

with any 'Addendum/ Corrigendum' issued in accordance with "ITB: Clause-9":

- Section-I : Invitation for Bids [IFB]
- Section-II : Instructions to Bidders [ITB]
- Section-III : Bid Data Sheets [BDS]  
Annexure to Bid Data Sheets [Qualifying Requirements]
- Section-IV : General Conditions of Contract [GCC]
- Section-V : Special Conditions of Contract [SCC]
- Section-VI : Sample Forms and Formats
- Section-VII : Scope of Work & Technical Specifications
- Section-VIII : Schedule of Rates [SOR]/ Price Schedule [PS]/ Format for Price Bid

- 7.2 The Bidder is expected to examine all instructions, forms, terms & conditions in the Tender Documents. The entire Tender Documents together with all its amendments, clarifications and attachments thereto, shall be considered to be read, understood and accepted by the Bidders. Failure to furnish all information required by the Tender Documents or submission of a Bid not substantially responsive to the Tender Documents in every respect will be at Bidder's risk and may result in the rejection of his Bid. However, Employer/ Owner at its sole discretion may seek clarifications from the Bidders to adjudge the exact content and facts of the Tender Documents.

## 8 CLARIFICATION OF TENDER DOCUMENTS

- 8.1 A prospective Bidder requiring any clarification(s) of the Tender Documents may notify Employer in writing by E-mail or at Employer's mailing address indicated in the Bid Information Sheet no later than 02 (Two) working days after the pre-bid meeting (in cases where pre-bid meeting is scheduled) or 15 (Fifteen) days prior to the bid closing date (in cases where pre-bid meeting is not held). Employer reserves the right to ignore the bidders request for clarification if received beyond the aforesaid period. Employer may respond in writing to the request for clarification. Employer's response including an explanation of the query, but without identifying the source of the query will be uploaded on ETS Portal of ISN-ETS <https://www.bharat-electronictender.com> and/ or Employer's website [www.seci.co.in](http://www.seci.co.in).
- 8.2 Any clarification or information required by the Bidder but same not received by the Employer at clause 8.1 above is liable to be considered as "no clarification/ information required".
- 8.3 Clarifications sought by the bidders are to be mandatorily submitted in the SECI provided format only provided along with the Tender document. Pre-Bid queries submitted in any other format will not be considered.

## 9 AMENDMENT OF TENDER DOCUMENTS

- 9.1 At any time prior to the 'Bid Due Date', Employer/ Owner may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the Tender Documents by addenda/ corrigendum.
- 9.2 Any addendum/ corrigendum thus issued shall be part of the Tender Documents and shall be hosted on ETS Portal of ISN-ETS <https://www.bharat-electronictender.com> and/ or Employer's website [www.seci.co.in](http://www.seci.co.in). Bidders have to take into account all such addendum/

corrigendum before submitting their bid.

- 9.3 The Employer, if consider necessary, may extend the date of submissions of Bid in order to allow the Bidders a reasonable time to furnish their most competitive bid taking into account the amendment issued thereof.

## [C] - PREPARATION OF BIDS

### 10 LANGUAGE OF BID:

The bid prepared by the bidder and all correspondence/ drawings and documents relating to the bid exchanged by bidder and Employer/ Owner shall be written in English language alone. Any printed literature furnished by the bidder may be written in another language as long as accompanied by an ENGLISH translation duly authenticated by the Chamber of Commerce/ Certified Translator of bidder's country, in which case, for the purpose of interpretation of the bid, the ENGLISH translation shall govern.

In the event of submission of any document/ certificate by the Bidder in a language other than English, the English translation of the same duly authenticated by Chamber of Commerce/ Certified Translator of Bidder's country shall be submitted by the Bidder.

### 11. DOCUMENTS COMPRISING THE BID

The bid shall be submitted by the Bidder under "Single Stage - Two Envelope" procedure of bidding. Under this procedure, the bid submitted by the Bidder in two envelopes - First Envelope (also referred to as Techno - Commercial Part) and Second Envelope (also referred to as Price Part) shall comprise of the following documents:

#### I. Offline Documents

Offline documents of the bid shall comprise of following documents to be submitted in sealed envelope, as part of First Envelope. **The envelope shall bear {the name of Tender, the Tender No. and the words 'DO NOT OPEN BEFORE' (due date & time)}.**

**Contact Persons Name: Mr Sandeep Kumar**

- (a) Original Non-Refundable Tender Processing Fee as per clause no. 05 of ITB
- (b) Original Non-Refundable Cost of Tender Document, if applicable
- (c) 'Covering Letter' on Bidder's 'Letterhead' (in Original) clearly specifying the enclosed contents, as per 'Form F-0'
- (d) EMD, if applicable in original as per Clause 16 of ITB as per 'Form F-4A' or as prescribed.
- (e) Bid Securing Declaration in original as per 'Form F-4B' or as prescribed
- (f) Power of Attorney for authorized signatory in non-judicial stamp paper (as per 'Form F-24')
- (g) Copy of Board Resolution
- (h) The Pass-Phrase to decrypt the relevant Bid-Parts (for both Techno-Commercial and Financial) in separate sealed envelopes before the start date and time of the Tender Opening Event (TOE)

**Bidder shall also upload the scanned copies of all the above-mentioned original documents during online Bid Submission as a part of First envelope.**

**"Bidder should explicitly note that no offline documents are to be submitted as a part of Second envelope".**

## **II. Online Documents/Soft Copy**

Online documents/Soft copy of the bid shall comprise of following documents to be uploaded on the ISN-ETS portal <https://www.bharat-electronictender.com> as per provisions therein.

### **II (a) As part of First Envelope**

- (a) The Electronic Form of the bid for First Envelope (Techno-Commercial), as available on the ISN-ETS portal, shall be duly filled.
- (b) Scanned copies of all the above-mentioned original documents during online Bid Submission as a part of First envelope and Bid Form for first envelope

- (c) Certificate of Incorporation
- (d) 'Bidder's General Information', as per 'Form F-1'.
- (e) 'No Deviation Confirmation', as per 'Form F-6'
- (f) 'Bidder's Declaration regarding Banning, Liquidation etc.', as per 'Form F-7'
- (g) 'Declaration on restriction on procurement from certain countries.', as per 'Form F-8'
- (h) 'Solar Plant Details as per 'Form F 10'
- (i) 'Bidders Experience as per 'Form F-13'
- (j) Format of Chartered Accountant certificate for financial capability of the bidder as per 'Form F-16'
- (k) 'E-Banking Format as per 'Form F-19'
- (l) 'Shareholding Certificate' as per 'Form F-23'
- (m) Documents in accordance with the "Qualifying Requirements (QR)" establishing the qualification
- (n) Document showing annual turnover for the financial years as required in Qualifying Requirements (QR) such as annual reports, profit and loss account, net worth etc. along with information as sought in enclosed Format F-16
- (o) Tender Document. (Only First and Last Pages of Original Tender Document duly sealed and signed/ digitally signed and all pages of amendments to Tender Documents duly sealed and signed/ digitally signed by the Authorized Signatory).

## **II (b) As part of Second Envelope**

- (a) The Electronic Form of the bid for Second Envelope (Price - Part), as available on the ISN-ETS portal, shall be duly filled. "Termed as **ELECTRONIC FORM**"
- (b) Main Price Bid comprising of SOR-1 & SOR-2 of the Price Schedule (available in Section - VIII, SOR), duly completed, sealed and signed/ digitally signed shall be uploaded. "Termed as **MAIN BID**".

SOR -1 is the Schedule and Breakup of Lump sum Price (Supply, Service and NPV of O&M) of the Tender. SOR -2 comprises of the yearly Breakup of the NPV of O&M price for 10 years period.

