

- been suppressed;
- iv. If the bidder fails to furnish required Performance Bank Guarantee in accordance with Section 3.9.

3.11 Power Purchase Agreement:

1. A copy of Power Purchase Agreement, to be executed between MSEDCL and the successful bidder or its 100% subsidiary Special Purpose Vehicle (SPV), shall be provided by MSEDCL along with this RfS. The PPA shall be signed within 1 month from the date of issue of Letter of Award (LoA). A single PPA shall be executed between MSEDCL and the selected bidder for each project. The PPA shall be valid for a period of 25 years from the Scheduled Commercial Operation Date in case of proposed/new solar power projects or for a period of 25 years from the date of execution of PPA for existing solar power projects based on the terms, conditions and provisions of the RfS, irrespective of dates of early part commissioning or early full commissioning.
2. Before signing of PPA between MSEDCL and the selected Bidders, MSEDCL will verify the documents furnished by the Bidders at the time of submission of response to RfS including the shareholding of the Project Company along with a copy of complete documentary evidence supported with the original documents. Bidders will also be required to furnish the documentary evidence for meeting the RfS Qualification Requirements.
3. The successful bidders shall be free to operate their projects after expiry of the 25 years from the SCOD of the project, if other conditions like land lease etc., permits. However, any extension of the PPA period beyond 25 years from the Scheduled Commercial Operation Date in case of proposed/new solar power projects or for a period of 25 years from the date of execution of PPA for existing solar power projects shall be through mutual agreements between the successful bidder and MSEDCL.

3.12 Capacity Utilisation Factor (CUF):

3.12.1 Criteria for generation:

The Successful Bidder/Power producer will declare the CUF of their project at the time of PPA and will be allowed to revise the same once within first year of COD. The declared CUF shall in no case be less than 19% over a year. They shall maintain generation so as to achieve CUF in the range of $\pm 10\%$ of their declared value during PPA duration. The lower limit will, however, be relaxable by MSEDCL to the extent of grid non-availability for evacuation which is beyond the control of the developer. The annual CUF will be calculated every year from 1st April of the year to 31st March next year.

3.12.2 Shortfall in minimum generation:

If for any Contract Year, it is found that the Successful Bidder has not been able to generate minimum energy corresponding to the value of annual CUF within the permissible lower limit of CUF declared by the Successful Bidder, on account of reasons solely attributable to the Successful Bidder, such shortfall in performance shall make the Successful Bidder liable to pay the compensation @ 25% of the PPA tariff to MSEDCL. This will, however, be relaxable by MSEDCL to the extent of grid non-availability for evacuation (beyond the Delivery Point) which is beyond the control of the Successful Bidder. This compensation shall be applied to the amount of shortfall in generation during the Contract Year.

However, this compensation shall not be applicable in events of Force Majeure identified under the PPA with MSEDCL, affecting supply of solar power by the Successful Bidder

3.12.3 Excess Generation:

During any contract year, in case the generation is over and above 10% of declared annual CUF, the Successful Bidder will be free to sell it to any other entity provided first right of refusal will vest with MSEDCL. In case MSEDCL purchases the excess generation, the same may be done at 75% (seventy-five per cent) of the PPA tariff. MSEDCL shall inform the Solar Power Producer for procurement of excess power within 15 days of receiving a written intimation from the Solar Power Producer for such excess generation. If in case MSEDCL fails to reply to the Solar Power generator within the above stipulated time period then the generator shall be free to sell it to any other entity.

3.12.4 Repowering:

The Successful bidder shall be allowed to repower the project as per its requirement for a maximum cumulative period of six (6) months during the entire term of the PPA. The generator shall not be in default for non-supply of power during this period of repowering. However, the MSEDCL will be obliged to buy power only within the range of CUF, specified in the PPA. Any excess generation will be dealt as specified in clause 3.12.3 of RfS.

3.13 Financial Closure or Project Financing Arrangements:

The Successful bidder shall report 100% tie-up of Financing Arrangements for the projects within 9 (nine) months from the date of execution of the Power Purchase Agreement, for projects being set up in Solar park, and within 12 (twelve) months from the date of execution of the Power Purchase Agreement, for projects being set up outside Solar park. In this regard, the SPD shall submit a certificate/necessary documents from all financing agencies regarding the tie-up of 100% of the funds indicated for the Project, including arrangements of funds in the form of Equity. Accordingly, the successful bidder shall furnish the following documents at the time of reporting Financial Closure i.e.

