

# **SECTION A**

## **Request For Qualification for Agreement for Procurement of Power For Medium Term**

**Issued by:  
Noida Power Company Limited,  
Commercial Complex, H-Block, Alpha-II Sector,  
Greater Noida – 201 308 (U.P.)**

**22<sup>nd</sup> January, 2018**

**E-Tender No.:- NPCL/MediumTerm/LumpsumTariff/17-18/ET/**

**E-Reverse Auction No.:- NPCL/MediumTerm/LumpsumTariff/17-18/ET/**

## **DISCLAIMER**

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

This Bidding Document is not an agreement and is neither an offer nor invitation by the Utility to the prospective Bidders or any other person. The purpose of this 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 selection pursuant to Section A (“**Request for Qualification**” or “**RFQ**”) and financial bids (the “**Bid**”) for qualification and selection pursuant to Section B (“**Request for Proposal**” or “**RFP**”) of this Bidding Document. This Bidding Document includes statements, which reflect various assumptions and assessments arrived at by the Utility in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This Bidding Document may not be appropriate for all persons, and it is not possible for the Utility, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this 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. The Utility accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Utility, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder or Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this 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 Utility also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this Bidding Document.

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

The issue of this Bidding Document does not imply that the Utility is 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 Utility reserves 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 Utility 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 Utility shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Bidder in preparation or submission of the Application and Bid, regardless of the conduct or outcome of the Bidding Process.

## GLOSSARY

<b>APP</b>	As defined in Clause 1.1.3
<b>Application</b>	As defined in the Disclaimer
<b>Bid Due Date</b>	As defined in Clause 1.1.6
<b>Associate</b>	As defined in Clause 2.2.7
<b>Bids</b>	As defined in the Disclaimer
<b>Bid Security</b>	As defined in Clause 1.2.6
<b>Bidder(s)</b>	As defined in Clause 1.2.1
<b>Bidding Documents</b>	As defined in the Disclaimer
<b>Bidding Process</b>	As defined in Clause 1.2.1
<b>e-Reverse Auction Stage</b>	As defined in Clause 1.2.1
<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>Developer</b>	shall mean the owner of the Power Station from which the supplier shall supply the Power to the Utility(ies);
<b>FOO</b>	Finance, Own and Operate
<b>Eligible Projects</b>	As defined in Clause 3.2.1
<b>Financial Capacity</b>	As defined in Clause 2.2.2 (B)
<b>Government</b>	Government of India/State
<b>LOA</b>	Letter of Award
<b>Lowest Bidder</b>	As defined in Clause 1.2.7
<b>Net Worth</b>	As defined in Clause 2.2.4 (ii)
<b>PPP</b>	Public Private Partnership
<b>Project</b>	As defined in Clause 1.1.1
<b>Qualification</b>	As defined in Clause 1.2.1
<b>Re. or Rs. or INR</b>	Indian Rupee
<b>SECTION A (RfQ)</b>	As defined in the Disclaimer
<b>SECTION B (RfP)</b>	As defined in the Disclaimer
<b>Supplier/ Selected Bidder</b>	As defined in Clause 1.1.3
<b>Tariff</b>	As defined in Clause 1.2.12
<b>Technical Capacity</b>	As defined in Clause 2.2.2 (A)
<b>Trading Licensee(s)</b>	shall mean the Bidder/Bidder which is an Electricity Trader or a Distribution Licensee in terms of the Electricity Act, 2003 and submits its Application on the basis of an exclusive power purchase agreement executed with the entity with identified generation source from where the power is proposed to be supplied by the Bidder/Bidder
<b>Utility</b>	As defined in Clause 1.1.1

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

# NOIDA POWER COMPANY LIMITED

## 1. INTRODUCTION<sup>§</sup>

### 1.1 Background

- 1.1.1 The Noida Power Company Limited (NPCL) (the “Utility”) is engaged in the distribution of electricity and as part of this endeavour, the Utility has decided to procure electricity from a power generating station that would dedicate a contracted capacity of 100 MW for production of electricity and supply thereof for a period of 16 (Sixteen) months on **Round-the-Clock basis** (the “**Project**”) through Public Private Partnership (the “**PPP**”) on Finance, Own and Operate (the “**FOO**”) basis, and has, therefore, decided to carry out the bidding process for selection of a corporate entity (ies) as the Bidder to whom the contract may be awarded for production of electricity and supply thereof as per the terms and conditions specified in the Bidding Documents.