## **12 SCHEDULE OF RATES (SOR)/ PRICE SCHEDULE (PS)/ BID PRICES**

- 12.1 Unless stated otherwise in the Tender Documents, the Contract shall be for the whole works as described in Tender Documents, based on the rates and prices submitted by the Bidder and accepted by the Employer/ Owner. The prices quoted by the Bidders should indicate clearly the Goods & Service Tax (GST) components as also mentioned under the SoR.
- 12.2 Prices must be filled in format for "Schedule of Rates [SOR]/ Price Schedule [PS]/ Bid Prices" enclosed as part of Tender documents under Section - VIII. If quoted in separate typed sheets, such bids may be rejected.
- 12.3 Bidder shall quote for all the items of "SOR/ PS" after careful analysis of cost involved for the performance of the completed item considering all parts of the Tender Document. In case any

activity though specifically not covered in description of item under "SOR/ PS" but is required to complete the works as per Specifications, Scope of Work/ Service, Standards, "GCC", "SCC" or any other part of Bidding Document, the prices quoted shall be deemed to be inclusive of cost incurred for such activity.

- 12.4 All Goods & Service Tax (GST) components [applicable for both Centre and state] payable by the Contractor under the Contract, or for any other cause, shall be mentioned as per the SOR formats SOR-1 & SOR-2.
- 12.5 Prices quoted by the Bidder, shall remain FIRM and Fixed and valid until completion of the Contract and will not be subject to variation on any account.
- 12.6 The Bidder shall quote the prices in 'figures' & words. There should not be any discrepancy between the prices indicated in figures and the price indicated in words. In case of any discrepancy, the same shall be dealt as per clause no. 30 of ITB.
- 12.7 Bidder need to submit the detailed break-up of Goods & Service Tax (GST) (applicable for both Central and State) in the SOR formats viz SOR-1 & SOR-2. This data is required to ascertain the
- Computation of taxes assumed at the time of bidding.
  - The total impact due to revision in applicable tax rate or introduction of new tax, if any.

Bidders are required to ascertain the correctness of amount related to Goods & Service Tax (GST) as mentioned in the SOR/ PS as on the date of techno-commercial bid submission as it will impact the Price assessment part at the time of evaluation of price bid.

### 13 **Goods & Service Tax (GST)**

Contractor shall mandatorily obtain the registration under GST Law at Central level and/or in respective State as may be required. Further, Contractor shall mandatorily file returns under GST before their due date & comply with the requirements of the Law within timelines. Before releasing the payment to the Contractor. Owner shall not be responsible for any delay in payment release to the contractor in case the GST compliance is not fulfilled from the contractor side in any manner.

Contractor shall be responsible to comply with all the requirements of applicable provisions of GST. Contractor has to mandatorily get registered under GST at Central and relevant State(s). Contractor shall file all the returns on timely basis and upload all the Invoices and acceptance thereof as may be required under the provisions of GST. In case, it is found that Owner is not able to take Input Tax Credit (ITC) benefit of the taxes due to any fault of the Contractor, Owner shall be constrained to deduct the amount from the payments to be made to the Contractor or recover the same in any other manner.

- 13.1 Bidders are required to submit a copy of the GST Registration Certificate or GST provisional

certificate while submitting the bids wherever GST tax is applicable.

13.2 The responsibility of payment of GST lies with the Service Provider only. Contractor providing taxable service shall issue an Invoice, a Bill or as the case may be, a Challan which is signed, serially numbered and in accordance with rule GST Law. The invoice shall also contain the following:

- (a) Name, Address & Registration No. of such Person/ Contractor
- (b) Name & Address of the Person/ Contractor receiving Taxable Service
- (c) Description, Classification & Value of Taxable Service provided
- (d) GST Amount, if any.
- (e) HSN code of the Goods/Services.

Payments to Service Provider for claiming GST amount will be made provided the above formalities are fulfilled. Further, Employer/ Owner may seek copies of challan and certificate from Chartered Accountant for deposit of GST collected from Employer/ Owner.

13.3 In case CBIT (Central Board of Indirect Taxes and Customs) brings to the notice of Employer/ Owner that the contractor has not remitted the amount towards GST collected from Employer/ Owner to the government exchequer, then, that contractor may be debarred from bidding in future tenders of Employer/ Owner for given period as per the sole discretion of Employer/ Owner.

13.4 In case of statutory variation in GST during currency of the Contract, the Contractor shall submit a copy of the 'Government Notification' to evidence the rate as applicable on the date of submission of Bid and on the date of revision. Claim for payment of GST / Statutory variation in GST, should be raised within two [02] months from the date of issue of 'Government Notification' for payment of differential (in %) GST, otherwise claim in respect of above shall not be entertained for payment of arrears. The following may also be noted: -

- a) Any increase in the rate of Non ITC based GST beyond the contractual completion period shall be to contractor's account whereas any decrease in the rate shall be passed on to the Employer/ Owner.
- b) The base date for the purpose of applying statutory variation shall be the last date of bid submission.

13.5 Owner will reimburse the GST to the Contractor at actuals against submission of ITC based invoices issued in accordance with GST rules. In case of any variation in the executed quantities, the amount on which the GST is applicable shall be modified in same proportion.

13.6 Owner will reimburse the GST to the Contractor at actuals against documentary evidence subject to the ceiling amount of GST as quoted by the bidder, subject to any statutory variations. In case of any variation in the executed quantities (If directed and/ or certified by the Engineer-In-Charge) the ceiling amount on which GST is applicable will be modified on pro-rata basis.

13.7 Contractor shall ensure timely submission of correct invoice(s) with all required supporting



document(s) so to enable Owner to avail Input Tax Credit (ITC) (If applicable)

#### 14 **BID CURRENCIES:**

Bidders must submit bid in the currency as mentioned Bid Data Sheet.

#### 15 **BID VALIDITY**

15.1 Bids shall be kept valid for period specified in BDS from the final 'Bid Opening Date'. A Bid valid for a shorter period may be rejected by Employer as 'non-responsive'.

15.2 In exceptional circumstances, prior to expiry of the original 'Bid Validity Period', the Employer may request the Bidders to extend the 'Period of Bid Validity' for a specified additional period. The request and the responses thereto shall be made in writing or by email. A Bidder may refuse the request without forfeiture of his 'EMD, if applicable will '. A Bidder agreeing to the request will not be required or permitted to modify his Bid, but will be required to extend the validity of its 'EMD, if applicable will ' for the period of the extension and in accordance with "ITB: Clause-16" in all respects.

**Note:** In case of extension(s) of last due date of the Tender submission, the latest extension issued shall be considered as the final due date of Tender submission and accordingly the Tender validity should be calculated and sufficed. The validity of the Tender need to be revised by respective bidders, in case the bids are already submitted prior to the last due date of the initial Tender submission deadline.

#### 16 **EARNEST MONEY DEPOSIT (EMD)**

16.1 The applicability/Non-applicability of Earnest Money Deposit (EMD) is specified under BDS

16.2 The Bids must be accompanied with '**Earnest Money Deposit (EMD)**' in the form of either through NEFT/ RTGS transfer in the account of SECI or '**Demand Draft**' or '**Banker's Cheque**' [in favour of **Solar Energy Corporation of India limited, New Delhi payable at New Delhi**] or '**Bank Guarantee**' as per the format given in **Form F - 4 of the bidding documents**. Bidders shall ensure that EMD, having a validity of at least 30 (Thirty) Days beyond the validity of the bid, must accompany the Bid in the format(s) made available in the Tender Document. In case of any extension in validity of bid, the EMD shall be extended suitably. The EMD shall be submitted in Indian Rupees only.

16.3 The '**EMD**' is required to protect Employer/ Owner against the risk of Bidder's conduct, which would warrant the EMD's forfeiture, pursuant to "ITB: Clause-16.8".

16.4 Employer/ Owner shall not be liable to pay any Bank charges, commission or interest etc. on the amount of 'EMD'. In case 'EMD' is in the form of a 'Bank Guarantee', the same shall be from any scheduled Bank as specified in the List of Banks enclosed at Form F-22, Section-VI of Tender documents or a branch of an International Bank situated in India and registered with 'Reserve Bank of India' as Scheduled Foreign Bank. However, in case of 'Bank Guarantee' from Banks other than the Nationalized Indian Banks, the Bank must be commercial bank

having net worth in excess of INR 500 Crores (Indian Rupees Five Hundred Crores Only).

