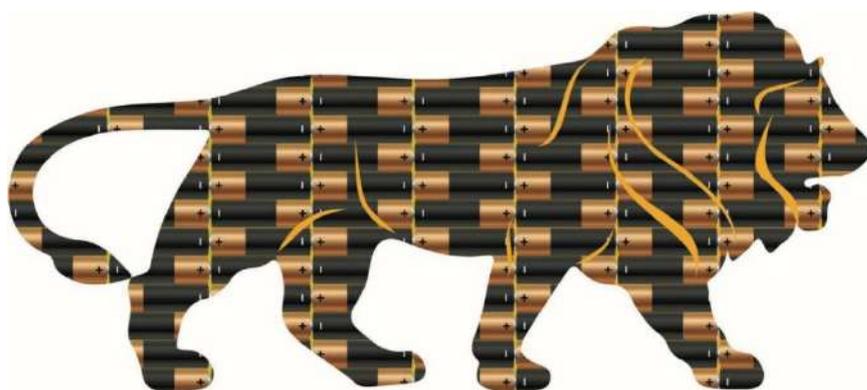


**NATIONAL PROGRAMME
ON ADVANCE CHEMISTRY
CELL (ACC)
BATTERY STORAGE**



DRAFT MODEL BID DOCUMENTS

Date: 11 November 2020
Version#1

Government of India/भारत सरकार
NITI Aayog/ नीति आयोग
(PPP Vertical)
(सरकारी निजी कंपनी भागीदारी)
Sansad Marg, New Delhi – 110001

STAKEHOLDERS CONSULTATION

Advance Chemistry Cells (“ACCs”) are the new generation advance storage technologies that can store electric energy either as electrochemical or as chemical energy and convert it back to electric energy as and when required. Globally, manufacturers are investing in these new generation technologies at commercial scale to fill the expected boom in battery demand through 2030. Considering its importance and the emphasis on transition to a clean energy economy, the Government of India (“GoI”) in March 2019, launched the National Mission on Transformative Mobility & Battery Storage (the “**Mission**”), under the Chairmanship of the CEO, NITI Aayog. The Mission, apart from notifying various policy interventions to promote electric vehicle penetration in India, has proposed the National Programme on Advance Chemistry Cell Battery Storage (the “**Programme**”), which is pending Union Cabinet’s approval, to support 50 Giga Watt hours (“GWh”) of domestic ACC manufacturing. This umbrella-level initiative proposes various fiscal incentives through a single-window mechanism, to make domestic ACC manufacturing industry, globally competitive. In addition the Programme also proposes a composite framework for imposition of suitable Basic Custom Duty with the intent to promote phased manufacturing of ACCs and its components in India and makes recommendations for promoting the overall market demand for ACCs in India.

The Hon’ble Finance Minister of India too in her Budget 2019-20 and later in her ‘Atma-Nirbhar Bharat’ speech, reaffirmed Government’s intent to extend incentives and invite domestic and global companies through a transparent competitive bidding mechanism to set-up mega-manufacturing plants in sunrise & advance technology areas such as Lithium Storage Batteries etc., in order to boost the overall *Economic Growth* and promote *Make in India*.

This is a first of its kind incentive initiative by the Government to promote Make in India and to attract global investments into setting-up of ‘Gigafactories’ in India. The Structure of the documents and the Model of the bid adopted under the Programme encompasses following key features, first, the cash subsidy shall be offered on output, i.e. the volume of cells manufactured and sold by the beneficiaries. Second, it’s a technology agnostic initiative, whereby only cells with higher performance specifications (i.e., Energy Density & Cycle Life) shall be eligible to avail the incentives. While the subsidy benchmarks shall be determined in a manner that cells with better quality or performance characteristics attract higher subsidy, thereby encouraging manufacturers to invest into Research & Development and to Manufacture such cells in India. Third, a ‘QCBS’ (i.e., Value Weighted) based bidding process on