- a) Tie-up of Financing Arrangements: internal resources and/or 100% tie up of funds through a bank / financial institution by way of a legally binding agreement/ sanction

letter for commitment of such finances. The bidder shall submit the undertaking that legally binding agreement shall be submitted within two months.

- b) Submit power evacuation/ connectivity agreement of successful bidder with CTU/STU/DISCOM;
- c) Evidence of clear identification of required land along with the following details:
 - i) The bidder shall identify 100% of the land area required for the project. The land used from the project on lease hold basis or right to use basis will be accepted in case of both government land and private land. Where, leasing of private land is involved, the lease should allow transfer of land to the Procurer, in case of default of the Solar Power Generator.
 - ii) Sworn affidavit/Undertaking from the authorized person of the successful bidder listing the details of the land and certifying total land required for the project.
 - iii) Developer and/ or Transfer Permission issued by State Nodal Agency/MEDA.
 - iv) Copy of key plan drawing showing survey number, plot number, point of installation of solar project with capacity.

If the Project Developer fails to tie-up Financing Arrangement for the projects within 9 (nine) months from the date of execution of the Power Purchase Agreement, for projects being set up in Solar park, and within 12 (twelve) months from the date of execution of the Power Purchase Agreement, for projects being set up outside Solar park, as prescribed above or if the Project Developer fails to report such tie-up then the MSEDCL shall forfeit the Performance Bank Guarantee (PBG) unless the delay is on account of delay caused due to a Force Majeure, an extension for the attainment of the financial closure can however be considered by MSEDCL, on the sole request of the Solar Power Generator, on payment of penalty of Rs.10000/- per day per MW (excluding 18% GST, if applicable). This extension will not have any impact on the Scheduled Commissioning Date (SCOD).

3.14 Commissioning and penalty for delay in commissioning:

- 3.14.1 The Projects shall be commissioned within a period of 15 (fifteen) months from the date of execution of the PPA, for projects being set up in Solar park, and within a period of 18 (eighteen) months from the date of execution of the PPA, for projects being set up outside Solar park.
- 3.14.2 The Successful Bidder shall be required to obtain Developer and / or Transfer Permission, Copy of key plan drawing showing survey number, plot number, point of installation of solar project with capacity.
- 3.14.3 Further, evidence of clear possession of Project Site selected by Successful Bidder shall be submitted 30 (Thirty) days before the Scheduled Commercial Operation Date for which the Successful Bidder shall provide documents/ Lease Agreement to establish

possession/ right to use 100% (hundred per cent) of the required land in the name of the Successful Bidder or its Affiliate. In case the land is in the name of Affiliate, the land should be transferred in the name of Successful Bidder prior to Scheduled Commercial Operation Date (SCOD). Wherever leasing of private land is involved, the lease should allow transfer of land to MSEDCL, in case of default of the Successful Bidder. For lease of Government land, if the lease is not available upfront for the entire term of the PPA, then the Successful Bidder shall be required to give an undertaking stating that they shall be solely responsible for securing the extension of required land for the balance period of term of PPA. For lease of private land, the lease period shall cover the entire term of PPA. Sworn affidavit from the authorized person of the Successful Bidder listing the details of the land and certifying total land required for the Project under clear possession of the Successful Bidder shall be submitted by the Successful Bidder 30 (thirty) days before SCOD. Commissioning of the Project will not be allowed until the demonstration of land possession by the successful bidder. Such delay in commissioning, if any, shall lead to liquidated damages as per clause 3.14.7.