Brief particulars of the Project are as follows:

<b>Requisition</b>	<b>Capacity Required (in MW)</b>	<b>Period when supply must commence</b>	<b>Delivery Point</b>
RTC	100	01.12.2018	NPCL Periphery i.e. interconnection of NPCL with UPSTU

- 1.1.2 The Utility intends to pre-qualify and short-list suitable bidders (the “**Bidders**”) whose Bid shall be opened on the date specified at Clause 1.3 of this RFQ and will be eligible for participation in the e-Reverse Auction Stage, for awarding the Project through an open competitive bidding process in accordance with the procedure set out herein.
- 1.1.3 The selected Bidder (the “**Supplier**”) shall be responsible for financing, construction, operation and maintenance of the Project, and in case of Supplier being a Trading Licensee, it shall be responsible for supply of power from the Power Station, under and in accordance with the provisions of a medium-term Agreement for procurement of power (the “**Agreement for Procurement of Power**” or the “**APP**”) to be entered into between the Supplier and the Utility in the form provided by the Utility as part of the Bidding Documents pursuant hereto.
- 1.1.4 The scope of work will broadly include operation and maintenance of the Power Station and supply of power, and in case of Supplier being a Trading Licensee, the scope of work will be supply of power from the Power Station, in accordance with the terms of the APP.

<sup>§</sup> Instructions for Applicants

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

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

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

- 1.15 All Bidders shall indicate the particulars of the relevant Power Station in the form specified at Annex-V of Appendix-I as available at <http://www.mstcecommerce.com/auctionhome/ppa/index.jsp> (“DEEP Portal”). Bidders may bid for the capacity specified in Clause 1.1.1, or a part thereof, not being less than 50% (fifty per cent) of such capacity or 100 (one hundred) MW, whichever is lower. The remaining capacity, if any, may be procured from other Bidders who are willing to match the lowest Bid.
- 1.16 The Utility shall receive Applications pursuant to this Bidding Document in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Utility, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the “**Bid Due Date**”).
- 1.2 Brief description of Bidding Process:**
- 1.21 The Utility has adopted a two-stage bidding process (collectively referred to as the “**Bidding Process**”) for selection of the bidder for award of the Project. The first stage (the “**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, comprising of RFQ and RFP (the “**Bidder**”). Prior to submission of the Application, the Bidder shall pay to the Utility a sum of Rs 10, 000 (Rupees ten thousand only) as indicated above, as the cost of the RFQ process. At the end of this e-Tender Stage, system will send an email to all qualified Bidders who are eligible to participate in the e- Reverse Auction Stage.
- 1.22 All the Bidders would be able to participate in the e-Bidding events on making payment of the requisite fees of ₹500 per MW per requisition for the total capacity sought by the Utility for that particular requisition for which the bidder is willing to bid, to PFC Consulting Limited (PFCCL). The requisite fee plus applicable taxes shall be deposited through the portal by e-Payment Gateway provided by MSTC Ltd. After the completion of the bidding process, only successful Bidder(s) will have to pay these charges for the quantum allocated to each bidder. The balance amount will be refunded by PFCCL within seven (7) working days without any interest. The fee deposited by non Selected Bidder(s) will also be refunded by PFCCL within seven (7) working days of completion of the event without any interest.
- 1.23 The e-Tender Stage shall be a two-fold process, where the Bidders will be required to submit their Application and Bid online at the DEEP Portal on or before the Bid Due Date.
- 1.24 In the e-Tender Stage, Bidders would be required to furnish all the information specified in this Bidding Document by submitting (a) its Application under Section A (RFQ) for its qualification in accordance with the eligibility requirement under the RFQ and (b) its Bid in accordance with Section B (RFP).
- 1.25 The Bidder shall pay to the Utility a sum of Rs. 50,000 (Rupees Fifty Thousand) as the cost of the RFP process. The Bid shall be valid for a period of not less than 120

days from the Bid Due Date. The Bids of only those Bidders that are pre-qualified and short-listed by the Utility after evaluation of their Application, shall be opened on such date as specified under Clause 1.3 of this Section A and shall be invited to participate in e-Reverse Auction Stage for the Project, in accordance with Clause 4 of Section B, to submit their revised financial bids in e- Reverse Auction stage. The Utility is likely to provide a comparatively short time span for submission of the Bids for the Project. The Bidders are, therefore, advised to familiarise themselves with the terms of the Model APP that will govern the structure of this Project. The said Model APP has been notified by the Government under section 63 of the Electricity Act 2003 for tariff based bidding by the Utilities.

- 1.2.6 In terms of the RFP, 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 capacity offered by the Bidder (the "**Bid Security**"), refundable not later than 60 (sixty) days from the Bid Due Date, except in the case of the selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the APP. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Utility<sup>\$</sup> or may be submitted as e-bank guarantee or deposited online through NEFT/RTGS payment at the DEEP Portal. The demand draft shall be kept valid for a period not less than 180 (one hundred and eighty) days from the Bid Due Date, by submitting another demand draft before expiry of the existing demand draft and may be further extended as may be mutually agreed between the Utility and the Bidder from time to time. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Utility and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.7 In e-Reverse Auction Stage, the lowest Bid received in the e-Tender Stage shall be displayed to the Bidders on the DEEP Portal and thereafter any subsequent lowest bid in e-Reverse Auction Stage on a real time basis. During the e-Reverse Auction Stage, the Bidders will have the option of reducing the Tariff quoted by them at e-Tender Stage in their Bids in decrements of 1 (one) paise or multiples thereof and to increase the quantum quoted by them at e-Tender Stage by 1 MW or multiples thereof. At the end of the e-Reverse Auction, lowest bidder will be identified by the system, the system will check all bids received in e-Tender and e-Reverse Auction and identify the Bidder who has quoted the lowest Tariff therein ("**Lowest Bidder**").
- 1.2.8 Generally, the Lowest Bidder shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified here, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for any reason or in case the Capacity Required as per clause 1.1.1 is not fully met by the Lowest Bidder. All other bidders will be asked to match the Lowest Bid in the system ("**L-1 Matching**"). In L-1 Matching round, the Bidders will be displayed the bid of the Lowest Bidder ("**Lowest Bid**") and available quantity, they will be required to input the quantity in MW that they