- 16.5 Bid not accompanied with required amount of EMD shall be liable for rejection.
- 16.6 'Earnest Money Deposit' of all the unsuccessful Bidders disqualified at the stage of Techno-Commercial evaluation, E-Ra shortlisting or during/after E-Ra process will be discharged/ returned as promptly as possible, but not later than '30 [thirty] days' of their respective disqualification.
- 16.7 The successful bidder's (L1 bidder) 'Earnest Money Deposit' will be discharged upon the Bidder's signing the 'Contract Agreement' and furnishing the 'Performance Security duly vetted by the Bank'.
- 16.8 Notwithstanding anything contained herein, the 'EMD' may also be forfeited in any of the following cases:
- (a) If a Bidder withdraws or varies his Bid during the 'Period of Bid Validity'
  - (b) If a Bidder has indulged in corrupt/ fraudulent/ collusive/ coercive practice
  - (c) Violates any other condition, mentioned elsewhere in the tender document including deviations or conditional bid.
  - (d) In the case of a successful Bidder, if the Bidder fails to:
    - (i) acceptance of the NOA/ LOI/ LOA.
    - (ii) to furnish "Performance Security.
    - (iii) to accept 'arithmetical corrections' as per provision of the clause 30 of ITB.
- 16.9 In case EMD is in the form of 'Bank Guarantee', the same must indicate the Bid Document No and the Work for which the Bidder is quoting. This is essential to have proper correlation at a later date. The 'EMD' should be in the form provided at 'Form F-4A'.

**Note:** In case of extension(s) of last due date of the Tender submission, the latest extension issued shall be considered as the final due date of Tender submission and accordingly the Earnest Money Deposit validity and Bid validity should be calculated and sufficed. The validity of the submitted EMD and bid validity need to be revised by respective bidders, in case the bids are already submitted prior to the last due date of the initial Tender submission deadline.

## 17 PRE-BID MEETING

- 17.1 The Bidder(s) or his designated representative are invited to attend a "Pre-Bid Meeting" which will be held at address specified in Bid Information Sheet under Section - I, Invitation for Bids, IFB. It is expected that a bidder shall not depute more than 02 representatives for the meeting.
- 17.2 Purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 17.3 Text of the questions raised and the responses given, together with any responses prepared after the meeting, will be uploaded on SECI & ETI website against the Tender. Any modification of the Contents of Tender Documents listed in "ITB: Clause-7.1", that may



become necessary as a result of the Pre-Bid Meeting shall be made by the Employer/ Owner exclusively through the issue of an Addendum/ Corrigendum pursuant to "ITB: Clause-9", and not through the minutes of the Pre-Bid Meeting.

17.4 Non-attendance of the Pre-Bid Meeting will not be a cause for disqualification of Bidder.

## **18 SIGNING OF BID/TENDER DOCUMENT**

18.1 The First and Last Pages of original tender documents including amendments, clarifications if any shall be typed or written in indelible ink [in the case of copies, photocopies are also acceptable] and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder (as per POA) before uploading at ISN-ETS online portal. The name and position held by each person signing, must be typed or printed below the signature.

## **19 ZERO DEVIATION AND REJECTION CRITERIA**

19.1 **ZERO DEVIATION** : Deviation to terms and conditions of Tender Documents may lead to rejection of bid. Employer/ Owner will accept bids based on terms & conditions of Tender Documents only. Bidder may note Employer/ Owner will determine the substantial responsiveness of each bid to the Tender Documents pursuant to provision contained in clause 29 of ITB. For purpose of this, a substantially responsive bid is one which conforms to all terms and conditions of the Tender Documents without deviations or reservations. Employer's/ Owner's determination of a bid's responsiveness is based on the content of the bid itself. Employer/ Owner reserves the right to raise technical and/ or commercial query(ies), if required. The response(s) to the same shall be in writing, and no change in the price(s) or substance of the bids shall be sought, offered or permitted. The substance of the bid includes but not limited to prices, completion, scope, technical specifications, etc. Bidders are requested to not to take any deviation.

19.2 **REJECTION CRITERIA:** Notwithstanding the above, deviation to the following clauses of Tender document shall lead to summarily rejection of Bid:

- (a) Eligibility Criteria including General, Technical and Financial Qualifying Requirements
- (b) Firm Price
- (c) Tender Processing Fees and Earnest Money Deposit
- (d) Tender Document Fees, if applicable
- (e) Specifications & Scope of Work
- (f) Schedule of Rates (SOR)/ Price Schedule (PS)
- (g) Duration/ Period of Contract/ Completion schedule
- (h) Period of Validity of Bid
- (i) Warrantee/Guarantee/ Defect Liability Period
- (j) Arbitration/ Resolution of Dispute/ Jurisdiction of Court
- (k) Force Majeure & Applicable Laws
- (l) Any other condition specifically mentioned in the tender document elsewhere that non-

compliance of the clause lead to rejection of bid

Note: Further, it is once again reminded not to mention any condition in the Bid which is contradictory to the terms and conditions of Tender document.

## 20 **E-PAYMENT**

Owner has initiated payments to Suppliers and Contractors electronically, and to facilitate the payments electronically through '**e-banking**'. The successful bidder should give the details of his bank account as per the bank mandate form enclosed at Format F-19 in Section-VI, Sample Forms and Formats of the Tender documents.

## **[D] - SUBMISSION OF BIDS**

### 21 **SUBMISSION, SEALING AND MARKING OF BIDS**

- 21.1 Bids shall be submitted through e-tender mode in the manner specified elsewhere in tender document.
- 21.2 Offline documents (Specific documents only) as mentioned in clause no. 11.I of Section - II, Instructions to Bidders (ITB) of the Tender document shall be submitted in a Sealed Covering Envelope. The Covering Envelope shall have the following Sticker

Offline Tender Document for “Design, Engineering, Supply, Construction, Erection, Testing & Commissioning of 50 MW (AC) Solar PV Project with Land at Tamilnadu, India”	
Tender Document No.	SECI/C&P/TD/2020/TN/50
Last Date of Submission	
Bids Submitted by	(Enter Full name and address of the Bidder)
Authorized Signatory	(Signature of the Authorized Signatory) (Name of the Authorized Signatory) (Stamp of the Bidder)
Bid Submitted to	Solar Energy Corporation of India Limited (A Government of India Enterprise) D - 3, 1 <sup>st</sup> Floor, Wing - A, Prius Platinum Building District Center, Saket New Delhi - 110 017

21.3 All the bids shall be addressed to the Employer at address specified in the Bid Information Sheet in Section - I, Invitation for Bids (IFB).

21.4 Bids submitted under the name of AGENT/ CONSULTANT/ REPRESENTATIVE/ RETAINER/ ASSOCIATE etc. on behalf of a bidder/ affiliate shall not be accepted.

## 22 DEADLINE FOR SUBMISSION OF BIDS

22.1 The bids must be submitted through e-tender mode not later than the date and time specified in the Bid Information Sheet in Section - I, Invitation for Bids (IFB).

22.2 The offline documents of required specific documents must be submitted through courier/ registered post/ by hand not later than the date and time specified in the Bid Information Sheet in Section - I, Invitation for Bids (IFB)/BDS

22.3 Employer/ Owner may, in exceptional circumstances and at its discretion, extend the deadline for submission of Bids (clause 9 of ITB refers). In which case all rights and obligations of Employer/ Owner and the Bidders, previously subject to the original deadline will thereafter be subject to the deadline as extended. Notice for extension of bid submission date will be uploaded on ETS Portal of ISN-ETS <https://www.bharat-electronictender.com> and/ or Employer's website [www.seci.co.in](http://www.seci.co.in).

## 23 LATE BIDS

23.1 Any bids received after the notified date and time of closing of tenders will be treated as late bids.

23.2 E-tendering system shall close immediately after the deadline for submission of bid and no bids can be submitted thereafter.

