

Model

Request For Proposal

for

Power Supply Agreement

Government of India

For official use only

TABLE OF CONTENTS

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

2.18	Confidentiality	15
2.19	Correspondence with the Bidder	16
D	Bid Security	16
2.20	Bid Security	16
3	Evaluation of Bids	18
3.1	Opening and Evaluation of Bids	18
3.2	Tests of responsiveness	18
3.3	Selection of Bidder	18
3.4	Contacts during Bid Evaluation	19
3.5	Bid Parameter	20
4	Fraud and Corrupt Practices	22
5	Pre-Bid Conference	24
6	Miscellaneous	25
 Appendices		
I	Letter comprising the Bid	26
II	Bank Guarantee for Bid Security	31
III	Power of Attorney for signing of Bid	34
IV	Power of Attorney for Lead Member of Consortium	36
V	Guidelines of the Department of Disinvestment	39
VI	List of Bid-specific Clauses	41
VII	List of Project-specific Clauses	42

Model
Request for Proposal (RFP)

[NAME AND ADDRESS OF THE UTILITY]

LETTER OF INVITATION

Dated

To,

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

Sub: RFP for ***** Project

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the Signatory)

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

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 Utility 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 Utility 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 Utility in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Utility, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. 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 Utility accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Utility, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP 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 Stage.

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

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

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

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery

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

GLOSSARY

Associate	As defined in Clause 2.1.14
Bank Guarantee	As defined in Clause 2.20.1
Bid(s)	As defined in Clause 1.2.2
Bidders	As defined in Clause 1.2.2
Bidding Documents	As defined in Clause 1.1.7
Bid Due Date	As defined in Clause 1.1.7
Bidding Process	As defined in Clause 1.2.1
Bid Security	As defined in Clause 1.2.4
Bid Stage	As defined in Clause 1.2.1
[CIL	As defined in Clause 3.5.2]
Conflict of Interest	As defined in Clause 2.1.14
Contract	As defined in Clause 1.1.5
Damages	As defined in Clause 2.1. 14
BOO	As defined in Clause 1.1.1
Demand Draft	As defined in Clause 2.20.1
Government	Government of *****
Lowest Bidder	As defined in Clause 1.2.6
LOA	As defined in Clause 3.3.5
Member	Member of a Consortium
PSA	As defined in Clause 1.1.2
PPP	Public Private Partnership
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in the Disclaimer
RFQ	As defined in Clause 2.1.2
Selected Bidder	As defined in Clause 3.3.1
Supplier	As defined in Clause 1.1.2
Tariff	As defined in Clause 1.2.6
Utility	As defined in Clause 1.1.1

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein. The words and expressions beginning with capital letters and not defined herein, but defined in the RFQ, shall, unless repugnant to the context, have the meaning ascribed thereto therein.

Invitation for Proposal

[Name of Utility]

1. INTRODUCTION

1.1 Background²

1.1.1 The [***³ Distribution Company]⁴ (the “**Utility**”) is engaged in the distribution of electricity and as part of this endeavour, the Utility has decided to procure electricity on a long term basis from a power station (the “**Project**”) through Public Private Partnership (the “**PPP**”) on Build, Own and Operate (the “**BOO**”) basis, and has decided to carry out the bidding process for selection of a corporate entity as the Bidder to whom the contract may be awarded for production of electricity and supply thereof as per the terms and conditions specified in the Bidding Documents.

Brief particulars of the Project are as follows:

Capacity Required
(in MW)

**Period when supply must
commence**

[*** months from date of
RFQ]

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

1.1.3 The scope of work will broadly include designing, financing, operation and maintenance of the Power Station and supply of power in accordance with the terms in the PSA.

1.1.4 Applicants may bid for the [the capacity specified in Clause 1.1.1, or a part thereof, not being less than 25% (twenty five per cent) of such capacity.

² Serially numbered footnotes are for guidance of the Utility and should be omitted prior to issue of RFP. Footnotes marked in non-numerical characters shall be retained in the RFP.

³ Wherever asterisk is used, it should be substituted by project-specific details prior to issue of RFP.

⁴ All project-specific provisions in this document have been enclosed in square parenthesis and may be modified, as necessary. The square parenthesis should be removed after carrying out the required modifications. The curly parenthesis including the provisions contained therein, and all blank spaces shall be retained in the RFP document to be issued to the Bidders. They should be suitably modified/filled up by the respective Bidders to reflect the particulars relating to such Bidders.