- 3.14.4 Synchronization certificates shall be issued by RLDC/MSLDC and after successful commissioning of Project, commissioning certificate shall be issued by MSEDCL.
- 3.14.5 **Part Commissioning:** Part commissioning of the Project shall be accepted by MSEDCL subject to the condition that the Minimum Capacity for acceptance of first and subsequent part(s) commissioning shall be 25 MW for intra-state projects and 50 MW for inter-state projects, without prejudice to the imposition of penalty, in terms of the PPA on the part which is not commissioned. However, the SCOD (Schedule Commercial Operation Date) will not get altered due to part-commissioning. Irrespective of dates of part commissioning or full commissioning, the PPA will remain in force for a period of 25 (twenty-five) years from the SCOD.
- 3.14.6 **Early Commissioning:** The Successful Bidder shall be permitted for full commissioning as well as part commissioning of the Project even prior to the SCOD. In case of early full commissioning, MSEDCL will purchase the generation till SCOD at PPA tariff. In cases of early part-commissioning, till SCOD, MSEDCL may purchase the generation till SCOD, at 75% (seventy-five per cent) of the PPA tariff without any additional Tariff on account of Change in Law till the SCOD. However, in case the entire capacity is commissioned prior to SCOD, MSEDCL may purchase the generation at PPA Tariff.
- 3.14.7 The Project shall be commissioned by the Scheduled Commercial Operation Date. In case of failure to achieve this milestone, MSEDCL shall forfeit the Performance Bank Guarantee (PBG) in the following manner.
- a) **Delay upto Six (6) months from SCOD** – MSEDCL will forfeit total Performance Bank Guarantee on per day basis and proportionate to the Capacity not commissioned.
 - b) **In case the commissioning of the project is delayed beyond Six (6) months from SCOD** :-- The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and reduction in the fixed tariff shall be limited to 21 (Twenty One) months from the date of execution of the PPA, for

projects being set up in Solar park, and within a period of 24 (Twenty Four) months from the date of execution of the PPA, for projects being set up outside Solar park.

- c) In case, the Commissioning of the Project is delayed beyond this period as mentioned in Section (b) above, the power producer's Event of Default as per clause 10.3 of PPA, shall be considered to have occurred and the contracted capacity shall stand reduced / amended to the project Capacity Commissioned upto the maximum time period allowed for commissioning of the full Project capacity and the PPA for the balance Capacity not commissioned shall be terminated and shall be reduced from the selected Project Capacity.

3.15 Commercial Operation Date (COD):

Commercial Operation date with respect to the Project ~~/Unit~~ shall mean the date on which the commissioning certificate is issued upon successful commissioning of the full capacity of the Project or the last part capacity of the Project/~~Unit~~ (certified by RLDC/SLDC/MSEDCL) as the case may be and available for commercial operation. The Successful Bidders shall have to provide a written notice to MSEDCL at least 30 days in advance for the same.

3.16 Minimum Paid up Share Capital to be held by Project Promoter

- i) The Company developing the project shall provide complete information in their bid in reference to RfS about the Promoters and their shareholding in the company indicating the controlling shareholding before signing of PPA with MSEDCL.
- ii) The successful bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the PPA shall not fall below 51% (fifty-one per cent) at any time prior to 3 (three) years from the COD, except with the prior approval of MSEDCL. However, in case the Project is being set up by a Public Limited Company, this condition will not be applicable.
- iii) In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 3 (three) years from the COD, except with the prior approval of the MSEDCL.
- iv) However, in case the successful bidder shall be itself executing the PPA, then it shall ensure that its promoters shall not cede control (Control shall mean ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such Company or right to appoint majority Directors) till 3 (three) year from the COD, except with the prior approval of MSEDCL. In this case it shall also be essential that

the successful bidder shall provide the information about its promoters and their shareholding to MSEDCL before signing of the PPA with MSEDCL.

- v) Any change in the shareholding after the expiry of 3 (three) year from the COD can be undertaken under intimation to MSEDCL.
- vi) In case, the financial eligibility and qualification is attained through financials of Parent Company, then the shareholding pattern of the Parent Company shall not change till the achievement of Financial Closure and the shareholding pattern of the bidding entity shall not change till one year from the date of COD.
- vii) In the event the Solar Power Generator is in default to the lender(s), lenders shall be entitled to undertake “Substitution of Promoter” in concurrence with MSEDCL.
- viii) In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a New Entity, an amount of INR 10 Lakh per Project per Transaction as Facilitation Fee (non-refundable) shall be deposited by power producer/bidder to MSEDCL. However, the new entity should be of the same financial strength as the Successful Bidder.

3.17 Structuring of the Bid selection process:

Single stage, double envelope bidding followed by reverse auction has been envisaged under this RfS. Bidders have to submit both Technical bid and Financial bid (Fixed Tariff) together in response to this RfS online. The preparation of bid proposal has to be in the manner described in **Section 3.18 & 3.21**.