prospective commitment criteria shall be followed, to promote large scale capacity deployment with emphasis on promoting domestic manufacturing and ensuring transparency, The participants shall be ranked on the basis of their submissions, and capacities shall be allocated in the order of their ranking, with the entity ranked 1 allocated the capacity first, followed by entity ranked 2, and so on, till a cumulative capacity of 50 GWh per year has been allocated. The subsidy support will be limited to a cumulative 50 GWh of ACC manufacturing capacity in India, with a single beneficiary not allowed more than 20 GWh cell manufacturing facility. Furthermore, to encourage economies of scale, minimum bid may be restricted to 5 GWh capacity, which may be developed in phases over a five-year window. Last but not the least, in order to ensure the bankability of the manufacturing facility and with emphasis upon key performance indicators, the incentive framework has been fused with the principles of Public Private Partnership (“PPP”). The structure thus adopted for the Programme bid documents ensures that there is an optimal sharing of risk between the beneficiary firm and the Government, and thus expected to bolster investors’ confidence and become instrumental in putting India as a leader on the world map in ACC manufacturing.

In view of the above, the draft Model Bid Documents have prepared, including the Request for Proposal (“RFP”), the Programme Agreement and a Tripartite State Support Agreement. The said documents have been uploaded on the NITI Aayog website and available at this link: <https://www.niti.gov.in/documents/model-agreements>. All stakeholders are requested to provide their written comments, if any, **by or before 14th December, 2020**. The comments are to be sent in the enclosed format, in electronic and editable form, addressed to

Mr. Aman Hans,
Consultant PPP & Lead Energy Storage Mission, NITI Aayog

by email at: aman.hans@nic.in. In this regard, there will be a stakeholder’s meet at NITI Aayog, New Delhi on **18th December, 2020 at 11:00am** through virtual mode and details shall be shared separately. All those who are interested in attending the meet are requested to send a line of confirmation latest by **16th December 2020** on the aforementioned email.

FORMAT
FOR COMMENTS ON BID DOCUMENTS ON THE
NATIONAL PROGRAM ON ADVANCE CHEMISTRY CELL (ACC)
BATTERY STORAGE

- Name and address of the comments/ suggestion provider: _____
- Designation: _____
- Name of Organization: _____
- Contact email ID and number: _____

Sl. No.	Type of Bid Document	Article/ Clause Reference	Page Number	Comment/ Suggestion and Reasons



National Programme on ACC Battery Storage

REQUEST FOR PROPOSAL

Government of India

Disclaimer

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

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

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

The Government and its advisors make no representation or warranty and shall have no liability to any person, including any Bidder(s) under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid.

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

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

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

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

GLOSSARY

Advance Chemistry Cell / ACC	It shall have the definition as prescribed under the Programme Agreement
Appointed Date	As defined in the Programme Agreement
Associate	As defined in Clause 2.2.1
Bank Guarantee	As defined in Clause 2.23.1
Beneficiary Firm	As defined in the Programme Agreement
Bid	As defined in Clause 1.1.2
Bid Due Date	As defined in Clause 1.1.5
Bid Security	As defined in Clause 1.2.2
Bidder(s)	As defined in Clause 1.1.2
Bidding Documents	As defined in Clause 1.1.5
Bidding Process	As defined in Clause 1.2.1
Central Public Procurement Portal	It shall mean the electronic portal of the Government of India that facilitates all the central government organisations to publish their tenders.
Conflict of Interest	As defined in Clause 2.2.1(c)
Consortium	As defined in Clause 2.2.1(a)
CRA	Credit Rating Agency
Credit Rating	As defined in Clause 2.2.3
Eligible Bidder	As defined in Clause 1.2.5
Financial Bid	As defined in Clause 1.2.1
Financial Close	As defined in Programme Agreement
GFR Order	As defined in Clause 2.2.17
GoI	Government of India
Government	Government of India represented by Department of Heavy Industry, Ministry of Heavy Industries & Public Enterprises (DHI) and/or NITI Aayog, as the case may be
GWh	Gigawatt hours
IFRS	As defined in Clause 2.2.4 (i)
Lead Member	As defined in Clause 2.2.9 (c)
LOA	As defined in Clause 2.30.3
Member	Member of a Consortium
Net Worth	As defined in Clause 2.2.4 (ii)
Parent Company	Shall mean a company that holds at least 26% (twenty six percent) of the paid - up equity capital directly or indirectly in the Bidder or in the Member in a Consortium, as the case may be.
Performance Security	As defined in the Programme Agreement

