

Model

Request For Qualification

For

Agreement for Procurement of Power

Government of India

For official use only

GLOSSARY

APP	As defined in Clause 1.1.2
Applicant(s)	As defined in Clause 1.2.1
Application	As defined in the Disclaimer
Application Due Date	As defined in Clause 1.1.5
Associate	As defined in Clause 2.2.9
Bids	As defined in Clause 1.2.3
Bid Due Date	As defined in Clause 1.2.3
Bid Security	As defined in Clause 1.2.4
Bidders	As defined in Clause 1.1.1
Bidding Documents	As defined in Clause 1.2.3
Bidding Process	As defined in Clause 1.2.1
Bid Stage	As defined in Clause 1.2.1
FOO	Finance, Own and Operate
Eligible Projects	As defined in Clause 3.2.1
Financial Capacity	As defined in Clause 2.2.2 (B)
Government	Government of *****
LOA	Letter of Award
Lowest Bidder	As defined in Clause 1.2.8
Net Worth	As defined in Clause 2.2.4 (ii)
PPP	Public Private Partnership
Project	As defined in Clause 1.1.1
Qualification	As defined in Clause 1.2.1
Qualification Stage	As defined in Clause 1.2.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in Clause 1.2.1
RFQ	As defined in the Disclaimer
Supplier	As defined in Clause 1.1.2
Tariff	As defined in Clause 1.2.8
Technical Capacity	As defined in Clause 2.2.2 (A)
Utility	As defined in Clause 1.1.1

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto hereinabove.

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DISCLAIMER

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

This RFQ is not an agreement and is neither an offer nor invitation by the Utility to the prospective Applicants or any other person. The purpose of this RFQ is to provide interested parties with information that may be useful to them in the formulation of their application for qualification pursuant to this RFQ (the “**Application**”). This RFQ includes statements, which reflect various assumptions and assessments arrived at by the Utility in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFQ may not be appropriate for all persons, and it is not possible for the Utility, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFQ. The assumptions, assessments, statements and information contained in this RFQ may not be complete, accurate, adequate or correct. Each Applicant should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFQ and obtain independent advice from appropriate sources.

Information provided in this RFQ to the Applicant(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Utility accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Utility, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFQ or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFQ and any assessment, assumption, statement or information contained therein or deemed to form part of this RFQ or arising in any way with pre-qualification of Applicants for participation in the Bidding Process.

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

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

The issue of this RFQ does not imply that the Utility is bound to select and short-list pre-qualified Applications for Bid Stage or to appoint the selected Bidder or Supplier, as the case may be, for the Project and the Utility reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Application including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Utility or any other costs incurred in connection with or relating to its Application. All such costs and expenses will remain with the Applicant and the Utility shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Application, regardless of the conduct or outcome of the Bidding Process.

[Name of Utility]

1. INTRODUCTION

1.1 Background¹

1.1.1 The [***²Distribution Company]³ (the “**Utility**”) is engaged in the distribution of electricity and as part of this endeavour, the Utility has decided to procure electricity from a power generating station that would dedicate a contracted capacity of *** MW for production of electricity and supply thereof for a period of [5 (five)]⁴ years [during peak hours of the day comprising 2 (two) hours upto or before 10:00 (ten hundred) hours in the morning and 4 (four) hours from or after 17:00 (seventeen hundred) hours in the evening]⁵ (the “**Project**”) through Public Private Partnership (the “**PPP**”) on Finance, Own and Operate (the “**FOO**”) basis, and has, therefore, 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
***	[4 (four)] month from Bid Due Date

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

1.1.2 The selected Bidder (the “**Supplier**”) shall be responsible for financing, construction, operation and maintenance of the Project under and in accordance with the provisions of a medium-term Agreement for procurement of power (the “**Agreement for Procurement of Power**” or the “**APP**”) to be entered into

¹ Serially numbered footnotes are for guidance of the Utility and should be omitted prior to issue of RFQ. Footnotes marked in non-numerical characters shall be retained in the RFQ.

²Wherever asterisk is used, it should be substituted by project-specific details prior to issue of RFQ.

³All project-specific provisions in this document have been enclosed in square parenthesis and may be modified, as necessary, before issuing the RFQ for the Project. The square parenthesis should be removed after carrying out the required modifications. The curly parenthesis including the provisions contained therein and all the blank spaces may be retained in the RFQ document to be issued to prospective Applicants. They should be suitably modified/ filled up subsequently by the respective Applicants or the Utility, as the case may be, to reflect the particulars relating to the Project or the Applicants.

⁴To be fixed between 1(one) and 5 (five) years.