<sup>\$</sup> The format for the bank guarantee has been published as part of Section B of this Standard Bidding Document

wish to supply at the Lowest Bid. At the end of L-1 Matching round, system will allocate power to bidders in the order as they were at the end of e-Reverse Auction

- 1.2.9 (like L-1, L-2 , L-3 cumulative in e-Tender and e-Reverse Auction Stage) for the quantity bid by Lowest Bidder in e-Reverse Auction and other bidders in L-1 Matching. It is hereby clarified that the Utility will not accept the entire capacity offered of the last Lowest Bidder in the order of progression, in the event the Capacity Required gets fulfilled by a part thereof. In the event that none of the other Bidders match the Bid of the Lowest Bidder, the Utility may, in its discretion, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be. Further, it is clarified that any single Bidder cannot quote part capacity from different power stations.
- 1.2.10 During the e-Tender Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the contract including implementation of the Project.
- 1.2.11 As part of this Bidding Documents, the Utility will provide a draft APP and other information pertaining/ relevant to the Project available with it.
- 1.2.12 Bids are invited for the Project under Section B of 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 APP forming part of the Bidding Documents. For the purposes of bidding hereunder, the Base Fixed Charge and Base Variable Charge shall constitute the tariff for the Power Station (the “**Tariff**”). For Lumpsum Tariff, generating cost of electricity, the transmission charges and the transmission losses shall form part of the Base Variable Charge. The contract period shall be pre-determined, and will be indicated in the draft APP. The Project shall be awarded to the Bidder quoting the lowest Tariff, after the completion of the process under Clause 1.2.7 and Clause 1.2.8 above.

(a) *Lumpsum Tariff*

The Bidder shall quote a Base Variable Charge comprising the generating cost of electricity, the transmission charges and the transmission losses. Based on its Bid, a lumpsum tariff shall be paid to the Supplier comprising of (a) a Base Variable Charge, and (b) a Base Fixed Charge , as per the provisions of Clause 12.3.1 of the APP. The Tariff shall be revised as per the terms of the APP. 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.

In this Section A, the term “Lowest Bidder” shall mean the Bidder who is offering the lowest Tariff.

Explanation: In case the Bidder is a Trading Licensee, the provisions of Sub-clauses (a) related to the source/supply of Fuel shall mean the source/supply of Fuel, as applicable to the Developer

- 1.2.13 Further details of the process for submission of Bid to be followed at the e-Tender



Stage and the terms thereof will be spelt out in Section B of this Bidding Document.

- 1.2.14 Any queries or request for additional information concerning this Section A shall be submitted in writing on the DEEP Portal or by speed post/courier/special messenger and e-mail attaching the queries in Microsoft word file so as to reach the officer designated in Clause 2.12.3 by the specified date. The envelopes/communications shall clearly bear the following identification/ title:

**"Queries/ Request for Additional Information: Bidding for Procurement of Power on Medium Term Basis"**

### 1.3 Schedule of Bidding Process

The Utility shall endeavour to adhere to the following schedule:

	<b>Event Description</b>	<b>Date and Time</b>
1.	Date and time of Start of e-Tender Stage	22-Jan-18
2.	Last date and time for receiving queries on RFQ and RFP	05-Feb-18
3.	Pre-Bid Meeting	12-Feb-18
4.	Utility response to queries latest by	19-Feb-18
5.	Last date and time of submission of e-Tender (including Section A and Section B) – Bid Due Date	06-Mar-18
6.	Opening of Application	06-Mar-18
7.	Intimation to short-listed and pre-qualified Bidders for opening of their Bids	14-Mar-18
8.	Opening of Bids of those Bidders who are short-listed and pre-qualified in the RFQ Process.	23-Mar-18
9.	Start of e-Reverse Auction	23-Mar-18
10.	Close of e-Reverse Auction	23-Mar-18
11.	L-1 Matching	23-Mar-18
12.	Letter of Award (LOA)	30-Mar-18
13.	Validity of Bids	06-Jul-18
14.	Signing of APP	06-Apr-18

### 1.4 Pre-Bid Meeting

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

**Date: 12.02.2018**

**Time: 11:00 Hrs.**

**Venue: Noida Power Company Limited,**

**Knowledge Park-IV, Greater Noida (Near Wipro)**

## 1. INSTRUCTIONS TO BIDDERS

### A. GENERAL

#### 2.1 Scope of Application

- 2.1.1. The Utility wishes to receive Applications for Qualification in order to short-list experienced and capable Bidders for opening of the Bids in the RFP process.
- 2.1.2. The Bids of the short-listed Bidders may be opened subsequently as per the schedule specified in Clause 1.3. of this RFQ.