23.3 Unsolicited Bids or Bids received to address other than one specifically stipulated in the tender document will not be considered for evaluation/ opening/ award if not received to the specified

destination within stipulated date & time.

## **24 MODIFICATION AND WITHDRAWAL OF BIDS**

### **24.1 Modification and withdrawal of bids shall be as follows: -**

The bidder may withdraw or modify its bid after bid submission but before the due date and time for submission as per tender document with the due written consent from the authorized signatory of the bidder.

### **24.2 The modification shall also be prepared, sealed, marked and dispatched in accordance with the provision of the clause 21 of ITB, with the outer and inner envelopes additionally marked modification or withdrawal as appropriate. A withdrawal notice may also be sent by e-mail or fax but followed by a signed confirmation copy post not later than the deadline for submission of bids. No bid shall be modified/ withdrawn after the deadline for submission of bids.**

### **24.3 No bid shall be allowed to be withdrawn/ modified/ substitute in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the bidder on the Bid Form. Withdrawal/ Modification/ Substitution of a bid during this interval shall result in the forfeiture of bidder's EMD, if applicable pursuant to clause 16 of ITB and rejection of bid.**

### **24.4 The latest bid hence submitted shall be considered for evaluation and all other bids shall be considered to be unconditionally withdrawn.**

### **24.5 In case after price bid opening the lowest evaluated bidder (L1) is not awarded the job for any mistake committed by him in bidding or withdrawal of bid or modification of bid or varying any term in regard thereof leading to re-tendering, Employer shall forfeit EMD, if applicable paid by the bidder and such bidders shall be debarred from participation in re-tendering of the same job(s)/ item(s). Further, such bidder will be debarred for a given period as decided by Employer/ Owner after following the due procedure.**

## **25 EMPLOYER'S RIGHT TO ACCEPT ANY BID AND TO REJECT ANY OR ALL BIDS**

Employer/ Owner reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all Bids, at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligations to inform the affected Bidder or Bidders of the ground for Employer's/ Owner's action. However, Bidder if so desire may seek the reason (in writing) for rejection of their Bid to which Employer/ Owner shall respond quickly.

## **[E] - BID OPENING AND EVALUATION**

## **26 BID OPENING**

### **26.1 *Unpriced Bid Opening:***

As the case may be, Employer will open bids, in the presence of bidders' designated representatives who choose to attend, at date, time and location stipulated in the BDS. The

bidders' representatives, who are present shall sign a bid opening register evidencing their attendance. However the presence of bidder(s) during unpriced bid opening is subjective and will depend on case to case basis against the sole discretion of Employer/ Owner. As it's an online bidding system, Bidder's attendance during the Techno-commercial Bid opening in Employer's Premises is not envisaged, as the same may be observed by the respective bidders from their online login credentials of the e-tendering portal.

## 26.2 ***Priced Bid Opening:***

26.2.1 Employer will open the price bids of those bidders who meet the qualification requirement and whose bids are determined to be technically and commercially responsive.

26.2.2 The price bids of those bidders who were not found to be techno-commercially responsive shall not be opened.

26.2.3 As it's an online bidding system, Bidder's attendance during the Price Bid opening in Employer's Premises is not envisaged, as the same may be observed by the respective bidders from their online login credentials of the e-tendering portal. Employer may also intimate the Techno commercial qualified bidders through mails for the opening of price bids.

## 27 **CONFIDENTIALITY**

Information relating to the examination, clarification, evaluation, and comparison of Bids, and recommendations for the award of a Contract, shall not be disclosed to Bidders or any other persons not officially concerned with such process. Any effort by a Bidder to influence the Employer's/ Owner's processing of Bids or award decisions may result in the rejection of the Bidder's Bid and action shall be initiated as per procedure in this regard.

## 28 **CONTACTING THE EMPLOYER/ OWNER**

28.1 From the time of Bid opening to the time of award of Contract, if any Bidder wishes to contact the Employer/ Owner on any matter related to the Bid, it should do so in writing. Information relating to the examination, clarification, evaluation & recommendation for award shall not be disclosed.

28.2 Any effort by the Bidder to influence the Employer/ Owner in the Employer's 'Bid Evaluation', 'Bid Comparison', or 'Contract Award' decisions may result in the rejection of the offer/Bid and action shall be initiated as per procedure in this regard.

## 29 **EXAMINATION OF BIDS AND DETERMINATION OF RESPONSIVENESS**

29.1 The owner's determination of a bid's responsiveness is based on the content of the bid only. Prior to the detailed evaluation of Bids, the Employer will determine whether each Bid: -

- (a) Meets the "Bid Evaluation Criteria" of the Bidding Documents;
- (b) Is accompanied by the required 'Earnest Money Deposit' and 'Tender Processing Fees', if applicable
- (c) Is substantially responsive to the requirements of the Tender Documents; and
- (d) Provides any clarification and/ or substantiation that the Employer/ Owner may require

to determine responsiveness pursuant to "ITB: Clause-29.2"

29.2 A substantially responsive Bid is one which conforms to all the terms, conditions and specifications of the Tender Documents without material deviations or reservations or omissions for this purpose employer defines the foregoing terms below: -

- a) "Deviation" is departure from the requirement specified in the tender documents.
- b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirement in the tender documents.
- c) "Omission" is the failure to submit part or all of the information or documentation required in the tender document.

29.3 A material deviation, reservation or omission is one that,

- a) If accepted would,
  - i) Affect in any substantial way the scope, quality, or performance of the job as specified in tender documents.
  - ii) Limit, in any substantial way, inconsistent with the Tender Document, the Employer's rights or the bidder's obligations under the proposed Contract.
- b) If rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids.

29.4 The Employer shall examine all aspects of the bid to confirm that all requirements have been met without any material deviation, reservation or omission.

29.5 If a Bid is not substantially responsive, it may be rejected by the Employer and may not subsequently be made responsive by correction or withdrawal of the of material deviation, reservation or omission.

### **30 CORRECTION OF ERRORS**

30.1 If there is a discrepancy between the unit price and the total price, which is obtained by multiplying the unit price and quantity specified by the Employer, or between subtotals and the total price, the unit or subtotal price shall prevail, and the quantity and the total price shall be corrected. However, in case of items quoted without indicating any quantity or the items for which the quantities are to be estimated by the Bidder, the total price quoted against such items shall prevail. If there is a discrepancy between words and figures, the amount in words will prevail.

The prices of all such item(s) against which the Bidder has not quoted rates/ amount (viz., items left blank or against which '-' is indicated) in the Price Schedules will be deemed to have been included in other item(s).

The subtotal, total price or the total bid price to be identified in Bid Form for this purpose, irrespective of the discrepancy between the amount for the same indicated in words or figures shall be rectified in line with the procedure explained above.

The Bidder should ensure that the prices furnished in various price schedules are consistent



with each other. In case of any inconsistency in the prices furnished in the specified price schedules to be identified in Bid Form for this purpose, the Employer shall be entitled to consider the highest price for that particular line item for the purpose of evaluation and for the purpose of award of the Contract use the lowest of the prices in these schedules.

- 30.2 The amount stated in the bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors. If the bidder does not accept the corrected amount of bid, its bid will be rejected.

### **31 CONVERSION TO SINGLE CURRENCY FOR COMPARISON OF BIDS**

All bids submitted must be in the currency specified at clause 14 of ITB.

### **32 EVALUATION OF BIDS & E REVERSE AUCTION**

Bid shall be evaluated as per evaluation criteria mentioned below on the total project cost including GST. The Employer shall only use the criteria and methodology indicated in the Tender documents. No other criteria/ methodology shall be permitted.

