

**Request for Selection  
of Bidder (s)**

**for**

**Procurement of Aggregated Power  
for Group of States**

**Through**

**e-Tender on**

**Discovery of Efficient Electricity Price (DEEP) Portal**

**Issued by  
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**November 21, 2022**



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## DISCLAIMER

The information contained in this document or subsequently provided to Applicant(s)/Bidders, whether verbally or in documentary or any other form, by or on behalf of the Authorised Representative or any of its employees or advisors, is provided to Applicant(s)/Bidder(s) on the terms and conditions set out here and such other terms and conditions subject to which such information is provided (the “**Request for Selection (RfS)**”). The RfS along with **Power Purchase Agreement (PPA)** shall collectively be referred as the “**Bidding Document**”.

This Bidding Document is not an agreement and is not an offer to the prospective Applicants/Bidders or any other person. The purpose of this Bidding Document is to provide interested parties with information that may be useful to them in the formulation of their application (the “**Application**”) for qualification and financial bid (the “**Bid**”) for selection pursuant to the Bidding Document. This Bidding Document includes statements, which reflect various assumptions and assessments arrived at by the Authorised Representative in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This Bidding Document may not be appropriate for all persons, and it is not possible for the Authorised Representative, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this Bidding Document. The assumptions, assessments, statements and information contained in this Bidding Document 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 Bidding Document and obtain independent advice from appropriate sources.

Information provided in this Bidding Document 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. Authorised Representative accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authorised Representative, its employees and advisors make no representation or warranty and shall have no liability to any person, including any 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 Bidding Document or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the Bidding Document and any assessment, assumption, statement or information contained therein or deemed to form part of this Bidding Document or arising in any way with pre-qualification of Bidders for participation in the Bidding Process.

The Authorised Representative also accept(s) 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 Bidding Document.

The Authorised Representative 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 Bidding Document.

The issue of this Bidding Document does not imply that the Authorised Representative are bound to select and short-list pre-qualified Applications for opening of the Bids or to appoint the selected Bidder or Supplier, as the case may be, for the Project and the Authorised Representative reserve the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

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

## GLOSSARY

<b>Applicant</b>	As defined in Clause 1.1.6
<b>Application</b>	As defined in the Disclaimer
<b>PPA</b>	As defined in Clause 1.1.3
<b>Authorised Representative</b>	As defined in Clause 1.1.1
<b>Bid Due Date</b>	As defined in Clause 1.1.6
<b>Bids</b>	As defined in the Disclaimer
<b>Bid Security</b>	As defined in Clause 1.2.11
<b>Bidder(s)</b>	As defined in Clause 1.1.3
<b>Bidding Document</b>	As defined in the Disclaimer
<b>Bidding Process</b>	As defined in Clause 1.2.1
<b>e-Tender Stage</b>	As defined in Clause 1.2.2
<b>BOLT</b>	Build, Own, Lease and Transfer
<b>BOO</b>	Build, Own and Operate
<b>BOOT</b>	Build, Own, Operate and Transfer
<b>BOT</b>	Build, Operate and Transfer
<b>FOO</b>	Finance, Own and Operate
<b>Government</b>	Government of India/State
<b>LOA</b>	Letter of Award
<b>Lowest Bidder or L1</b>	As defined in Clause 1.2
<b>PPP</b>	Public Private Partnership
<b>Qualification</b>	As defined in Clause 1.2.2
<b>Qualified Bidders</b>	As defined in Clause 1.1.3
<b>Re. or Rs. or INR</b>	Indian Rupee
<b>Selected Bidder</b>	As defined in Clause 1.1.7
<b>Supplier</b>	As defined in Clause 1.1.7
<b>Supply of Electricity</b>	As defined in Clause 1.1.2
<b>Successful Bidder</b>	As defined in Clause 1.1.7
<b>Tariff</b>	As defined in Clause 1.2.21
<b>Technical Capacity</b>	As defined in Clause 2.2.2

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.

\*\*\*

Name of Utilities are as follow:

Sl. No	Name of Utility*	Requisite Quantum* (MW)
1.	Gujarat Urja Vikas Nigam Ltd.	1000
2.	Maharashtra State Electricity Distribution Company Ltd.	500
3.	Madhya Pradesh Power Management Company Ltd.	660
4.	New Delhi Municipal Corporation	250
5.	Tamil Nadu Generation and Distribution Corporation Ltd.	1500

\*tentative

(Collectively referred to as the “Utilities”)

# 1 INTRODUCTION

## 1.1 Background

1.1.1 PFC Consulting Limited, a wholly owned subsidiary of Power Finance Corporation Limited (Government of India Undertaking) (the “**Authorised Representative**”), has been authorised by the Ministry of Power, Government of India to aggregate power with or without the requisition of the States or by an agency authorised by such States (the “**Authorised Representative**”) and to carry out the Bidding Process for selection of the Successful Bidder(s), on behalf of the Utilities.

1.1.2 The Authorised Representative/Utilities has decided to procure electricity from a power generating station that would dedicate a contracted capacity of 4500 MW for production of electricity and supply thereof for a period of 5 (five) years (the “**Project**”) through Public Private Partnership (the “**PPP**”) on Finance, Own and Operate (the “**FOO**”) basis, by sourcing coal from the Allocated Coal Linkage in terms of the Letter of Assurance issued/to be issued in the name of the Supplier and the Fuel Supply Agreement to be executed between the Supplier and the Coal Supplier in accordance with the draft PPA (the “**Supply of Electricity**”), and Authorised Representative has, therefore, decided to carry out the Bidding Process for selection of a corporate entity (ies) as the Successful Bidder(s) to whom the contract may be awarded for production of electricity and supply thereof as per the terms and conditions specified in the Bidding Document.

A. Brief particulars of the Supply of Electricity are as follows:

Requisition	Capacity Required (in MW)	Period when supply must commence	Delivery Point
RTC	4500	April 2023	Nearest interconnection point of the Power Station with the CTU System i.e. point of grid connection

B. Brief particulars of the Coal Linkage are as follows: (To be intimated later)

S. No	Name of Subsidiary	Source & Grade	Quantity of Coal (MT)	Power Quantum (MW)

1.1.3 The Utilities shall sign power purchase agreement with the Successful Bidder(s) (the “**Power Purchase Agreement**” or the “**PPA**”) in the form provided as part of the Bidding Documents pursuant hereto. The Authorised Representative intends to

pre-qualify and short-list suitable Applicant(s) (the “**Qualified Bidders**”) whose Bid shall be opened on the date specified at Clause 1.3 of the Bidding Document (the “**Bidders**”), for awarding the contract through an open competitive bidding process in accordance with the procedure set out herein.

- 1.1.4 The scope of work will broadly include operation and maintenance of the Power Station and supply of electricity, in accordance with the terms of the PPA.
- 1.1.5 All Applicants shall indicate the particulars of the relevant Power Station in the form specified at Annex-IV of Appendix-I and as available at e-Bidding Portal (“**DEEP Portal**”). Applicants may bid for minimum 100 (one hundred) MW.
- 1.1.6 The Authorised Representative shall receive Applications pursuant to the Bidding Document in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authorised Representative, 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 “**Bid Due Date**”) by the prospective bidders (the “**Applicants**”).
- 1.1.7 The Qualified Bidder(s) who are issued Letter of Award (LoA) (the “**Selected Bidder(s)**”) and who accept the LoA (the “**Successful Bidder**” or the “**Supplier**”) shall be responsible for financing, operation and maintenance of the power station, under and in accordance with the provisions of PPA.