#### 2.2 Eligibility of Bidders

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

- (a) The Bidder should be a corporate entity;
- (b) The Bidder should either be the owner and operator of the Power Station from where electricity shall be supplied or a Trading Licensee;
- (c) In case of Bidder being a Trading Licensee, such Trading Licensee should have executed a power purchase agreement or an equivalent arrangement with the Developer for atleast the Capacity for which the Application has been made;
- (d) the Power Station has access to an assured supply of Fuel; and
- (e) Other eligibility conditions shall include the following:
  - (1) The prospective Bidders should have achieved CoD before the last date of submission of bids.
  - (2) A copy of certificate of CoD of the plant to be provided by prospective Bidders to ascertain that the offered power would be supplied w.e.f. 01.12.2018 without fail.

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

- (A) **Technical Capacity:** For demonstrating technical capacity and experience (the “Technical Capacity”), the Bidder shall own and operate power generating station(s) having an installed capacity equivalent to at least twice the capacity for which the Bidder is willing to Bid. Bidders shall not be allowed to increase their capacity at e-Reverse Auction Stage or L1 Matching greater than for which Technical Capacity has been demonstrated.

In case the Bidder is a Trading Licensee, the condition under Clause 2.2.2 (A) shall be fulfilled through the Developer.

(B) **Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) equivalent to Rs. 1 crore (Rs. one crore) per MW of the capacity the Bidder is willing to Bid, at the close of the preceding financial year. Bidders shall not be allowed to increase their capacity at e- Reverse Auction Stage or L1 Matching greater than for which Financial Capacity has been demonstrated.

In case the Bidder is a Trading Licensee, the condition under Clause 2.2.2(B) may be either fulfilled jointly or severally by the Trading Licensee and Developer.

2.2.3 The Bidders 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 Bidder or its Associates or in case the Bidder is a Trading Licensee, then of the Developer, stating the power stations which are owned and operated by the Bidder or the Developer, as the case may be, as specified in paragraph 2.2.2 (A) above; and
- (ii) certificate(s) from statutory auditors of the Bidder or its Associates specifying the net worth of the Bidder or its Associates, as the case may be, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.3 (ii). For the purposes of this Section A, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders.

2.2.4 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bidder to digitally sign and submit the Application and Bid at e-Tender Stage and to submit its revised bids in e-Reverse Auction 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 subsists as on the date of Application, would not be eligible to submit an Application. In case the Bidder is a Trading Licensee, the entity herein shall be construed as the Trading Licensee as well as the Developer.

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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 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ.

2.2.6 An Bidder and/or the Developer (in case the Bidder is a Trading Licencee) including any Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder and/or the Developer or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder and/or the Developer or Associate. Provided, however, that where an Bidder claims that its or the Developers disqualification arising on account of any cause or event specified in this Clause 2.2.6 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Utility for seeking a waiver from the disqualification hereunder and the Utility may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

2.2.7 In computing the Technical Capacity and Net Worth of the Bidder under Clauses 2.2.2, 2.2.3 and 3.2, the Technical Capacity and Net Worth of its respective Associates would also be eligible hereunder.

Provided that in case the Bidder is a Trading Licensee, the Developer's Associate shall not be eligible for computing Technical Capacity under Clause 2.2.2 and only the Developer's Technical Capacity shall be considered

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

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

- (a) Bidders 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 Bidder must apply to the Bidder or Associate 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, Bidders 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 3 (three) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

### **2.3 Number of Applications and costs thereof**

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

2.3.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Applications and their participation in the RFP process and the e-Reverse Auction Stage. The Utility will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

### **2.4 Verification of information**

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

### **2.5 Acknowledgement by Bidder**

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

- (a) made a complete and careful examination of this Section A;
- (b) received all relevant information requested from the Utility;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in this Section A or furnished by or on behalf of the Utility relating to any of the matters referred to in Clause 2.4 above; and
- (d) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

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

2.6.1 Notwithstanding anything contained in this Section A, the Utility reserves the right to accept or reject any Application and to annul the Bidding Process and

reject all Applications/ Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore. In the event that the Utility rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

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

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

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

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

2.6.3 In case it is found during the evaluation or at any time before signing of the APP or after its execution and during the period of subsistence thereof, including the contract thereby granted by the Utility, that one or more of the pre-qualification conditions have not been met by the 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 APP, and if the Bidder/SPV has already been issued the LOA or has entered into the APP, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this Section A, be liable to be terminated, by a communication in writing by the Utility to the Bidder, without the Utility being liable in any manner whatsoever to the Bidder and without prejudice to any other right or remedy which the Utility may have under this Section A, the Bidding Documents, the APP or under applicable law.