#### **32.1 Evaluation of Techno - Commercial Part (First Envelope)**

The Employer will carry out a detailed evaluation of the bids of the qualified bidders in order to determine whether the technical aspects are in accordance with the requirements set forth in the Bidding Documents. In order to reach such a determination, the Employer will examine the information supplied by the bidders, pursuant to ITB Clause 11, and other requirements in the Bidding Documents, taking into account the following factors:

- overall completeness and compliance with the Technical Specifications of the bid. The bid that does not meet minimum acceptable standards of completeness, consistency and detail may be rejected for non-responsiveness.
- compliance with the time schedule
- Any other relevant technical factors that the Employer/ Owner deems necessary or prudent to take into consideration.
- Any deviations to the commercial and contractual provisions stipulated in the Tender Documents.
- details furnished by the bidder in response to the requirements specified in the Tender Documents.

#### **32.2 Opening of Second Envelope by Employer**

The Second Envelope i.e., Price Part of only those Bidders shall be opened who are determined as having submitted substantially responsive bids and are ascertained to be qualified to satisfactorily perform the Contract, pursuant to ITB Clause 32.1. In case the bid/offer is rejected, pursuant to ITB Clause 32.1 the Second Envelope submitted by such bidders shall be sent to archive unopened and the EMD, if applicable shall be returned as per

the Tender provisions.

The prices and details as filled up in Electronic Form by the bidder and opened during the bid opening and recorded in the Bid Opening Statement would not be construed to determine the relative ranking amongst the Bidders, or the successful Bidder, and would not confer any right or claim whatsoever on any Bidder. The successful Bidder (also referred to as the L1 Bidder) shall be determined as per the provisions of this Section - II and considered for award of contract as provided in ITB.

### 32.3 Evaluation of Financial Part (Second Envelope)

32.3.1 The Employer will examine the Price Part (Second Envelopes) to determine whether they are complete, whether any computational errors have been made, whether the documents have been properly signed/digitally signed, and whether the bids are generally in order.

32.3.2 The Price Part containing any deviations and omissions from the contractual and commercial conditions and the Technical Specifications which have not been identified in the First Envelope are liable to be rejected.

32.3.3 Arithmetical errors will be rectified in line with Clause no. 30 of ITB.

32.3.5 The comparison shall also include the impact of Goods & Service Tax (GST) in line with the provisions of the Tender Documents.

32.3.6 The Employer's comparison will include the costs resulting from application of the evaluation procedures described below:

a. The Evaluated Bid Value (EBV) shall be calculated using the following method:

- i. EPC/ LSTK Contract Value i.e., Total sum of the price comprising of Ex Works Supply of all Equipments and materials including mandatory spares and any other supplies specified in the tender Documents, providing all services i.e. Transportation for delivery at site and Insurance including unloading, storage, handling at site, Civil works, Erection, Installation, Testing and Commissioning, performance testing in respect of all the equipment's supplied and any other services specified in the Tender Documents including Goods & Service Tax on both supply & services.
- ii. Net Present Value (NPV) of O&M Contract Price including GST for the entire period in years to be calculated at a discounting rate as mentioned in the Tender documents..

The exact format for sharing the base price and all Goods & Service Tax is attached in SOR 1& SOR 2.

SOR -1 is the Schedule and Breakup of Lump sum Price (Supply, Service and NPV of O&M) of the Tender. SOR -2 comprises of the yearly Breakup of the NPV of O&M price for the complete O&M period.

Bidder to mention the Total NPV of O&M amount for the total O&M period in SOR-1 which should match with the Total NPV of O&M amount for the total O&M period in SOR 2.

The terms EXW etc., shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce, 38, Cours Albert 1er, 75008, Paris, France

- b. **Evaluated Bid Value (EBV)** = (1) EPC/ LSTK Price as quoted by the bidder including GST + (2) O & M Contract Price for the entire period in years on NPV basis including GST.

Detailed Taxation Break up for this purpose is also given in the SOR-1 & SOR-2 of the SOR for the EBV calculation purpose.

**Discounting Rate for NPV calculation considered is 8.61%**

### 32.4 Evaluation of Price Bid

#### 32.4.1 Following factors shall be considered for evaluation of Price Bids:

- a) Evaluated Bid Values (EBV) for all the Bidders shall be compared to determine the lowest Evaluated Bid Value (EBV) as given under SOR- 1 Format of Schedule of Rates & the lowest (L1) evaluated Bid as such, will be selected for the Notification of Award (NOA) subject to the successful bidder selected after E-Ra (Clause 32.4.2).
- b) The mentioned Evaluated Bid Value will be considered up to 2 decimal places only.
- c) Bidder with the lowest EBV shall be L-1, Bidder with Second lowest EBV shall be L-2 & so on subject to the successful bidder selected after E-Ra (Clause 32.4.2)
- d) The Evaluated Bid Value shall be inclusive of Goods & Service Tax (GST) as quoted by the bidder. The award shall be placed Inclusive of GST with taxation bifurcation separately indicated as submitted by the successful bidder in the SOR format.
- e) Billing Break-up (BBU):
  - For each item of SOR 1 & 2, the BBU shall be prepared in the same SOR format (Item name, UoM, Quantity, unit Ex Works price, GST, Total price etc) and the sum of all billing break-up item prices shall be equivalent to the each respective SORs item price with discounted rate of e-Reverse auction (If applicable).
  - The Contractor would be required to provide detailed Bill of Quantity (BOQ) along with the break-up of Contract Price (including GST) and HSN code of the respective goods/services, which should match with the Price Quoted by the Contractor in its Price Bids and accepted by the Employer. This will be used by the Owner at the time of payment to the Contractor. Accordingly, bidders should diligently quote the GST component in the bid.
  - Owner shall reimburse the amount of GST as per the rates mentioned by Contractor in the

detailed BOQ. In case of any statutory variation in GST during the currency of the Contract, same will be reimbursed to the Contractor subject to the treatment provided under clause No 13 of the ITB of the Bidding document, only in respect of the items/quantity which have been mentioned by the Contractor in the detailed BOQ.

- In case of imported Equipment/items purchased from third party (Bought-Out Items) are supplied to the Employer/Owner in execution of the Project, the price of such Goods shall be inclusive of all cost as well as any duties paid/payable in relation to import/purchase of such goods (viz., customs duties, GST & levies etc.) considering and taking into account the ITC as may be available under the applicable laws including GST.

- In case of any statutory variation in GST during the currency of the Contract, same will be reimbursed to the Contractor only in respect of the taxes which are levied during the direct transaction held between Owner and the Contractor. Any statutory variation applicable in respect of the items/services procurement between third party/sub-contractor and the Contractor would not be reimbursed by Owner.

### 32.4.2 Procedure for e- Reverse Auction (e-RA):

1. The e-auctioning shall be conducted on <https://www.bharat-electronictender.com>. E-Auctioning shall be carried out on the day as intimated by SECI to the eligible bidders.
2. After financial bid evaluation, the bidders shall be shortlisted in the ascending order of price bid quoted. Keeping minimum 03 Bids eligible for e-RA, Total no of bids will be reduced by a factor 1/2 and resultant as such, will be eligible for e-RA. Decimal Nos will be corrected to next whole No & will be counted accordingly for the e-RA. If the price bid quoted is same for two or more bidders, then all the bidders with same price bid shall be considered of equal rank/standing in the order.

Ex: (1) No of Bids after arranging the Bids in ascending order = 3, so total No of Bids eligible for e-RA in this case =  $3 \times \frac{1}{2} = 1.5$ , but as the minimum 03 bids needs to be kept, so in this case 03 bids will be eligible for e-RA.

(2) No of Bids after arranging the Bids in ascending order = 7, so total No of Bids eligible for e-RA in this case =  $7 \times \frac{1}{2} = 3.5 = 4$ , rounding off to the next whole No. So, in this case 04 bids will be there for e-RA

In case of substantially low response by the bidders & the total no of responsive bids to be less than 03 (Three), Owner/Employer reserves the sole discretion & all rights of proceeding/Non-proceeding with e-RA, against the management approval.