## **1.2 BRIEF DESCRIPTION OF BIDDING PROCESS**

- 1.2.1 The Authorised Representative has adopted a single-stage bidding process (“**Bidding Process**”) for selection of the bidder for award of the Supply of Electricity.
- 1.2.2 The single stage (the “**e-Tender Stage**”) of the process involves qualification (the “**Qualification**”) of interested parties who submit Application and Bids in accordance with the provisions of this Bidding Document. Prior to submission of the Application, the Bidder shall pay to the Authorised Representative a sum of Rs 5,00, 000 (Rupees Five Lakhs only) plus applicable taxes as indicated above, as the cost of the Bidding Process. The requisite fee plus applicable taxes shall be deposited to Authorized Representative through identified mode of payment.  
Bank details of Authorised Representative:

Name	PFC CONSULTING LTD E-Deep
Bank	ICICI Bank
Account No.	000705050220
IFS Code	ICIC0000007

- 1.2.3 Omitted
- 1.2.4 All the Applicants would be able to participate in the e-Bidding events on making payment of the requisite fees of Rs. 8000 (Rupees Eight Thousand) per MW, to the Authorized Representative to participate in the e-Bidding event. The requisite

fee plus applicable taxes shall be deposited to Authorized Representative through identified mode of payment.

- 1.2.5 After the completion of the Bidding Process, i.e. issuance of LoA to Selected Bidder (s) only the Selected Bidder(s) will be charged the requisite fees for the quantum allocated to each Selected Bidder @ Rs. 8000 per MW plus applicable taxes. The balance amount will be refunded by the Authorized Representative within seven (7) working days of completion of Bidding Process i.e. issuance of LoA to Selected Bidder(s) without any interest for the quantum of power for which LoA is not issued.
- 1.2.6 The fee deposited by non-Selected Bidder(s) will also be refunded by the Authorized Representative without any interest within seven (7) working days of completion of Bidding Process i.e. issuance of LoA to Selected Bidder(s).
- 1.2.7 At the e-Tender Stage, the Bidder will be required to submit its Application and Bid online at the DEEP Portal on or before the Bid Due Date.
- 1.2.8 In the e-Tender Stage, Applicants would be required to furnish all the information specified in the Bidding Document by submitting
  - a. Application for qualification in accordance with the eligibility requirement under the Bidding Document and
  - b. Bid in accordance with Bidding Document.
- 1.2.9 The Bid shall be valid for a period of not less than 120 days from the Bid Due Date or as may be mutually extended. The Bids of only those Applicants that are pre-qualified and short-listed by the Authorised Representative after evaluation of their Application, shall be opened on such date as specified under Clause 1.3 of the Bidding Document.
- 1.2.10 The Authorised Representative is likely to provide a comparatively short time span for submission of the Bids for the Supply of Electricity. The Bidders are, therefore, advised to familiarise themselves with the terms of the PPA that will govern the structure of the Supply of Electricity. The model PPA has been notified by the Government under section 63 of the Electricity Act 2003 for tariff-based bidding by the Authorised Representative.
- 1.2.11 **BID SECURITY**
  - a. In terms of the Bidding Document, a Bidder will be required to deposit, along with its Bid, a bid security of **Rs 5,00,000 (Rupees Five lakh) per MW of maximum capacity to be offered by the Bidder** (the "**Bid Security**"), in the form of a bank guarantee or e-bank guarantee issued by a nationalized 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 Authorised Representative in the format at Appendix–III (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 Authorised Representative 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 nationalized 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.

- b. The Bid Security deposited by non-Selected Bidder(s) will be refunded by the Authorized Representative without any interest within seven (7) working days of completion of Bidding Process i.e. issuance of LoA to Selected Bidder(s), except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the PPA.

PPA.

- c. The Applicants will have an option to provide Bid Security in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Authorised Representative and payable at Delhi (the “**Demand Draft**”). The demand draft shall be kept valid for a period not less than 180 (one hundred and eighty) days from the Bid Due Date, by submitting another demand draft before expiry of the existing demand draft and may be further extended as may be mutually agreed between the Authorised Representative and the Bidder from time to time. The Authorised Representative shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free
- d. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authorised Representative and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- e. Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authorised Representative as non-responsive.
- f. The Successful Bidder’s Bid Security will be returned, without any interest, upon the Supplier signing the PPA and furnishing the Performance Security in accordance with the provisions thereof. The Authorised Representative may, at the Successful 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 PPA.
- g. The Authorised Representative shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified herein below. The Bidder, by submitting its Bid, shall be deemed to have acknowledged and confirmed that the Authorised Representative 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 the Bidding Document. No relaxation of any kind on Bid Security shall be given to any Bidder.
- h. The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authorised Representative under the Bidding Document and/ or under the PPA, or otherwise, if,

- i. a Bidder submits a non-responsive Bid;
- ii. a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in the Bidding Document;
- iii. a Bidder withdraws its Bid during the period of Bid validity as specified in the Bidding Document and as extended by mutual consent of the respective Bidder(s) and the Authorised Representative ;
- iv. the Successful Bidder fails within the specified time limit-
  - 1) to sign and return the duplicate copy of LoA;
  - 2) to sign the PPA; or
  - 3) to furnish the Performance Security within the period prescribed therefor in the PPA; or
- v. the Successful Bidder, having signed the PPA, commits any breach thereof prior to furnishing the Performance Security.

1.2.12 The Bid evaluation shall be done coal source wise with bucket filling approach.

1.2.13 The list of Qualified Bidders for consideration of evaluation for a coal source shall be arrived at by considering the last Bidder whose Bid is less than or equal to 110% of Fixed Charge plus fuel component of Variable charge of the L1 Bidder for that coal source.

1.2.14 The bids shall be evaluated source wise starting with the source with higher quantity of coal. In case two sources have equal coal quantity, the source having the lowest average price per kWh quoted by the Bidders shall be taken up first.

1.2.15 The Lowest Bidder for a source shall be allocated maximum coal from that source subject to coal quantity commensurate with the capacity offered by that Bidder. Thereafter, if further quantity of coal is available in that source, quantity offered by the next Lowest Bidder after L1 shall be exhausted. This will continue for remaining Bidders until the last Qualified Bidder or the source quantity is exhausted, whichever is earlier. If any Bidder has spare capacity after exhaustion of a source, it shall be considered for shortlisting in other sources also for the balance capacity.

1.2.16 In case there is a tie between the prices offered by two Bidders, the Bidder quoting lower Fixed Charge per kWh shall be selected first.

1.2.17 After the entire process, the constraint for minimum offer quantity shall be checked against all the Selected Bidders. In case any Bidder is allocated a total quantity which is less than its minimum offered quantity, the coal allocation to such Bidder shall not be considered and aggregate quantity of power procurement shall get modified to that extent.

1.2.18 Omitted

- 1.2.19 As part of the Bidding Documents, the Authorised Representative will provide a Draft PPA.
- 1.2.20 Bids are invited for the Supply of Electricity under this Bidding Document, 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 PPA forming part of the Bidding Documents.
- 1.2.21 For the purposes of bidding hereunder, the Base Fixed Charge and the Base Variable Charge shall constitute the tariff for Supply of Electricity (the “**Tariff**”).
- 1.2.22 The Bidder shall quote a Tariff comprising of Base Fixed Charge and Base Variable Charge for each source of coal. The cost of Fuel and the transportation/transit thereof, shall form part of the Base Variable Charge.