⁵ The words in square parenthesis may be omitted in case procurement is not confined to Peak Hours.

between the Supplier 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 operation and maintenance of the Power Station and supply of power in accordance with the terms of the APP.
- 1.1.4 All Applicants shall indicate the particulars of the relevant Power Station in the form specified at Annex-V of Appendix-I. Applicants may bid for the capacity specified in Clause 1.1.1, or a part thereof, not being less than 50% (fifty per cent) of such capacity. The remaining capacity, if any, may be procured from other Bidders who are willing to match the lowest Bid.
- 1.1.5 The Utility shall receive Applications pursuant to this RFQ in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Utility, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the "**Application Due Date**").

1.2 Brief description of Bidding Process

- 1.2.1 The Utility has adopted a two-stage process (collectively referred to as the "**Bidding Process**") for selection of the bidder for award of the Project. The first stage (the "**Qualification Stage**") of the process involves qualification (the "**Qualification**") of interested parties who make an Application in accordance with the provisions of this RFQ (the "**Applicant**"). Prior to making an Application, the Applicant shall pay to the Utility a sum of Rs 10, 000 (Rupees ten thousand) as the cost of the RFQ process⁶. At the end of this stage, the Utility expects to announce a list of suitable pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the "**Bid Stage**") comprising Request for Proposals (the "**Request for Proposals**" or "**RFP**").
- 1.2.2 In the Qualification Stage, Applicants would be required to furnish all the information specified in this RFQ. Only those Applicants that are pre-qualified and short-listed by the Utility shall be invited to submit their Bids for the Project. The Utility is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are, therefore, advised to familiarise themselves with the terms of the Model APP that will govern the structure of this Project. The said Model APP has been notified by the Government under section 63 of the Electricity Act 2003 for tariff based bidding by the Utilities.
- 1.2.3 In the Bid Stage, the Bidders will be called upon to submit their financial offers (the "**Bids**") in accordance with the RFP and other documents to be provided by the Utility (collectively the "**Bidding Documents**"). The Bidding Documents for the Project will be provided to every Bidder on payment of {Rs. 100,000 (Rs. one

⁶The cost of RFQ may be determined at the rate of Rs. 10,000 for every 100 MW of capacity to be procured. Thus the cost of an RFQ document for a project of 200 MW shall be Rs. 20,000.

lakh only)}[§]. The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of bids (the “**Bid Due Date**”).

- 1.2.4 In terms of the RFP, a Bidder will be 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 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 APP. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Utility⁸ 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 Generally, the Lowest Bidder shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the RFP, 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, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be.
- 1.2.6 During the Bid Stage, Bidders are invited to examine the Bid 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.
- 1.2.7 As part of the Bidding Documents, the Utility will provide a draft APP and other information pertaining/ relevant to the Project available with it.
- 1.2.8 Bids will be invited for the Project on the basis of a tariff to be offered by a Bidder for production and supply of electricity in accordance with the terms of the draft APP forming part of the Bidding Documents. For the purposes of bidding hereunder, the Fixed Charge [and Variable Charge] shall constitute the tariff for the Power Station (the “**Tariff**”). [The cost of Fuel, transportation thereof and the transmission losses shall form part of the Variable Charge.] The contract period shall be pre-determined, and will be indicated in the draft APP. The Project shall be awarded to the Bidder quoting the lowest Tariff.

[§] The actual amount will be indicated in the RFP.

⁷ The Utility may prescribe a bid security not exceeding Rs. 5 lakh per MW. It may, in its discretion, reduce the bid security, but not less than Rs 2 lakh per MW, in any case.

⁸ The format for the bank guarantee has been published as part of the Model RFP document.

[(a) Coal from domestic market⁹

Since the Bidder is expected to source Fuel from the domestic market at the prevailing price, the cost of Fuel which shall be included in the Variable Charge shall be a 'pass through' in accordance with the terms of the APP. However, the element of coal transportation shall be linked to the notified freight of Indian Railways and revised as per the terms of the APP. The Bid for the Project shall, therefore, comprise the Fixed Charge and Variable Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder.]

[(b) Gas from domestic market

Since the Bidder is expected to source Fuel from the domestic market at the prevailing price, the cost of Fuel which shall be included in the Variable Charge shall be a 'pass through' in accordance with the terms of the APP. However, the element of transportation shall be linked to the charge notified by the Petroleum and Natural Gas Regulatory Board and revised as per the terms of the APP. The Bid for the Project shall, therefore, comprise the Fixed Charge and Variable Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder.]