Provided, however, that the Utility may, in its sole discretion, accept only those Bids which match the lowest Bid]⁵.

- 1.1.5 The PSA sets forth the detailed terms and conditions for grant of the contract to the Supplier, including the scope of the Supplier's services and obligations (the "**Contract**").
- 1.1.6 The statements and explanations contained in this RFP 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 and obligations of the Supplier set forth in the PSA or the Utility's rights to amend, alter, change, supplement or clarify the scope of work, the Contract to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including 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 Utility.
- 1.1.7 The Utility shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Utility pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Utility (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").

1.2 Brief description of Bidding Process

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

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

- 1.2.2 In the Bid Stage, the aforesaid short-listed Applicants, including their successors, (the "**Bidders**", which expression shall, unless repugnant to the context, include the Members of the Consortium) are being called upon to submit their financial offers (the "**Bids**") in accordance with the terms specified in the Bidding Documents. The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of bids (the "**Bid Due Date**").

⁵ The Utility may suitably modify this Clause depending on its own requirements.

- 1.2.3 The Bidding Documents include the draft PSA for the Project [which is enclosed/ which will be provided to the Bidders on or near about ***]⁶. Subject to the provisions of Clause 2.1.3, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- 1.2.4 A Bidder is required to deposit, along with its Bid, a bid security of [Rs 5 lakh (Rupees five lakh) per MW of capacity offered by the Bidder]⁷ (the "**Bid Security**"), refundable not later than 60 (sixty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the PSA. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Utility, and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5 During the Bid Stage, Bidders are invited to examine the Bidding Documents in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Contract including implementation of the Project.
- 1.2.6 Bids are invited for the Project on the basis of a tariff to be offered by a Bidder for and in respect of the Project. For the purposes of evaluation hereunder, the Fixed Charge [and Fuel Charge] will constitute the tariff for the Power Station (the "**Tariff**"). The contract period shall be pre-determined and specified in the Bidding Documents.
- In this RFP, the term "**Lowest Bidder**" shall mean the Bidder who is offering the lowest Tariff.
- 1.2.7 Generally, the Lowest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Lowest Bidder, the Utility may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.
- 1.2.8 Further and other details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP.
- 1.2.9 Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax and e-mail to the officer designated in Clause

⁶ The PSA should either be provided along with the RFP or at least 45 days before the Bid Due Date and 21 days before the Pre-Bid Conference.

⁷ The Utility may, if deemed necessary, prescribe a higher bid security not exceeding Rs. 7.5 lakh per MW. It may also reduce the bid security, but not less than Rs 3 lakh per MW, in any case.

2.11.5 below. The envelopes/ communication shall clearly bear the following identification/ title:

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

1.3 Schedule of Bidding Process

The Utility shall endeavour to adhere to the following schedule:

Event Description	Date
1. Last date for receiving queries	[25 days from the date of RFP]
2. Pre-Bid meeting-1	[To be specified]
3. Utility response to queries latest by	[35 days from the date of RFP]
4. [Pre-Bid meeting-2] ⁸	[To be specified]
5. Bid Due Date	[To be specified] On Bid Due Date [at least 45 days from the date of RFP]
6. Opening of Bids	Within 30 days of Bid Due Date
7. Letter of Award (LOA)	120 days of Bid Due Date
8. Validity of Bids	Within 30 days of award of LOA
9. Signing of PSA	

⁸ In case of complex projects, the number of pre-bid meetings could be more than two. For repetitive projects, one Pre-bid meeting would suffice.

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1. General terms of Bidding

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

- 2.1.10 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix–IV.
- 2.1.11 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.12 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.13 The documents including this RFP and all attached documents, provided by the Utility are and shall remain or become the property of the Utility and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.13 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Utility will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.14 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Utility shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Utility and not by way of penalty for, *inter alia*, the time, cost and effort of the Utility, including consideration of such Bidder’s proposal (the “**Damages**”), without prejudice to any other right or remedy that may be available to the Utility under the Bidding Documents and/ or the PSA or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956. For the purposes of this Clause 2.1.14, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”)

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

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

Explanation:

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

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

2.1.15 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Utility in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project

during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the PSA. In the event any such adviser is engaged by the Selected Bidder or Supplier, as the case may be, after issue of the LOA or execution of the PSA for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the PSA and without prejudice to any other right or remedy of the Utility, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Utility may have thereunder or otherwise, the LOA or the PSA, as the case may be, shall be liable to be terminated without the Utility being liable in any manner whatsoever to the Selected Bidder or Supplier for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFQ for the Project. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of this Project.

