

*Jammu & Kashmir State Power Development Corporation Limited*

Request for Proposal

for

Procurement of Power for long term from Phagla Hydro Power Project (16MW) to be set up at Chang Nallah (Tributary of Suran), district Poonch in the State of Jammu & Kashmir on BOOT basis

Issued by

Jammu & Kashmir State Power Development Corporation Limited  
(Nodal Agency)

On behalf of

Power Development Department, Govt. of Jammu & Kashmir  
(Procurer)

June 2012

***Jammu & Kashmir State Power Development Corporation Limited***  
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Request for Proposal (RFP) for supply of long term power from Phagla (16MW) Hydro Power Project to be set up at Chang Nallah (Tributary of Suran), district Poonch in the State of Jammu & Kashmir on BOOT basis to Power Development Department, Govt of Jammu & Kashmir (herein after referred to as “Procurer”), issued by Jammu & Kashmir State Power Development Corporation Limited (JKSPDCL) (hereinafter referred to as “Nodal Agency”) for and on behalf of the the Procurer.

This RFP along with Annexures as per Table of Contents is issued to -

M/s. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTES:

1. This RFP, along with its Annexures, is not transferable. .
2. Though adequate care has been taken while preparing this RFP, the Bidder shall satisfy himself/itself on receipt of the RFP document, that the RFP document is complete in all respects. Intimation of any discrepancy shall be given to this office immediately. If no intimation is received from any Bidder within ten (10) days from the date of issue of this RFP, it shall be considered that the issued document, complete in all respects, has been received by the Bidder.
3. The Nodal Agency may modify, amend or supplement this RFP document, in accordance with the J &k State Hydro Electric Project Development Policy, 2011 issued by Power Development Department, Govt. of Jammu & Kashmir vide order no. 205-PDD of 2011 dated 7 July 2011, as amended or revised till the Bid Deadline, and submit the same to the Jammu and Kashmir State Electricity Regulatory Commission (JKSERC). Further, this RFP does not constitute a binding offer by the Procurer or the Nodal Agency nor does it constitute a contract. This RFP may be

withdrawn or cancelled by the the Nodal Agency at any time without assigning any reasons thereof.

4. While this RFP has been prepared in good faith, neither the Procurer, Nodal Agency nor their directors or employees or advisors/consultants make any representation or warranty, express or implied, or accept any responsibility or liability, whatsoever, in respect of any statements or omissions herein, or the accuracy, completeness or reliability of information contained herein, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of this RFP, even if any loss or damage is caused to the Bidder by any act or omission on their part.

***I A Kakroo,  
Nodal Officer,  
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Place: Srinagar

Date: 30 June 2012

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## DEFINITIONS

Any capitalised term, used but not defined in this RFP, shall have the meaning ascribed to such term in the PPA, other RFP Project Documents, or the Policy, in that order. In the absence of availability of definitions in the foregoing references, the capitalised term shall be interpreted in accordance with the J & K Electricity Act 2010, the JKSERC (Terms and Conditions of Determination of Hydro Generation Tariff) Regulations 2011, Grid Code or any other relevant electricity law, rule or regulation prevalent in J & K, in that order.

Following capitalised terms used in this RFP; shall have the meanings given hereunder:

**“Affiliate”** in relation to a Bidder which is a company shall mean a company that either directly or indirectly

- i. controls or
- ii. is controlled by or
- iii. is under common control with  
a Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and “control” means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;

In relation to a Bidder which is a proprietary concern shall mean any other proprietary concern wholly owned by the same proprietor as the proprietor of the Bidder.

In relation to a partnership concern shall mean any other partnership firm if any of the partners of the Bidder are having more than 51% share in such other partnership concern or any other sole proprietary concern which is wholly owned by a partner having 51% share in the Bidder or any other company in which the 51% equity jointly or individually is held by the any of the partners in the Bidder.

**“Authorised Signatory”** in relation to sole proprietorship firm shall mean the sole proprietor, in relation to partnership firm the partner in whose favour the Power of Attorney has been given by other remaining partners of the firm, in relation to a cooperative society or any registered legal entity the person authorized by the governing body in this behalf and in relation to company shall mean the person in whose favour the Power of Attorney as per Annexure 12 has been issued or a person who has been authorized by the Board of Directors of the company through a board resolution to sign the Bid;

**“Bid”** shall mean Non-Financial Bid and Financial Bid submitted by the Bidders in accordance with the terms and conditions of this RFP;

**“Bidding Company”** shall mean the reference to the single company, if the Bid for the proposed Project has been made by a single company.

**“Bidding Consortium”** or **“Consortium”** for the purpose of this RFP, shall refer to such group of IPPs (including its permitted successors and legal assigns subject to fulfillment of conditions given in RFP) which has duly purchased the RFP from the Nodal Agency;

**“Bid Deadline”** shall mean the last date and time for submission of Bid in response to this RFP, specified in Clause 2.12.1;

**“Bidder”** shall mean any IPP or any Consortium of such IPPs has submitted its Bid in response to this RFP;

**“Bid Process”** or **“Bidding Process”** shall mean and include various activities in relation to the bidding process starting from the publication of the RFP notice till selection of the Successful Bidder and signing of the RFP Project documents;

**“Bid Variables”** shall mean Free Power and Terminal Price;

**“Capacity Charge”** shall mean the tariff for the supply of power from the Project as determined by the JKSERC for each Contract Year in accordance with the the JKSERC (Terms and Conditions of Determination of Hydro Generation Tariff) Regulations 2011 as amended from time to time or any other successor regulations;

**“Change in Ownership”** shall mean change of ownership, by way of merger/ acquisition/amalgamation/ reorganisation/ consolidation/ demergerand/or change in ownership by way of merger/ acquisition/ amalgamation/ reorganisation/ consolidation/demerger of the Affiliate/Parent of the Bidder/Member(including Lead Member) whose technical and/or financial qualifications have been relied upon by the Bidder, in its Bid;

**“Commercial Operation Date”** or **“COD”** shall mean, in relation to a Unit, the date one day after the date when the Procurer and the Nodal Agency receives a final test certificate of the Independent Engineer and in relation to the Project shall mean the date by which such final test certificates are received by the Procurer and Nodal Agency for all the Units;

**“Company Secretary”** shall have the meaning ascribed to such term in the Company Secretaries Act, 1980 or a person with equivalent position in case of the Bidder being a company incorporated outside India [Note: In case the Bidder is a company incorporated outside India, the relevant Company Secretary shall furnish an affidavit certifying its standing as a company secretary in the jurisdiction of the said Bidder]

**“Conflict of Interest”** A Bidder may be considered to be in a conflict of interest with one or more Bidders in the same Bidding Process if they have a relationship with each other, directly or through a common entity, that puts them in a position to have access to information about or influence the Bid of another Bidder;

**“Consents, Clearances, Permits”** shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the development, execution and operation and maintenance of Project including without any limitation on the construction, ownership, operation and maintenance of the Project;

**“Contracted Capacity”** shall mean the net capacity of power (in MW) contracted between the Seller and the Procurer at the Interconnection Point as provided in the Selected Bid as per **Error! Reference source not found.** of this RFP;

**“Contracted Year”** shall mean the period beginning on the Revised Commercial Operation Date and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) months beginning on April 1 and ending on March 31 provided that the last Contract Year shall end on the last day of the term of the PPA;

**“CTU” or “Central Transmission Utility”** shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;

**“Detailed Project Report” or “DPR”** shall mean the project report prepared by the Seller and approved by the Nodal Agency;

**“Earnest Money Deposit or EMD”** shall mean the earnest money to be submitted by the Bidder along with its Bid as per the provisions of Clause 2.16 of the RFP;

**“Effective Date”** shall mean the date from which the PPA becomes effective;

**“Financially Evaluated Entity”** shall mean the entity which has been evaluated for the satisfaction of the financial requirement set forth in Clause 2.1.1 hereof;

**“Free Power”** shall mean quantum of energy corresponding to such percentage {not less than Fifteen Per Cent (15%)} of Net Energy generated by the Project, to be supplied free of cost by the Seller to the Procurer in each time block, as mentioned in format of **Error! Reference source not found.** submitted in terms of Clause 2.10.1.1;

**“Financial Bid”** shall mean Envelope II of the Bid submitted by the Bidder in terms of format at **Error! Reference source not found.**;

**“Grid Code” / “IEGC” or “JKEGC”** shall mean the Grid Code specified by the Central Commission under Clause (h) of sub-section (1) of Section 79 of the Electricity Act 2003 and the Jammu & Kashmir Electricity Grid Code as specified by JKSERC referred under Clause (h) of sub-section (1) of Section 71 of the J & K Electricity Act 2010, as applicable;

**“Infrastructure”** shall mean power, telecom, ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation, water supply, sewerage and real estate development sectors;

**“Installed Capacity”** shall mean the summation of the name plate capacities of all the Units of the Project as determined at the TEC by the Nodal Agency subject to normal de-rating / re-rating as per the guidelines of CEA;

**“Interconnection Point”** shall mean the point specified in Article 3.9 of the PPA for delivery of power to the Procurer from the Project;

**“IPP”** shall mean any private investor such as private limited company / public limited company / public sector undertakings / partnership concerns / sole proprietorship concerns / cooperative societies / State Governments other than J&K or any other Government or non Government entity or their joint ventures or consortiums;

**“Intra State Transmission System”** shall mean any system for transmission of electricity other than an Inter-State Transmission System;

**“Inter State Transmission System”** shall include

- (i) Any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;
- (ii) The conveyance of electricity across the territory of an intervening State as well as conveyance within the State, which is incidental to such inter-State transmission of electricity; and
- (iii) The transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by Central Transmission Utility;

**“Jammu and Kashmir State Electricity Regulatory Commission or “JKSERC”** shall mean the State Electricity Regulatory Commission established under sub-section (1) of Section 3 of the Jammu and Kashmir State Electricity Regulatory Commission Act, 2000;

**“Local Area Development Fund” or “LADF”** shall mean energy equivalent to One Per Cent (1%) of Net Energy generated by the Project, to be supplied free of cost by the Seller to the Procurer; in each time block, as mentioned in format at **Error! Reference source not found.** submitted in terms of Clause 2.10.1.1;