Price Bid	As defined in Clause 3.3.4.
Project	As defined in Clause 1.1.3
Programme Agreement	As defined in Clause 2.2.10
Re. or Rs. or INR	Indian Rupee
RFP	Shall mean this request for proposal issued by the Government to the Bidders.
Selected Bidder	As defined in Clause 2.30.1
State Government	It shall mean the state governments extending support for the implementation of the Project.
Subsidy	As defined in Clause 1.2.5
Subject Person	As defined in Clause 2.2.1 (c) (i)
SPV	As defined in Clause 2.2.10
Technical Bid	As defined in Clause 1.2.1
Technical Capacity	As defined in Clause 3.2.1
Tie Bidder	As defined in Clause 2.30.2
Tripartite Agreement	As defined in Clause 1.1.3
Ultimate Parent Company	Shall mean a company which owns at least 26% (twenty six percent) equity in the Bidder or Member of a Consortium, (as the case may be) and in the SPV (as the case may be) and such Bidder or Member of a Consortium, (as the case may be) and the SPV (as the case may be) shall be under the direct control or indirectly under the common control of such company.

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

1. INTRODUCTION

1.1 Background

- 1.1.1 The Government of India (“**GoI**”) through the Department of Heavy Industry, Ministry of Heavy Industries & Public Enterprises (“**Government**”) intends to develop giga-scale advance cell manufacturing for domestic application and promotion of diverse energy sources, to ensure overall energy security for the nation in the long run. The Government has launched and intends to implement the National Programme on Advance Chemistry Cell Battery Storage (“**Programme**”). To achieve this, the Government wishes to select private entities to set-up manufacturing facilities that produce Advance Chemistry Cell (“**ACC / Advance Chemistry Cell**”) as defined under the Programme Agreement.
- 1.1.2 NITI Aayog is facilitating the Government to carry out a Bidding Process (*defined hereinafter*) and seeks bids (“**Bid**”) as response to this RFP from individuals, LLPs, funds, private entities, public entities or other international entities (hereinafter referred to as Bidder(s)).
- 1.1.3 The Selected Bidders (*defined hereinafter*) would be entitled to receive fiscal benefits in the form of a subsidy in accordance with the Programme. A Bidder selected through this RFP, to be eligible for this subsidy, would have to commit to set-up an Advance Chemistry Cell manufacturing facility of minimum 5 (five) GWh capacity and establish an Advance Chemistry Cell manufacturing facility with value-addition of minimum 25% (twenty-five percent) at the mother unit level and minimum 60% (sixty percent) overall, in accordance with the Programme Agreement (“**Project**”). The Government shall execute a Programme Agreement with the SPV (as provided in Clause 2.2.10), substantially in the format specified at Appendix VIII hereto. State Governments shall also extend support and provide additional incentives for implementation of the Project, through the execution of a tripartite agreement between the SPV, State Government and the Government (“**Tripartite Agreement**”). The template of the model Tripartite Agreement has been annexed to this RFP at Appendix XIV and the Bidders may seek additional incentives through direct negotiation with the respective State Government. It is clarified that the Government shall have the right to seek amendment to such Tripartite Agreement, agreed to be executed between the Beneficiary Firm and the respective State Government. Execution of the Programme Agreement with the Beneficiary Firm, shall be subject such amendments being carried out by the Beneficiary Firm, to the satisfaction of the Government.
- 1.1.4 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services or the Government’s right to amend, alter, change, supplement or clarify the scope of work. Consequently, any omissions, conflicts or contradictions in this RFP are to be noted, interpreted, and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Government.
- 1.1.5 The Government shall receive all documents pursuant to this RFP in accordance with the terms set forth herein, as modified, altered, amended and clarified from time to time by the Government (collectively the “**Bidding Documents**”), and all documents shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bid (the “**Bid Due Date**”).