[(c) Gas from ONGC/GAIL

Since the Bidder has entered into an agreement with ONGC/GAIL for supply of Fuel at the notified price from its gas fields/LNG terminals, the cost of Fuel which shall be included in the Variable Charge shall be linked to the price notified by ONGC/GAIL and revised as per the terms of the APP. However, the element of transportation shall be linked to the notified charges for pipelines and revised as per the terms of the APP. The Bid for the Project shall, therefore, comprise the Fixed Charge and Variable Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder.]

[(d) Supply from Hydro-electric Power Station

The Bidder shall quote a lumpsum tariff comprising of (a) Base Fixed Charge as per the provisions of the APP and (b) Base Variable Charge. The Tariff shall be revised as per the terms of the APP. The Bid for the Project shall, therefore, comprise the Fixed Charge and the Variable Charge and the Bidder seeking the lowest Tariff shall be the Selected Bidder.]

[(e) Coal imported from international market

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. *** per¹⁰ KWh on the express understanding that

⁹Depending upon the choice of Fuel source, only the applicable Sub-clause may be retained and the remaining Sub-clauses should be omitted. While retaining the relevant Sub-clause, its heading shown in italics may also be omitted along with its serial number.

¹⁰The Utility shall specify an indicative cost based on approximate market prices.

the actual cost of Fuel shall be a “pass through” in accordance with the terms of the APP. The cost of transportation by sea shall be included in the cost of Fuel and the element of inland coal transportation shall be linked to the notified freight of Indian Railways and revised as per the terms of the APP. The Bid for the Project shall, therefore, comprise the Fixed Charge and Variable Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder.]

[(f) *Gas imported from international market*

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. *** per¹¹ KWh on the express understanding that the actual cost of Fuel shall be a “pass through” in accordance with the terms of the APP. However, the element of transportation shall be linked to the charge notified by the Petroleum and Natural Gas Regulatory Board and revised as per the terms of the APP. The Bid for the Project shall, therefore, comprise the Fixed Charge and Variable Charge, which shall be specified separately, and the Bidder seeking the lowest Tariff shall be the Selected Bidder.]

[(g) *Coal from captive mines abroad*

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 Variable Charge which shall be specified separately. The cost of Fuel shall be payable as per the terms of the APP, Free on Board (FOB), as specified in US cents and shall be revised as per the terms of the APP. 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 APP, the transportation charges shall be payable separately in accordance with the provisions of Clause 12.3.2 thereof. The Bidder seeking the lowest Tariff shall be the selected Bidder.]

[(h) *Fuel imported under fixed-price Gas Contract*

Since the Bidder is expected to source fuel through a fixed-price contract for supply of gas from outside India, the Bid for the Project shall be the Tariff comprising the Fixed Charge and the Variable Charge which shall be specified separately. The cost of Fuel shall be payable as per the terms of the APP, Free on Board (FOB), as specified in US cents and shall be revised as per the terms of the APP. 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 APP, the transportation charges shall be payable separately in accordance with the provisions of Clause 12.3.2 thereof. The Bidder seeking the lowest Tariff shall be the selected Bidder.]

¹¹ The Utility shall specify an indicative cost based on approximate market prices.

[(i) Lumpsum Tariff

The Bidder shall quote a lumpsum tariff comprising of (a) Base Fixed Charge as per the provisions of clause 11.2 of the APP and (b) Base Variable Charge comprising of generating cost of electricity, the transmission charges and the transmission losses. The Tariff shall be revised as per the terms of the APP. The Bid for the Project shall, therefore, comprise the Fixed Charge and the Variable Charge and the Bidder seeking the lowest Tariff shall be the Selected Bidder.]

In this RFQ, the term “Lowest Bidder” shall mean the Bidder who is offering the lowest Tariff^s.

1.2.9 Further and other details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.

1.2.10 Any queries or request for additional information concerning this RFQ shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.13.3 below. The envelopes/ communications shall clearly bear the following identification/ title:

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

1.3 Schedule of Bidding Process

The Utility shall endeavour to adhere to the following schedule:

Event Description	Date
<u>Qualification Stage</u>	
1. Last date for receiving queries	[10 days from date of RFQ]
2. Pre-Application Conference	[15 days from date of RFQ]
3. Utility response to queries latest by	[20 days from date of RFQ]
4. Application Due Date	[30 days from date of RFQ]
5. Announcement of short-list	Within 7 days of Application Due Date
 <u>Bid Stage</u>	
1. Sale of Bid Documents	[To be specified]
2. Last date for receiving queries	[To be specified]

- | | | |
|----|---------------------------------------|---|
| 3. | Pre-Bid meeting | [To be specified] |
| 4. | Utility response to queries latest by | [To be specified] |
| 5. | Bid Due Date | [To be specified] |
| 6. | Opening of Bids | On Bid Due Date (at least 30 days from the date of RFP) |
| 7. | Letter of Award (LOA) | Within 10 days of Bid Due Date |
| 8. | Validity of Bids | 60 days of Bid Due Date |
| 9. | Signing of APP | Within 10 days of award of LOA |

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Application

2.2.1 The Utility wishes to receive Applications for Qualification in order to short-list experienced and capable Applicants for the Bid Stage.

