of the duplicate copy of this LOA by the Authority, procure execution of the Programme Agreement.

The Government may exercise its rights under the RFP, including rights available under Clause 2.23.5 thereof, in the event [insert name of Bidder] fails to comply with its obligations as specified in the RFP.

Yours faithfully,

Date:

(Signature of the Authorised signatory of the Government)

(Name and designation of the of the Authorised signatory of the Government)

Place:

APPENDIX- XII

Details of the Bank Account

Details of the bank account for transferring cost of the RFP process:

Bank Account Number	:	5184863459
Account/ Beneficiary Name:	:	IFCI-PLI-ACC
Bank Name	:	Central Bank of India
Bank Branch Address	:	59, Shakuntala Building, Nehru Place, New Delhi-110019
9 Digit (MICR) Code Number of the Bank & Branch	:	110016051
Account Type	:	Current Account
Bank and Branch Code/ BSR Code	:	1410
IFSC Code (Indian Financial System Code)	:	CBIN0281410
SWIFT Code	:	CBININBBNEH

APPENDIX- XIII

Integrity Pact

Subject: Integrity compliance to be furnished in relation to production linked incentive scheme.

(To be signed by the authorised representative of the Bidder duly depicting the designation and submitted on the letterhead of the Bidder along- with the authorization to do so)

1. Whereas, the Bidder namely (*name of the Bidder with address*) has submitted a Bid under the National Programme on Advance Chemistry Cell Battery Storage (“**Programme**”) to Ministry of Heavy Industries, Government of India (“**Government**”) seeking Subsidy for manufacturing Advance Chemistry Cell
2. Now, therefore, the Bidder including its officers / representatives commits and undertakes that it will take all measures necessary to prevent corruption. It commits to observe the following principles during its association/ engagement with the Government or its agencies or its consultants engaged with the process of appraisal and verification of the Bid, for the approval of the Bid and disbursement of Subsidy under the Programme.
 - The Bidder will not directly or through any other person or firm, offer, promise or give to any of the Government’s officer(s) or consultant or agency representative (appraisal or / and verification agency appointed by the Government to handle the Bid) involved in the process of dealing with the Bid or to any third person any material or other benefit which it is not legally entitled to in order to obtain in exchange any advantage of any kind whatsoever before or during or after the process of the Bid for grant of approval or disbursement of Subsidy under the Programme.
 - The Bidder will not commit any offence under the applicable laws. Further, the Bidder will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Government.
 - The Bidder shall disclose the name and address of the duly authorised agents / representatives who will be dealing with the Government or its agencies and the remuneration of these agents or representatives shall not include any hidden amount or component to get the work done in undue manner or causing inducement of whatsoever nature whether in cash or kind to influence the normal process or practice of work.
 - The Bidder will not offer any illicit gratification to obtain unfair advantage.
 - The Bidder will not collude with other parties to impair transparency and fairness.
 - The Bidder will not give any advantage to anyone in exchange for unprofessional behaviour.
3. The Bidder declares that no previous transgressions occurred in the last 3 (three) years with any other company in any country conforming to the anti-corruption approach or with any other public sector enterprise/ Central or State Government or its any instrumentality in India.
4. The Bidder agrees that if it is found that the Bidder has made any incorrect statement on this subject, the Bid of the Bidder will be closed or rejected and the Government reserves the right to initiate legal action of whatsoever nature. In case if the Government has disbursed the

Subsidy under the Programme, the amount disbursed to the Bidder shall be recoverable along with interest calculated at 3 (three) years SBI MCLR prevailing on the date of disbursement, compounded annually besides blacklisting of the Bidder and initiation of legal action of whatsoever nature at the discretion of the Government.

The contents of the above undertaking have been gone through and after understanding the same is being executed / given on.....day of (month / year).

Signature

(Name & designation with address)

APPENDIX- XIV

Draft Programme Agreement

[Attached separately]

APPENDIX- XV

Draft Tripartite Agreement

[Attached separately]