1.2 Brief description of Bidding Process

- 1.2.1 The Government has adopted a two envelope single stage selection process (the “**Bidding Process**”) for selection of the Bidder for entitlement to receive subsidy on the basis of capacity sold by the Beneficiary Firm (including scale of Advance Chemistry Cell production and Advance Chemistry Cell’s Value Addition in India). The Bidding Process for evaluating the Bids comprise of a technical bid wherein the bidder shall state its Technical Capacity as

specified in Clause 3.2 (“**Technical Bid**”) and a financial bid which shall include the Subsidy (*as defined hereinafter*) quoted by the Bidder (“**Financial Bid**”). Prior to submission of the Bid, the Bidder shall pay to the Government a sum of [INR 4,50,000 (Rupees Four lakh fifty thousand)] as the cost of the RFP process. After the Bidder qualifies the qualification criteria as specified in Clause 2.2.3, in the first stage, a technical evaluation will be carried out as specified in Clause 3.2. Based on this technical evaluation, a list of short-listed Bidders shall be prepared as specified in Clause 3.3.1. In the second stage, a financial evaluation will be carried out as specified in Clause 3.3. Bids will finally be ranked according to their combined technical and financial scores as specified in Clause 3.4. For the purposes of evaluation, in case of a consortium, only the qualification criteria specified in Clause 2.2.3 of the Lead Member (*as defined hereinafter*) shall be considered. The Bidders shall be selected through a transparent short-listing process as provided for under Clause 3 of this RFP. The Bidders are required to submit this information on the Central Public Procurement Portal [***]. Accordingly, the Selected Bidders will be awarded incentives by Government for carrying out its obligations in relation to the Project in accordance with and under the terms of the Programme Agreement. The Subsidy disbursement shall commence once the proposed domestic Value Addition and sale of the Advance Chemistry Cell begins. It shall be phased-out over a ten (10) year windows from the Appointed Date (as defined in the Programme Agreement), on a quarterly basis.

- 1.2.2 A Bidder is required to deposit, along with its Bid, a bid security calculated at the rate of 1% (one percent) of INR 225,00,00,000 (Rupees two hundred and twenty five crore only) per GWh (the “**Bid Security**”), refundable no later than [90 (ninety)] days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Programme Agreement. It is clarified that the amount of Bid Security shall be subject to a ceiling of INR 10,00,00,000 (Rupees ten crore) up to 5 (five) GWh; INR 15,00,00,000 (Rupees fifteen crore) up to 10 (ten) GWh and INR 20,00,00,000 (Rupees twenty crore) up to 20 (twenty) GW of annual Advance Chemistry Cell committed production capacity. The Bidders shall provide Bid Security in the form of a bank guarantee acceptable to the Government, with a validity period of not less than [180 (one hundred and eighty)] days from the Bid Due Date, inclusive of a claim period of [90 (ninety)] days, and may be extended as may be mutually agreed between the Government and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.3 Details of the process to be followed and the terms thereof are spelt out in this RFP.
- 1.2.4 In terms of this RFP, a Bidder is required to deposit the following at the address given at Clause 2.15.4:
- (a) A Bid Security in accordance with Clause 1.2.2; and
 - (b) A power of attorney for signing the Bid in accordance with Clause 2.2.7.
- 1.2.5 Bids are invited for the subsidy provided by the Government for implementing the Project (the “**Subsidy**”). In this RFP, the term “**Eligible Bidder**” shall mean the Bidder who has the highest score as provided in Clause 3. Subject to the provisions of Clause 2.6, the Project will be awarded to the Eligible Bidder. The Bidder shall specify the amount of Subsidy in its Bid.