The Base Fixed Charge and Base Variable Charge shall each be atleast 35% of the quoted Tariff. The Bid for the Project shall, therefore, comprise the Base Fixed Charge and the Base Variable Charge and the Bidder seeking the lowest Tariff shall be the Selected Bidder. Responsibility for arranging access, payment of transmission charges and for bearing losses in respect of inter-state transmission shall be that of the Utility. Responsibility for arranging access, payment of transmission charges and for bearing losses in respect of intra-state transmission shall be that of the Supplier.

- 1.2.23 Since the Selected Bidder is expected to source fuel from Coal India Limited (“**CIL**”) / Singareni Collieries Company Limited (“**SCCL**”) or a subsidiary thereof/ from the Allocated Coal Linkage which is earmarked by CIL/SCCL or a subsidiary thereof to the Authorised Representative..

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 for each source shall be the Selected Bidder.

- 1.2.24 Based on its Bid, a tariff shall be paid to the Supplier comprising of

- (a) a Fixed Charge, as per the provisions of Article 11 of the PPA; and
- (b) a Variable Charge, as per the provisions of Article 12 of the PPA

The Tariff shall be revised as per the terms of the PPA.

- 1.2.25 Further details of the process for submission of Bid to be followed at the Bid Stage and the terms thereof has been spelt out in the Bidding Document.
- 1.2.26 Any queries or request for additional information concerning the Bidding Document/ Bidding Process shall be submitted in writing by speed post/courier and e-mail attaching the queries in Microsoft word file so as to reach the officer designated in Clause 2.12.3 by the specified date. The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information: Bidding for Procurement of Aggregated Power for Group of States - Supply of Electricity".

### 1.3 Schedule of Bidding Process

The Authorised Representative shall endeavour to adhere to the following schedule:

	Event Description	Date
1.	Publication of Bidding Document	21.11.2022
2.	Last date and time for receiving queries on Bidding Document	01.12.2022
3.	Pre-Application Meeting	07.12.2022
4.	Response to queries latest by the Applicants	12.12.2022
5.	Last date and time of submission of application and bid (Bid Due Date)	21.12.2022
6.	Opening of Application to the extent of only qualification requirement	21.12.2022
7.	Intimation to short-listed and pre-qualified Bidders for opening of their Bids	28.12.2022
8.	Opening of Bids of qualified bidders and completion of bid evaluation process	05.01.2023
9.	Letter of Award (LoA) (to Selected Bidder(s))	Within 10 days of the completion of bid evaluation process
10.	Validity of Bids	120 days of Bid Due Date or as may be mutually extended
11.	Signing of PPAs (between successful bidders and procuring Utilities on one to one basis based on allocated capacity)	Within 10 days of award of LoA

### 1.4 Pre-Bid Meeting

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

Date: 07.12.2022

Time: Will be informed later

Venue: Will be informed later

## 2. INSTRUCTIONS TO APPLICANT

### A. GENERAL

#### 2.1 Scope of Application

- 2.1.1 The Authorised Representative wishes to receive Applications for Qualification in order to short-list experienced and capable Applicants for opening of the Bids in the Bidding process.
- 2.1.2 The Bids of the short-listed Applicants may be opened subsequently as per the schedule specified in Clause 1.3 of this Bidding Document.

#### 2.2 Eligibility of Applicant

- 2.2.1 For determining the eligibility of the Applicant for their pre-qualification hereunder, the following shall apply:
- (a) The Applicant should be a corporate entity;
  - (b) The Applicant should own and be responsible for operation of the commissioned Power Station from where electricity shall be supplied
  - (c) The Applicant should not have an existing power purchase agreement for the quantum of power quoted under this Bid;
- 2.2.2 To be eligible for pre-qualification and short-listing, an Applicant shall fulfil the following condition 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 the untied capacity for which the Applicant is willing to Bid.
- 2.2.3 The Applicant shall enclose with its Application, to be submitted as per the format at Appendix-I, complete with its Annexes, the following<sup>§</sup>:
- (i) Certificate(s) from statutory auditors of the Applicant, stating the power stations which are owned and operated by the Applicant, as the case may be, as specified in paragraph 2.2.2 (A) above; and
- 2.2.4 The Applicant should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Applicant to sign the document and also digitally sign and submit the Application and Bid at e-Tender Stage.
- 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

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<sup>§</sup> 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.

subsists as on the date of Application, would not be eligible to submit an Application. The Bidder should submit a statement as per Annex-1 of Appendix-I.

2.2.6 An Applicant 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 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. Provided, however, that where an Applicant claims that its disqualification arising on account of any cause or event specified in this Bidding Document is such that it does not reflect

- i. any malfeasance on its part in relation to such cause or event;
- ii. any wilful default or patent breach of the material terms of the relevant contract;
- iii. any fraud, deceit or misrepresentation in relation to such contract; or
- iv. any rescinding or abandoning of such contract,

it may make a representation to this effect to the Authorised Representative for seeking a waiver from the disqualification hereunder and the Authorised Representative 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 Supply of Electricity.

2.2.7 Omitted

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

- (a) Applicant should submit their Application online at the DEEP Portal only and upload clearly marked and referenced documents/sheets in the e-Tender Stage.
- (b) information supplied by a Applicant must apply to the Applicant named in the Application and not, unless specifically requested, to other associated companies or firms. The Bid of only those Bidders will be opened whose identity and/ or constitution is identical to that at pre-qualification; and
- (c) in responding to the pre-qualification submissions, Applicant 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 Bid Due Date falls within three months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 1 (one) years, preceding its latest financial year.

2.2.10 For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Bidder 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 Supply of Electricity.
- 2.3.2 The Applicant shall be responsible for all of the costs associated with the preparation of their Applications and their participation in the Bidding Process. The Authorised Representative will not be responsible or in any way be liable for such costs, regardless of the conduct or outcome of the Bidding Process.

## **2.4 Verification of information**

- 2.4.1 Applicant(s) are encouraged to submit their respective Applications after assessing physical conditions of the Power Station, including the transmission systems, 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 Bidding Documents;
  - (b) received all relevant information requested from the Authorised Representative;
  - (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 Authorised Representative 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 Authorised Representative 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 this document or the Bidding Process, including any error or mistake therein or in any information or data given by the Authorised Representative.

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

- 2.6.1 Notwithstanding anything contained in this Bidding Document, the Authorised Representative reserve 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 Authorised Representative reject or annul all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.6.2 The Authorised Representative reserve the right to reject any Application and/ or

Bid 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 Authorised Representative, the supplemental information sought by the Authorised Representative 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 Authorised Representative reserve the right to take any such measure as may be deemed fit in the sole discretion of the Authorised Representative, 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 PPA or after its execution and during the period of subsistence thereof, including the contract thereby granted by the Authorised Representative, 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 PPA, and if the Bidder has already been issued the LoA or has entered into the PPA, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this Bidding Document, be liable to be terminated, by a communication in writing by the Authorised Representative to the Bidder, without the Authorised Representative being liable in any manner whatsoever to the Bidder and without prejudice to any other right or remedy which the Authorised Representative may have under this Bidding Document, the PPA or under applicable law.