2.1.16 This RFP is not transferable.

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

2.1.18 [Other Bid conditions shall include:***]⁹

[(a) The Bidder, in case it does not have the O&M experience specified in Clause 2.2.3 of the RFQ, by submitting its Bid, shall be deemed to acknowledge and agree that for a period of at least 5 (five) years from the date of commercial operation of the Project, it shall enter into an operation & maintenance (O&M) agreement with an entity having the specified experience, failing which the PSA shall be liable to termination].

2.2 Change in composition of the Consortium

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

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

⁹ Other Project specific conditions of bidding or restrictions, if any, may be stated here, such as a limit on the number of projects which may awarded to a Bidder.

- 2.2.2 Approval for change in the composition of a Consortium shall be at the sole discretion of the Utility and must be approved by the Utility in writing. The Bidder must submit its application for change in composition of the Consortium no later than 15 (fifteen) days prior to the Bid Due Date.
- 2.2.3 The modified/ reconstituted Consortium shall submit a revised Jt. Bidding Agreement and a Power of Attorney, substantially in the form at Appendix-IV, prior to the Bid Due Date.

2.3 Change in Ownership

- 2.3.1 By submitting the Bid, the Bidder acknowledges that it was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members who shall, until the 2nd (second) anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Supplier; and (ii) 5% (five per cent) of the Total Project Cost specified in the PSA. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the PSA, and a breach hereof shall, notwithstanding anything to the contrary contained in the PSA, be deemed to be a breach of the PSA and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.3.1 shall apply only when the Bidder is a Consortium.
- 2.3.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Utility forthwith along with all relevant particulars about the same and the Utility may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the PSA but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the PSA, be deemed to be a breach of the PSA, and the same shall be liable to be terminated without the Utility being liable in any manner whatsoever to the Supplier. In such an event, notwithstanding anything to the contrary contained in the PSA, the Utility shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Utility under the Bidding Documents and/ or the PSA or otherwise.

2.4 Cost of Bidding

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

2.5 Verification of information

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

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

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Utility;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Utility relating to any of the matters referred to in Clause 2.5.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Utility, or a ground for termination of the PSA by the Supplier;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

2.6 Verification and Disqualification

2.6.1 The Utility reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFQ, the RFP or the Bidding Documents and the Bidder shall, when so required by the Utility, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such

verification, by the Utility shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Utility thereunder.

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

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

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

- (i) invite the remaining Bidders to submit their Bids in accordance with Clauses 3.3.3 and 3.3.4; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Utility, including annulment of the Bidding Process.

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

B. DOCUMENTS

2.7 Contents of the RFP

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

Invitation for Bids

Section 1. Introduction

- Section 2. Instructions to Bidders
- Section 3. Evaluation of Bids
- Section 4. Fraud and Corrupt Practices
- Section 5. Pre-Bid Conference
- Section 6. Miscellaneous

Appendices

- I. Letter comprising the Bid
- II. Bank Guarantee for Bid Security
- III. Power of Attorney for signing of Bid
- IV. Power of Attorney for Lead Member of Consortium
- V. Guidelines of the Department of Disinvestment

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

2.8 Clarifications

2.8.1 Bidders requiring any clarification on the RFP may notify the Utility in writing or by fax and e-mail in accordance with Clause 1.2.10. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Utility shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be sent by fax or e-mail. The Utility will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

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

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

2.9 Amendment of RFP

2.9.1 At any time prior to the Bid Due Date, the Utility may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.

- 2.9.2 Any Addendum issued hereunder will be in writing and shall be sent to all the Bidders.
- 2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Utility may, in its sole discretion, extend the Bid Due Date[§].

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

- 2.10.1 The Bidder shall provide all the information sought under this RFP. The Utility will evaluate only those Bids that are received in the required formats and complete in all respects.
- 2.10.2 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.