1.3 Schedule of Bidding Process

The Government shall endeavour to adhere to the following schedule:

	Event Description	Date
1.	Last date for receiving queries	[25 days from the date of RFP]
2.	Pre-Bid Conference -1	[To be specified]

3.	Government response to queries latest by	[35 days from the date of RFP]
4.	Pre-Bid Conference -2	[To be specified]
5.	Bid Due Date	[To be specified]
6.	Opening of Technical Bid	On Bid Due Date [at least 45 days from the date of RFP]
7.	Opening of Financial Bid	[Within 30 days of Bid Due Date]
8.	Letter of Award (LOA)	[To be specified]
9.	Validity of Bid	[120 days of Bid Due Date]
10.	Signing the Tripartite Agreement	[60 days of the LOA]
10.	Signing the Programme Agreement	Within 30 days of signing the Tripartite Agreement

1.4 Pre-bid Conference

The date, time and venue of the Pre-bid Conference shall be:

Date: *****

Time: 1100 hrs

Venue: *****

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 Scope of Bid

The Government wishes to receive Bids for selection in order to select eligible Bidders. The Bidder shall be required to submit a Technical Bid and a Financial Bid. The Financial Bid shall only be opened if the Bidder meets the threshold as provided for in Clause 3.1 and Clause 3.2, under the Technical Bid.

2.2 Eligibility of Bidders

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

- (a) The Bidder for pre-qualification may be a sole firm/ single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. For the purpose of evaluation, in case of a consortium, only the qualification criteria specified in Clause 2.2.3 of the Lead Member (*as defined hereinafter*) shall be considered. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be a member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
- (b) A Bidder may be a natural person, private entity, public sector undertaking or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.9 below.
- (c) A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - (i) the Bidder, or its Associate (or any constituent thereof) and any other Bidder or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest:

Provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 20% (twenty percent) of the aggregate issued, subscribed and paid up share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or an Associate is less than 20% (twenty percent) of the aggregate issued, subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by the Government, a bank, insurance company, pension fund or a public financial institution referred to in Section 2(72) of the Companies Act, 2013;

For the purposes of this Clause 2.2.1, indirect shareholding held through 1 (one) or more intermediate persons shall be computed as follows: (A) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (B) subject always to sub-clause (A) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person,

the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the aggregate issued, subscribed and paid up equity shareholding of such intermediary; or

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

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1 shall include each Member of such Consortium and the term Associate with respect to a Bidder shall include an Associate of each Member of that Consortium.

- (d) A Bidder shall be liable for disqualification if any legal, financial or technical adviser of the Government in relation to the Project is engaged by the Bidder or its Member, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Explanation: In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1, shall include each Member of such Consortium.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1, shall include each Member of such Consortium.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the “Associate”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation the ownership, directly or indirectly, of more than 50% (fifty per cent) of the economic or voting shares of such person,

and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person

2.2.2 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Government in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Programme Agreement; or (iii) execution of the Tripartite Agreement. In the event any such adviser is engaged by the Selected Bidder or SPV, as the case may be, after issue of the LOA or execution of the Programme Agreement or the Tripartite Agreement, for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Programme Agreement or the Tripartite Agreement and without prejudice to any other right or remedy of the Government, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Government may have there under or otherwise, the LOA or the Programme Agreement or the Tripartite Agreement, as the case may be, shall be liable to be terminated without the Government being liable in any manner whatsoever to the Selected Bidder or SPV for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

2.2.3 To be eligible for short-listing, a Bidder shall fulfil the following conditions of eligibility:

Qualification Criteria:

(A) Credit Rating

The Bidder shall have a corporate long-term credit rating of CRISIL AA+ or ICRA AA+ (in case the Bidder is incorporated in India) and/or S&P BB+ or FITCH BB+ or Moody's Ba1 (if the Bidder is incorporated in a jurisdiction other than India) from at least 2 (two) credit rating agencies ("**Credit Rating**").

(B) Net Worth

The Bidder shall have a minimum Net Worth of INR 225,00,00,000 (Rupees two hundred and twenty-five crore only) per GWh, as per the capacity specified in its Technical Bid for the financial year preceding the date of submission of the Bid.

In case of a Consortium, the aforementioned qualification of the Lead Member, who shall have an equity share of at least 26% (twenty-six per cent) in the SPV, should satisfy the above conditions of eligibility; provided that such Lead Member shall, for a period of 5 (five) years from the date of commercial operation of the Project, hold equity share capital of not less than 26% (twenty-six per cent) of the subscribed and paid up equity of the SPV.