**“Lead Member of the Bidding Consortium” or “Lead Member”** shall mean the Member which commits at least twenty six percent (26%) equity stake in the Project Company and so designated by other Member(s) of the Bidding Consortium in accordance with the Joint Deed Agreement submitted along with its Bid;

**“Letter of Award” or “LOA”** shall mean the letter issued by the Nodal Agency to the Successful Bidder for award of the Project;

**“Member of a Bidding Consortium” or “Member” or “Consortium Member”** shall mean each member in the Bidding Consortium which has executed the the Joint Deed Agreement submitted along with its Bid;

**“Net Energy”** shall mean the energy corresponding to the Installed Capacity after adjustment of actual auxiliary consumption as available for injection at Interconnection Point;

**“Net Present Value or “NPV”** shall mean the difference between the present value of cash inflows to the Procurer and the present value of cash outflows of the Procurer computed as per Clause 0 of the RFP;

**“Nodal Agency”** shall mean the Jammu & Kashmir State Power Development Corporation Limited, a Government of Jammu & Kashmir undertaking, incorporated under the Companies Act, 1956 and having its registered office at Srinagar, Kashmir, on behalf of the Government of the J&K State shall conduct the bidding process, award Hydro Electric Projects, carry out necessary documentation, sign agreements, monitor during construction and operation, take over the Project from the Seller and take all other necessary steps as required under the Policy on behalf of the Procurer;

**“Non- Financial Bid”** shall be comprised of the information and documents to be included in Envelope I of the Bid as mentioned in Clause 2.10.1.1;

**“Normative Capacity Index” or “Normative Plant Availability Factor”** shall be:

- (i) During the first year of commercial operation of the generating station - 85%;
- (ii) After first year of operation of the generating station – 90%;

**“Parent”** in relation to companies shall mean a company which has at least twenty six per cent (26%) equity either directly or indirectly in the Bidder;

In relation to a Bidder which is a proprietary concern shall mean any other proprietary concern wholly owned by the same proprietor as the proprietor of the Bidder.

In relation to a partnership concern shall mean any other partnership firm if any of the partners of the Bidder are having more than 51% share in such other partnership concern or any other sole proprietary concern which is wholly owned by a partner having 51% share in the Bidder or any other company in which the 51% equity jointly or individually is held by the any of the partners in the Bidder.

**“Permanent Residents”** shall mean a person holding the State Subject Certificate issued by the appropriate authority of the Government of Jammu and Kashmir;

**“Permitted Assigns”** shall mean the entities specified in Article 13.2 of PPA;

**“Performance Guarantee”** shall have the meaning as per Clause 2.17 of this RFP

**“Policy”** shall mean J & K State Hydro Electric Project Development Policy, 2011 issued by Power Development Department, Govt. of Jammu & Kashmir vide order no. 205-PDD of 2011 dated 7 July 2011, and as amended from time to time;

**“Power Purchase Agreement”** or **“PPA”** shall mean the tripartite agreement titled ‘Power Purchase Agreement’ proposed to be executed between the Procurer, Nodal Agency and Seller, an unsigned copy of which is attached hereto and marked as Format 1 of **Error! Reference source not found.**, including all its schedules, annexures and all amendments or modifications;

**“Procurer”** shall mean the Power Development Department, Government of Jammu & Kashmir or any other successor entity created as a result of restructuring of the Power Development Department of the Jammu and Kashmir State;

**“Project”** shall mean Phagla Hydro Power Project of the Installed Capacity of 16MW to be set up at Chang Nallah (Tributary of Suran), district Poonch in the state of Jammu & Kashmir on BOOT basis;

**“Project Company”** shall mean the company, incorporated by the Successful Bidder as per applicable laws , in accordance with Clause 2.4;

**“Project Feasibility Report”** or **“PFR”** shall mean the report prepared by the Nodal Agency containing the initial information regarding the Project, site and other details issued to the Bidders along with the RFP ;

**“Qualification Requirements”** shall mean the qualification requirements as set forth in Clause 2.1 of this RFP;

**“Qualified Bidder”** shall mean the Bidder who after evaluation of their Non Financial Bid as per Clauses 3.2 and 3.3 stand qualified for opening and evaluation of their Financial Bid;

**“Revised Scheduled Commercial Operation Date”** shall mean the date fixed by the Nodal Agency for COD of the Project while according TEC to the Project;

**“RFP Project Documents”** shall mean the following documents to be entered into in respect of the Project, by the parties to the respective agreements:

- a) PPA;
- b) Implementation Agreement;

- c) any other agreement designated as such, from time to time by the Nodal Agency;

**“RFP”** shall mean this Request for Proposal along with all schedules, annexures and RFP Project Documents attached hereto and shall include any modifications, amendments or alterations thereto;

**“Scheduled Commercial Operation Date”** shall mean 9 October 2016 for the purpose of evaluation of bids only which shall be subject to revision by the Nodal Agency while according TEC to the Project;

**“Seller”** shall mean the Project Company incorporated by the Successful Bidder for the purposes of development, finance, ownership, design, engineering, procurement, construction, commissioning, operation maintenance and transfer of the Project in accordance with the PPA and other RFP Project Documents;

**“Statutory Auditor”** shall mean the auditor of a Company appointed under the provisions of the Companies Act, 1956 or under the provisions of any other applicable governing law;

**“STU” or “State Transmission Utility”** shall mean the department or the government company or corporation specified as such by the Government under sub-section (1) of Section 33 of the J & K Electricity Act 2010;

**“Successful Bidder”** shall mean the Bidder selected pursuant to this RFP to set up the Project and supply electrical output therefrom to the Procurer through the Seller as per the terms of PPA and other RFP Project Documents;

**“Technically Evaluated Entity”** shall mean the entity which has been evaluated for the satisfaction of the technical requirement set forth in Clause 2.1.2 hereof;

**“Terminal Price”** shall mean the amount quoted by the Bidder in rupees in format at **Error! Reference source not found.** submitted in terms of Clause 2.10.1.1. , which shall be payable by the Nodal Agency to the Seller on transfer of the Project back to the Nodal Agency as per the provisions of PPA;

**“Ultimate Parent”** in relation to a company shall mean a company which owns at least twenty six percent (26%) equity either directly or indirectly in the Parent and Affiliates; and

**“Upfront Premium”** shall mean an amount of Rupees Sixty Four (64) lakhs to be paid by the Successful Bidder to the Nodal Agency within a period of sixty (60) days from the date of issuance of LOA, as mentioned in Clause 2.4.3;

## 1. INTRODUCTION

- 1.1. The Nodal Agency, on behalf of the Procurer, (which expression shall also include the successors and Permitted Assigns of the Procurer), hereby invites Bids for purchase of power on a long-term basis from Phagla (16 MW) Hydro Power Project to be set up at Chang Nallah (Tributary of Suran), district Poonch in the state of Jammu & Kashmir on Build, Own Operate and Transfer (BOOT) basis. The bids are invited pursuant to the "J&K State Hydroelectric Projects Development Policy 2011" notified vide Govt. order No. 205-PDD of 2011 dated 07-7-2011 as amended from time to time. In case of need of any clarification, or inconsistency in this RFP the provision of the Policy shall prevail and be final and binding.
- 1.2. The objective of the Bidding Process is to select a Successful Bidder for development of the Project on BOOT basis as per the terms of the RFP and RFP Project Documents. The Project will have a Installed Capacity of 16MW as per Project Feasibility Report. The Installed Capacity of the Project indicated above is based on Project Feasibility Report issued to the Bidder alongwith this RFP. In case the Installed Capacity is increased on preparation of DPR and upon Techno Economic Clearance (TEC) by the Nodal Agency, the Upfront Premium to be paid by Successful Bidder shall be as per the increased Installed Capacity. However, there shall be no decrease in the Upfront Premium in case the Installed Capacity of the Project is reduced pursuant to preparation of DPR and upon TEC thereof by the Nodal Agency. Further, the Contracted Capacity comprising of Free Power, LADF and power to be procured by the Procurer shall however be as per the revised Installed Capacity and not the Installed Capacity indicated herein.
- 1.3. The Successful Bidder shall be responsible for ensuring that the Seller undertakes development, finance, ownership, design, engineering, procurement, construction, commissioning, operation, maintenance and transfer of the Project as per the terms of the RFP Project Documents. The Successful Bidder shall also ensure that all equipment and auxiliaries are suitable for operation in the frequency range of 47.5 to 51.5 Hz (-5% to +3% of rated frequency of 50.0 Hz). Construction of project infrastructure including approach roads, arrangement for water supply, power for construction purposes, etc. shall be the responsibility of the Seller and the cost thereof shall be borne entirely by the Seller.
- 1.4. The Successful Bidder shall ensure that design, construction and testing of all equipment, facilities, components and systems of the Project shall be in accordance with Indian Standards and Codes issued by Bureau of Indian Standards, other international standards and in accordance with the provisions of the Implementation Agreement. The Capacity Charges for the power to be procured by the Procurer during the term of PPA shall be determined by JKSERC as per (Terms & Conditions for Determining of Hydro Generation Tariff)

Regulations, 2011 as amended from time to time or any subsequent regulations in this regard.

- 1.5. The responsibility of the Successful Bidder shall be to supply power to the Procurer as per the terms and conditions of the RFP Project Documents. The Procurer through the Nodal Agency, has initiated the development of the Project at Chang Nallah (Tributary of Suran), district Poonch. The Nodal Agency has prepared the Project Feasibility Report (PFR) for the Project which is enclosed at Annexure 3.  
Since potential site is being notified on the basis of preliminary reconnaissance and PFR only, the Bidders are expected to verify various project related parameters viz. discharge, head, water availability, habitation, etc. The information contained in the PFR is only indicative and neither the Nodal Agency, its authorized representative, Procurer, nor their directors, employees or advisors/consultants make any representation or warranty, express or implied, or accept any responsibility or liability, whatsoever, in respect of any statements or omissions made in the Project Feasibility Report, or the accuracy, completeness or reliability of information contained therein, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of such Project Feasibility Report, even if any loss or damage is caused to the Bidders by any act or omission on their part.
- 1.6. The Project shall be awarded on BOOT basis for a period of Thirty Five (35) years reckoned from the COD of the Project. At the end of the period of Thirty Five (35) years, the Project shall be transferred to the Nodal Agency on payment of Terminal Price without any encumbrances unless such period is extended beyond thirty five (35) years on mutually agreed terms and conditions.
- 1.7. The Nodal Agency will acquire land as per requirement specified in the approved DPR as per prevalent laws. The possession of land shall be handed over to the Successful Bidder on lease hold basis for the term of PPA on payment of upfront land premium and annual lease rent. The Seller shall handover the possession of the land taken over from the Nodal Agency on lease back to the Nodal Agency as per the provisions of PPA and Implementation Agreement.
- 1.8. The Design Energy of the Project for the purpose of evaluation of the Bid is 85.50 MUs.
- 1.9. The Project along with all the assets built as part of the Project will be transferred back to the Nodal Agency at the end of the term of PPA. The Bidder as part of the Bid shall quote the Terminal Price for transferring the Project to the Nodal Agency at the end of the term of PPA.
- 1.10. All Bidders are required to submit Bid in accordance with the instructions set forth in this RFP.