- At least one week prior to e-RA, an advance intimation regarding the date and time of the e-RA will be sent by email to all bidders whose technical & financial bids have been opened and found to be qualified. However, from this advance intimation it shall not be construed by the bidders that they have been shortlisted for e-RA. Further at least two hours before the schedule start time of e-Auctioning, a system generated email for invitation for e-Auctioning will be sent to all those bidders only who have been shortlisted based on the criteria mentioned.
- Shortlisted bidders for e-Auctioning will be able to login into the ISN website of e-auctioning 15 minutes before the start time of e-auctioning.
- At the start of e-auctioning process, the bid along with the list of short-listed bidders shall be displayed with their pseudo names as their first round bid along with the NPV value of O&M quotation per year submitted and calculated as per SoR. The auctioning shall be on both the EPC price and NPV value of the O&M quoted by the bidder.

The minimum decrement step for e-Auctioning is in the multiples of **Rs. 10, 00,000/- (INR Ten lacs only)** in EPC & NPV of O&M Price bid (Firm value of the financial proposal as the sum of individual bid value of supply, erection and civil works including GST & NPV value of O&M including GST), i.e. each decrement shall be in multiples of Rs. Rs.10, 00,000/- (INR Ten Lacs only). At the end of the e-RA, the final discount offered by the bidder, in the form of price reduction so offered on the EPC & NPV value of O&M price, shall be applied proportionately

to all of the SOR Line items price (EPC Price + NPV of O&M price) quoted by the bidder initially in the financial bid. Accordingly, the revised reduced price of all of the SOR line items of the EPC & NPV of O&M will be derived. This proportionate price reduction will be applicable on both the EPC price & NPV value of O&M price, on which the e-RA has been actually conducted.

- **While applying the price reduction obtained after E-Ra, all the SOR line items of the SOR- 1 (Supply & Service) can be straight away reduced by applying the % reduction factor uniformly on all the line items of SOR – 1. Same way, the NPV value of each year line item of O&M value under SOR – 2, can also be straight away reduced by applying the % reduction factor uniformly on all the line items of SOR – 2. However, as the reduced line items so arrived will be the NPV values of each year O&M value, so for the purpose of award, absolute values of each year O&M price line item wise will then be back calculated by dividing the finally arrived (After applying % reduction factor post E-Ra) yearly reduced NPV values by the respective year “Discounting Rate for NPV calculation” & thereby, the absolute value of OM price will be calculated on yearly basis. The award will be placed on the absolute value of O&M price only and not on NPV of O&M price. NPV values are considered for the purpose of price bids evaluation only.**
  - L2, L3, L4.... LN Bidders have to mandatorily apply their decrements suitably so as to beat the L1 price in the first go itself, else system will not accept their respective Bids. However, at no stage, increase in EPC & NPV of O&M price will be permissible.
  - During E- Auctioning, no revision in total price for which a bidder is considered qualified after evaluation of Technical Bid is allowed.
  - The initial auctioning period will be of one (01) hour with a provision of auto extension by eight minutes from the scheduled/ extended closing time if any fresh bid is received in last eight minutes of auctioning period or extended auctioning period. If no valid bid is received during last eight minutes of auctioning period or extended auctioning period, then the e-auctioning process will get closed.
3. Following information will be displayed in the bidder’s bidding window:
- First round EPC and NPV of O&M price as their start price initially and thereafter last quoted EPC & NPV of O&M Price
  - The auction will be conducted on the total sum of EPC & NPV of O&M price.
  - The list of last quoted EPC & NPV of O&M price (i.e. last Bid Value) of all bidders with their Pseudo Identities and their time of quote.
4. Selection of Successful Bidders

Post E-Ra, the bidders shall be selected in the ascending order with lowest quoted Evaluated Bid value (EPC + NPV of O&M price) (being L1).



- a. The final price will be arrived by adding the EPC price and the NPV of O&M price (as a result of e-auctioning process)
- b. The bidder with lowest Evaluated Bid value (EBV) at the end of E-Auctioning will be considered L1.
- c. In case of tie in the final EBV after E-Ra, (i.e. the sum of their last quoted discounted EPC price and the NPV of O&M price), among two or more bidders being the same at the end of e-Reverse Auction, they will be considered in the chronological order of their last bid with preference to the bidder who has quoted his last bid earlier than others.
- d. In the above case, if the time of quote also become exactly same among the bidders at a tie, then the ranking among these bidders shall be done as follow:
  - The bidder who has quoted lowest Total Price in their Price BID before commencement of E-Auction shall be considered as L-1.
  - If there is also a tie among any of these bidders, then L-1 will be the bidder who has the highest average annual turnover as per the documents submitted as a part of their bid.
5. At the end of selection process, a Notification of Award (NOA) will be issued to the successful bidder (L1).
6. In all cases, SECI's decision regarding selection of bidder through E-Auctioning or even annulment of tendering process shall be final and binding on all participating bidders.

### 32.4.3 Other Instructions

- For further instructions, the vendor should visit the home-page of the portal <https://www.bharat-electronictender> and go to the User-Guidance Centre.
- The help information provided through 'ETS User-Guidance Centre' is available in three categories :  
Users intending to Register / First-Time Users, Logged-in users of Buyer organizations, and Logged-in users of Supplier organizations. Various links (including links for User Manuals) are provided under each of the three categories.
- Important Note: It is strongly recommended that all authorized users of Supplier organizations should thoroughly peruse the information provided under the relevant links, and take appropriate action. This will prevent hiccups, and minimize teething problems during the use of ETS.

**33 COMPENSATION FOR EXTENDED STAY**

NOT APPLICABLE

**34 PURCHASE PREFERENCE**

NOT APPLICABLE

**[F] - NOTIFICATION OF AWARD/ LETTER OF INTENT/ CONTRACT AGREEMENT**

**35 AWARD**

Subject to "ITB: Clause-29", Owner will award the Contract to the successful Bidder whose Bid has been determined to be substantially responsive and has been determined as the lowest provided that bidders, is determined to be qualified to satisfactorily perform the Contract.

**36 NOTIFICATION OF AWARD/ LETTER OF INTENT/ LETTER OF ALLOCATION**

36.1 Prior to the expiry of 'Period of Bid Validity', Owner will notify the successful bidder in writing, in the form of "Notification of Award (NOA)"/ "Letter of Intent (LOI)"/ "Letter of Allocation (LOA)" through e-mail/ courier/ registered post, that his Bid has been accepted. The acceptance of the notification of award will constitute the formation of the Contract.

36.2 Contract Period shall commence from the date of "Notification of Award"/ "Letter of Intent"/ "Letter of Allocation" or as mentioned in the Notification of Award/ Letter of Intent/ Letter of Allocation. The "Notification of Award"/ "Letter of Intent"/ "Letter of Allocation" will constitute the formation of a Contract, until the Contract has been effected pursuant to signing of Contract as per "ITB: Clause-37".

36.3 The of "Notification of Award (NOA)"/ "Letter of Intent (LOI)"/ "Letter of Allocation (LOA)" shall be issued to successful bidder in duplicate. The successful bidder is required to return its duplicate copy duly signed and stamped on each page including all the Appendix, Annexures as a token of acceptance.

36.4 Incase the successful bidder fails to acknowledge the acceptance of "Notification of Award (NOA)"/ "Letter of Intent (LOI)"/ "Letter of Allocation (LOA)" as mentioned above vide clause no. 36.3, same will be treated as a case of non-responsiveness & default and Employer/ Owner may take suitable action to get the project successfully executed.

36.5 In case of Non-responsive/Non acceptance to the NOA or CA or non-submission of timely Performance Security by the successful bidder, SECI at its sole discretion may take appropriate actions with the forfeiture of EMD, if applicable & may annul the entire Tendering process at its sole discretion.

**37 SIGNING OF CONTRACT AGREEMENT**

37.1 Within 30 (Thirty) days of the release of Notification of Award (NOA) by the owner, the successful Bidder/ Contractor shall be required to execute the 'Contract Agreement' with Owner on a 'non-judicial stamp paper' of appropriate value [cost of the 'stamp-paper' shall be borne by the successful Bidder/ Contractor] and of 'state' specified in Bidding Data Sheet

(BDS).