2.2.4 The Bidder shall enclose with its Bid, to be submitted as per the format at Appendix-I, complete with its Annexes, the following[§]:

- (i) certificate prepared according to the International Financial Reporting Standards ("**IFRS**") from a reputed auditor specifying the Net Worth of the Bidder, as specified under Clause 2.2.3(B), as per format at Appendix IV.

[§] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder or its Associate may provide the certificates required under this RFP.

- (ii) certificate(s) from statutory auditors of the Bidder specifying the Net Worth of the Bidder, as specified under Clause 2.2.3(B), as at the close of each of the preceding financial year for which the Net Worth is required, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.
 - (iii) the Technical Bid consisting of the Value Addition and Scale of Production committed by the Bidder, to the Government, as per format at Appendix V and a Financial Bid comprising the Subsidy quoted by the Bidder as per format at Appendix VI. The Technical Bid shall be evaluated in accordance with Clause 3.2. The Financial Bid shall be evaluated in accordance with Clause 3.3 and the Subsidy shall be payable by the Government to the Selected Bidders per the terms and conditions of this RFP and the provisions of the Programme Agreement.
- 2.2.5 The Bidder shall deposit a Bid Security in accordance with the provisions of this RFP.
- 2.2.6 The validity period of the Bank Guarantee shall not be less than [180 (one hundred and eighty)] days from the Bid Due Date, inclusive of a claim period of [90 (ninety)]days and may be extended as may be mutually agreed between the Government and the Bidder. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 90 (ninety) days from the Bid Due Date except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Programme Agreement.
- 2.2.7 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bid to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.
- 2.2.8 The Financial Bid shall consist of a Subsidy payable by the Government to the Selected Bidder as per the terms and conditions of this RFP and the provisions of the Programme Agreement.
- 2.2.9 A Selected Bidder shall form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 2013 (the “**SPV**”), to implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:
- (a) number of members in a consortium shall not exceed [3(three)];
 - (b) subject to the provisions of sub-clause (a) above, the Bid should contain the information required for each member of the Consortium;
 - (c) members of the Consortium shall nominate 1 (one) member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty-six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;
 - (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial and technical obligations;
 - (e) an individual Bidder cannot at the same time be member of a Consortium applying for selection. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for selection;

- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix- XI (the “**Jt. Bidding Agreement**”), for the purpose of making the application and submitting a Bid in the event of being short-listed. The Jt. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*;
 - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Programme Agreement and subsequently perform all the obligations of the terms of the Programme Agreement, in case the Subsidy under the Project is awarded to the Consortium;
 - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (iii) commit the minimum equity stake to be held by each member;
 - (iv) Lead Member of the Consortium undertakes that it shall hold at least 26% (twenty-six per cent) of the subscribed and paid up equity of the SPV at all times for 5 (five) years after the Appointed Date; and
 - (v) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the SPV under the Programme Agreement.
- (h) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Government.

2.2.10 The SPV will be required to enter into an agreement with the Government for availing the Subsidy and specifying the details of implementation of the Project (“**Programme Agreement**”). The SPV shall also enter into a Tripartite Agreement with the Government and the State Government for availing additional incentives as specified in Clause 1.1.3 above.

2.2.11 Any entity which has been barred by the Central Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as member of a Consortium.

2.2.12 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or Consortium Member, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder or Consortium Member. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.12 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Government for seeking a waiver from the disqualification hereunder and Government may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project. The

decision of the Government on granting such waiver under this Clause 2.2.12 shall be final and binding on the Bidder or Consortium Member.

2.2.13 The following conditions shall be adhered to while submitting a Bid:

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making do provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder or Member named in the Bid and not, unless specifically requested, to other associated companies or firms; and
- (c) in responding to the pre-qualification submissions, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below.