The Authorised Representative reserve the right to verify all statements, information and documents submitted by the Bidder in response to the Bidding Document. Any such verification or lack of such verification by the Authorised Representative shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authorised Representative thereunder.

## **B. DOCUMENTS**

### **2.7 Contents of the Bidding Document**

This Bidding Document comprises the glossary; disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.13.

#### **Invitation for Qualification**

Section 1	Introduction
Section 2	Instructions to Bidders
Section 3	Criteria for Evaluation
Section 4	Selection of Bidder
Section 5	Fraud & Corrupt Practices
Section 6	Pre – Application Conference
Section 7	Miscellaneous

#### **Appendices**

- I. Letter comprising the Application/Bid
- II. Power of Attorney for signing of Application/ Bid
- III. Bank Guarantee for Bid Security
- IV. Pre-Contract Integrity Pact

### **2.8 Clarifications**

- 2.8.1 Applicant(s) requiring any clarification on the Bidding Documents may notify the Authorised Representative in writing by speed post/courier and e-mail attaching the queries in microsoft word file in accordance with Clause 1.2.26. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3 of the Bidding Document.

The Authorised Representative shall endeavour to respond to the queries within the period specified therein, but no later than 7 (seven) days prior to the Bid Due Date. The queries and its responses of all Applicants will be uploaded on website of Authorised Representative and DEEP Portal.

- 2.8.2 The Authorised Representative shall endeavour to respond to the questions raised or clarifications sought by the Applicant(s). However, the Authorised Representative reserve 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 Authorised Representative to respond to any question or to provide any clarification.
- 2.8.3 The Authorised Representative may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicant. All clarifications and interpretations issued by the Authorised Representative shall be deemed to be part of the Bidding Document. Verbal clarifications and information given by Authorised Representative or its employees or representatives shall not in any way

or manner be binding on the Authorised Representative.

- 2.8.4 In order to afford the Applicant(s) a reasonable time for taking response to clarifications into account, or for any other reason, the Authorised Representative may, in its sole discretion, extend the Bid Due Date.<sup>#</sup>

## **2.9 Amendment of Bidding Documents**

- 2.9.1 At any time prior to the deadline for submission of Application, the Authorised Representative may, for any reason, whether at its own initiative or in response to clarifications requested by a Applicant, modify the Bidding Documents by the issuance of Addenda.
- 2.9.2 Any Addendum thus issued will be available at the website of Authorised Represntative and DEEP Portal. The Applicant(s) are advised to check the DEEP Portal for any amendments or notifications.
- 2.9.3 In order to afford the Applicant(s) a reasonable time for taking an Addendum into account, or for any other reason, the Authorised Representative may, in its sole discretion, extend the Bid Due Date.<sup>\$</sup>

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<sup>#</sup> While extending the Bid Due Date on account of response to the clarifications, the Authorised Representative shall have due regard for the time required by Applicant(s) to address the clarifications specified therein. In the case of significant clarifications, at least 15 (fifteen) days shall be provided between the date of issuance of clarifications and the Bid Due Date, and in the case of minor clarifications, at least 7 (seven) days shall be provided.

<sup>\$</sup> While extending the Bid Due Date on account of an addendum, the Authorised Representative shall have due regard for the time required by Applicant(s) to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Bid Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

## **C. PREPARATION AND SUBMISSION OF APPLICATION**

### **2.10 Language**

2.10.1 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 Bidder 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 Bidder. 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/Bid**

2.11.1 The Bidder shall provide all the information sought under this Bidding Documents. The Authorised Representative 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 Bidder shall submit their Application online on the DEEP portal, signed by a valid digital signature of the authorized signatory of the Bidder.

2.11.3 For the documents uploaded online, the Application shall be typed or written in indelible ink. It shall be signed by the authorized signatory of the Applicant who shall also initial each page(including each Appendix and Annex) in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Application shall be initialed by the person(s) signing the Application/Bid. The Application shall contain page numbers.

2.11.4 The Applicant shall ensure that its authorized signatory has a Digital Signature Certificate (DSC).

2.11.5 The Applicant shall register on the DEEP Portal for participation in the Bidding Process.

2.11.6 The Official Copy of the Bidding Document shall be available for download on the DEEP Portal and on the website of Authorised Representative .

### **2.12 Sealing and Marking of Applications**

2.12.1 The Applicant shall submit the Application in the format specified at Appendix-I and the format created online in the DEEP portal, together with the documents specified in Clause 2.12.2.

2.12.2 Documents required to be uploaded as per this Bidding Document shall contain:

- (i) Application/Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents;

- (ii) Power of Attorney for digitally signing the Application/Bid as per the format at Appendix-II;
- (iii) copy of Memorandum and Articles of Association, if the Bidder is a body corporate;
- (iv) copies of Bidder's duly audited balance sheet and profit and loss account for the preceding three years;
- (v) Bank Guarantee as per the format at Appendix-III; and
- (vi) Pre-Contract Integrity Pact as per format provided in Appendix IV

2.12.3 The Applicant(s) shall send the hard copy of all the original documents stated at Clause 2.12.2 in an envelope clearly indicating the name and address of the Applicant, addressed to:

ATTN. OF: Sh. Neeraj Singh.

DESIGNATION: Chief General Manager

ADDRESS: PFC Consulting Limited,  
9<sup>th</sup> Floor, A wing, Statesman House  
Barakhamba Road, Connaught Place  
New Delhi – 110001

E-MAIL ADDRESS: [neeraj\\_singh@pfcindia.com](mailto:neeraj_singh@pfcindia.com) /  
[deep-pfcc@pfcindia.com](mailto:deep-pfcc@pfcindia.com)

Such hard copies should reach the aforementioned address within 2 working days after the opening of the Application in accordance with Clause 1.3 of this Bidding Document. The Applicant(s) are notified that in case of any discrepancy in the documents uploaded online at the DEEP Portal and the hard copies submitted in accordance with this Clause 2.12, the documents uploaded online shall prevail.

2.12.4 If the Application is not uploaded and digitally signed as instructed above, the Authorised Representative assume no responsibility for rejection of the Application and consequent losses, if any, suffered by the Applicant.

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

2.12.5 In the e-Tender Stage, all Applicant(s)/Bidders after uploading on the DEEP Portal the Application and the Bid as per the Bidding Document and digitally signing the same must click on 'Final submit' button to finally submit their Application and Bid, without clicking the 'Final submit' button the system will not consider the Application or the Bid.

## **2.13 Bid Due Date**

- 2.13.1 Applications should be submitted online latest by 15:00 hours IST on the Bid Due Date, at the DEEP Portal in the manner and form as detailed in this Bidding Document.
- 2.13.2 The Authorised Representative may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

## **2.14 Late Applications**

- 2.14.1 Applications will not be accepted for submission at the DEEP Portal after the time specified on the Bid Due Date.