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

## **B. DOCUMENTS**

### **2.7 Contents of the RFQ (Section A)**

This RFQ comprises the glossary; disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

#### **Invitation for Qualification**

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

#### **Appendices**

- I. Letter comprising the Application
- II. Power of Attorney for signing of Application
- III. List of Application-specific Provisions

### **2.8 Clarifications**

- 2.8.1 Bidders requiring any clarification on the RFQ may notify the Utility in writing online at DEEP Portal or by speed post/courier/special messenger and by e-mail attaching the queries in microsoft word file in accordance with Clause 1.2.13. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3 of the RFQ. The Utility 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 responses will be sent by e-mail or online at the DEEP Portal. The Utility will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries or upload all the queries and its responses on the DEEP Portal.
- 2.8.2 The Utility shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Utility reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Utility to respond to any question or to provide any clarification.
- 2.8.3 The Utility may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Utility shall be deemed to be part of the RFQ. Verbal clarifications and information given by Utility or its employees or representatives shall not in any way or manner be binding on the Utility.



## **2.9 Amendment of RFQ**

- 2.9.1 At any time prior to the deadline for submission of Application, the Utility may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFQ by the issuance of Addenda.
- 2.9.2 Any Addendum thus issued will be available at the DEEP Portal. The Bidders are advised to check the DEEP Portal for any amendments or notifications.
- 2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Utility may, in its sole discretion, extend the Bid Due Date.<sup>§</sup>

## **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**

- 2.11.1 The Bidder shall provide all the information sought under this RFQ. The Utility will evaluate only those Applications that are received in the required formats and complete in all respects. Incomplete and /or conditional Applications shall be liable to rejection.
- 2.11.2 The 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 Bidder who shall also initial each page of the Bidder (including each Appendix and Annex) in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Application shall be initialed by the person(s) signing the Application. The Application shall contain page numbers.

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

- 2.11.4 The Bidder shall ensure that its authorized signatory has a Digital Signature Certificate (DSC).
- 2.11.5 The Bidder 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 Utility.

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

2.12.1 The Bidder 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 RFQ shall contain:

- (i) Application in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- (ii) Power of Attorney for digitally signing the Application as per the format at Appendix-II;
- (iii) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
- (iv) copies of Bidder's and Developer's (in case of Trading Licensee) duly audited balance sheet and profit and loss account for the preceding five years;
- (v) if the Bidder is a Trading Licensee, a copy of the power purchase agreement or an equivalent arrangement with the Developer; and
- (vi) a copy of Fuel Supply Agreement or equivalent arrangement for the Power Station; ; and
- (vii) Certificate of CoD of the plant from which the offered power would be supplied w.e.f. 01.12.2018 without fail.

2.12.3 The Bidders 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 Bidder, addressed to:

ATTN. OF:	Mr Rajiv Goyal
DESIGNATION:	General Manager
ADDRESS:	Noida Power Company Limited, Commercial Complex, Block-H, Alpha-II Sector, Greater Noida Gautam Budh Nagar Uttar Pradesh-201 308

FAX NO: 0120-2333518  
E-MAIL ADDRESS: [powertrading@noidapower.com](mailto:powertrading@noidapower.com)

Such hard copies should reach the aforementioned address within 5 days after the opening of the Application in accordance with Clause 1.3 of this RFQ. The Bidders 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 2.12.3, the hard copies submitted shall prevail.

- 2.12.4 If the Application is not uploaded and digitally signed as instructed above, the Utility assumes no responsibility for rejection of the Application and consequent losses, if any, suffered by the Bidder.

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

- 2.12.5 In the e-Tender stage, all Bidders after uploading on the DEEP Portal the Application and the Bid as per the RFP 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 **11:00 hours IST** on the Bid Due Date, at the DEEP Portal in the manner and form as detailed in this RFQ.
- 2.13.2 The Utility may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

## **2.14 Late Applications**

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 Bidder 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 Bidder on or after the Bid Due Date. The DEEP Portal shall provide the option to Bidders, after submission of the Application and the Bid as per this Bidding Document, to withdraw and delete the Application. Clicking on withdraw, Application will withdraw the Bidders Application and no further submission will be allowed whatsoever. While clicking on delete, Application will delete all the encrypted data saved on the DEEP Portal and the Bidder may submit fresh Application prior to the Bid Due Date.
- 2.15.2 However, notwithstanding this Clause, all bids submitted in e-Reverse Auction Stage and L1 Matching will be considered final and cannot be modified after the bid has been accepted by the system.

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 Utility, shall be disregarded.

## **D. EVALUATION PROCESS**

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

2.16.1 The Utility shall open the Applications at **12:00 hours IST** on the Bid Due Date, at the place specified in Clause 2.12.3 and in the presence of the Bidders who choose to attend.

2.16.2 Applications which are withdrawn in accordance with Clause 2.15 shall not be opened and payments if any made shall be refunded within 7 days in accordance with Clause 2.20.2.

2.16.3 The Utility will subsequently examine and evaluate Applications in accordance with the provisions set out in Clause 3.