2.2.14 While qualification is open to persons from any country, the following provisions shall apply:

- (a) Where, on the date of the Bid, 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member.

then the qualification of such Bidder or in the event described in sub clause (b) above, the continued qualification of the Bidder shall be subject to approval of the Government from national security and public interest perspective. The decision of the Government in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Government shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the Government of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.2.15 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 3 (three) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.2.16 Ministry of Finance, Government of India has issued order dated 23 July, 2020 (as attached at Appendix X of RFP) for qualification of a bidder from a country which shares a land border with India (“**GFR Order**”). As per the GFR Order, any Bidder from a country which shares a land border with India (as defined in the GFR Order) will be eligible to bid in this tender only if the Bidder is registered with the Competent Authority as specified in the GFR Order. The GFR Order shall apply mutatis mutandis to this Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I. The Competent Authority shall be entitled to disqualify a Bidder in accordance with the provisions of the GFR Order at any stage of the Bidding Process.

2.3 Change in composition of the Consortium

2.3.1 Where the Bidder is a Consortium, change in the composition of a Consortium may be permitted by the Government, only where:

- (a) the application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date;
- (b) the Lead Member continues to be the Lead Member of the Consortium;
- (c) the substitute is at least equal, in terms of the requirement of the qualifications under the Bid, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Bidders; and
- (d) the new Member(s) expressly adopt(s) the Bid already made on behalf of the Consortium as if it were a party to it originally and is not a Bidder/Member/Associate of any other Consortium bidding for this Project and shall submit all such documents as may be necessary in support of the Bid, including a Power of Attorney as specified in Clause 2.2.7 above.

2.3.2 Approval for change in the composition of a Consortium shall be at the sole discretion of the Government and must be approved in writing.

2.3.3 Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, a Bidder may, within 10 (ten) days after the Bid Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof. Upon on the occurrence of such removal, the Bidder shall submit necessary documents, as may be required by the Government, evidencing the removal of such Member from its Consortium.

2.4 Number of Bids and Costs thereof

2.4.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another application either individually or as a member of any Consortium, as the case may be. It is further clarified that any of the Parent Company/ Affiliate/Ultimate Parent Company of the Bidder or Member of a Consortium shall not separately participate directly or indirectly in the Bidding Process. Further, if any Bidder is having a Conflict of Interest with other Bidders participating in the Bidding Process, the Bids of all such Bidders shall be rejected.

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

2.5 Acknowledgement by Bidder

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

- (a) made a complete and careful examination of the RFP;
- (b) received all relevant information requested from the Government;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Government; and
- (d) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

2.6 Right to accept or reject any or all Bids

2.6.1 Notwithstanding anything contained in this RFP, the Government reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons there for.

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

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

If the Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected, at the sole discretion of the Government.

2.6.3 The Government reserves the right to verify, in any manner as the Government may deem fit, all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by the Government shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Government there under.

2.7 Change in Ownership

2.7.1 By submitting the Bid, the Bidder acknowledges that it was pre-qualified and short-listed on the basis of qualification requirements of its Lead Member who shall, until the 5th (fifth) anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than 26% (twenty-six per cent) of the subscribed and paid-up equity of the SPV. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Programme Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Programme Agreement, be deemed to be a breach of the Programme Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.7.1 shall apply only when the Bidder is a Consortium.

- 2.7.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose credentials were taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with this RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Government forthwith along with all relevant particulars about the same and the Government may, in its sole discretion, disqualify the Bidder. In the event such change in control occurs after signing of the Programme Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Programme Agreement, be deemed to be a breach of the Programme Agreement, and the same shall be liable to be terminated without the Government being liable in any manner whatsoever to the SPV. In such an event, notwithstanding anything to the contrary contained in the Programme Agreement, the Government shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as damages, without prejudice to any other right or remedy that may be available to the Government under the Bidding Documents and/ or the Programme Agreement or otherwise.

For the purposes of determining 'control' under this Clause 2.7.2., the Government shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

2.8 Cost of Bidding

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

2.9 Verification and Disqualification

- 2.9.1 The Government reserves the right to verify all statements, information and documents submitted by the Bidder in response to this RFP or the Bidding Documents and the Bidder shall, when so required by the Government, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Government shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Government thereunder.

- 2.9.2 The Government reserves the right to reject any Bid and appropriate the Bid Security if:

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

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

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

- 2.9.3 In case it is found during the evaluation or at any time before signing of the Programme Agreement or after its execution and during the period of subsistence thereof, including the incentives thereby granted by the Government, that one or more of the pre-qualification