## **2.15 Modifications/ Substitution/ Withdrawal of Applications**

- 2.15.1 The Applicant may modify, substitute or withdraw its Application after submission, provided that such modification, substitution or withdrawal is made prior to the Bid Due Date. No Application shall be modified, substituted or withdrawn by the Applicant on or after the Bid Due Date except as provided in clause 2.15.3. The DEEP Portal shall provide the option to Applicant(s), after submission of the Application and the Bid, to withdraw and delete the Application and the Bid. By clicking on withdraw, Application and Bid will be withdrawn by the Bidders from the DEEP Portal and further submission will be allowed only by another login id on or before the Bid Due Date. While clicking on delete, Application and Bid saved on the DEEP Portal in encrypted form will be deleted and the Applicant may submit fresh Application and Bid with same login id on or before the Bid Due Date.
- 2.15.2 However, notwithstanding any other provision, all Bids submitted will be considered final and cannot be modified after the Bid has been accepted by the DEEP Portal.
- 2.15.3 Any alteration/ modification in the Application or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authorised Representative, shall be disregarded.

## **D. EVALUATION PROCESS**

### **2.16 Opening and Evaluation of Applications**

- 2.16.1 The Authorised Representative shall open the Applications at 15:30 hours IST on the Bid Due Date..
- 2.16.2 Application and Bid which are withdrawn in accordance with Clause 2.15, the envelope containing hard copy shall not be opened and payments if any made shall be refunded without any interest within 7 working days after declaration of Successful Bidder / issuance of Letter of Award.
- 2.16.3 The Authorised Representative will subsequently examine and evaluate Applications in accordance with the provisions set out in the Bidding Process.
- 2.16.4 Applicant(s) are advised that pre-qualification of Bidders will be entirely at the discretion of the Authorised Representative. Applicant(s) 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 any way be construed as binding on the Authorised Representative, its agents, successors or assigns, but shall be binding against the Bidder if the Supply of Electricity is subsequently awarded to it on the basis of such information.
- 2.16.6 The Authorised Representative reserve the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s)/ Bid(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 Authorised Representative may, in its sole discretion, exclude the relevant project from computation of the Technical Capacity of the Applicant.

### **2.17 Confidentiality**

- 2.17.1 Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Applicant(s) shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authorised Representative in relation to, or matters arising out of, or concerning the Bidding Process. The Authorised Representative will treat all information, submitted as part of Application and Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authorised Representative 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 Authorised Representative 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 Authorised Representative shall determine whether each Application is responsive to the requirements of the Bidding Document. An Application shall be considered responsive if:

- (a) it is received as per format at Appendix-I.
- (b) omitted;
- (c) it is digitally signed and uploaded as stipulated in Clauses 2.11 and 2.12;
- (d) it is accompanied by the Power of Attorney;
- (e) it contains the information and documents) as requested in this Bidding Document;
- (f) it contains information in formats same as those specified in this Bidding Document;
- (g) it contains certificates from its statutory auditors in the formats specified at Appendix-I of the Bidding Document for Power Station;
- (h) it contains an attested copy of the banking system generated receipt by the authorised signatory or receipt of the Authorised Representative for payments towards the cost of the Bidding Process, fees submitted to the Authorized Representative and Bid Security as specified in Clause 1.2.2, 1.2.4 and 1.2.11 respectively;
- (i) a legal opinion from the legal counsel of the Bidder with respect to the authority of the Supplier to enter into this Agreement and the enforceability of the provisions thereof;
- (j) submitted the Capacity Certificate and evidence of the capacity of the Power Station;
- (k) it contains the Pre-Contract Integrity Pact as per format provided in Appendix IV
- (l) it does not contain any condition or qualification; and
- (m) it is not non-responsive in terms hereof.

2.18.2 The Authorised Representative reserve the right to reject any Application which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authorised Representative in respect of such Application. The Authorised Representative may, in its discretion, allow the Applicant to rectify any infirmities or omissions if the same do not constitute a material modification of the Application. Provided, however, the Authorised Representative may allow, in its discretion, any modification as provided under Clause 2.15.

## **2.19 Clarifications and/ or Additional Information**

2.19.1 To facilitate evaluation of Applications, the Authorised Representative may, in its sole discretion, seek clarifications and/ or additional information from any Applicant(s)/Bidder regarding its Application/Bid. Such clarification(s) and/ or additional information shall be provided within the time specified by the Authorised Representative for this purpose. Any request for clarification(s) and/ or additional information and all clarification(s) and/ or additional information in response thereto shall be provided in writing through email in desired format and hard copy.

2.19.2 If an Applicant/Bidder does not provide clarifications and/ or additional information 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 Authorised Representative may proceed to evaluate the Application by construing the particulars requiring clarification and/ or additional information to the best of its understanding, and the Applicant/Bidder shall be barred from subsequently questioning such interpretation of the Authorised Representative and evaluation shall be binding on the Applicant/ Bidder.

## **E. QUALIFICATION**

### **2.20 Pre-qualification and notification**

- 2.20.1 After the evaluation of Applications, the Authorised Representative would announce a list of Qualified Bidders whose Bid shall be opened on the date specified in accordance with this Bidding Document. At the same time, the Authorised Representative would notify the other Bidders that they have not been pre-qualified. The Authorised Representative will not entertain any query or clarification from Bidders who fail to qualify.
- 2.20.2 The Bid Security deposited by Applicant(s) who do not qualify after the evaluation of the Applications shall be refunded by the Authorized Representative without any interest within seven (7) working days of completion of Bidding Process i.e. issuance of LoA to Selected Bidder(s).

### **2.21 Submission of Bids**

- 2.21.1 The Applicant will submit the Bid online in the form and manner to be set out in the Bidding Document.
- 2.21.2 The Bids of only Qualified Bidders shall be opened by the Authorised Representative on such date as specified in this Bidding Document. The Applicant(s) are 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 Supply of Electricity. No extension of time is likely to be considered for submission of Applications/ Bids.

### **2.22 Proprietary data**

- 2.22.1 All documents and other information supplied by the Authorised Representative or submitted by an Applicant/ Bidder to the Authorised Representative shall remain or become the property of the Authorised Representative. Applicant (s) 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 Authorised Representative will not return any Application or any information provided along therewith.

### **2.23 Correspondence with the Applicant / Bidder**

- 2.23.1 Save and except as provided in this Bidding Document, the Authorised Representative shall not entertain any further correspondence with any Applicant /Bidder in relation to the acceptance or rejection of any Application/ Bid.

### **3. CRITERIA FOR EVALUATION**

#### **3.1 Evaluation parameters**

- 3.1.1 Only those Applicant(s) who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Clause 3. Applications of Applicant(s) 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;

#### **3.2 Technical Capacity for purposes of evaluation**

- 3.2.1 Subject to the provisions of Clause 2.2, the Bidders 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, BOLT, BOO, BOOT, BOT, DBFOO or on other similar basis.
- 3.2.2 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.