2.16.4 Bidders are advised that pre-qualification of Bidders will be entirely at the discretion of the Utility. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

2.16.5 Any information contained in the Application shall not in anyway be construed as binding on the Utility, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.

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

2.16.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Utility may, in its sole discretion, exclude the relevant project from computation of the Technical Capacity of the Bidder.

### **2.17 Confidentiality**

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

## **2.18 Tests of responsiveness**

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

- (a) it is received as per format at Appendix-I.
- (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.13.2;
- (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 as specified in Clause 2.2.4;
- (e) it contains all the information and documents (complete in all respects) as requested in this RFQ;
- (f) it contains information in formats same as those specified in this RFQ;
- (g) it contains certificates from its statutory auditors in the formats specified at Appendix-I of the RFQ for each Eligible Project;
- (h) it contains a copy of power purchase agreement or equivalent arrangement with the Developer in case the Bidder is a Trading Licensee;
- (i) it contains a copy of Fuel Supply Agreement or equivalent arrangement for the Power Station;
- (j) it contains an attested copy of the system generated receipt or receipt of the Utility for payments towards the cost of the RFQ process, cost of the RFP process, fees submitted to PFCCL as per Clause 1.2.2 and Bid Security as specified in Clause 1.2;
- (k) it does not contain any condition or qualification; and
- (l) it is not non-responsive in terms hereof.

2.18.2 The Utility reserves the right to reject any Application which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Utility in respect of such Application. Provided, however, that the Utility may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Application

## **2.19 Clarifications**

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

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

## **E. QUALIFICATION AND BIDDING**

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

- 2.20.1 After the evaluation of Applications, the Utility would announce a list of pre-qualified Bidders (Bidders) whose Bid submitted online shall be opened on the date specified in accordance with Section B of this Bidding Document. At the same time, the Utility would notify the other Bidders that they have not been pre-qualified. The Utility will not entertain any query or clarification from Bidders who fail to qualify.
- 2.20.2 The Bid Security and the cost of RFP process submitted by the Bidders who do not qualify after the evaluation of the Applications shall be refunded by the Utility, without any interest, to such Bidders within 7 days of completion of RFQ evaluation.

### **2.21 Submission of Bids**

The Bidders will be requested to submit a Bid online in the form and manner to be set out in Section B of the Bidding Document.

The Bids of only pre-qualified Bidders shall be opened by the Utility on such date as specified in this Bidding Document. The Utility is likely to provide a comparatively short time span for submission of the Bids for the Project. The Bidders are therefore advised to examine the Bidding Documents, and to carry out such scrutiny and studies as may be required for submitting their respective Bids for award of the Project. No extension of time is likely to be considered for submission of Bids.

### **2.22 Proprietary data**

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

### **2.23 Correspondence with the Bidder**

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

## **2. CRITERIA FOR EVALUATION**

### **3.1 Evaluation parameters**

- 3.1.1 Only those Bidders who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Clause 3. Applications of Bidders who do not meet these criteria shall be rejected.
- 3.1.2 The Bidder's competence and capability is proposed to be established by the following parameters:
- (a) Technical Capacity; and
  - (b) Financial Capacity

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

- 3.2.1 Subject to the provisions of Clause 2.2, the 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 Bidder, 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 Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-II of Appendix-I.
- 3.2.3 In case the Bidder is a Trading Licensee, the condition under Clause 3.2 shall be fulfilled through the Developer.

### **3.3 Financial information for purposes of evaluation**

- 3.3.1 The Application must be accompanied by the Audited Annual Reports of the Bidder for the last 3 (three) financial years, preceding the year in which the Application is made.
- 3.3.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.
- 3.3.3 The Bidder must establish the minimum Net Worth specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of Appendix-I.

### 3. FRAUD AND CORRUPT PRACTICES

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



- (d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Utility with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

#### **4. PRE-BID MEETING**

- 51 A Pre-Bid 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- Bid meeting. A maximum of three representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 52 During the course of Pre-Bid meeting, the Bidders will be free to seek clarifications and make suggestions for consideration of the Utility. The Utility shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.
- 53 In case the Utility desires to have the pre-bid meeting online at the DEEP Portal, the Pre-bid meeting will take place as per the schedule specified in this Bidding Document. A report of the Pre-Bid meeting shall be prepared online and be made available to all the participating Bidders.

## 5. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which the Utility has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Utility, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Bidder in order to receive clarification or further information;
  - (c) 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 Utility by, on behalf of, and/ or in relation to any Bidder; and/ or
  - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Application, the Bidder agrees and releases the Utility, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDIX I  
Letter Comprising the Application for Pre-Qualification  
(Refer Clause 2.13.2) – to be uploaded during e-Tender Stage

To,

**The General Manager (Projects & Power Trading),  
Noida Power Company Limited,  
Commercial Complex, H-Block, Alpha-II Sector,  
Greater Noida – 210 308 (Uttar Pradesh)**

Sub: Application for pre-qualification for Bidding for Procurement of Power on Medium  
Term Basis Dated:

Dear Sir,

With reference to your Bidding Document dated ....<sup>s</sup>, I/we, having examined Section A of the Bidding Document and understood its contents, hereby submit my/our Application for Qualification for the aforesaid project. The Application is unconditional and unqualified.