2.11 Sealing and Marking of Bids

- 2.11.1 The Bidder shall submit the Bid in the format specified at Appendix-I, and seal it in an envelope and mark the envelope as “BID”.
- 2.11.2 The documents accompanying the Bid shall be placed in a separate envelope and marked as “Enclosures of the Bid”. The documents shall include:
- (a) Bid Security in the format at Appendix–II;
 - (b) Power of Attorney for signing of Bid in the format at Appendix–III;
 - (c) If applicable, the Power of Attorney for Lead Member of Consortium in the format at Appendix–IV; and
 - (d) A copy of the PSA with each page initialled by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (b) hereinabove.
- 2.11.3 A true copy of the documents accompanying the Bid, as specified in Clause 2.11.2 (a), (b) and (c) above, shall be bound together in one hard cover and a copy of the PSA as specified in Clause 2.11.2 (d) shall be bound in another hard cover. The pages in each hard cover shall be numbered serially and every page shall be initialled in blue ink by the authorised signatory of the Bidder. This copy of the documents shall be placed in a separate envelope and marked “Copy of Documents”.

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

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

“Bid for the ***** Project”

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

2.11.5 Each of the envelopes shall be addressed to:

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

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

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

2.12 Bid Due Date

2.12.1 Bids should be submitted before 1100 hours IST on the Bid Due Date at the address provided in Clause 2.11.5 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.5.

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

2.13 Late Bids

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

2.14 Contents of the Bid

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

- 2.14.2 Generally, the Project will be awarded to the Lowest Bidder.
- 2.14.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.
- 2.14.4 The proposed PSA shall be deemed to be part of the Bid.

2.15 Modifications/ Substitution/ Withdrawal of Bids

- 2.15.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Utility prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.
- 2.15.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.11, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- 2.15.3 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Utility, shall be disregarded.

2.16 Rejection of Bids

- 2.16.1 Notwithstanding anything contained in this RFP, the Utility reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Utility rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.16.2 The Utility reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.17 Validity of Bids

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

2.18 Confidentiality

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

entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Utility or as may be required by law or in connection with any legal process.

2.19 Correspondence with the Bidder

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

D. BID SECURITY

2.20 Bid Security

- 2.20.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.7 and 2.1.8 hereinabove in the form of a bank guarantee issued by a nationalised bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. one thousand crore), in favour of the Utility in the format at Appendix-II (the “**Bank Guarantee**”) and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 2.20.2 Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Utility and payable at [Delhi] (the “**Demand Draft**”). The Utility shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.20.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Utility as non-responsive.
- 2.20.4 Save and except as provided in Clauses 1.2.4 and 1.2.5 above, the Bid Security of unsuccessful Bidders will be returned by the Utility, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Utility, and in any case within 60 (sixty) days from the Bid Due Date. Where Bid Security has been paid by deposit, the refund thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Utility give the name and address of the person in whose favour the said demand draft shall be drawn by the Utility for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.
- 2.20.5 The Selected Bidder’s Bid Security will be returned, without any interest, upon the Supplier signing the PSA and furnishing the Performance Security in accordance with the provisions thereof. The Utility may, at the Selected Bidder’s option, adjust the amount of Bid Security in the amount of

Performance Security to be provided by him in accordance with the provisions of the PSA.

2.20.6 The Utility shall be entitled to forfeit and appropriate the Bid Security as Damages *inter alia* in any of the events specified in Clause 2.20.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Utility will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.

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

- (a) If a Bidder submits a non-responsive Bid;
- (b) If 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) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Utility;
- (d) In the case of Selected Bidder, if it fails within the specified time limit-
 - (i) to sign and return the duplicate copy of LOA;
 - (ii) to sign the PSA; or
 - (iii) to furnish the Performance Security within the period prescribed therefor in the PSA; or
- (e) In case the Selected Bidder, having signed the PSA, commits any breach thereof prior to furnishing the Performance Security.

3. EVALUATION OF BIDS

3.1 Opening and Evaluation of Bids

3.1.1 The Utility shall open the Bids at 1130 hours on the Bid Due Date, at the place specified in Clause 2.11.5 and in the presence of the Bidders who choose to attend.

3.1.2 The Utility will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.

3.1.3 To facilitate evaluation of Bids, the Utility may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.2 Tests of responsiveness

3.2.1 Prior to evaluation of Bids, the Utility shall determine whether each Bid is responsive to the requirements of this RFP. A Bid shall be considered responsive only if:

- (a) it is received as per the format at Appendix-I;
- (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.12.2;
- (c) it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.10 and 2.11;
- (d) it is accompanied by the Bid Security as specified in Clause 2.1.7;
- (e) it is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.9 and 2.1.10, as the case may be;
- (f) it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
- (g) it does not contain any condition or qualification; and
- (h) it is not non-responsive in terms hereof.