- 1.11. As per the provisions of the Policy, the Projects upto 10 MWs are reserved for execution by IPPs that are Permanent Residents of Jammu & Kashmir. This would include IPPs as sole proprietors, partnerships and companies in which permanent residents of J&K hold majority stake of atleast fifty one (51%) percent effective holding of the total issued and subscribed share capital. The Bidders would have to submit details of Permanent Residents of J&K along with the self attested copies of the State Subject Certificates.
- 1.12. The Bid shall also be accompanied by a non-refundable deposit towards processing fee by means of demand draft of Rs 2.00 lakhs (Rupees two lakhs) drawn in the name of General Manager (Accounts) Jammu & Kashmir State Power Development Corporation Limited (JKSPDCL), payable at Srinagar.
- 1.13. The Seller will be responsible for doing all confirmatory survey and investigation including site access, etc at its own cost leading to preparation of DPR.
- 1.14. Not used
- 1.15. The Seller shall be responsible for ensuring submission of documents complete in all respects to concerned authorities. Failure to do so within the stipulated time frame shall be treated as non-compliance of the Policy and Implementation Agreement.
- 1.16. The Seller shall be responsible for all the R&R activities, including cost of implementation plan, as approved by GoJK.
- 1.17. The Bidder shall be responsible for carrying out due diligence with regard to his compliance responsibilities under various applicable Central/State/other laws, rules and regulations and ensure compliance with the same.
- 1.18. Issuance of RFP to any Bidder shall not construe that such Bidder is considered to be qualified. Bidders in their own interest are advised to ascertain whether they meet the Qualification Requirements before purchasing the RFP.

## 2. INFORMATION AND INSTRUCTIONS TO BIDDERS

2.

### 2.1. *Qualification Requirements*

The Bidders must fulfill the Qualification Requirements as specified in this RFP. In the case of a Bidding Consortium, the technical criteria shall be met by the Lead Member.

#### 2.1.1. **The Bidder must fulfill the following Qualification Requirements**

**Financial Criteria:-**The Bidder must fulfill following minimum financial requirements

1. **Networth:** Rs. 0.50 Crore per MW of the PFR Capacity indicated in the RFP notification or equivalent US\$[*Calculated as per provisions mentioned in Note below*]. The above computation shall be derived from any of the past three years audited annual accounts immediately preceding the Bid Deadline.
2. **Annual Turnover:** Rs. 1.20 Crore per MW of the PFR Capacity indicated in the RFP Notification or equivalent US\$[*Calculated as per provisions mentioned in Note below*]. The above computation shall be derived from any of the past three years' audited annual accounts immediately preceding the Bid Deadline.

In case of sole proprietors and partnership firms, in addition to annual accounts duly certified by the Chartered Accountant, an audit report certifying the true and fair view of the accounts and duly acknowledged IT return/Service Tax Return for verifying the turnover, should be furnished as documentary evidence in support of meeting the financial Qualification Requirements.

The above financial parameters shall be computed as follows:-

- In relation to companies the Networth
 

	=	Equity share capital
Add	:	Reserves
Subtract	:	Revaluation reserves
Subtract	:	Intangible assets
Subtract	:	Miscellaneous expenditures to the extent not written off and carry forward losses

In relation to Sole Proprietors and Partnership firms the Networth shall be equal to capital.

- Annual Turnover: Annual gross revenue earned by the Bidder.

While evaluating the financial capacity of the Bidders, the projects already under execution by the Bidder in the State shall be netted off.

For example, in respect of Annual turnover:

Annual Turnover of the Bidder = X Crores

Eligibility for MWs =  $X / 1.20 = Y$

MWs already in execution = Z

MWs the bidder is eligible to Bid now =  $Y - Z$

Similar calculation shall be adopted for Net worth.

**2.1.2. Technical Criteria:-** The Bidder must fulfill following minimum technical requirements.

Bidder must have experience of developing Infrastructure Projects in the last fifteen (15) years, whose aggregate capital costs must not be less than the amount equivalent to Rs. 0.75 Crores per MW or equivalent US\$ [*Calculated as per provisions mentioned in Note below*] of the PFR Capacity indicated in the RFP notification from Infrastructure projects/Infrastructure project components, out of which minimum Rs.0.225 Crores per MW or equivalent US\$ [*Calculated as per provisions mentioned in Note below*] of the PFR Capacity indicated in the RFP notification should be from projects/project components of hydroelectric/river valley/power projects and the capital cost of at least one Infrastructure project should be equivalent or more than Rs. 0.125 Crores per MW or equivalent US\$ [*Calculated as per provisions mentioned in Note below*] of the PFR Capacity indicated in the RFP notification. For this purpose, capital expenditure incurred on projects that have been completed or under construction at least 7 (seven) days before the Bid Deadline shall be considered. In case of project constructed on cash contract basis the value of works completed at least 7 (seven) days before the Bid Deadline shall be considered.

Developing Infrastructure project means:-

Successful commissioning/operation of a project in which the Bidder and or /Parent/Affiliate, as the case may be, held equity stake of not less than twenty Six (26) % from the time of financial closure till the time of commissioning of such project.

OR

Infrastructure projects being constructed by the Bidder and /or Parent/Affiliate holding equity stake of not less than twenty six (26) % since financial closure

OR

Infrastructure projects/project components constructed / being constructed by the Bidder/Parent/Affiliate on cash contract basis.

In case of companies for the purposes of technical and financial criteria only unconsolidated audited annual accounts shall be used. However, audited consolidated annual accounts of the Bidder may be used for the purpose of financial criteria provided the Bidder has at least 26% equity in each company whose accounts are merged in the audited consolidated accounts and provided further that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of the Bid.

Bidders shall furnish documentary evidence duly certified by Managing Director/ Chief Executive Officer, being a full time director on the Board of the Company and the Statutory Auditor in support of their financial capability and technical experience as defined in Clauses 2.1.1 and 2.1.2 respectively. In case of sole proprietary concern or partnership firm, the documentary evidence shall be certified by the proprietor himself and by any of the partner authorized by other partners respectively.

[**Note:** For the Qualification Requirements, if data is provided by the Bidders in foreign currency, equivalent rupees will be calculated using bills selling exchange rates (card rate) USD / INR of State Bank of India prevailing on the date of closing of the accounts for the respective financial year as certified by the Bidders' banker. For currency other than USD, Bidders shall convert such currency into USD as per the exchange rates certified by their banker prevailing on the relevant date and used for such conversion. If the exchange rate for any of the above dates is not available, the rate for the immediately available previous day shall be taken into account.]

- 2.1.3. If the Bid is submitted by a Bidding Consortium the financial requirement shall be met individually and collectively by all the Members in the Bidding Consortium. The financial requirement to be met by each Member of the Bidding Consortium shall be computed in proportion to the equity commitment made by each of them in the Project Company as per the Joint Deed Agreement (Annexure 8), forming part of its Non Financial Bid. However, the technical criteria shall be met by the Lead Member of the Consortium.
- 2.1.4. The Bidder may seek qualification on the basis of financial capability of its Parent and / or its Affiliate(s) for the purpose of meeting the Qualification Requirements. In case of the Bidder being a Bidding Consortium, any Member may seek qualification on the basis of financial capability of its Parent and / or its Affiliate(s). The financial capability of a particular Parent and / or Affiliates, shall not be used by more than one Bidder or a Member in a Bidding Consortium.
- 2.1.5. The determination of the relationship of Parent or Affiliate with the Bidder or with the Member of the Bidding Consortium, including the Lead Member, shall be as existing on the date seven (7) days prior to the Bid Deadline. Documentary evidence in the form of a certificate from a practicing Company Secretary or Statutory Auditor or Chartered Accountant to establish such relationship shall be furnished by the Bidder along with the Bid.
- 2.1.6. If the Financially Evaluated Entity is an entity other than the Bidder or a Member of a Bidding Consortium, the Bidder or Member relying on such Financially Evaluated Entity will have to submit a legally binding

undertaking along with the Bid supported by a board resolution/affidavit , as applicable as per Annexure 6, from the Financially Evaluated Entity or its Parent / Ultimate Parent, as the case may be, that the obligation of the Bidder or the Member of the Consortium to submit a Performance Guarantee and equity investment in the Project Company, if selected, shall be deemed to be the obligations of the Financially Evaluated Entity or its Parent / Ultimate Parent, as the case may be, and in the event of any default whatsoever by the Successful Bidder in submitting the Contract Performance Guarantee and equity investment in the Project Company, the same shall be submitted/invested by such Financially Evaluated Entity or by the Parent / Ultimate Parent, as the case may be.

- 2.1.7. A Bidder shall submit only one **Bid** in the same Bidding Process, individually as Bidder or as a Member of a Bidding Consortium (including the Lead Member). It is further clarified that any of the Parent / Affiliate / Ultimate Parent of the Bidder or a Member of a Bidding Consortium shall not separately participate directly or indirectly in the same Bidding Process. Further, if any Bidder has a Conflict of Interest with other Bidder(s) participating in the same Bidding Process, the Bid of all such Bidder(s) shall be rejected.
- 2.1.8. Notwithstanding anything stated above, the **Nodal Agency** reserves the right to verify the authenticity of the documents submitted for meeting the Qualification Requirements and may request for any additional information / documents. The **Nodal Agency** reserves the right at its sole discretion to contact the Bidder's bank, lenders, financing institutions and any other persons as necessary to verify the Bidder's information/documents for the purpose of qualification.
- 2.1.9. The Qualified Bidder(s) will be required to continue to maintain compliance with the Qualification Requirements throughout the Bidding Process and till the execution of the **Implementation Agreement and PPA**. Where the Financially Evaluated Entity is not the Bidder or a Member of a Bidding Consortium, as the case may be, the Bidder or Member shall continue to be an Affiliate of the Financially Evaluated Entity till execution of the PPA. Failure to comply with the aforesaid provisions shall make the Bid liable for rejection at any stage.