#### 4. SELECTION OF BIDDER

- 4.1 Subject to the provisions of Bidding Document, the Bidder whose Bid is adjudged as responsive in terms of Bidding Document and who quotes the Lowest Tariff offered to the Authorised Representative, in conformity with the provisions of Clause 4.8 shall be declared as the selected Bidder(s) (the “**Selected Bidder(s)**”). In the event that the Authorised Representative rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 4.2 The list of Qualified Bidders for consideration of evaluation for a coal source shall be arrived at by considering the last Bidder whose Bid is less than or equal to 110% of Fixed Charge plus fuel component of Variable charge of the L1 Bidder for that coal source.
- 4.3 The minimum number of qualified bidders against each source shall be at least two. If, in case of a particular source, it is found that only 1 (one) bidder has offered bid, the Authorised Representative may cancel the bidding process for such source and shall proceed with selection of bidders for other sources.
- 4.4 The Bids shall be evaluated coal source wise starting with the source with higher quantity of coal. In case two sources have equal coal quantity, the source having the lowest average price per kWh quoted by the Bidders shall be taken up first.
- 4.5 The lowest bidder (L1) for a source shall be allocated maximum coal from that source subject to coal quantity commensurate with the capacity offered by that bidder. Thereafter, if further quantity of coal is available in that source, quantity offered by the next lowest bidder after L1 shall be exhausted. This will continue for remaining bidders until the last Qualified Bidder or the source quantity is exhausted whichever is earlier. If any bidder has spare capacity after exhaustion of a source, it shall be considered for shortlisting in other sources also for the balance capacity.
- 4.6 In case there is a tie between the prices offered by two bidders, the bidder quoting lower Fixed Charge per kWh shall be selected first.
- 4.7 After the entire process, the constraint for minimum offer quantity shall be checked against all the successful bidders. In case any bidder is allocated a total quantity which is less than its minimum offered quantity, the allocation to such bidder shall not be considered and aggregate quantity of power procurement shall get modified to that extent.
- 4.8 After selection, a Letter of Award (the “LoA”) shall be issued, in duplicate, by the Authorised Representative 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 Authorised Representative 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.

- 4.9 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Supplier to execute the PPA within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the PPA.

#### **4.10 Contacts during Bid Evaluation**

- 4.10.1 Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authorised Representative 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 Authorised Representative and/ or their employees/ representatives on matters related to the Bids under consideration.
- 4.11 The coal allocated for the purposes of the Project would be either from a single source (coal field) or from multiple sources.

#### **4.12 Allocation of Capacity to Various States:**

- 4.12.1 The Capacity of each Successful Bidder shall be allocated amongst various states on proportionate basis. By way of illustration, if aggregate power requirement is 1000 MW (State A: 500 MW, State B: 200 MW and State C:300 MW) and there are two successful bidders (B1: 600 MW and B2:400 MW), State A will get 300 MW ( $=600 \times 500/1000$ ) from B1 and 200 MW ( $=400 \times 500/1000$ ) from B2. Similar, capacity allocations shall be made for each participating state from each Successful Bidder.
- 4.13 The Energy Charge Rate (ECR) for each Supplier (i.e. Successful Bidder) for a month shall be based on weighted average cost of the coal consumed during that month from allocated linkage coal sources).

## **5. FRAUD AND CORRUPT PRACTICES**

- 5.1 The Bidders 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 Authorised Representative may reject an Application without being liable in any manner whatsoever to the Bidder if it determines that the Bidder 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.
- 5.2 Without prejudice to the rights of the Authorised Representative under Clause 5.1 hereinabove, if an Bidder is found by the Authorised Representative to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or Bidding Document A issued by the Authorised Representative during a period of 2 (two) years from the date such Bidder is found by the Authorised Representative 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.
- 5.3 For the purposes of this Clause 5, the following terms shall have the meaning hereinafter respectively assigned to them:

“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 Authorised Representative 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 Authorised Representative , shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under this Bidding Document, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the Project or the LOA or the PPA, who at any time has been or is a legal, financial or technical adviser of the Authorised Representative in relation to any matter concerning the Project;

“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;

“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;

“undesirable practice” means establishing contact with any person connected with or employed or engaged by the Authorised Representative with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process;; and

“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.

- 5.4 The bidder(s) shall execute the pre-contract Integrity Pact in the format annexed as Appendix IV.

## **6. PRE-APPLICAITON MEETING**

- 6.1 A Pre-Application meeting of the interested parties shall be convened at the designated date, time and place. Only those persons who have registered at the DEEP Portal for participating in the Bidding Process shall be allowed to participate in the Pre-Application meeting.
- 6.2 During the course of Pre-Application meeting, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authorised Representative. The Authorised Representative 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.

## **7. MISCELLANEOUS**

- 7.1 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.
- 7.2 The Authorised Representative , 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) pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
  - (d) retain any information and/ or evidence submitted to the Authorised Representative by, on behalf of, and/ or in relation to any Bidder; and/ or
  - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 7.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the Authorised Representative , 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 and Bid – to be uploaded during e-Tender Stage

To,

[The .....  
.....  
.....  
.....

Ph. No. : .....

Fax No: .....

E-Mail: .....]

Sub: Application for pre-qualification and Bid for Procurement of Aggregated Power of 4500 MW – Supply of Electricity

Dated:

Dear Sir,

1. With reference to your Bidding Document dated ....<sup>§</sup>, I/we, having examined the Bidding Document and understood its contents, hereby submit my/our Application for Qualification for the aforesaid Supply of Electricity. The Application and Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authorised Representative will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Bidders for the aforesaid Supply of Electricity, and we certify that all information provided in the Application and in Annexes I to IV 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 Qualified Bidder for the aforesaid Supply of Electricity and for sale of power to the Authorised Representative.
4. I/ We shall make available to the Authorised Representative any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
5. I/ We acknowledge the right of the Authorised Representative to reject our Application without assigning any reason or otherwise and hereby waive, to the

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<sup>§</sup> All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant.

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 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:
  - 7.1 I/ We have examined and have no reservations to the Bidding Document, including any Addendum issued by the Authorised Representative
  - 7.2 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 the Bidding Document, in respect of any tender or of the Bidding Document issued by or any agreement entered into with the Authorised Representative or any other public sector enterprise or any government, Central or State; and
  - 7.3 I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of the Bidding 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 open the Bid of the Bidders, without incurring any liability to the Bidders, in accordance with Clause 2.16.6 of the Bidding Document.
9. I/ We certify that in regard to matters other than security and integrity of the country, I/ we have not been convicted by a Court or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Supply of Electricity or which relates to a grave offence that outrages the moral sense of the community.
10. I/ We further certify that in regard to matters relating to security and integrity of the country, I/ we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
11. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our CEO or any of our directors/managers/ employees<sup>\$</sup>.

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<sup>\$</sup> In case the Applicant is unable to provide the certification specified in para 11, 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 Authorised Representative 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.

12. 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 Bidding Document, we shall intimate the Authorised Representative of the same immediately.
13. The Statement of Legal Capacity as per format provided at Annex-IV in Appendix-I of the Bidding Document, and duly signed, is enclosed.
14. 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 Authorised Representative in connection with the selection of Bidders, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Supply of Electricity and the terms and implementation thereof.
15. I/ We agree and undertake to abide by all the terms and conditions of the Bidding Document.
16. I/ We certify that in terms of the Bidding Document, my/our Technical Capacity is equivalent to .....MW (MW in words).
17. I/We offer a Capacity of {...MW} from {Capacity, Name and address of the Project} which conforms to Clause 1.1.2 of the Bidding Document out of the Capacity Required of {... MW} given under Clause 1.1.2 of the Bidding Document and minimum Capacity of {...MW} which conforms to Clause 4.7 of the Bidding Document.
18. I/ We offer a Bid Security of Rs..... (Rupees .....only) to the Authorised Representative in accordance with the Bidding Document.
19. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.
20. 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.
21. I/ We shall keep this offer valid for 120 (One Twenty) days from the Bid Due Date specified in the Bidding Document.
22. I/ We hereby submit the following Bid and offer for each source of coal separately, on DEEP Portal, as on the Bid Due Date, in accordance with the provisions of the Bidding Documents

A Tariff of Rs.... and paise ... (Rupees .. and paise ..) per kWh comprising

- a. Base Fixed Charge Rs.....and paise..... (Rupees ....and paise ....) per kWh;
- b. Base Variable Charge of Rs.....and paise .. (Rupees ..and paise..) per kWh including
  - i. Rs.. and paise.. (Rupees .. and paise ..) per kWh as the cost of fuel;

ii. Rs.. and paise .. (Rupees .. and paise ..) per kWh as the cost of fuel transportation.