3.2.2 The Utility reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Utility in respect of such Bid.

3.3 Selection of Bidder

3.3.1 Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2.1 and who quotes the lowest Tariff offered to the Utility in conformity with the provisions of Clause 3.5 shall be declared as the selected Bidder (the “**Selected Bidder**”). In the event that the

Utility rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

- 3.3.2 In the event that two or more Bidders quote the same amount of Tariff (the "**Tie Bidders**"), the Utility 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.
- 3.3.3 In the event that the Lowest Bidder withdraws or is not selected for any reason in the first instance (the "**first round of bidding**"), the Utility may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Lowest Bidder (the "**second round of bidding**"). If in the second round of bidding, only one Bidder matches the Lowest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Lowest Bidder in the second round of bidding, then the Bidder whose Bid was lower as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth lowest Bidders in the first round of bidding offer to match the said Lowest Bidder in the second round of bidding, the said third lowest Bidder shall be the Selected Bidder.
- 3.3.4 In the event that no Bidder offers to match the Lowest Bidder in the second round of bidding as specified in Clause 3.3.3, the Utility may, in its discretion, invite fresh Bids (the "**third round of bidding**") from all Bidders except the Lowest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are lower than the Bid of the second lowest Bidder in the first round of bidding.
- 3.3.5 After selection, a Letter of Award (the "**LOA**") shall be issued, in duplicate, by the Utility to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Utility may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 3.3.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Supplier to execute the PSA within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the PSA.

3.4 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Utility makes official intimation of award/rejection to the Bidders. While the Bids are under consideration, Bidders and/

or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Utility and/ or their employees/ representatives on matters related to the Bids under consideration.

3.5 Bid Parameter

3.5.1 The Bid shall comprise the Tariff offered by the Bidder for production and supply of electricity to the Utility in accordance with the provisions of the PSA. The Tariff comprising the Bid shall be offered in accordance with the provisions of Clause 3.5.2.¹⁰

3.5.2 [(a) Since the Bidder is expected to source concessional fuel from Coal India Limited or a subsidiary thereof (the “CIL”), the cost of Fuel which shall be included in the Fuel Charge shall be a ‘pass through’ in accordance with the terms of the PSA. However, the element of coal transportation and transmission losses may vary from case to case and shall affect the Fuel Charge offered by each Bidder. The Bid for the Project shall, therefore, comprise the Fixed Charge and Fuel Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder.]

[(b) Since the Bidder is expected to source fuel from captive mines separately allotted to it by a Governmental Instrumentality, the Bid for the Project shall be the Tariff comprising the Fixed Charge and Fuel Charge which shall be specified separately. As a condition of bidding, the Fuel Charge to be offered by the Bidder shall not exceed Rs.*** per kWh and shall not be lower than Rs.*** per kWh¹¹. The Bidder seeking the lowest Tariff shall be the Selected Bidder.]

[(c) Since the Bidder is expected to source Fuel through imports, the Fuel Charge shall be a ‘pass through’. For the purposes of submission of Bids, the Bidders may assume a Fuel cost equal to Rs. *** per¹² KWh on the express understanding that the actual cost of Fuel shall be a “pass through” in accordance with the terms of the PSA. However, the element of coal transportation and transmission losses may vary from case to case and shall affect the Fuel Charge offered by each Bidder. The Bid for the Project shall, therefore, comprise the Fixed Charge and Fuel Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder.]

[(d) Since the Bidder is expected to source fuel through imports from captive mines situated outside India, the Bid for the Project shall be the Tariff comprising the Fixed Charge and the Fuel Charge which shall be specified

¹⁰ Depending upon the choice of Fuel source, only the applicable Sub-clause may be retained and the remaining Sub-clauses should be omitted. However, in case the Fuel to be procured under Sub-clause (a) is to be supplemented by imported Fuel, the Utility may retain both Sub-clause (a) and Sub-clause (d).

¹¹The Utility shall specify the ceiling, but it may, in its discretion, also specify the floor for the Fuel Charge at RFP stage.