## **2.2. Submission of Bid by the Bidder**

- 2.2.1. The information and/or documents shall be submitted by the Bidder as per the formats specified in Annexure 1 to 19 as applicable.
- 2.2.2. Strict adherence to the formats wherever specified, is required. Wherever, information has been sought in specified formats, the Bidder shall refrain from referring to brochures / pamphlets. Non-adherence to formats and / or submission of incomplete information may be a ground for declaring

the Bid as non-responsive. Each format has to be duly signed and stamped by the authorized signatory of the Bidder.

- 2.2.3. The Bidder shall furnish documentary evidence in support of meeting Qualification Requirements to the satisfaction of the **Nodal Agency** and shall furnish audited/certified annual accounts in support of meeting financial requirement, which shall consist of unabridged balance sheet, profit and loss account, profit appropriation account, auditors report, etc., as the case may be, of Bidding Company or each Member of a Consortium or Financially Evaluated Entity for the last three (3) financial years immediately preceding the Bid Deadline for the purpose of calculation of Networth and Turnover.

In case the annual accounts for the financial year immediately preceding the Bid Deadline is not audited, the Bidder shall give an undertaking to this effect, duly certified by its statutory auditor. In such a case, the Bidder shall provide the audited annual accounts for 3 (three) years preceding the financial year as above for which the annual accounts has not been audited.

- 2.2.4. No Change in Ownership or change in the composition of the Bidder / Bidding Consortium and its Parent or Affiliate whose credentials have been used for meeting the Qualification Requirements after the Bid submission till execution of PPA shall be permitted.

2.2.5. ***Bid submitted by a Bidding Consortium***

- 2.2.5.1. The Bid shall contain a legally enforceable Joint Deed Agreement entered amongst the Members in the Bidding Consortium, designating one of the Members to be the Lead Member (as per Annexure 8). There shall be only one Lead Member which shall continue to hold **twenty six** percent (**26%**) equity in the Project Company up to a period of at least five (5) years post COD of the Project, where after Lead Member or Successful Bidder shall have the right to disinvest its entire equity holding in the Seller. In case the Lead Member or Successful Bidder is holding equity through Affiliate/s, Ultimate Parent or Parent, such restriction shall apply to such entities. Each Member of the Bidding Consortium shall duly sign the Joint Deed Agreement making it liable for raising the required funds for its respective equity investment commitment as specified in the Joint Deed Agreement. In the absence of a duly executed Joint Deed Agreement, the Bid will not be considered for evaluation and will be rejected.

Provided however that the Lead Member of the Bidding Consortium shall be liable to the extent of one hundred percent (100%) of the total proposed commitment of equity investment in the Project Company, i.e., for both its own liability as well as the liability of the other Members.

Provided further that the Joint Deed Agreement shall not be amended without the prior written approval of the Nodal Agency.

In addition, the Bid shall also contain Board Resolution from each Member of the Consortium other than the Lead Member in favour of their respective authorized representatives for executing the POA, Joint Deed Agreement and signing of the requisite formats.

2.2.5.2. The Lead Member shall designate one person to represent the Consortium in its dealings with the Nodal Agency. The person designated by the Lead Member shall be authorized through a Power of Attorney (as per Annexure 12) to perform all tasks including, but not limited to providing information, responding to enquiries, signing of Bid on behalf of the Consortium, etc. Additionally, the Bid shall also contain a Power of Attorney in original (as per Annexure 12) in favor of the Lead Member issued by the other Members of the Consortium.

2.2.5.3. The Bid shall also contain signed letter of consent as per Annexure 9 from each Member of the Consortium confirming that the Bid has been reviewed and each element of the Bid is agreed to by them including but not limited to the investment commitment in the Project Company and Bid Variables.

**2.2.6. Bid submitted by a Bidding Company**

2.2.6.1. The Bidding Company should designate one person to represent the Bidding Company in its dealings with the Nodal Agency. The person should be authorized to perform all tasks including, but not limited to providing information, responding to enquiries, signing of Bid etc. The Bidding Company should submit, along with Bid, a Power of Attorney in original (as per Annexure 12), authorizing the signatory of the Bid.

**2.3. Purchase of power by Procurer**

The Seller shall be responsible for supply of Free Power and LADF power. Further, the Procurer intends to procure from the Seller for the term of PPA thirty (30) Per Cent of Net Energy from the Project after adjusting for Free Power and One Per Cent (1%) of power towards LADF . The Capacity Charge shall be determined by JKSERC for this Thirty Per Cent (30%) of power to be procured. In addition the Procurer shall have the first right for the balance power from the Project for the Term of PPA, and the Seller shall be under an obligation to offer

the same to the Procurer before selling it in the market or to a third party. The Normative Capacity Index required to be met by the Seller shall be eighty five per cent (85 %) during the first year after COD and ninety (90% ) thereafter.

- 2.3.1. All Bidders are required to ensure compliance with the conditions mentioned in Format 1 of **Error! Reference source not found.** In the event of non-fulfillment of any of the conditions specified in Format 1 of **Error! Reference source not found.**, the Bid may be considered by the Nodal Agency to be non-responsive.
- 2.3.2. The drafts of the following RFP Project Documents have been attached to this RFP:-
  - a. PPA as Format 1 of **Error! Reference source not found.**;
  - b. Implementation Agreement Format 2 of **Error! Reference source not found.**

Upon finalisation of the RFP Project Documents after the amendments envisaged in Clause 2.9.1, the Nodal Agency shall initial all the pages of the PPA and the other RFP Project Documents and deliver copies of the same to the Bidders at least thirty (30) days prior to the Bid Deadline.

The PPA and the other RFP Project Documents shall be signed in required number of originals so as to ensure that one original is retained by the Procurer, one original by the Nodal Agency and one original is retained by the Seller.

#### 2.4. ***Incorporation of a Project Company***

- 2.4.1. The Successful Bidder shall necessarily, within thirty (30) days of the issue of the Letter of Award, incorporate a Project Company provided such a Project Company has not been incorporated by the Bidder prior to the submission of the Bid. In case the Project Company has already been incorporated prior to the submission of the Bid such Project Company shall be responsible to execute the RFP Project Documents. The investment in the Project Company shall be as per provisions of the Joint Deed Agreement (applicable in case of consortium) and shall be subject to the provisions of Clause 2.11.2 of this RFP. If the Successful Bidder is an entity other than Bidding Consortium, the hundred percent (100%) investment in the Project shall be made by the Successful Bidder and shall be subject to the provisions of Clause 2.11.2 of this RFP.
- 2.4.2. The Project Company shall execute the RFP Project Documents and be responsible for setting up of the Project as per provisions of the Implementation Agreement and for supply of power and transfer of the Project back to the Nodal Agency as per the provisions of the PPA.
- 2.4.3. Within sixty (60) days of the issue of the Letter of Award, the Successful Bidder or the Seller shall:

- i. furnish to the Nodal Agency the Performance Guarantee in accordance with Clause 2.17 and
- ii. ensure that the Seller simultaneously signs the PPA, Implementation Agreement and the other RFP Project Documents as per Format 1 and Format 2, respectively at Annexure 1 with the parties thereto. All stamp duties payable for executing the Implementation Agreement, PPA and other RFP Project Documents shall be borne by the Seller.
- iii. make payment of Upfront Premium as per RFP. This amount shall be payable by a crossed demand draft or banker's cheque drawn in favour of "General Manager (Accounts), Jammu & Kashmir State Power Development Corporation Limited" payable at Srinagar. The Upfront Premium shall be increased if the Installed Capacity of the Project is increased pursuant to preparation of DPR and upon TEC thereof by the Nodal Agency However, there shall be no decrease in the aforesaid Upfront Premium in case the Installed Capacity of the Project is reduced pursuant to preparation of DPR and upon TEC thereof by the Nodal Agency.

2.4.4. If the Successful Bidder fails or refuses to comply with its obligations under Clause 2.4.3 and provided the Procurer and/or other parties to the respective RFP Project Documents are willing to execute the said documents, such failure or refusal on the part of the Successful Bidder shall constitute sufficient grounds for cancellation of the Letter of Award and the Nodal agency shall be entitled to forfeit the EMD of the Successful Bidder.

## **2.5. Capacity Charge**

2.5.1. The Capacity Charge shall be payable by the Procurer to the Seller in Indian Rupees only as determined by JKSERC from time to time.

## **2.6. Point of contact in case of Bidding Consortium**

2.6.1. In case of Bid being submitted by a Bidding Consortium, the Lead Member of the Consortium will be the single point of contact for the purposes of the RFP, till the Effective Date. Any dispute amongst the Consortium Members shall not be the responsibility of the Procurer and/or Nodal Agency and no financial burden shall pass on to the Procurer and/or Nodal Agency on this account.

## **2.7. Evacuation of Power**

2.7.1. The Seller shall be responsible for developing the necessary infrastructure to connect the Project at the Interconnection Point with the Grid at CTU/ STU/ other transmission licensee interface for evacuation of its Power. The cost of the facilities required at the interconnection point shall be borne by the Seller.