- 37.2 In case the successful bidder fails to execute the 'Contract Agreement' as mentioned above vide clause no. 37.1, same will be treated as a case of non-responsiveness & default and Employer/ Owner may take suitable action to get the project successfully executed. Same shall constitute sufficient grounds for the forfeiture of EMD, if applicable.
- 37.3 In case of Non-responsive/Non-acceptance to the NOA or CA or non-submission of timely Performance Security by the successful bidder, SECI at its sole discretion may take appropriate actions with the forfeiture of EMD, if applicable & may annul the entire Tendering process at its sole discretion

### 38. VOID

### 39. PROCEDURE FOR ACTION IN CASE CORRUPT/ FRAUDULENT/ COLLUSIVE/ COERCIVE PRACTICES

- 39.1 Procedure for action in case Corrupt/ Fraudulent/ Collusive/ Coercive Practices is enclosed at Annexure-I along with this ITB document.
- 39.2 Annexure-I deliberates in detail the all consequences pertaining to clause no. 39.

### 39.3 **NON-APPLICABILITY OF ARBITRATION CLAUSE IN CASE OF BANNING OF VENDORS/ SUPPLIERS/ CONTRACTORS/ BIDDERS/ CONSULTANTS INDULGED IN FRAUDULENT/ COERCIVE PRACTICES**

Notwithstanding anything contained contrary in GCC and other "CONTRACT DOCUMENTS", in case it is found that the Vendors/ Suppliers/ Contractors/ Bidders/ Consultants indulged in fraudulent/ coercive practices at the time of bidding, during execution of the contract etc., and/ or on other grounds as mentioned in Employer's/ Owner's "Procedure for action in case Corrupt/ Fraudulent/ Collusive/ Coercive Practices" (Annexure-I), the contractor/ bidder shall be banned (in terms of aforesaid procedure) from the date of issuance of such order by Employer/ Owner, to such Vendors/ Suppliers/ Contractors/ Bidders/ Consultants.

The Vendor/ Supplier/ Contractor/ Bidder/ Consultant understands and agrees that in such cases where Vendor/ Supplier/ Contractor/ Bidder/ Consultant has been banned (in terms of aforesaid procedure) from the date of issuance of such order by Employer/ Owner, such decision of Employer/ Owner shall be final and binding on such Vendor/ Supplier/ Contractor/ Bidder/ Consultant and the 'Arbitration clause' in the GCC and other "CONTRACT DOCUMENTS" shall not be applicable for any consequential issue/ dispute arising in the matter.

### 40. PUBLIC PROCUREMENT POLICY FOR MICRO AND SMALL ENTERPRISES (MSEs)

- 40.1 As per the Public Procurement Policy for Micro and Small Enterprise (MSEs) order 2012, issued vide Gazette Notification number 503, dated 23.03.2012 by Ministry of Micro, Small and Medium Enterprise of Govt. of India, and specific to this tender, MSEs must be registered with any of the following agencies/ bodies shall be exempted from Tender Processing Fees

and EMD submission, if applicable upon production of valid registration certificate.

- (i) District Industries Centre (DIC)
- (ii) National Small Industries Corporation (NSIC)
- (iii) Udyog Aadhaar Memorandum

MSEs participating in the tender must submit the certificate of registration with any one of the above agencies. The registration certificate issued from any of the above agencies must be valid as on close date of the tender.

The MSEs, who have applied for registration or renewal of registration with any of the above agencies/ bodies, but have not obtained the valid certificate as on close date of the tender, are not eligible for exemption/ preference.

**40.2 In case of JV/ Consortium, in order to avail the exemption to Tender Processing Fees and Earnest Money Deposit (EMD, if applicable), all the members of JV/ Consortium should be registered under any of the Categories mentioned under clause 40.1 above.**

**40.3** In case the bidder is falling under above category, the bidder shall submit the documentary evidence satisfying the same.

If the bidder does not provide the above confirmation or appropriate document or any evidence, then it will be presumed that they do not qualify for any preference admissible in the tender.

#### **41 AHR ITEMS**

**NOT APPLICABLE**

#### **42 RISK OF REJECTION**

Any Conditional Bid will straight away run into risk of rejection.

#### **43 INCOME TAX & CORPORATE TAX**

**43.1** Income tax deduction shall be made from all payments made to the contractor as per the rules and regulations in force and in accordance with the Income Tax Act prevailing from time to time.

**43.2** Corporate Tax liability, if any, shall be to the contractor's account.

**43.3** TDS under GST as may be applicable shall be deducted as per law of Government of India in vogue.

#### **43.4 MENTIONING OF PAN NO. IN INVOICE/ BILL**

As per CBDT Notification No. 95/2015 dated 30.12.2015, mentioning of PAN no. is mandatory for procurement of goods/ services/ works/ consultancy services exceeding INR 2 Lacs per transaction.

Accordingly, supplier/ contractor/ service provider/ consultant should mention their PAN no. in

their invoice/ bill for any transaction exceeding INR 2 Lacs. As provided in the notification, in case supplier/ contractor/ service provider/ consultant do not have PAN no., they have to submit declaration in Form 60 along with invoice/ bill for each transaction.

Payment of supplier/ contractor / service provider/ consultant shall be processed only after fulfilment of above requirement

**44. SETTLEMENT OF DISPUTES BETWEEN GOVERNMENT DEPARTMENT AND ANOTHER AND ONE GOVERNMENT DEPARTMENT AND PUBLIC ENTERPRISE AND ONE PUBLIC ENTERPRISE AND ANOTHER**

In the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitrator under this clause. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/ Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

**45 DISPUTE RESOLUTION (PROVISION REGARDING APPLICABLE LAWS AND SETTLEMENT OF DISPUTES)**

- 45.1 Unless otherwise specified, the matters where decision of the Engineer-in-Charge is deemed to be final and binding as provided in the Agreement and the issues/ disputes which cannot be mutually resolved within a reasonable time, all disputes shall be settled in accordance with the Conciliation Rules.
- 45.2 Any dispute(s)/ difference(s)/ issue(s) of any kind whatsoever between/ amongst the Parties arising under/ out of/ in connection with this contract shall be settled in accordance with the laid down rules.
- 45.3 In case of any dispute(s)/ difference(s)/ issue(s), a Party shall notify the other Party (ies) in writing about such a dispute(s)/ difference(s)/ issue(s) between/ amongst the Parties and that such a Party wishes to refer the dispute(s)/ difference(s)/ issue(s) to Conciliation. Such Invitation for Conciliation shall contain sufficient information as to the dispute(s)/ difference(s)/ issue(s) to enable the other Party(ies) to be fully informed as to the nature of the dispute(s)/ difference(s)/ issue(s), the amount of monetary claim, if any, and apparent cause(s) of action.
- 45.4 Conciliation proceedings commence when the other Party(ies) accept(s) the invitation to conciliate and confirmed in writing. If the other Party(ies) reject(s) the invitation, there will be no conciliation proceedings.
- 45.5 If the Party initiating conciliation does not receive a reply within thirty days from the date on which he/she sends the invitation, or within such other period of time as specified in the invitation, he/she may elect to treat this as a rejection of the invitation to conciliate. If he/she

so elects, he/she shall inform the other Party(ies) accordingly.

- 45.6 Where Invitation for Conciliation has been furnished, the Parties shall attempt to settle such dispute(s) amicably under Part-III of the Indian Arbitration and Conciliation Act, 1996. It would be only after exhausting the option of Conciliation as an Alternate Dispute Resolution Mechanism that the Parties hereto shall go for Arbitration. For the purpose of this clause, the option of 'Conciliation' shall be deemed to have been exhausted, even in case of rejection of 'Conciliation' by any of the Parties.
- 45.7 The cost of Conciliation proceedings including but not limited to fees for Conciliator(s), Airfare, Local Transport, Accommodation, cost towards conference facility etc. shall be borne by the Parties equally.
- 45.8 The Parties shall freeze claim(s) of interest, if any, and shall not claim the same during the pendency of Conciliation proceedings. The Settlement Agreement, as and when reached/agreed upon, shall be signed between the Parties and Conciliation proceedings shall stand terminated on the date of the Settlement Agreement.