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

Yours faithfully,

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

Place: Name and seal of the Applicant

**ANNEX-I**  
**Particulars of the Bidder**

1.

<b>Sr. No</b>	<b>Description</b>	<b>Details</b>
1.	Name	
2.	Date of commencement of business	
3.	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 Bidder:

<b>Sr. No</b>	<b>Description</b>	<b>Details</b>
1.	Name	
2.	Designation	
3.	Address	
4.	Telephone Number	
5.	Mobile Number	
6.	E-Mail Address	
7.	Fax Number	

4. Particulars of the Authorised Signatory of the Bidder:

<b>Sr. No</b>	<b>Description</b>	<b>Details</b>
1.	Name	
2.	Designation	
3.	Address	
4.	Telephone Number	
5.	Mobile Number	
6.	E-Mail Address	
7.	Fax Number	

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

Name of Bidder:

No.	Criteria	Yes	No
1.	Has the Bidder 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 Bidder 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?		

6. A statement by the Bidder 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) of the Bidding Document)

<b>Item (1)</b>	<b>Refer Instruction (2)</b>	<b>Particulars of the Project (3)</b>
Title of the Power Station		
Location		
Capital Cost of the Power Station	1	
Date of completion/ Commissioning	2	
Installed capacity of the plant	4	
Untied Capacity	5	

**Instructions:**

1. Provide the capital cost of the Project.
2. The date of commissioning of the project, upon completion, should be indicated.
3. The total number of units along with the details of the capacity of each unit should be provided
4. Certificate from the Applicant's, as applicable, statutory auditor<sup>\$</sup> must be furnished as per formats below for Power Station.
5. Provide the untied Capacity in MW

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<sup>\$</sup> 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 <sup>Φ</sup>**

Based on its books of accounts and other published information authenticated by it, this is to certify that ..... (*name of the Bidder*) 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*).

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation of the  
authorised signatory)

Date:

<sup>Φ</sup> Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary.

6. In case the generating station is not under a separate SPV the following format shall be used, Certificate from the Applicant's statutory auditor must be furnished as per formats below for Power Station.

### **Certificate from Statutory Auditor regarding Eligible Projects**

Based on its book of accounts and other published information authenticated by it, this is to certify that ..... (*name of the Bidder*) having its registered office at .....own the ..... (*name of Project*) from .....(*date*).

The project was commissioned on .....(*date of commissioning of the project*).

Name of the audit firm:

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

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**  
**Statement of Legal Capacity**  
*(To be forwarded on the letterhead of the Applicant)*

Ref.

Date:

To,

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

Ph. No. : .....

Fax No: .....

E-Mail: .....

Dear Sir,

We hereby confirm that we satisfy the terms and conditions laid out in the Bidding 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 Application and the Bid. 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-IV**  
**Particulars of the Power Station**

Sr. No	Description	Details			
1.	<b>Details of Applicant</b>				
	a. Name of the Applicant				
	b. Date of commencement of business				
	c. Address of the corporate headquarters				
	d. Brief description of the Company including details of its main lines of business				
2.	<b>Details of Power Station (from which capacity is offered)</b>				
	a. Name of the Power Station				
	b. Location of Power Station (Specify place, District and State)				
	c. Unit and installed capacity of each unit (MW)	<b>Unit No.</b>	<b>1</b>	<b>2</b>	<b>...</b>
		Installed Capacity (MW)			
		COD			
		Quantum of power contracted with other purchasers, if any (MW)			
		Details of surplus/untied capacity (MW)			
	d. Total Proposed Supply of Electricity (MW) irrespective of power been supplied from any Unit				
	e. Minimum Proposed Supply of Electricity (MW)				

Signature:  
Name:  
Designation:  
Date:  
Place:

**APPENDIX II**  
**Power of Attorney for signing of Application and Bid<sup>\$</sup>**  
**(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 Procurement of Aggregated Power of 4500 MW – Supply of Electricity proposed by the [.....] (the “**Authorised Representative**”) 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 **Authorised Representative**, representing us in all matters before the Authorised Representative, signing and execution of all contracts including the Agreement for Procurement of Aggregated Power for Group of States (PPA) and undertakings consequent to acceptance of our bid, and generally dealing with the Authorised Representative in all matters in connection with or relating to or arising out of our bid for the said Supply of Electricity and/ or upon award thereof to us and/or till the entering into of the PPA with the Authorised Representative/Utility (ies).

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

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

For

....

(Signature, name, designation and address)

Witnesses:

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<sup>\$</sup> To be submitted in original.

## Affixation of Common Seal

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.*

**APPENDIX – III**  
**Bank Guarantee for Bid Security**

B.G. No.

Dated:

1. In consideration of you, \*\*\*\*\*, having its office at \*\*\*\*\*, (hereinafter referred to as the “Authorised Representative”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of .....(a company registered under the Companies Act, 1956/2013) and having its registered office at ..... ((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 Procurement of Aggregated Power of 4500 MW (hereinafter referred to as the “Supply of Electricity”) pursuant to the Bidding Document dated ..... issued in respect of the Supply of Electricity and other related documents including without limitation the draft Agreement for Procurement of Aggregated Power for Group of States ( PPA) (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at ..... and one of its branches at .... (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 1.2.11 c) read with Clause 1.2.11 d) of the Bidding Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Document by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authorised Representative 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 Authorised Representative 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 Authorised Representative is disputed by the Bidder or not, merely on the first demand from the Authorised Representative stating that the amount claimed is due to the Authorised Representative by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. \*\*\*\*\* (Rupees \*\*\*\*\* only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 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 Authorised Representative 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 Authorised Representative 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 Authorised Representative that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authorised Representative 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 Authorised Representative shall be entitled to treat the Bank as the principal debtor. The Authorised Representative 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 Authorised Representative, and the Bank shall not be released from its liability under these presents by any exercise by the Authorised Representative 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 Authorised Representative or any indulgence by the Authorised Representative to the said Bidder or by any change in the constitution of the Authorised Representative 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 Authorised Representative 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 Authorised Representative 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 Authorised Representative 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 Authorised Representative serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [\*\*\* (indicate date falling 180 days from the Bid Due Date)].

Signed and Delivered by .... Bank  
By the hand of Mr./Ms ....., its .. and authorised official.

(Signature of the Authorised Signatory)  
(Official Seal)

## **APPENDIX – IV**

### **Pre-Contract Integrity Pact**

#### **General**

This Pre-Contract Integrity Pact is made on \_\_\_\_ day \_\_\_\_\_ of the month of \_\_\_\_ 20\_\_\_\_, between, on one hand, PFC Consulting Limited through \_\_\_\_\_ (hereinafter called the "Authorized Representative", which expression shall mean and include, unless the context otherwise requires, his successors in the office and assigns) of the First Part

#### **AND**

M/s \_\_\_\_\_ represented by \_\_\_\_ \*Insert Name & Designation of AUTHORIZED SIGNATORY of the Bidder (hereinafter called the "Bidder" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

**WHEREAS** the Authorized Representative is conducting the bidding process for selection of Supplier to whom the contract may be awarded for production of electricity as per terms and conditions specified in the Bidding Documents.