2.1.2 Short-listed Applicants may be subsequently invited to submit the Bids for the Project.

2.2 Eligibility of Applicants

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

(a) The Applicant should be a corporate entity;

(b) the Applicant should be the owner and operator of the Power Station from where electricity shall be supplied; and

[(c) the Applicant has access to an assured supply of Fuel.]

[(d) Other eligibility conditions shall include the following:¹²]

2.2.2 To be eligible for pre-qualification and short-listing, an Applicant shall fulfil the following conditions of eligibility:

(A) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Applicant shall own and operate power generating station(s) having an installed capacity equivalent to at least twice the generation capacity specified in Clause 1.1.1.

(B) **Financial Capacity:** The Applicant shall have a minimum Net Worth (the “**Financial Capacity**”) equivalent to Rs. 1 crore (Rs. one crore) per MW of capacity offered by the Applicant) at the close of the preceding financial year.

2.2.3 The Applicants shall enclose with its application, to be submitted as per the format at Appendix-I, complete with its Annexes, the following:

(i) Certificate(s) from its statutory auditors[§] stating the power stations which are owned and operated by the Applicant, as specified in paragraph 2.2.2 (A) above; and

¹²Other project-specific conditions of eligibility or restrictions, if any, may be stated here, such as a limit on the supply of power that may be contracted with an entity, including its Associates.

[§] In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.3 (i).

- (ii) certificate(s) from its statutory auditors specifying the net worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.3 (ii). For the purposes of this RFQ, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders.
- 2.2.4 The Applicant should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Application to commit the Applicant.
- 2.2.5 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Application, would not be eligible to submit an Application.
- 2.2.6 An Applicant including any Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Applicant or Associate. Provided, however, that where an Applicant claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.6 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Utility for seeking a waiver from the disqualification hereunder and the Utility may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.
- 2.2.7 In computing the Technical Capacity and Net Worth of the Applicant under Clauses 2.2.2, 2.2.3 and 3.2, the Technical Capacity and Net Worth of its respective Associates would also be eligible hereunder.

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

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

- (a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by an Applicant must apply to the Applicant or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification; and
- (c) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below.

2.2.9 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within three months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 3 (three) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.

2.3 Number of Applications and costs thereof

2.3.1 No Applicant shall submit more than one Application for the Project.

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

2.4 Verification of information

Applicants are encouraged to submit their respective Applications after familiarising themselves with the information and physical conditions relevant to the Project, including the transmission capacity, applicable laws and regulations, and any other matter considered relevant by them.

2.5 Acknowledgement by Applicant

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

- (a) made a complete and careful examination of the RFQ;
- (b) received all relevant information requested from the Utility;

- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFQ or furnished by or on behalf of the Utility relating to any of the matters referred to in Clause 2.4 above; and
 - (d) agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.5.2 The Utility shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFQ or the Bidding Process, including any error or mistake therein or in any information or data given by the Utility.

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

2.6.1 Notwithstanding anything contained in this RFQ, the Utility reserves the right to accept or reject any Application and to annul the Bidding Process and reject all Applications/ Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore. In the event that the Utility rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.6.2 The Utility reserves the right to reject any Application and/ or Bid if:

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

If such disqualification/ rejection occurs after the Bids have been opened and the Lowest Bidder gets disqualified/ rejected, then the Utility reserves the right to:

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

2.6.3 In case it is found during the evaluation or at any time before signing of the APP or after its execution and during the period of subsistence thereof, including the contract thereby granted by the Utility, that one or more of the pre-qualification conditions have not been met by the Applicant, or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Supplier either by issue of the LOA or entering into of the APP, and if the Applicant/SPV has already been issued the LOA or has entered into the APP, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ, be liable to be terminated, by a communication in writing by the Utility to the Applicant, without the Utility being liable in any manner whatsoever to the Applicant and without prejudice to any other right or

remedy which the Utility may have under this RFQ, the Bidding Documents, the APP or under applicable law.