¹² The Utility shall specify an indicative cost based on approximate market prices.

separately. As a condition of bidding, the Fuel Charge to be offered by the Bidder shall not exceed an amount that reflects [80% (eighty per cent)/ 85% (eighty five per cent)/ 90% (ninety per cent)]¹³ of the price of Fuel computed with reference to the average [API 4 Index (South Africa)][§] for a period of 180 (one hundred and eighty) days immediately preceding the date of Bid in accordance with Clause 22.2.2 of the draft PSA forming part of the Bid Documents. [Further, the Fuel Charge shall not be lower than an amount that reflects ***% (***) per cent) of the price of Fuel computed with reference to the aforesaid index]¹⁴. The Fuel Charge to be offered by the bidder shall be quoted in US cents per kWh. For the purposes of evaluation of the Bid, the exchange rate to be used for conversion into Indian Rupees shall be the mean of the buying and selling rate quoted by the State Bank of India on the closing of the working day that precedes the date of Bid. As specified in the PSA, the freight and transportation charges shall be payable separately in accordance with the provisions of Clause 22.2.4 thereof. The Bidder seeking the lowest Tariff shall be the selected Bidder.]

¹³ The relevant figure may be determined and retained by the Utility prior to invitation of Bids and the remaining figures shall be omitted.

[§] An alternative Index, if any, may be specified by the Utility prior to invitation of Bids.

¹⁴ The Utility shall specify the ceiling, but it may, in its discretion, also specify the floor for the Fuel Charge at RFP stage.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the PSA. Notwithstanding anything to the contrary contained herein, or in the LOA or the PSA, the Utility may reject a Bid, withdraw the LOA, or terminate the PSA, as the case may be, without being liable in any manner whatsoever to the Bidder or Supplier, as the case may be, if it determines that the Bidder or Supplier, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Utility shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Utility under the Bidding Documents and/ or the PSA, or otherwise.
- 4.2 Without prejudice to the rights of the Utility under Clause 4.1 hereinabove and the rights and remedies which the Utility may have under the LOA or the PSA, or otherwise if a Bidder or Supplier, as the case may be, is found by the Utility to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the PSA, such Bidder or Supplier shall not be eligible to participate in any tender or RFP issued by the Utility during a period of 2 (two) years from the date such Bidder or Supplier, as the case may be, is found by the Utility to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Utility who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the PSA or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Utility, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.1.15 of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the PSA, as the case may be, any person in respect of any matter relating to the Project or the LOA or the PSA, who at any time has been or is a legal, financial or

technical adviser of the Utility in relation to any matter concerning the Project;

- (b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- (c) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Utility with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-BID CONFERENCE

- 5.1 Pre-Bid conferences of the Bidders shall be convened at the designated date, time and place. Only those persons who have purchased the RFP document shall be allowed to participate in the Pre-Bid Conferences. A maximum of five representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.2 During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Utility. The Utility shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

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

APPENDIX – I

Letter comprising the Bid
(Refer Clauses 2.1.5 and 2.14)

Dated:

[The *****,

*****]

Sub: Bid for ***** Project

Dear Sir,

With reference to your RFP document dated *****^{\$}, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that the Utility will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Supplier for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Supplier for the development, construction, operation and maintenance of the aforesaid Project and for sale of power to the Utility.
4. I/ We shall make available to the Utility any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Utility to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members[£] or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Utility; and

^{\$} All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant.

[£] If the Bidder is not a Consortium, the provisions applicable to Consortium may be omitted.

- (b) I/ We do not have any conflict of interest in accordance with Clauses 2.1.14 and 2.1.15 of the RFP document; and
 - (c) I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Utility or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
 - (e) the undertakings given by us along with the Application in response to the RFQ for the Project were true and correct as on the date of making the Application and are also true and correct as on the Bid Due Date and I/we shall continue to abide by them.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16 of the RFP document.
9. I/ We believe that we/ our Consortium satisfy(s) the Net Worth criteria and meet(s) the requirements as specified in the RFQ document.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our

directors/ managers/ employees.[£]

14. [I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Appendix-V thereof.]
15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Utility of the same immediately.
16. I/ We acknowledge and undertake that our Consortium was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Supplier; and (ii) 5% (five per cent) of the Total Project Cost specified in the PSA. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the PSA in respect of Change in Ownership.
17. I/ We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ, I/We shall inform the Utility forthwith along with all relevant particulars and the Utility may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the PSA but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed

a breach thereof, and the PSA shall be liable to be terminated without the Utility being liable to us in any manner whatsoever.
18. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate as such prior to execution of the PSA. In case where the Utility has already established an SPV for the Project, the Selected Bidder shall acquire the entire equity thereof.

[£] In case the Applicant is unable to provide the certification specified in para 13, it may precede the paragraph by the words, viz. "Except as specified in Schedule **** hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Application. The Utility will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are of a nature that could cast a doubt on the ability or suitability of the Applicant to undertake the Project.