**WHEREAS** the Bidder is a Company constituted in accordance with the relevant law in the matter and the Authorized Representative is a Public Sector Undertaking (PSU) performing its function on behalf of the Ministry of Power, Government of India.

#### **NOW, THEREFORE,**

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings during the complete bidding process with a view to:-

Enabling the Authorized Representative to select the bidder as the Supplier in conformity with the defined procedures by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling Bidder to abstain from bribing or indulging in any corrupt practice in order to emerge as selected bidder by providing assurance to them that their competitors will also abstain from bribing and other practices and the Authorized Representative will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

#### **1. Commitments of Authorized Representative**

- 1.1 The Authorized Representative undertakes that no official of the Authorized Representative, connected directly or indirectly with the bidding process, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER, either for themselves or for any person, organization or third party related to the bidding process in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.
- 1.2 The Authorized Representative will, during the bidding stage, treat all bidders alike, and will provide to all bidders the same information and will not provide any such information to any particular bidder which could afford an advantage to that particular bidder in comparison to the other bidders.
- 1.3 All the officials of the Authorized Representative will report the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
2. In case of any such preceding misconduct on the part of such official(s) is reported by the Bidder to the Authorized Representative with the full and verifiable facts and the same is prima facie found to be correct by the Authorized Representative, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Authorized Representative and such a person shall be debarred from further dealings related to the bidding process. In such a case while an enquiry is being conducted by the Authorized Representative the proceedings under the bidding process would not be stalled.

### **3. Commitments of Bidder.**

The Bidder commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre award stage in order to emerge as Selected Bidder or in furtherance to secure it and in particular commits itself to the following:-

- 3.1 The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Authorized Representative, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the bidding process in exchange for any advantage in the bidding, evaluation, contracting and implementation of the bidding process.

- 3.2 The Bidder further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Authorized Representative or otherwise in bidding process or for bearing to do or having done any act in relation to bidding process or any other contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the bidding process or any other contract with the Government.
- 3.3 The Bidder shall disclose the name and address of agents and representatives and Indian Bidder shall disclose their foreign principals or associates.
- 3.4 The Bidder shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with this bid.
- 3.5 The Bidder further confirms and declares to the Authorized Representative that the Bidder has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Authorized Representative or any of its functionaries, whether officially or unofficially for selection of Bidder as Supplier, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
- 3.6 The Bidder, either while presenting the bid or during pre-award negotiations or before signing the Agreement for Procurement of Aggregated Power for Group of States (“PPA”) , shall disclose any payments he has made, is committed to or intends to make to officials of the Authorized Representative or their family members, agents, brokers or any other intermediaries in connection with the bidding process and the details of services agreed upon for such payments.
- 3.7 The Bidder will not collude with other parties interested in the bidding process to impair the transparency, fairness and progress of the bidding process.
- 3.8 The Bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.9 The Bidder shall not use improperly, for purpose of competition or personal gain, or pass on to others, any information provided by the Authorized Representative as part of the business relationship, regarding plans, technical proposal and business details, including information contained in any electronic data carrier. The Bidder also undertakes to exercise due and adequate care lest any such information is divulged.
- 3.10 The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.

3.11 The Bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

3.12 The Bidder shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Authorized Representative.

#### **4. Previous Transgression**

4.1 The Bidder declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify Bidder's exclusion from the bidding process.

4.2 The Bidder agrees that if it makes incorrect statement on this subject, Bidder can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

#### **5. Bid Security**

5.1 Along with the technical bid, the BIDDER has submitted Bid Security, with the Authorized Representative.

5.2 The Bid Security shall be valid & retained by the Authorized Representative for such period as specified in the RfS Document.

#### **6. Sanctions for Violations**

6.1 Any breach of the aforesaid provisions by the Bidder or any one employed by it or acting on its behalf (whether with or without the knowledge of the Bidder) shall entitle the Authorized Representative to take all or anyone of the following actions, wherever required:-

- (i) To immediately call off the pre-award negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder (s) would continue.
- (ii) The Bid Security (in pre-award stage) shall stand forfeited either fully or partially, as decided by the Authorized Representative and the Authorized Representative shall not be required to assign any reason therefore.
- (iii) To immediately cancel the award, if already awarded, without giving any compensation to the Bidder.

- (iv) To cancel all or any other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the Authorized Representative resulting from such cancellation/rescission.
  - (v) To debar the Bidder from participation in any tender or RfS issued by any Authorized Representative for an indefinite period.
  - (vi) To recover all sums paid in violation of this Pact by Bidder to any middleman or agent or broker with a view to securing the award.
- 6.2 The Authorized Representative will be entitled to take all or any of the actions mentioned at para 6.1 (i) to (vi) of this Pact also on the Commission by the Bidder or anyone employed by it or acting on its behalf (whether with or without the knowledge of the Bidder), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 6.3 The decision of the Authorized Representative to the effect that a breach of the provisions of this Pact has been committed by the Bidder shall be final and conclusive on the Bidder. However, the Bidder can approach the Independent Monitor(s) appointed for the purposes of this Pact.

## **7. Independent Monitors**

- 7.1 The Authorized Representative has appointed Independent Monitors (hereinafter referred to as Monitors) for this Pact in consultation with the Central Vigilance Commission (Names and Addresses of the Monitors to be given).
- 7.2 The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- 7.3 The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- 7.4 Both the parties accept that the Monitors have the right to access all the documents relating to the project/procurement, including minutes of meetings.
- 7.5 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the Authorized Representative.
- 7.6 The Bidder accepts that the Monitors has the right to access without restriction to all Project documentation of the Authorized Representative including that provided by the Bidder. The Monitor shall be under contractual obligation to treat the information and documents of the Bidder/Subcontractors(s) with confidentiality. [As all the bid documents are with Authorized Representative only]

7.7 The Authorized Representative will provide to the Monitors sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the monitor the option to participate in such meetings.

7.8 The Monitor will submit a written report to the designated Authority of the Authorized Representative within 8 to 10 weeks from the date of reference or intimation to him by the Authorized Representative / Bidder and, should the occasion arise, submit proposals for correcting problematic situations.

## **8. Facilitation of Investigation**

In case of any allegation of violation of any provisions of this Pact or payment of commission, the Authorized Representative or its agencies shall be entitled to examine all the documents including the Books of Accounts of the Bidder and the Bidder shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

## **9. Law and Place of Jurisdiction**

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the Authorized Representative.

## **10. Other Legal Actions**

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the any extent law in force relating to any civil or criminal proceedings.

## **11. Validity**

11.1 The validity of this Integrity Pact shall be from date of its signing and upto 6 months from the date of signing of PPA. In case Bidder is unsuccessful, this Integrity Pact shall expire after 15 days from the date of signing of PPA.

11.2 Should one or several provisions of this Pact turn out to be invalid, the remainder of this Pact shall remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

The Parties hereby sign this Integrity Pact at on

Authorized Representative)  
Name of the Officer Designation  
Name of the Authorized Representative with address

Witness:

- 1.
- 2.

**BIDDER**

Name of Whole time Director/Authorized

Signatory

Name of the Bidder with address

Witness:

- 1.