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

B. DOCUMENTS

2.7 Contents of the RFQ

This RFQ 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 Qualification

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

Appendices

- I. Letter comprising the Application
- II. Power of Attorney for signing of Application
- III. List of Bid-specific Clauses
- IV. List of Project-specific Clauses

2.8 Clarifications

- 2.8.1 Applicants requiring any clarification on the RFQ may notify the Utility in writing or by fax and e-mail in accordance with Clause 2.12.3. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Utility shall endeavour to respond to the queries within the period specified therein, but no later than 7 (seven) days prior to the Application Due Date. The responses will be sent by fax and/or e-mail. The Utility will forward all the queries and its responses thereto, to all purchasers of the RFQ without identifying the source of queries.
- 2.8.2 The Utility shall endeavour to respond to the questions raised or clarifications sought by the Applicants. However, the Utility reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Utility to respond to any question or to provide any clarification.
- 2.8.3 The Utility may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicants. All clarifications and interpretations issued by the Utility shall be deemed to be part of the RFQ. 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 RFQ

- 2.9.1 At any time prior to the deadline for submission of Application, the Utility may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ by the issuance of Addenda.
- 2.9.2 Any Addendum thus issued will be sent in writing to all those who have purchased the RFQ.
- 2.9.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the Utility may, in its sole discretion, extend the Application Due Date.[§]

C. PREPARATION AND SUBMISSION OF APPLICATION

2.10 Language

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

2.11 Format and signing of Application

- 2.11.1 The Applicant shall provide all the information sought under this RFQ. The Utility will evaluate only those Applications that are received in the required formats and complete in all respects. Incomplete and /or conditional Applications shall be liable to rejection.
- 2.11.2 The Applicant shall prepare 1 (one) original set of the Application (together with originals/ copies of documents required to be submitted along therewith pursuant to this RFQ) and clearly marked "ORIGINAL". In addition, the Applicant shall submit 1 (one) copy of the Application, alongwith documents required to be submitted along therewith pursuant to this RFQ, marked "COPY". The Applicant shall also provide 2 (two) soft copies on Compact Disc (CD). In the event of any discrepancy between the original and the copy, the original shall prevail.

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

2.11.3 The Application and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Applicant 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 Application shall be initialled by the person(s) signing the Application. The Application shall contain page numbers and shall be bound together.

2.12 Sealing and Marking of Applications

2.12.1 The Applicant shall submit the Application in the format specified at Appendix-I, together with the documents specified in Clause 2.12.2, and seal it in an envelope and mark the envelope as “APPLICATION”. The Applicant shall seal the original and the copy of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL” and “COPY”. The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.12.2 and 2.12.3.

2.12.2 Each envelope shall contain:

- (i) Application in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- (ii) Power of Attorney for signing the Application as per the format at Appendix-II;
- (iii) copy of Memorandum and Articles of Association, if the Applicant is a body corporate, and if a partnership then a copy of its partnership deed;
- (iv) copies of Applicant’s duly audited balance sheet and profit and loss account for the preceding five years; and
- [(v) any other project-specific requirement that may be specified by the Utility].

Each of the envelopes shall clearly bear the following identification:

“Application for Qualification: **** Project”

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

2.12.3 Each of the envelopes shall be addressed to:

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

2.12.4 If the envelopes are not sealed and marked as instructed above, the Utility assumes no responsibility for the misplacement or premature opening of the

contents of the Application and consequent losses, if any, suffered by the Applicant.

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

2.13 Application Due Date

- 2.13.1 Applications should be submitted before 1100 hours IST on the Application Due Date, at the address provided in Clause 2.12.3 in the manner and form as detailed in this RFQ. A receipt thereof should be obtained from the person specified in Clause 2.12.3.

- 2.13.2 The Utility may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Applicants.

2.14 Late Applications

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

2.15 Modifications/ substitution/ withdrawal of Applications

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

- 2.15.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.12, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

- 2.15.3 Any alteration/ modification in the Application or additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Utility, shall be disregarded.

D. EVALUATION PROCESS

2.16 Opening and Evaluation of Applications

- 2.16.1 The Utility shall open the Applications at 1130 hours IST on the Application Due Date, at the place specified in Clause 2.12.3 and in the presence of the Applicants who choose to attend.

- 2.16.2 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.15 shall not be opened.

- 2.16.3 The Utility will subsequently examine and evaluate Applications in accordance with the provisions set out in Section 3.
- 2.16.4 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the Utility. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.16.5 Any information contained in the Application shall not in anyway be construed as binding on the Utility, its agents, successors or assigns, but shall be binding against the Applicant if the Project is subsequently awarded to it on the basis of such information.
- 2.16.6 The Utility reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s) without assigning any reasons.
- 2.16.7 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Utility may, in its sole discretion, exclude the relevant project from computation of the Technical Capacity of the Applicant.