2. I/ We acknowledge that the Utility will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Bidders for the aforesaid project, and we certify that all information provided in the Application and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the aforesaid Project and for sale of power to the Utility.
4. I/ We shall make available to the Utility any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
5. I/ We acknowledge the right of the Utility to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we or our Associates {and the Developer (to be inserted in case of a Trading Licensee being the Bidder)} 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.

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

7. I/ We declare that:
  - 5.1.1.1 I/ We have examined and have no reservations to the Bidding Document, including any Addendum issued by the Utility;
  - 5.1.1.2 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 Clause 4.3 of Section A of the Bidding Document, in respect of any tender or Section B of the Bidding Document issued by or any agreement entered into with the Utility or any other public sector enterprise or any government, Central or State; and
  - 5.1.1.3 I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of Section A 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 Section A of the Bidding Document.
9. I/ We believe that we/ satisfy the Net Worth criteria and meet all the requirements as specified in Section A of the Bidding Document and are/ am qualified to submit a Bid.
10. I/ We declare that our Associates are not a Member of a/ any other Bidder applying for pre-qualification.
11. I/We declare that the Developer is not a Bidder or Member of any other Bidder applying for pre-qualification where I/We as Trading Licensee am/are applying for pre-qualification. (Clause Applicable only if Bidder is a Trading licensee).
12. I/ We certify that in regard to matters other than security and integrity of the country, we or any of our Associates, {and the Developer (to be inserted in case of a Trading Licensee being the Bidder)} have not been convicted by a Court or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
13. I/ We further certify that in regard to matters relating to security and integrity of the country, we or any of our Associates and the Developer (to be inserted in case of a Trading Licensee being the Bidder) have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

14. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates {and the Developer (to be inserted in case of a Trading Licensee being the Bidder)} or against our CEO or any of our directors/managers/ employees<sup>§</sup>.
15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of Section A of this Bidding Document, we shall intimate the Utility of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annex-IV in Appendix-I of Section A of the Bidding Document, and duly signed, is enclosed.
17. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Utility in connection with the selection of Bidders, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
18. I/ We agree and undertake to abide by all the terms and conditions of the Bidding Document.
19. I/ We certify that in terms of Section A of the Bidding Document, my/our Network is Rs. .... (Rs. in words) and our Technical Capacity is equivalent to .....MW (MW in words).§
20. I/We offer a Capacity of {...MW} from {Capacity, Name and address of the Project} which conforms to Clause 1.1.4 of Section A of the Bidding Document out of the Capacity Required of {... MW} given under Clause 1.1.1 of Section A of the Bidding Document.

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

Yours faithfully,

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

Place: Name and seal of the Applicant

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

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

1. (a) Name:  
  
(b) Date of commencement of business:  
  
(c) Address of the corporate headquarters:
2. Brief description of the Company including details of its main lines of business:
3. Particulars of individual(s) who will serve as the point of contact/ communication for the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Company:
  - (d) Address:
  - (e) Telephone Number:
  - (f) E-Mail Address:
  - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
  - (e) Fax Number:
5. The following information shall also be provided for the Bidder:

Name of Bidder:

No.	Criteria	Yes	No
1.	Has the Bidder {and the Developer (to be inserted in case of a Trading Licensee being 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 {and the Developer (to be inserted in case of a Trading Licensee being 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 or any of its Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

Note: In case the Bidder is a Trading Licensee, the information required at point 5 and 6 above shall be provided by the Bidder for itself and the Developer.



ANNEX-II

**Technical Capacity of the Bidder<sup>®</sup>**

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

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

<sup>®</sup> Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.2.7. In case the Bidder is a Trading Licensee, provide details of only those projects that have been undertaken by a Developer in accordance with Clause 3.2.1.

**Instructions:**

1. A separate sheet should be filled for each Eligible Project.
2. The total number of units along with the details of the capacity of each unit should be provided.
3. Provide the capital cost of the Eligible Project.
4. The date of commissioning of the project, upon completion, should be indicated.

5. Certificate from the Bidder's or Developer's, as applicable, statutory auditor<sup>§</sup> must be furnished as per formats below for each Eligible Project.

**Certificate from the Statutory Auditor regarding Eligible Projects<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/Associate*) is an equity shareholder in ..... (*title of the project company*) and holds Rs.

..... cr. (Rupees ..... crore) of equity (which constitutes .....% of the total paid up and subscribed equity capital) of the project company. The project was commissioned on ..... (*date of commissioning of the project*).

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

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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.