- 2.7.2. The Seller shall be responsible for the synchronization of the Project with the Grid.
- 2.7.3. The Seller shall supply power equivalent to the Contracted Capacity at the Interconnection Point and the responsibility for evacuation of power beyond the Interconnection Point will be of the Procurer as per the PPA.
- 2.7.4. The Seller shall, be free to sell the energy generated in excess of the energy equivalent to the Contracted Capacity as it deems fit, within or outside the State. In case of sale to the State, its supply of energy shall be metered at Interconnection Point.
- 2.7.5. For supply of energy equivalent to Contracted Capacity in Grid connected mode, the available transmission network /distribution networks of the State's Transmission Utility /Distribution Utilities shall be utilized and Seller will not be required to pay any wheeling/transmission charges. The T&D losses for intrastate transmission system shall be borne by the Procurer as per the JKSERC regulations for State Transmission Utility/State Distribution utility network and for wheeling/ transmitting beyond STU on CTU network, it shall be as per CERC regulations.
- 2.7.6. For supply of power under Clause 2.7.4 the intrastate transmission system of STU and distribution system of State Distribution Utility, can be utilized by seeking open access and the open access charges shall be as per JKSERC regulations. T&D losses will also be as per JKSERC regulations.
- 2.8. Clarification and Pre-bid Meeting**
- 2.8.1. The Bidder or his authorised representative is invited to attend pre-bid meeting. Date and time for pre-bid meeting shall be as provided in Clause 2.12.2 or such other date and time as notified by the Nodal Agency.
- 2.8.2. The purpose of the pre-bid meeting will be to clarify any issues regarding the RFP and RFP Project Documents.
- 2.8.3. The Bidders may seek clarifications or suggest amendments to RFP and RFP Project Documents in writing, through a letter or by fax (and also soft copy by e-mail) to reach the Nodal Agency (in both cases thereof) at the address indicated in Clause 2.20 within the date mentioned in Clause 2.12.2. For any such clarifications or amendments the Bidder shall adhere to the format enclosed at **Error! Reference source not found..** The Nodal Agency is not under any obligation to respond to any clarifications sought by the Bidders or consider amendments suggested by the Bidders. For the avoidance of any doubt, it is hereby clarified that there shall be no extension in the Bid Deadline on account of clarifications sought in accordance with this Clause 0

Further, in case Bidders need any clarifications after the issuance of amendments, they should ensure that written request for such clarification is delivered to the Nodal Agency, at least fifteen (15) days prior to the Bid Deadline as mentioned in Clause 2.12.2. Nodal Agency may issue clarifications as per its sole discretion, which are considered reasonable by it. Any such clarification issued shall be sent to all the Bidders to whom the RFP has been issued. Clarifications sought after this date shall not be considered in any manner and shall be deemed not to have been received.

- 2.8.4. Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

## 2.9. *Amendment of RFP*

- 2.9.1. Any time after the issue of RFP by the date mentioned in Clause 2.12.2, the Nodal Agency may, for any reason, whether at its own initiative or in response to a clarification requested by any Bidder, modify or amend the RFP and RFP Project Documents, including the timelines specified in RFP.
- 2.9.2. The amendment to the RFP shall be notified in writing through a letter or fax or e-mail to all the Bidders who have purchased the RFP and shall be binding on them. The Nodal Agency shall not be responsible for any delay in receipt of the amendment. Late receipt of any amendment will not relieve the Bidder from being bound by that modification or the Bid Deadline .
- 2.9.3. All such amendments shall be issued at least thirty (30) days prior to Bid Deadline.
- 2.9.4. In order to give Bidders reasonable time to take the above amendments into account in preparing their Bids, the Nodal Agency may, at its discretion, extend the Bid Deadline.

## 2.10. *The Bidding Process*

### 2.10.1. Bid Formats

- 2.10.1.1. The Bids in response to this RFP will be submitted by the Bidders in two envelopes, in the manner provided in Clause 0:

#### **Envelope I – Non- Financial Bid comprising of:**

1. (i) **Applicable in case of Companies or Consortium of Companies:** Board Resolutions, as per prescribed formats enclosed at **Error! Reference source not found.**, duly certified by the Company Secretary or the Director of the relevant Bidder, as applicable to the Bidder and mentioned hereunder:

- a) Board Resolution(s) from the Bidding Company and/or any Affiliate / Parent/ Ultimate Parent, if any, investing in the equity of the Project Company committing equal to one hundred percent (100%) in aggregate of the equity requirement of the Seller for the Project as per Format 1 of **Error! Reference source not found.**; or

Board Resolutions from each of the Consortium Members and/or any Affiliate / Parent / Ultimate Parent, if any investing in the equity of the Project Company together in aggregate committing to one hundred percent (100%) of equity requirement of the Seller for the Project (In case of Bidding Consortium): - as per Format 1 of **Error! Reference source not found.**; and

- b) Board Resolution(s) from a Parent and /or Affiliate (whose technical and / or financial credentials is used), of the Bidding Company or any Member of the Bidding Consortium, undertaking to invest the entire amount of equity in the Project Company as committed by the Bidding Company or Bidding Consortium Member, as the case may be, in the event of failure of the such Bidding Company or any Member of the Bidding Consortium to make such investment as per Format 2 of **Error! Reference source not found.**; or

Board Resolution of Ultimate Parent for total equity investment commitment on behalf of the Parent and/or Affiliates (of the Bidding Company or any Member of the Bidding Consortium, as the case may be ) whose technical and / or financial credentials is used.

As per Format 2 of **Error! Reference source not found.**;

Provided further that in case the Ultimate Parent is also the Bidding Company / Consortium Member, no Board Resolution as per Format 2 of **Error! Reference source not found.** shall be required. However, in such a case, a certificate from the Bidding Company / Consortium Member, confirming the Ultimate Parent status is to be provided.

For clarity sake, illustrations identifying which Board Resolution shall be applicable in typical cases are provided in **Error! Reference source not found.**

- (ii) **Applicable in case of Bidder other than Companies:** An affidavit in the Format 3 of **Error! Reference source not**

**found.** by the Sole Proprietor or Partner who is a Bidder, as applicable, duly notarized from Notary Public for equity commitment in the Project Company.

2. Bidders Undertakings and Executive Summary (as per prescribed Formats 1 and 2 of **Error! Reference source not found.**);
3. Covering Letter (as per prescribed Format enclosed as **Error! Reference source not found.**);
4. Original Power of Attorney issued by the Bidder in favour of the person signing the Bid, in the form attached hereto as Format 1 of **Error! Reference source not found.**. Additionally, in case of a Bidding Consortium, the Power of Attorney in favour of the Lead Member issued by the other Members of the Consortium, shall be provided in original as per Format 2 of **Error! Reference source not found.**

Provided that in the event the Bidder, is a foreign entity, it may submit Board Resolution in place of Power of Attorney for the purpose of fulfilling the requirements under this Clause. Provided further that such Board Resolution shall be supported by an unqualified opinion issued by the legal counsel of such foreign entity stating that the Board Resolution are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.

**In case of Bidder being an sole propretor the person signing the bid shall be the sole propretor himself and his signature shall be duly attested by the Bank Manager.**

**In case of partnership firms any of the partner may sign the Bid who have been authorized through a power of attorney as per prescribed format 1 of Annerure 12 by other partners of the firm.**

5. Joint Deed Agreement as per prescribed format at Annexure 8 where the Bidder is a Bidding Consortium;
6. Letter of Consent from the Consortium Members as per prescribed Format at Annexure 9 in case the Bidder is a Bidding Consortium;
7. Bidder's composition and ownership structure as per prescribed Format at Annexure 10;

8. Details for meeting Qualification Requirement as per the prescribed formats at Annexure 11 along with documentary evidence for the same as specified in Clause 2.1
9. Undertaking in the prescribed format in **Error! Reference source not found.** from the Parent and/or Affiliate, of the Bidder, whose financial credentials have been used for the purposes of meeting the Qualification Requirement, or

Undertaking of the Ultimate Parent, in the prescribed format at **Error! Reference source not found.**, for total equity investment commitment of the Parent and/or Affiliates (of the Bidder or any Member of the Bidding Consortium , as the case may be ) whose financial credentials have been used for the purposes of meeting the Qualification Requirement.

**In case the Bidder is other than a company and has used the credentials of any sole proprietor or any partnership firm for meeting the financial Qualification Requirements:** An affidavit in the Format 4 of **Error! Reference source not found.** by the sole proprietor or partner, as applicable, whose financial credentials have been used for meeting the Qualification Requirements duly notarized from Notary Public for equity commitment in the Project Company and submission of the Performance Guarantee.

10. Illustration of affiliates as per Annexure 17 duly signed by Company Secretary or Chartered Accountant in case of Bidder other than company
11. A disclosure statement as per **Error! Reference source not found.** regarding participation of any related entities in this Bidding Process.
12. Initialed RFP Documents as per Format 1 and 2 of Annexure 1
13. Not Used

**Envelope II– Financial Bid (as per prescribed format at Error! Reference source not found.).**

2.10.1.2. The Bidder shall inter-alia take into account the following while preparing and submitting the Financial Bid:-

1. The Bidder shall quote the percentage of Free Power to be supplied to the Procurer subject to a minimum of Fifteen Per Cent (15%) of Net Energy in addition to LADF;

2. The Bidder shall quote Terminal Price in Rupees payable by the Nodal Agency at which the Project shall be transferred back to the Nodal Agency as per the provisions of PPA. The quoted Terminal Price shall not be more than Rupees Sixteen (16) Crores.

2.10.1.3. Wherever the information has been sought in specified formats, the Bidders shall fill in the details as per the prescribed formats and shall refrain from referring to any other document for providing any information required in the prescribed format.

2.10.1.4. The Bidder should note that:

- a) If the Bidder or any Member in a Bidding Consortium conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in its Bid, in any manner whatsoever in order to create circumstances for the acceptance of his Bid, the Nodal Agency reserves the right to reject such Bid and/or cancel the Letter of Award, if issued. If such event is discovered after the Effective Date, consequences specified in the Implementation Agreement and PPA shall apply.
- b) If for any reason the Bid of any Successful Bidder is rejected or Letter of Award issued to such Bidder is cancelled, the Nodal Agency may:-
  - i. invite best reduced financial bids from those Bidders whose Bids are responsive and valid on that date; or
  - ii. annul the Bid Process; or
  - iii. take any such measure as may be deemed fit in the sole discretion of the Nodal Agency
- c) Bid submitted by the Bidder, within the Bid Deadline, shall become the property of the Nodal Agency and the Nodal Agency shall have no obligation to return the same to the Bidder.
- d) The Nodal Agency may verify the Bidder's financial data by checking with the Bidder's lenders / bankers / financing institutions / any other person as deemed necessary.
- e) The Bidders shall satisfy themselves, on receipt of the RFP, that the RFP is complete in all respects. Intimation of any discrepancy shall be given to the Nodal Agency at the address provided Clause 2.20 this RFP immediately. If no intimation is

received from any Bidder within ten (10) days from the date of issue of this RFP, it shall be considered that the issued document, complete in all respects, has been received by the Bidder.