2.17 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Utility in relation to, or matters arising out of, or concerning the Bidding Process. The Utility will treat all information, submitted as part of Application, in confidence and will require all those who have access to such material to treat the same in confidence. The Utility may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Utility or as may be required by law or in connection with any legal process.

2.18 Tests of responsiveness

- 2.18.1 Prior to evaluation of Applications, the Utility shall determine whether each Application is responsive to the requirements of the RFQ. An Application shall be considered responsive only if:
- (a) it is received as per format at Appendix-I.
 - (b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.13.2;
 - (c) it is signed, sealed, bound together, and marked as stipulated in Clauses 2.11 and 2.12;

- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.4;
- (e) it contains all the information and documents (complete in all respects) as requested in this RFQ;
- (f) it contains information in formats same as those specified in this RFQ;
- (g) it contains certificates from its statutory auditors^{\$} in the formats specified at Appendix-I of the RFQ for each Eligible Project;
- (h) it contains an attested copy of the receipt for payment to the Utility towards the cost of the RFQ document;
- (i) it does not contain any condition or qualification; and
- (j) it is not non-responsive in terms hereof.

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

2.19 Clarifications

2.19.1 To facilitate evaluation of Applications, the Utility may, at its sole discretion, seek clarifications from any Applicant regarding its Application. Such clarification(s) shall be provided within the time specified by the Utility for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

2.19.2 If an Applicant does not provide clarifications sought under Clause 2.19.1 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Utility may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Utility.

E. QUALIFICATION AND BIDDING

2.20 Pre-qualification and notification

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

^{\$}In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.19.1 (g). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ.

2.21 Submission of Bids

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

Only pre-qualified Applicants shall be invited by the Utility to submit their Bids for the Project. The Utility is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are therefore advised to examine the Bidding Documents, and to carry out such scrutiny and studies as may be required for submitting their respective Bids for award of the Project. No extension of time is likely to be considered for submission of Bids pursuant to invitation that may be issued by the Utility.

2.22 Proprietary data

All documents and other information supplied by the Utility or submitted by an Applicant to the Utility shall remain or become the property of the Utility. Applicants are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Application. The Utility will not return any Application or any information provided along therewith.

2.23 Correspondence with the Applicant

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

3. CRITERIA FOR EVALUATION

3.1 Evaluation parameters

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

3.1.2 The Applicant's competence and capability is proposed to be established by the following parameters:

(a) Technical Capacity; and

(b) Financial Capacity

3.2 Technical Capacity for purposes of evaluation

3.2.1 Subject to the provisions of Clause 2.2, the Applicants must establish the minimum Technical Capacity specified in Clause 2.2.2 (A) (the "**Eligible Projects**"). For a power generating project to qualify as an Eligible Project, it should be owned and operated by the Applicant, and shall include a power station built and operated on PPP, BOT, DBFOT or DBOO basis.

3.2.3 The Applicant should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-II of Appendix-I.

3.3 Financial information for purposes of evaluation

3.3.1 The Application must be accompanied by the Audited Annual Reports of the Applicant for the last 3 (three) financial years, preceding the year in which the Application is made.

3.3.2 In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.

3.3.3 The Applicant must establish the minimum Net Worth specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of Appendix-I.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Utility may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2 Without prejudice to the rights of the Utility under Clause 4.1 hereinabove, if an Applicant is found by the Utility to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFQ issued by the Utility during a period of 2 (two) years from the date such Applicant is found by the Utility to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Utility who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the PPA 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 sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the APP, as the case may be, any person in respect of any matter relating to the Project or the LOA or the APP, who at any time has been or is a legal, financial or technical adviser of the Utility in relation to any matter concerning the Project;
 - (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
 - (c) **“coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;

- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Utility with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-APPLICATION CONFERENCE

- 5.1 A Pre-Application conference of the interested parties shall be convened at the designated date, time and place. Only those persons who have purchased the RFQ document shall be allowed to participate in the Pre-Application conference. Applicants who have downloaded the RFQ document from the Utility's website (www.*****) should submit a Demand Draft of [Rs. 50,000 (Rupees fifty thousand only)] towards the cost of document, through their representative attending the conference. A maximum of three representatives of each Applicant shall be allowed to participate on production of authority letter from the Applicant.
- 5.2 During the course of Pre-Application conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Utility. The Utility shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts 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 Applicant in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the Utility by, on behalf of, and/ or in relation to any Applicant; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the Utility, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDIX I

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

Dated:

To,

[The *****,

*****]

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

Dear Sir,

With reference to your RFQ document dated[§], I/we, having examined the RFQ document and understood its contents, hereby submit my/our Application for Qualification for the aforesaid project. The Application is unconditional and unqualified.