19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Utility in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a PSA in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
21. I/ We have studied all the Bidding Documents carefully and also surveyed the Site. We understand that except to the extent as expressly set forth in the PSA, we shall have no claim, right or title arising out of any documents or information provided to us by the Utility or in respect of any matter arising out of or relating to the Bidding Process including the award of Contract.
22. I/ We offer a Bid Security of Rs.***** (Rupees ***** only) to the Utility in accordance with the RFP Document.
23. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.
24. The documents accompanying the Bid, as specified in Clause 2.11.2 of the RFP, have been submitted in a separate envelope and marked as “Enclosures of the Bid”.
25. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Contract is not awarded to me/us or our Bid is not opened or rejected.
26. The Tariff has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft PSA, our own estimates of costs and revenues, and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.
27. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
28. {We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Supplier under the PSA till occurrence of Financial Close in accordance with the PSA.}
29. I/ We undertake to feed electric supply into the grid at a point that is economical and efficient, as determined by the RLDC or SLDC, as the case may be.

30. I/ We undertake to bear the transmission charges and transmission losses upto the point of delivery of electricity to the Utility from out of the Tariff offered below and in accordance with the terms to be set forth in the Power Supply Agreement.
31. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
32. I/ We hereby submit the following Bid and offer, as on the Bid Due Date, in accordance with the provisions of the PSA and Clause 3.5 of this RFP, -

A Tariff of Rs. (Rupeesand paise)
comprising a Fixed Charge of Rs. (Rupees and paise
§ per kWh and a Fuel Charge of Rs..... (Rupees and paise
per kWh cents[@] per kWh as on the Bid Due Date on the express understanding that the Lowest Bidder shall be selected on the basis of the lowest Tariff offered.

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 Bidder/Lead Member

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

§ Paise may be quoted only in whole numbers.

@ For the purposes of evaluation of Bids for supply of electricity which includes Fuel supply from Captive Mines abroad, the cost of Fuel shall be quoted in Indian rupees and converted into US cents using the RBI Reference Rate for the working day preceding the Bid Due Date.

APPENDIX – II

Bank Guarantee for Bid Security

(Refer Clauses 2.1.7 and 2.20.1)

B.G. No. Dated:

1. In consideration of you, *****, having its office at *****, (hereinafter referred to as the “Utility”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of (a company registered under the Companies Act, 1956[§]) and having its registered office at (and acting on behalf of its Consortium^Y) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the ***** Project on DBFOT basis (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 PSA (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.1.7 read with Clause 2.1.8 of the RFP 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 Utility an amount of Rs. ***** (Rupees ***** only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Utility stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Utility is disputed by the Bidder or not, merely on the first demand from the Utility stating that the amount claimed is due to the Utility by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity

[§] A Bidder who is registered abroad may substitute the words, viz. of “a company registered under the Companies Act, 1956” by the words, viz. “a company duly organized and validly existing under the laws of the jurisdiction of its incorporation”.

^Y Omit if the Bidder is not a Consortium.

period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. ***** (Rupees ***** only).

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

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Utility to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Utility may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Utility in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. *** crore (Rupees ***** crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Utility serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by Bank

By the hand of Mr./Ms, its and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

APPENDIX – III

Power of Attorney for signing of Bid

(Refer Clause 2.1.9)

Know all men by these presents, We, (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the ***** Project proposed or being developed by the ***** (the “Utility”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Utility, representing us in all matters before the Utility, signing and execution of all contracts including the Power Supply Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Utility in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Power Supply Agreement with the Utility.

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

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

For.....

(Signature, name,
designation and address)

Witnesses:

- 1.
- 2.

Accepted

Notarised

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

Notes:

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

APPENDIX – IV

Power of Attorney for Lead Member of Consortium

(Refer Clause 2.1.10)

Whereas the ***** (the “Utility”) has invited bids from pre-qualified and short-listed parties for the ***** Project (the “Project”).

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

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

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

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

For

(Signature, Name & Title)

For

(Signature, Name & Title)

For

(Signature, Name & Title)

(Executants)

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

Witnesses:

1.

2.

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 Appostille certificate.

APPENDIX – V¹⁵

Guidelines of the Department of Disinvestment

(Refer Clause 1.2.1)

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

Block 14, CGO Complex
New Delhi.

Dated 13th July 2001.