- f) This RFP document includes statements, which reflect the various assumptions arrived at by the Nodal Agency in order to give a reflection of the current status in the RFP. These assumptions may not be entirely relied upon by the Bidders in making their own assessments. This RFP does not purport to contain all the information each Bidder may require and may not be appropriate for all persons. Each Bidder should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in this RFP and obtain independent advice from appropriate sources.

## 2.11. *Bidder's responsibilities*

### 2.11.1. Familiarities with relevant laws and regulations

2.11.1.1. The Bidder shall make independent enquiries and satisfy itself with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on his Bid. Upon submission of the Bid the Bidder shall be deemed to have inspected and examined the site conditions (including but not limited to its surroundings, its geological condition, the adequacy of the road and rail links to the site and the availability of adequate supplies of water), examined the laws and regulations in force and applicable in the State of Jammu and Kashmir, the transportation facilities available in the State of Jammu and Kashmir, the grid conditions, the conditions of roads, bridges, ports, etc. for unloading and/or transporting heavy pieces of material and has based its design, equipment size and fixed its price taking into account all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the supply of power from the Project. Accordingly, the Bidder acknowledges that, on being selected as Successful Bidder, the Seller shall not be relieved from any of its obligations under the RFP Project Documents nor shall the Seller be entitled to any extension of time or financial compensation by reason of the unsuitability of the site for whatever reason.

2.11.1.2. Upon submission of the Bid the Bidder shall be deemed to be familiar with the J & K Electricity Act, 2010, the Income Tax Act 1961, the Companies Act, 1956, the Customs Act, the Foreign Exchange Management Act, Grid Code, the regulations framed by JKSERC and all other related acts, laws, rules and regulations prevalent and applicable in J & K and in India. The Nodal Agency shall not entertain any request for clarifications from the Bidders

regarding the same. Non-awareness of these laws or such information shall not be a reason for the Bidder to request for extension of the Bid Deadline. The Bidder undertakes and agrees that before submission of its Bid all such factors, as generally brought out above, have been fully investigated and considered in submitting the Bid.

- 2.11.1.3. The Procurer and Nodal Agency shall not permit any change in any time schedule mentioned in this RFP or any financial adjustment arising due to lack of clear information on matters such as site conditions, laws and regulations and other related information and/or its effect on the Bid. It is hereby clarified that the Procurer/Nodal Agency shall at no time be responsible or held liable to the Bidder or any third parties with respect to any claims arising out of Clauses 2.11.1, 0 and / or 0.
- 2.11.1.4. Bidders may take into account the incentives available to the Project in terms of para 13 of the Policy for the purpose of quoting the Bid Variables. However, it may be noted that the Procurer and Nodal Agency do not take any responsibility or liability on this account whatsoever. The Bidder shall also take into account the cost to be incurred in relation to the Project arising out of its obligations under the Implementation Agreement.
- 2.11.1.5. The Seller may raise debt funds for the Project on a project finance basis. However, it is clarified that the Bidder and/or its Affiliates and/or its Parent and/or Ultimate Parent are free to guarantee or provide additional security in respect of the debt funds raised by the Seller for the Project.
- 2.11.1.6. The technical requirements of integrated grid operation are specified in the Grid Code. The Bidders should particularly acquaint themselves with the requirements of connection conditions, operating code for regional grids, scheduling and dispatch code etc. The Bidders are also advised to fully familiarize themselves with the real time grid conditions in the country. Information regarding grid parameters such as voltage and frequency is readily available on the websites of Regional Load Dispatch Centres. The protection trip setting of the generation on under frequency df/dt and defense plan are coordinated at the RPC forum in consultation with all stakeholders duly taking into account the design parameters of the various machines.
- 2.11.1.7. Construction of project infrastructure including approach roads, arrangement for water supply, arranging power for construction

purposes, etc. shall be the responsibility of the Seller and the cost thereof shall be borne entirely by the Seller.

- 2.11.1.8. The Bidder is advised to verify various project related parameters viz. discharge, head, water availability, habitation, etc. since the information in the PFR is only indicative and Nodal Agency shall not be responsible for the accuracy of the information contained therein.
- 2.11.1.9. The Seller shall be responsible for obtaining all the Consents , Clearnaces and Permits including Environmental and Forest Clearance. The Procurer and Nodal Agency shall have no liability to obtain any of the Consents , Clearnaces and Permits required for setting up of the Project and /or for operation and maintenance of the Project during the term of PPA. However, the Nodal Agency may facilitate the obtaining of Consents , Clearnaces and Permits on its best effort basis. In respect of clearance from Indus Water Treaty angle , JKSPDCL shall provide necessary support to the Successful Bidder.
- 2.11.1.10. The Seller shall be responsible for preparation and implementation of plan for Rehabilitation and Resettlement (R&R) approved by the GoJK, Environment Impact Assessment (EIA), Environment Management Plan (EMP). These measures shall be governed by Central/State policies in this regard.

**2.11.2. *Minimum Equity holding/Equity Lock-In***

- 2.11.2.1. The aggregate equity share holding of the Successful Bidder in the issued and paid up equity share capital of the Seller shall not be less than the following:
  - a) Fifty One percent (51%) up to a period of (2) two years after COD of the Project and
  - b) Twenty Six percent (26%) for a period of three (3) years thereafter.

It is clarified that if any of the entity/entities mentioned in serial number 9 of Clause 2.10.1.1 make equity investment in the Seller, the minimum shareholding requirements specified in this Clause 2.11.2.1, shall apply to such entity/entities. It is also clarified that in case the Successful Bidder is a Bidding Consortium, then the Members (other than the Lead Member) of the such Bidding Consortium shall be allowed to divest their equity as long as the other remaining Members (which shall always include the Lead Member) hold the minimum equity specified in a) and b) above.

It is further clarified that in case equity is held by the Affiliates, Parent or Ultimate Parent, subject to the proviso below, the Successful Bidder shall be permitted to transfer its shareholding in the Seller to another Affiliate/s or Parent/Ultimate Parent. If any such shareholding entity, qualifying as an Affiliate/Parent/Ultimate Parent, is likely to cease to meet the criteria to qualify as an Affiliate/Parent/Ultimate Parent, the shares held by such entity shall be transferred to another Affiliate/Parent/Ultimate Parent.

Provided further, the Lead Member of the Consortium or Successful Bidder shall compulsorily hold at least twenty six percent (26%) of the total paid equity share capital of the Seller for at least five (5) years post COD of the Project, where after Lead Member or Successful Bidder shall have the right to disinvest its entire equity holding in the Seller. In case the Lead Member or Successful Bidder is holding equity through Affiliate/s, Ultimate Parent or Parent, such restriction shall apply to such entities.

All transfers of shareholding of the Seller by any of the entities referred to above, shall be after prior written intimation to the Procurer, of at least thirty (30) days.

- 2.11.2.2. The Successful Bidder may invest in the equity share capital of the Seller through its Affiliate(s) or Ultimate Parent or Parent. If the Successful Bidder so invests through any Affiliate(s) or Ultimate Parent or Parent, the Successful Bidder shall be liable to ensure that minimum equity holding/lock-in limits specified above are still maintained. For this purpose, the effective shareholding of such Successful Bidder in the Seller shall be considered as follows:-

For computation of effective equity holding, the equity holding of the Successful Bidder or its Ultimate Parent in such Affiliate(s) or Parent and the equity holding of such Affiliate(s) or Ultimate Parent in the Seller shall be computed in accordance with the example given below:

If the Parent or the Ultimate Parent of the Successful Bidder A directly holds thirty percent (30%) of the equity in the Seller, then holding of Successful Bidder A in the Seller shall be thirty percent (30%);

If Successful Bidder A holds thirty percent (30%) of the Affiliate and the Affiliate holds fifty percent (50%) in the Seller, then, for the purposes of ascertaining the minimum equity/equity lock-in requirements specified above, the effective holding of Successful Bidder A in the Seller shall be fifteen percent (15%), (i.e.  $30\% * 50\%$ );

2.11.2.3. The provisions as contained in this Clause 2.11.2 and Article 15.1 of PPA shall override the terms of the Joint Deed Agreement submitted as a part of the Bid.

2.12. ***Due dates***

2.12.1. The Bidders should submit the Bids so as to reach the following address by 14.00 hrs (IST) on 18 September 2012:

*Nodal Officer,  
Jammu & Kashmir State Power Development Corporation Limited  
Hotel Shaw INN, Boulevard, Srinagar, Kashmir, J&K- 190001*

2.12.2. Important timelines are mentioned below:

<b>Date</b>	<b>Event</b>
June 30, 2012	Issuance of RFP
July 10, 2012	Submission of queries (if any) by Bidders on the RFP & RFP Project Documents
July 16, 2012	Pre-Bid Conference
July 21, 2012	Replies to queries
July 31, 2012	Amendments to RFP and RFP Project Documents (if any)
September 18, 2012	Submission of Financial and Non Financial Bids
September 18, 2012	Opening of Non Financial Bids
October 3, 2012	Opening of Financial Bids
October 9, 2012	Selection of Successful Bidder and issue of LOA

2.13. ***Validity of the Bid***

2.13.1. The Bidder shall submit the Bid which shall remain valid for a period of one hundred and eighty (180) days from the Bid Deadline. The Nodal Agency reserves the right to reject any Bid which does not meet the aforementioned bid validity requirement.

2.13.2. The Nodal Agency may solicit the Bidder's consent for an extension of the period of validity of the Bid. The request and the response, thereafter, shall be in writing. In the event the Bidder refuses to extend the Bid validity as requested by the Nodal Agency, the Nodal Agency shall not be entitled to forfeit the EMD. A Bidder accepting Nodal Agency's request for validity extension shall not be permitted to modify its Bid.