2. I/ We acknowledge that the Utility will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Applicants for the aforesaid project, and we certify that all information provided in the Application and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.

3. This statement is made for the express purpose of qualifying as a Bidder for the aforesaid Project and for sale of power to the Utility.

4. I/ We shall make available to the Utility any additional information it may find necessary or require to supplement or authenticate the Qualification statement.

5. I/ We acknowledge the right of the Utility to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last three years, we or our Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:

(a) I/ We have examined and have no reservations to the RFQ document, including any Addendum issued by the Utility;

[§] All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant.

- (b) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFQ 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
- (c) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFQ document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Clause 2.16.6 of the RFQ document.
9. I/ We believe that we/ satisfy the Net Worth criteria and meet all the requirements as specified in the RFQ document and are/ am qualified to submit a Bid.
10. I/ We declare that our Associates are not a Member of a/ any other Applicant applying for pre-qualification.
11. I/ We certify that in regard to matters other than security and integrity of the country, we or any of our 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 or any of our 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.^Y

^Y 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.

14. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFQ, we shall intimate the Utility of the same immediately.

15. The Statement of Legal Capacity as per format provided at Annex-IV in Appendix-I of the RFQ document, and duly signed, is enclosed.

16. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Utility in connection with the selection of Applicants, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

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

18. I/ We certify that in terms of the RFQ, my/our Networth is Rs.
(Rs. in words) and our Technical Capacity is equivalent toMW (MW in words).

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

Yours faithfully,

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

Place: Name and seal of the Applicant

ANNEX-I

Particulars of the Applicant

1. (a) Name:
(b) Date of commencement of business:
(c) Address of the corporate headquarters:

2. Brief description of the Company including details of its main lines of business:

3. Particulars of individual(s) who will serve as the point of contact/ communication for the Applicant:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:

4. Particulars of the Authorised Signatory of the Applicant:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:

5. The following information shall also be provided for the Applicant:

Name of Applicant:

No.	Criteria	Yes	No
1.	Has the Applicant been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise)?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Application?		
3.	Has the Applicant paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

Appendix I
Annex-I

6. A statement by the Applicant or any of its Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

ANNEX-II

Technical Capacity of the Applicant[@]

(Refer to Clauses 2.2.2(A) and 3.2 of the RFQ)

Item (1)	Refer Instruction (2)	Particulars of the Project (3)
Title of the project	1	
Location		
Total Project cost	3	
Installed capacity of the plant	2	
Project Type (Coal/ Gas etc.)		
Date of completion/ commissioning	4	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)		

[@] Provide details of only those projects that have been undertaken by the Applicant under its own name and/ or by an Associate specified in Clause 2.2.7.

Instructions:

1. A separate sheet should be filled for each Eligible Project.
2. The total number of units along with the details of the capacity of each unit should be provided.
3. Provide the capital cost of the Eligible Project.
4. The date of commissioning of the project, upon completion, should be indicated.
5. Certificate from the Applicant's statutory auditor^{\$} must be furnished as per formats below for each Eligible Project.

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

Certificate from the Statutory Auditor regarding Eligible Projects

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

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

6. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.7, the Applicant should also provide a certificate in the format below:

Certificate from Statutory Auditor/ Company Secretary regarding Associate

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of (*name of the Applicant/ Associate*) is held, directly or indirectly[£], by (*name of Associate/ Applicant*). By virtue of the aforesaid shareholding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.7 of the RFQ.

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

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

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

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

7. In the absence of any detail in the above certificates, the information would be considered inadequate and could lead to disqualification of the project.

ANNEX-III

Financial Capacity of the Applicant

(Refer to Clauses 2.2.2(B), 2.2.3(ii) and 3.3 of the RFQ)

(In Rs. crore)

Applicant Name	(1)	
Net Cash Accruals	Year 1 (2)	
	Year 2 (3)	
	Year 3 (4)	
Net Worth[€]	Year 1 (5)	

Name & address of Applicant's Bankers:

[€]The Applicant should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.7.

Instructions:

1. The Applicant shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Application Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Applicant and its Associates where the Applicant is relying on its Associate's financials;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

Appendix I
Annex-III

2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.9.
5. The Applicant shall provide an Auditor's Certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.3 (ii) of the RFQ document.

ANNEX-IV

Statement of Legal Capacity

(To be forwarded on the letterhead of the Applicant)

Ref. Date:

To,

Dear Sir,

We hereby confirm that we satisfy the terms and conditions laid out in the RFQ document.