OFFICE MEMORANDUM

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

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

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

¹⁵ These guidelines may be modified or substituted by the Government from time to time.

based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

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

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

APPENDIX- VI

LIST OF BID-SPECIFIC CLAUSES^{\$}

A. Clauses and appendices with non-numerical footnotes

1. Clause 2.9.3: Amendment of RFP
2. Clause 3.5.2 (d): Bid Parameter
3. Appendix-I: Letter comprising the Bid (Para 1, 6, 13 and 32)
4. Appendix-II: Bank Guarantee for Bid Security
5. Appendix VI: List of Bid-specific clauses

B. Clauses and appendices with curly brackets

1. Appendix-I: Letter comprising the Bid (Para 28)

C. Clauses and appendices with blank spaces

1. Letter of invitation
2. Appendix-I: Letter comprising the Bid (Para 32)
3. Appendix-II: Bank Guarantee for Bid Security (Para 1 and signatures)
4. Appendix-III: Power of Attorney for signing of Bid
5. Appendix-IV: Power Of Attorney For Lead Member Of Consortium

^{\$} This Appendix-VI contains a list of clauses and appendices that would need to be suitably modified for reflecting applicant-specific provisions. This Appendix-VI may, therefore, be included in the RFP document to be issued to prospective Applicants. The blank spaces in Appendices may be filled up by the Applicant and the footnotes may be deleted when it submits its proposal.

APPENDIX-VII

LIST OF PROJECT-SPECIFIC CLAUSES¹⁶

A. Clauses and appendices with serially numbered footnotes

1. Letter of Invitation (Footnote No. 1)
2. Clause 1.1: Background (Footnote No. 2)
3. Clause 1.1.1: Background (Footnote No. 3 and 4)
4. Clause 1.1.4: Background (Footnote No. 5)
5. Clause 1.2.3: Brief description of Bidding Process (Footnote No. 6)
6. Clause 1.2.4: Brief description of Bidding Process (Footnote No. 7)
7. Clause 1.3: Schedule of Bidding Process (Footnote No. 8)
8. Clause 2.1.18: General terms of Bidding (Footnote No. 9)
9. Clause 3.5.1: Bid Parameter (Footnote No. 10)
10. Clause 3.5.2: Bid Parameter: (Footnote No. 11, 12, 13 and 14)
11. Appendix-V: Guidelines of the Department of Disinvestment (Footnote No. 15)
12. Appendix VII: List of Project-specific clauses (Footnote No. 16)

B. Clauses and appendices with square parenthesis

1. Letter of invitation
2. Glossary: Definition of CIL
3. Title of the Utility
4. Clause 1.1.3: Background
5. Clause 1.1.4: Background
6. Clause 1.2.1: Brief description of Bidding Process
7. Clause 1.2.3: Brief description of Bidding Process
8. Clause 1.2.4: Brief description of Bidding Process
9. Clause 1.2.6: Brief description of Bidding Process
10. Clause 1.3: Schedule of Bidding Process
11. Clause 2.1.18: General terms of Bidding
12. Clause 2.20.2: Bid Security
13. Clause 3.5.2: Bid Parameter
14. Clause 6.1: Miscellaneous
15. Appendix-I: Letter comprising the Bid (Para 14)
16. Appendix-II: Bank Guarantee for Bid Security (Para 1, 9 and 13)

C. Clauses and appendices with asterisk

1. Letter of Invitation: Subject line
2. Glossary: Definition of Government
3. Clause 1.1.1: Background

¹⁶ This Appendix-VII contains a list of clauses and appendices that would need to be suitably modified, prior to issue of the RFP document, for reflecting project-specific provisions. This Appendix-VII should be omitted before issuing the RFP document to prospective Applicants.

4. Clause 1.2.3: Brief description of Bidding Process
5. Clause 1.2.9: Brief description of Bidding Process
6. Clause 2.1.7: General terms of Bidding
7. Clause 2.1.18: General terms of Bidding
8. Clause 2.11.4: Sealing and Marking of Bids
9. Clause 2.11.5: Sealing and Marking of Bids
10. Clause 3.5.2: Bid Parameter
11. Appendix-I: Letter comprising the Bid (Address, subject, Para 1 and 22)
12. Appendix-II: Bank Guarantee for Bid Security (Para 1, 3 and 13)
13. Appendix-III: Power of Attorney for signing of Bid
14. Appendix-IV: Power Of Attorney For Lead Member Of Consortium