2.14. ***Method of submission***

2.14.1. Bids are to be submitted in single sealed cover envelope (as mentioned in Clause 2.14.2) containing Envelope I ( Non Finanacial Bid) and Envelope

II (Finanacial Bid ) each one duly sealed separately. Envelope I ( Non Finanacial Bid) and Envelope II (Finanacial Bid ) should be transcribed in the following way;

Envelope I ( **Non Finanacial Bid**) transcript - “Bid for development of *16MW Phagla Hydro Power Project* on BOOT basis

Bidder’s Name- \_\_\_\_\_

Due for opening on \_\_\_\_\_ [insert date of opening of Non Financial Bid]

Envelope I: “Non Financial Bid”

Envelope II( **Financial Bid**) transcript - “Bid for development of *16MW Phagla Hydro Power Project* on BOOT basis

Bidder’s Name \_\_\_\_\_

Due for opening on \_\_\_\_\_ [insert date of opening of Financial Bid]

Envelope II: “Financial Bid ”

2.14.2. The Envelope I (Non Financial Bid) and Envelope II (Financial Bid) (mentioned in Clause 2.14.1) for the Bid to be submitted by Bidders should be packed in a single sealed cover envelope, with the following superscript:

“Bid for development of 16MW Phagla Hydro Power Project on BOOT basis”

Jammu & Kashmir State Power Development Corporation Limited  
Hotel Shaw INN, Boulevard, Srinagar, Kashmir, J&K- 190001  
Srinagar

Bidder’s name \_\_\_\_\_

Due for opening on----- [insert date of opening of Non Financial Bid]

The Bidder has the option of sending its Bid either by registered post or speed post, or courier, or by hand delivery, so as to reach the Nodal Agency at the specified address by the Bid Deadline. Bids submitted by telex/telegram/fax/e-mail shall not be considered under any circumstances. The Nodal Agency shall not be responsible for any delay in receipt of the Bids or any postal delays. Any Bid received by Nodal Agency after the Bid Deadline shall be returned unopened.

- 2.14.3. The Non-financial Bid (Envelope I) shall not contain any information / documents relating to the Financial Bid. In the event the Non-financial Bid contains any such information/documents, the Nodal Agency shall not be responsible for premature opening of the Financial Bid.

All pages of the Bid (except any document executed on non judicial stamp paper forming part of the Bid ) and any corrections, must be signed by the Authorised Signatory on behalf of the Bidder. It is clarified that the same Authorised Signatory shall sign all pages of the Bid. However, any published document submitted with the Bid shall be signed by the Authorized Signatory on the first and last page of such document.

- 2.14.4. The Bid shall be submitted in one ( 1) original and one ( 1) photo copies duly attested by the Bidder plus One (1) soft copy (In a single file) in form of two separate CDs for Non Financial Bid and Financial Bid respectively. The original Bid shall be clearly marked “ORIGINAL”, and the copy are to be clearly marked “COPY OF BID”. In the event of any discrepancy between the original and the accompanying copy, only the original shall prevail.
- 2.14.5. No change or supplemental information to a Bid shall be accepted after the Bid Deadline, unless the same is requested for by the Nodal Agency under Clause 0. Provided that a Bidder shall always have the right to withdraw or modify its Bid before the Bid Deadline and in the event the Bid is withdrawn by the Bidder, its Bid shall be returned unopened.
- 2.14.6. If the outer cover envelope or Envelope I (Non Financial Bid) or Envelope II (Financial Bid) is not sealed properly and not transcribed as required, the Nodal Agency will assume no responsibility for the Bid's misplacement or premature opening.
- 2.14.7. The Non-Financial Bid (Envelope I) shall be properly bound and no loose sheets shall be submitted.

2.15. ***Preparation cost***

- 2.15.1. The Bidder shall be responsible for all the costs associated with the preparation of the Bid and participation in discussions and attending Pre-bid meetings, etc. The Nodal Agency shall not be responsible in any way for such costs, regardless of the conduct or outcome of this Bid Process.
- 2.15.2. The cost of this RFP is Rs. 50,000, payable in the shape of a Demand Draft drawn in favour of General Manager (Accounts) Jammu & Kashmir State Power Development Corporation Limited (JKSPDCL), payable at Srinagar.. The RFP shall be available for sale in the office of Nodal Agency at Srinagar from 30 June 2012 to 30 August 2012, during office hours.

2.16. ***Earnest Money Deposit (EMD)***

2.16.1. Each Bidder shall submit the Bid accompanied by a refundable Earnest Money Deposit (EMD) of Rs ten (10) lakhs by means of a Demand Draft drawn in favour of General Manager (Accounts) Jammu & Kashmir State Power Development Corporation Limited (JKSPDCL), payable at Srinagar. Alternatively, the EMD can also be submitted in form of Bank Guarantee as per format at Annexure 20 issued by any of the banks listed in Annexure 14. The Bank Guarantee shall be valid for a period of seventy (70) days beyond the validity of the Bid. The EMD submitted by the Bidder shall be forfeited by the Nodal Agency on account of any of the following:

- Failure to execute the PPA and other RFP Project Documents as per the provisions of Clause 2.4.3 subject to the provisions of Clause 2.4.4; or
- Failure to furnish the Performance Guarantee as per Clause 2.4.3 and Clause 2.17; or
- Failure to make payment of the Upfront Premium as per Clause 2.4.3 of RFP.
- The EMD shall also be forfeited by the Nodal Agency for submission of wrong information by the Bidder or making any misrepresentation in the Bid as mentioned in Clause 2.10.1.4.

Intimation of the reasons of the forfeiture of the EMD shall be given to the Successful Bidder within three (3) working days after such forfeiture.

2.16.2. ***Return of EMD***

- i. EMD of all the Bidders whose Bids are declared non-responsive shall be returned within a period of thirty (30) days after the date on which Financial Bids are opened.
- ii. The EMD of all unsuccessful Bidders shall be returned and released by the Nodal Agency within a period of thirty (30) days of the occurrence of the earlier of the following:
  - a) submission of the Performance Guarantee by the Successful Bidder as per the provisions of the RFP Project Documents;
  - b) expiry of the Bid validity/extended validity of the Bid of unsuccessful Bidders.

2.16.3. The EMD of the Successful Bidder shall be returned on submission of Performance Guarantee as per Clause 2.17 and the provisions of the PPA.

2.17. ***Performance Guarantee***

2.17.1. The Successful Bidder, on behalf of the Seller, shall provide to the Nodal Agency within the time period as specified in Clause 2.4.3, the Performance Guarantee in the format provided in the **Error! Reference source not found.**, for an aggregate amount of Rupees One Crore Sixty lakhs. The Performance Guarantee shall be initially valid for a period of

three (3) months after the Scheduled COD of the Project and thereafter shall be dealt with in accordance with the provisions of the PPA. The Performance Guarantee shall be issued only by any of the banks listed in **Error! Reference source not found.** The aforesaid amount of Performance Guarantee shall be subject to increase or decrease if the Installed Capacity of the Project is increased or decreased pursuant to preparation of DPR and upon TEC thereof by the Nodal Agency. The Successful Bidder shall provide the additional Performance Guarantee if any, after approval of the DPR by the Nodal Agency valid for a period of three (3) months after the Scheduled COD of the Project and thereafter shall be dealt with in accordance with the provisions of the PPA. In case the amount of Performance Guarantee is to be reduced consequent upon reduction in the Installed Capacity at the TEC, the Bidder shall furnish a fresh Performance Guarantee for the reduced amount in the same format and for same validity within a period of thirty (30) days from the date of according TEC. Upon submission of fresh Performance Guarantee for the reduced amount the original Performance Guarantee shall be returned to the Seller..

- 2.17.2. In case the Successful Bidder is unable to obtain the Performance Guarantee for the total amount from any one nationalized / schedules bank specified in **Error! Reference source not found.**, the Successful Bidder may obtain the same from not more than three (3) banks specified in **Error! Reference source not found.**
- 2.17.3. Non submission of the Performance Guarantee by the Successful Bidder as per the provisions of Clause 2.17 may lead to the forfeiture of the EMD, cancellation of the Letter of Award of Successful Bidder by the Nodal Agency, and thereafter, the provisions of Clause 2.10.1.4 (b) shall be applicable
- 2.18. **Miscellaneous**
- 2.18.1. Language of the Bid shall be English only.
- 2.18.2. Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter as per **Error! Reference source not found.**
- 2.18.3. The Nodal Agency may, at its sole discretion, ask for additional information and/or seek clarifications from a Bidder after the Bid Deadline, inter alia, for the purposes of removal of inconsistencies or infirmities in its Bid. However , no change in the substance of the Financial Bid shall be sought or permitted by the Nodal Agency.
- 2.18.4. Failure to submit and /or submission of incomplete data/ information required under the provisions of RFP shall not be construed as waiver on

the part of Nodal Agency of the obligation of the Bidder to furnish the said data/information unless the waiver is in writing.

2.19. **Opening of Bids**

2.19.1. Envelope I (Non Financial Bid) and Envelope II (Financial Bid) will be opened as per the following time schedule and at the venue where the Bids are required to be submitted, in the presence of one representative from such Bidders who wish to be present:

Opening of Envelope I(Non Financial Bid): 15.00 hours (IST) on September 18, 2012

Opening of Envelope II(Financial Bid): 15.00 hours (IST) on October 3, 2012

or such other dates as may be intimated by the Nodal Agency to the Bidders

2.19.2. The following information from each Bid will be read out to all the Bidders at the time of opening of Envelope I and Envelope II:

- i. Name of the Bidder (Format 2 of **Error! Reference source not found.**) (applicable only for Envelope I)
- ii. Details of Format 2 of **Error! Reference source not found.** (applicable only for Envelope I)
- iii. Quoted Bid Variables (applicable only for Envelope II)
- iv. Details of EMD and Processing Fee (applicable only for Envelope I)

In the event of any of the above dates falling on a day which is not a working day or which is a public holiday, the Bid shall be opened on the next working day at the same venue and time.

2.20. **Enquiries**

Enquiries / Clarifications under Clause 0 may be sought from:

<p><i>Name of the Authorised official</i> I.A.Kakroo Nodal Officer</p> <p><i>Address of the Office</i> Jammu &amp; Kashmir State Power Development Corporation Limited Hotel Shaw INN, Boulevard, Srinagar, Kashmir, J&amp;K- 190001 Srinagar</p>	<p>Tel. No: +911942500071, +91194 2500109 Fax No. +91194 – 2500145 Email: <a href="mailto:jkspdcl@gmail.com">jkspdcl@gmail.com</a></p>
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Nodal Agency is not under any obligation to respond to any or all clarifications sought by the Bidders or to consider amendments suggested by the Bidders.