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

**Certificate from Statutory Auditor/ Company Secretary regarding Associate**

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

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

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

Name of the audit firm:

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

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

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

ANNEX-III

**Financial Capacity of the Bidder (in case the Trading Licensee is the Bidder the words “and/or the Developer” shall be inserted)**

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

<b>Applicant Name</b>	(1)	
<b>Net Worth (In Rs. crore)</b>	(2)	

<sup>6</sup>The Bidder should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.7. In case the Bidder is a Trading Licensee it should provide details of its own Financial Capacity and/or of the Developer.

**Name & address of Bidder’s Bankers:**

**Instructions:**

1. The Bidder shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Bid Due Date. The financial statements shall:
  - (a) reflect the financial situation of the Bidder and its Associates where the Bidder is relying on its Associate’s financials; In case the Bidder is a Trading Licensee and is relying on the Financial Capacity of the Developer, it should reflect the financial situation of the Developer also;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
3. Year will be the latest completed financial year, preceding the bidding. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.9 the Year shall be Year immediately preceding the latest completed Financial Year.
4. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder (in case the Trading Licensee is the Bidder the words "and/or of the Developer" shall be inserted) and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.3 (ii) of the RFQ document.

ANNEX-IV

**Statement of Legal Capacity**

*(To be forwarded on the letterhead of the Bidder)*

Ref.

Date:

To,

**The General Manager (Projects & Power Trading),  
Noida Power Company Limited,  
Commercial Complex, H-Block, Alpha-II Sector,  
Greater Noida – 210 308, (Uttar Pradesh)**

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- V

**Particulars of the Power Station**

1. Name of the Developer, Date of commencement of business, Address of the corporate headquarters, Brief description of the Company including details of its main lines of business: <sup>§</sup>
  
2. Location of Power Station (Specify place, district and state):
  
3. No. of units and installed capacity of each unit (in MW):

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

  

	Proposed No. of Units	Installed Capacity (in MW)	COD
--	--------------------------	-------------------------------	-----
  
4. Quantum of power contracted with other purchasers, if any (in MW):
  
5. Details of surplus capacity (in MW):
  
6. Proposed Supply of Power (in MW):

Signature:

Name:

Designation:

Date:

Place:

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<sup>§</sup> In case the Bidder is a Trading Licensee, provide details of the Developer, else Not Applicable will be mentioned.

**APPENDIX II**  
**Power of Attorney for signing of Application and Bid<sup>s</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 \*\*\*\*\* Project proposed or being developed by the \*\*\*\*\* (the “Utility”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Utility, representing us in all matters before the Utility, signing and execution of all contracts including the Agreement for Procurement of Power (APP) and undertakings consequent to acceptance of our bid, and generally dealing with the Utility in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the APP with the Utility.

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

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

For

....

(Signature, name, designation and address)

Witnesses:

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<sup>s</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 Bidder 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 Bidder.*
3. *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

APPENDIX - III  
**LIST OF APPLICATION-SPECIFIC PROVISIONS<sup>5</sup>**

**A. Clauses with currency-based footnotes**

Footnotes with “£” signs

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

Note: The above footnotes shall be removed prior to issuance of the Bidding Document.

Footnotes with “\$” signs

- (i) Clause 1: Introduction
- (ii) Clause 1.2.3: Brief description of Bidding Process
- (iii) Clause 1.2.6: Brief description of Bidding Process
- (iv) Clause 1.2.8 : Brief description of Bidding Process: Explanation
- (v) Clause 2.2.3 : Eligibility of Bidders
- (vi) Clause 2.9.3 : Amendment of RFQ
- (vii) Clause 2.18.1 (g): Tests of responsiveness
- (viii) Appendix I: Letter Comprising the Application for Pre-Qualification: Paragraph 1, 14 and 19.
- (ix) Appendix I, Annex-II: Technical Capacity of the Bidder
- (x) Appendix I, Annex-V: Particulars of Power Station
- (xi) Appendix III: List of Application-specific provisions
- (xii) Appendix IV: List of Project-specific provisions

Note: The above footnotes shall not be deleted. They shall remain in the RFQ to be issued to the prospective Bidders.

**B. Clauses with curly brackets**

1. Appendix I: Letter Comprising the Application for Pre-Qualification: Paragraph 6, 12, 14 and 20.
2. Annex I, Appendix I: Particulars of the Bidder: Paragraph 5
3. Annex-II, Appendix I: Form of Certificate from the Statutory Auditor/ Company Secretary regarding Associate

**C. Clauses with blank spaces**

- (i) Appendix I: Letter Comprising the Application for Pre-Qualification: Paragraph 1 and 19
- (ii) Appendix I, Annex-II: Technical Capacity of the Bidder: Certificate from the Statutory Auditor regarding project.
- (iii) Appendix I, Annex-II: Technical Capacity of the Bidder: Certificate from Statutory Auditor/ Company Secretary regarding Associate
- (iv) Appendix I, Annex-IV: Statement of Legal Capacity
- (v) Appendix II :Power of Attorney for signing of Application

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<sup>5</sup> This Appendix-III contains a list of Clauses and Appendices that would need to be suitably addressed for reflecting Application-specific provisions. This Appendix-III may, therefore, be included in the RFQ document to be issued to prospective Applicants