We have agreed that (insert individual's name) will act as our representative on its behalf and has been duly authorized to submit the RFQ. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

ANNEX- V

Particulars of the Power Station

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

2. No. of units and installed capacity of each unit (in MW):

Existing	No. of Units	Installed Capacity (in MW)	COD
Proposed	No. of Units	Installed Capacity (in MW)	COD

3. Quantum of power contracted with other purchasers, if any (in MW):

4. Details of surplus capacity (in MW):

5. Proposed Supply of Power (in MW)

Signature:

Name:

Designation:

Date:

Place:

APPENDIX II

Power of Attorney for signing of Application

(Refer Clause 2.2.4)

Know all men by these presents, We.....
(name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorised Mr/ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us and holding the position of, as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the ***** Project proposed or being developed by the ***** (the “Utility”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Utility, representing us in all matters before the Utility, signing and execution of all contracts including the Agreement for Procurement of Power (APP) 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 APP 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 OF2.....

For
.....

(Signature, name, designation and address)

Witnesses:

1.

(Notarised)

2

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

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

APPENDIX - III
LIST OF BID-SPECIFIC CLAUSES[£]

A. Clauses with currency-based footnotes

Footnotes with “£” signs

1. Appendix I, Annex-II: Form of Certificate from the Statutory Auditor/Company Secretary regarding Associate.

Note: The above footnotes shall be removed prior to execution of the RFQ.

Footnotes with “\$” and/or “Y” signs

1. Clause 1.2.3: Brief description of Bidding Process
2. Clause 1.2.8 : Brief description of Bidding Process: Explanation
3. Clause 2.2.3(i) : Eligibility of Applicants
4. Clause 2.9.3 : Amendment of RFQ
5. Clause 2.18.1 (g): Tests of responsiveness
6. Appendix I: Letter Comprising the Application for Pre-Qualification: Paragraph 1 and 13
7. Appendix I, Annex-II: Technical Capacity of the Applicant
8. Appendix III: List of Bid-specific clauses

Note: The above footnotes shall not be deleted. They shall remain in the RFQ to be executed between the Parties.

B. Clauses with curly brackets

1. Clause 1.2.3: Brief description of Bidding Process
2. Annex-II, Appendix I: Form of Certificate from the Statutory Auditor/ Company Secretary regarding Associate

C. Clauses with blank spaces

1. Appendix I: Letter Comprising the Application for Pre-Qualification: Paragraph 1 and 18
2. Appendix I, Annex-II: Technical Capacity of the Applicant: Certificate from the Statutory Auditor regarding project.
3. Appendix I, Annex-II: Technical Capacity of the Applicant: Certificate from Statutory Auditor/ Company Secretary regarding Associate
4. Appendix I, Annex-IV: Statement of Legal Capacity
5. Appendix II :Power of Attorney for signing of Application

[£] This Appendix-III contains a list of clauses and appendices that would need to be suitably modified for reflecting applicant-specific provisions. This Appendix-III may, therefore, be included in the RFQ 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 Application.

APPENDIX - IV

LIST OF PROJECT-SPECIFIC CLAUSES¹³

A. Clauses with serially numbered Footnotes (Fn)

1. Clause 1.1: Background (Fn. 1)*
2. Clause 1.1.1: Background (Fn. 2,3, 4 and 5)*
3. Clause 1.2.1 and 1.2.4: Brief description of Bidding Process (Fn.6*, 7* and 8)
4. Clause 1.2.8: Explanation, (e) and (f): Brief description of Bidding Process: (Fn. 9, 10 and 11)*
5. Clause 2.2.1 (d): Eligibility of Applicants (Fn. 12)*
6. Appendix IV: List of project-specific clauses (Fn.13)

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

B. Clauses with square parenthesis

1. Introduction: Name of the Utility
2. Clause 1.2.4: Brief description of Bidding Process
3. Clause 1.2.8: Brief description of Bidding Process
4. Clause 1.3: Schedule of Bidding Process
5. Clause 2.2.1 (c) and (d): Eligibility of Applicants
6. Clause 2.12.2 (v): Sealing and Marking of Applications
7. Clause 5.1: Pre-Application Conference
8. Clause 6.1: Miscellaneous
9. Appendix I: Letter Comprising the Application for Pre-Qualification

C. Clauses with asterisk

1. Glossary: Definition of Government
2. Clause 1.2.10: Brief description of Bidding Process
3. Clause 2.12.2 and 2.12.3: Sealing and Marking of Applications
4. Appendix I, Annex-IV: Statement of Legal Capacity
5. Appendix II: Power of Attorney for signing of Application

¹³ This Appendix-IV contains a list of clauses and appendices that would need to be suitably modified, prior to issue of the RFQ document, for reflecting project-specific provisions. This Appendix-IV should be omitted before issuing the RFQ document to prospective Applicants.