2.21. The Nodal Agency reserve the right to interpret the Bid submitted by the Bidder in accordance with the provisions of this RFP and make its own judgment regarding the interpretation of the same. In this regard the Nodal Agency shall have no liability towards any Bidder and no Bidder shall have any recourse to the Nodal Agency with respect to the selection process. The Nodal Agency shall evaluate the Bids using the evaluation process specified in Section 3, at its sole discretion. The Nodal Agency decision in this regard shall be final and binding on the Bidders.

2.22. **Confidentiality**

2.22.1. The Parties undertake to hold in confidence this RFP and RFP Project Documents and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- (a) to their professional advisors;
- (b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- (c) disclosures required under Law.

without the prior written consent of the other Party.

Provided that the Seller agrees and acknowledges that the Nodal Agency, Procurer may at any time, disclose the terms and conditions of the RFP and the RFP Project Documents to any person, to the extent stipulated under the Law and Policy.

2.23. **Right of the Nodal Agency to reject any Bid**

The Nodal Agency reserves the right, at its sole discretion, to reject all or any of the Bids or cancel or withdraw the RFP without assigning any reasons whatsoever and without incurring any liability whatsoever on any account. The Nodal Agency may also reject any Bid for the reason that the implementation of the project or its operation and maintenance by the Seller is not in the interest of State and the public.

2.24. **Fraudulent and Corrupt Practices**

2.24.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bid Process and subsequent to the issue of the LOA. Notwithstanding anything to the contrary contained herein, or in the LOA, the Nodal Agency shall reject a Bid, withdraw the LOA, as the case may be, 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 Bid Process. In such an event, the Nodal Agency shall forfeit the EMD, without prejudice to any other right or remedy that may be available to the Nodal Agency hereunder or otherwise.

2.24.2. Without prejudice to the rights of the Nodal Agency under Clause 2.24 hereinabove and the rights and remedies which the Nodal Agency may have under the LOA, if a Bidder is found by the Nodal Agency 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 Bid Process, or after the issue of the LOA, such Bidder shall not be eligible to participate in any tender or RFP issued by the Nodal Agency, during a period of two (2) years from the date such Bidder is found by the Nodal Agency to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

2.24.3. For the purposes of this Clause 2.24, 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, anything of value to influence the actions of any person connected with the Bid Process For avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Procurer / Nodal Agency who is or has been associated or dealt in any manner, directly or indirectly with the Bid Process or the LOA or has dealt with matters concerning the PPA or arising there from, 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 Procurer/Nodal Agency, shall be deemed to constitute influencing the actions of a person connected with the Bid Process; or (ii) engaging in any manner whatsoever, whether during the Bid 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 Procurer / Nodal Agency 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 Bid 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 Bid Process;
- d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Procurer/Nodal Agency with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid 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 Bid Process;

### 3. EVALUATION CRITERIA

3.

#### 3.1. Bid Evaluation

3.1.1. The Bid evaluation process comprises of the following four steps:

- Step I – Responsiveness check of Non-Financial Bid (Envelope I)
- Step II – Evaluation of Bidder’s fulfillment of Qualification Requirements as per Clause 2.1
- Step III - Evaluation of Financial Bids (Envelope II)
- Step IV– Successful Bidder selection

#### 3.2. Step I - Responsiveness check

The Non-Financial Bids submitted by the Bidders shall be scrutinized to establish “Responsiveness”. Subject to Clause 0, a determination that the Bid is “non-responsive” may be an adequate ground for rejection of the Bid at the sole discretion of the Nodal Agency. Any of the following conditions may cause the Bid to be considered “Non-responsive”, at the sole discretion of the Nodal Agency:

- i. Bids that are incomplete, i.e. not accompanied by any of the applicable formats inter alia covering letter, power of attorney supported by a board resolution as per Clause 2.10.1.1, applicable board resolutions, applicable undertakings, format for disclosure, valid processing fee and EMD, Joint Deed Agreement, formats for Qualification Requirements, Letter of Consents in case of Consortiums Bids;or
- ii. Material inconsistencies in the information / documents submitted by the Bidder, affecting the Qualification Requirements;or
- iii. Information not submitted in the formats specified in this RFP;or
- iv. Bidder submitting more than one Bid or participating in more than one Bid either as a Bidder or as a Member of Bidding Consortium;or
- v. Bid not meeting any of the conditions mentioned in Format 1 of **Error! Reference source not found.**; or
- vi. Bid not signed by Authorised Signatory in the manner and to the extent indicated in this RFP as per Clause 2.14.3; or
- vii. Bid validity being less than that required as per Clause 2.13 of this RFP; or
- viii. Bid not containing Format 1 (Bidders’ Undertakings) of **Error! Reference source not found.**;or
- ix. Bid being conditional; or
- x. Bid not received by the Bid Deadline; or
- xi. Bids having Conflict of Interest; or
- xii. More than one Member of the Bidding Consortium or a Bidder using the credentials of the same Parent / Affiliate; or
- xiii. Bidder delaying in submission of additional information or clarifications sought by Nodal Agency as applicable; or
- xiv. Bidder makes any misrepresentation as specified in Clause 2.10.1.4; or

- xv. Bidder has engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as per Clause 2.24; or
- xvi. Bids not submitted in English language.

Each Bid shall be checked for compliance with the submission requirements set forth in this RFP before the evaluation of Bidder's fulfillment of Qualification Requirements is taken up. Annexure 11 shall be used to check whether each Bidder meets the stipulated requirements.

### 3.3. STEP II– Evaluation of Bidder's fulfillment of Qualification Requirements

- 3.3.1. Evaluation of Bidder's Qualification will be carried out based on the information furnished by the Bidder as per the prescribed Format at Annexure 11 and related documentary evidence in support of meeting the Qualification Requirements as specified in Clause 2.1. Non-availability of information and related documentary evidence for the satisfaction of Qualification Requirements may cause the Bid to be non-responsive.

### 3.4. Step III - Evaluation of Financial Bids

#### 3.4.1. General

- 3.4.1.1. Envelope II (Financial Bid) of Bids which have been accepted for opening by Nodal Agency, based on the responsiveness check as specified above in Clause 3.2 and meeting Qualification Requirements as specified in Clause 3.3. above, shall be opened in the presence of the representatives of the Bidders, who wish to be present, as per the timelines indicated in Clause 2.19.1. The evaluation of Financial Bids will be carried out based on the information furnished in Envelope II. Provided however, in case Envelope II of only one Bidder remains after the responsiveness check (Step I) under Clause 3.2, and evaluation of Qualification Requirements (step II) under Clause 3.3, the Envelope II (Financial Bid) of such Bidder shall not be opened and the matter shall be referred to JKSERC and the selection of the Bidder shall then be at the sole discretion of the JKSERC.
- 3.4.1.2. The Financial Bids would be compared on the basis of NPV of Bid Variables for the term of the PPA, as mentioned hereafter.
- 3.4.1.3. The Bidders shall quote the values of Bid Variables as specified in format at **Error! Reference source not found.** The Net Present Value (in Rs.) of year on year net cash outflows ( outflow for each year - inflow for each year) to the Procurer considering all Bid Variables of each Bid shall be calculated for the term of the PPA as per the methodology mentioned hereunder. The Free Power to be supplied by the Seller calculated at the rate of Rs. 2.000 per kWh shall be considered as inflow to the Procurer for the term of PPA starting from Scheduled COD till the thirty fifth (35th) anniversary

of the Scheduled COD and payment of Terminal Price shall be outflow of the Procurer in the 35th year..

- a. Net Present Value of all the cash flows on account of value of Free Power to be realised(inflow), and the payment of Terminal Price(out flow) to be paid at the end of 35th anniversary of the Scheduled COD shall be calculated as on the Scheduled COD based on the Bid Variables quoted in format at Error! Reference source not found. and application of appropriate discount rate as mentioned in Clause 0 a.

Head	Value
1. Discount Rate for calculation of Net Present Value of net outflow to the Procurer (including terminal value)	This shall be the rate notified by the CERC applicable on the day which is seven (7) days before Bid Deadline.

The factor at Sl. No. 1 in the above table shall be applied as at the mid point of each Contract Year.

- b. The Net Present Value shall be calculated by assuming uniformly for all the Bidders that entire Installed Capacity has been commissioned on the Scheduled COD.
- c. **Design Energy:** The design energy of the Project for the purpose of evaluation of the Bids shall be as per Clause 0 of this RFP. Further, 0.50% of the design energy shall be considered as auxiliary consumption to work out the Net Energy.
- d. **Net Present Value of total net outflow:** The Net Present Value of the cash flows calculated as per provisions a to c)of Clause 0 on year on year basis shall then be summed up to arrive at the total Net Present Value of total net outflow for the Procurer with respect to each Bidder.
- e. The methodology of computation of Net Present Value of total net outflow to the Procurer is explained in the example provided in **Error! Reference source not found..**

### 3.5. Step III– Successful Bidder Selection

- 3.5.1. The Net Present Value of total net outflow to the Procurer calculated as per Clause 0 shall be ranked from the lowest to the highest and the Bidder with lowest NPV shall be declared as the Successful Bidder and the Letter of Award shall be issued to such Successful Bidder in two (2) copies, subject to Clause 0. The Successful Bidder shall be notified in writing by fax or registered post regarding acceptance of his Bid . No correspondence will be entertained from the unsuccessful Bidders. The Selected Bidder

shall unconditionally accept the LoA, and record on one (1) copy of the LoA, “Accepted unconditionally”, under the signature of the Authorized Signatory of the Successful Bidder and return such copy to the Nodal Agency within seven (7) days of issue of LOA.

- 3.5.2. If the Successful Bidder, to whom the Letter of Award has been issued does not fulfill any of the conditions specified in Clause 2.4.3, then in accordance with provisions of Clause 2.4.4, the Nodal Agency reserve the right to cancel the Letter of Award. Further, in such a case, the provisions of Clause 2.10.1.4 shall apply.