===== X =====



**Annexure-I**

**PROCEDURE FOR ACTION IN CASE CORRUPT/ FRAUDULENT/ COLLUSIVE/ COERCIVE PRACTICES**

**A Definitions:**

A.1 “Corrupt Practice” means the offering, giving, receiving or soliciting, directly or indirectly, anything of value to improperly influence the actions in selection process or in contract execution.

“Corrupt Practice” also includes any omission for misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.

A.2 “Fraudulent Practice” means and include any act or omission committed by an agency or with his connivance or by his agent by misrepresenting/ submitting false documents and/ or false information or concealment of facts or to deceive in order to influence a selection process or during execution of contract/ order.

A.3 “Collusive Practice amongst bidders (prior to or after bid submission)” means a scheme or arrangement designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

A.4 “Coercive practice” means impairing or harming or threatening to impair or harm directly or indirectly, any agency or its property to influence the improperly actions of an agency, obstruction of any investigation or auditing of a procurement process.

A.5 “Vendor/ Supplier/ Contractor/ Consultant/ Bidder” is herein after referred as “Agency”

A.6 “Competent Authority” shall mean the authority, who is competent to take final decision for Suspension of business dealing with an Agency/ (ies) and Banning of business dealings with Agency/ (ies) and shall be the “Committee” concerned.

A.7 “Allied Agency” shall mean all the concerns within the sphere of effective influence of banned/ suspended agencies. In determining this, the following factors may be taken into consideration:

- (a) Whether the management is common;
- (b) Majority interest in the management is held by the partners or directors of banned/ suspended firm.
- (c) substantial or majority shares are owned by banned/ suspended agency and by virtue of this it has a controlling voice.

A.8 “Investigating Agency” shall mean any department or unit of Employer/ Owner investigating into the conduct of Agency/ party and shall include the Vigilance Department of the Employer/ Owner, Central Bureau of Investigation, State Police or any other agency set up by the Central

or state government having power to investigate.

## **B Actions against bidder(s) indulging in corrupt /fraudulent/ collusive/ coercive practice**

### **B.1 Irregularities noticed during the evaluation of the bids:**

If it is observed during bidding process/ bids evaluation stage that a bidder has indulged in corrupt/ fraudulent/ collusive/ coercive practice, the bid of such Bidder (s) shall be rejected and its Earnest Money Deposit (EMD, if applicable) shall be forfeited.

Further, such agency shall be banned for future business with Employer/ Owner for a period specified in para B 2.2 below from the date of issue of banning order.

### **B.2 Irregularities noticed after award of contract**

#### **(i) During execution of contract:**

If an agency, is found to have indulged in corrupt/ fraudulent/ collusive/ coercive practices, during execution of contract, the agency shall be banned for future business with Employer/ Owner for a period specified in para B 2.2 below from the date of issue of banning order.

The concerned order(s)/ contract(s) where corrupt/ fraudulent/ collusive practices are observed, shall be suspended with immediate effect by Engineer-in-Charge (EIC)/ Employer/ Owner whereby the supply/ work/ service and payment etc. will be suspended. The action shall be initiated for putting the agency on banning list.

After conclusion of process, the order(s)/ contract(s) where it is concluded that such irregularities have been committed shall be terminated and Contract Performance Security submitted by agency against such order(s)/ contract(s) shall also be forfeited. The amount that may have become due to the contractor on account of work already executed by him shall be payable to the contractor and this amount shall be subject to adjustment against any amounts due from the contractor under the terms of the contract.

No risk and cost provision will be enforced in such cases.

#### **(ii) After execution of contract and during Defect liability period (DLP)/ Warranty/ Guarantee Period:**

If an agency is found to have indulged in corrupt/ fraudulent/ collusive/ coercive practices, after execution of contract and during DLP/ Warranty/ Guarantee Period/O&M Period, the agency shall be banned for future business with Employer/ Owner for a period specified in para B 2.2 below from the date of issue of banning order.

Further, the Contract Performance Security submitted by agency against such

order(s)/ contract(s) shall be forfeited.

**(iii) After expiry of Defect liability period (DLP)/ Warranty/ Guarantee Period**

If an agency is found to have indulged in corrupt/ fraudulent/ collusive/ coercive practices, after expiry of Defect liability period (DLP)/ Warranty/ Guarantee Period, the agency shall be banned for future business with Employer/ Owner for a period specified in para B 2.2 below from the date of issue of banning order.

**B.2.2 Period of Banning**

Banning period shall be reckoned from the date of issuance of banning order and shall be for a period as may be decided by the Employer/ Owner based on specific case basis. However, minimum period of ban shall be 06 (Six) months from the date of issuance of banning order.

In exceptional cases where the act of vendor/ contractor is a threat to the National Security, the banning shall be for indefinite period.

**C Effect of banning on other ongoing contracts/ tenders**

C.1 If an agency is banned , such agency shall not be considered in ongoing tenders/ future tenders.

C.2 However, if such an agency is already executing other order(s)/ contract(s) where no corrupt/ fraudulent/ collusive/ coercive practice is found, the agency shall be allowed to continue till its completion without any further increase in scope except those incidental to original scope mentioned in the contract.

C.3 If an agency is banned during tendering and irregularity is found in the case under process:

C.3.1 after issue of the enquiry/ bid/ tender but before opening of Technical bid, the bid submitted by the agency shall be ignored.

C.3.2 after opening Technical bid but before opening the Price bid, the Price bid of the agency shall not be opened and EMD, if applicable submitted by the agency shall be returned to the agency.

C.3.3 after opening of price bid, EMD, if applicable made by the agency shall be returned; the offer/Bid of the agency shall be ignored & will not be further evaluated. If the agency is put on banning list for fraud/ mis-appropriation of facts committed in the same tender/ other tender where errant agency emerges as the lowest (L1), then such tender shall also be cancelled and re-invited.

**D. Procedure for Suspension of Bidder**

**D.1 Initiation of Suspension**

Action for suspension business dealing with any agency/(ies) shall be initiated by C&P

Department when

- (i) Vigilance Department based on the fact of the case gathered during investigation by them recommend for specific immediate action against the agency.
- (ii) Vigilance Department based on the input from Investigating agency, forward for specific immediate action against the agency.
- (iii) Nonperformance of Vendor/ Supplier/ Contractor/ Consultant leading to termination of Contract/ Order.

## **D.2 Suspension Procedure:**

- D.2.1 The order of suspension would operate initially for a period not more than six months and is to be communicated to the agency and also to Vigilance Department. Period of suspension can be extended with the approval of the Competent Authority by one month at a time with a ceiling of six months pending a conclusive decision to put the agency on banning list.
- D.2.2 During the period of suspension, no new business dealing may be held with the agency.
- D.2.3 Period of suspension shall be accounted for in the final order passed for banning of business with the agency.
- D.2.4 The decision regarding suspension of business dealings should also be communicated to the agency.
- D.2.5 If a prima-facie, case is made out that the agency is guilty on the grounds which can result in banning of business dealings, proposal for issuance of suspension order and show cause notice shall be put up to the Competent Authority. The suspension order and show cause notice must include that (i) the agency is put on suspension list and (ii) why action should not be taken for banning the agency for future business from Employer/ Owner.

The competent authority to approve the suspension will be same as that for according approval for banning.

## **D 3 Effect of Suspension of business:**

Effect of suspension on other on-going/ future tenders will be as under:

- D.3.1 No enquiry/ bid/ tender shall be entertained from an agency as long as the name of agency appears in the Suspension List.
- D.3.2 If an agency is put on the Suspension List during tendering:
  - D.3.2.1 after issue of the enquiry/ bid/ tender but before opening of Technical bid, the bid submitted