3.18 Instructions to Bidders for structuring of bid proposals in Response to RfS

The bidder including its Parent, Affiliate or Ultimate Parent or any Group Company shall submit single response to RfS.

Detailed Instructions to be followed by the bidders for online submission of response to RfS as stated at **Annexure – D and Annexure -E**.

Submission of bid proposals by Bidders in response to RfS shall be in the manner described below:

1. Covering Letter as per **Format 6.1**.
2. In case of a Bidding Consortium, a Power of Attorney in favour of the Lead Member issued by the other Members of the Consortium shall be provided in original as per format attached hereto as **Format 6.2**.

In the event any Member of the Bidding Consortium (other than Lead Member) is a foreign entity, it may submit Board Resolutions in place of Power of Attorney for the purpose of fulfilling the requirements under this Section. Provided that, such Board Resolutions shall be supported by an unqualified opinion issued by the legal counsel of such foreign entity stating that the Board

Resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing Company and the authorizations granted therein are true and valid.

3. Earnest Money Deposit (EMD) in the form as per **Format 6.3 A**.
4. Performance Guarantee (to be submitted before signing of PPA as specified in Section 3.9) in the form as per **Format 6.3 B**.
5. Board Resolutions, as per prescribed formats enclosed as **Format 6.4** duly certified by the Company Secretary or the Director of the relevant Bidder, as applicable to the Bidder and mentioned hereunder:
 - a. Board resolution from the Bidding Company or the Lead Member of the Consortium, as the case may be, in favour of the person signing the response to RfS and in the event of selection of the Projects, to sign the PPA with the MSEDCL. Board Resolution from each of the Consortium Members in favour of the person signing Consortium Agreement
 - b. Board Resolution from the Bidding Company committing one hundred percent (100%) of the equity requirement for the Project / Board Resolutions from each of the Consortium Members together in aggregate committing to one hundred percent (100%) of equity requirement for the Project (in case of Bidding Consortium); and
 - c. Board Resolutions from each of the Consortium Members and Lead member contributing such additional amount over and above the percentage limit (specified for the Lead Member and other member in the Consortium Agreement) to the extent becoming necessary towards the total equity share in the Project Company, obligatory on the part of the Consortium pursuant to the terms and conditions in the Consortium Agreement.
6. In case of a Consortium, the Consortium Agreement between the Members in the Consortium as per **Format 6.5** along with Board resolution from each Member of the Consortium for participating in Consortium.
7. Bidder shall ensure that the technology to be adopted shall be commercially established technology as per **Annexure A** and is under operation for at least one year. Final details of the same shall be submitted at the time of reporting Financial Closure i.e. within 9 (nine) months from the date of execution of the Power Purchase Agreement, for projects being set up in Solar park, and within 12 (twelve) months from the date of execution of the Power Purchase Agreement, for projects being set up outside Solar park.
8. Tie-up of Financing Arrangements for the projects within 9 (nine) months from the date of execution of the Power Purchase Agreement, for projects being set up in Solar park, and within 12 (twelve) months from the date of execution of the Power Purchase Agreement, for projects being set up outside Solar park.
9. **Format 6.6:** Format for Disclosure.

10. Attachments

- i) Memorandum of Association, Section of Association needs to be attached along with the bid. The bidder should also highlight the relevant provision which highlights the objects relating to generation and sale of Power/ Energy/ Renewable Energy/ Solar Power plant development.
- ii) In case, there is no mention of the above provisions in the MoA/ AoA of the bidding company, the same has to be amended and submitted prior to signing of PPA, if the bidder is selected as Successful bidder.
- iii) Certificate of Incorporation of Bidding Company / all member companies of Bidding Consortium.
- iv) A certificate of shareholding of the bidding company, its Parent and Ultimate Parent (if any), duly certified by a practicing Chartered Accountant/ Company Secretary as on a date within one week prior to the last date of bid submission.
- v) Documents containing information about the Promoters and their shareholding in the Company (as on a date within one week prior to the last date of bid submission) to MSEDCL indicating the controlling shareholding at the stage of submission of response to RfS to MSEDCL as per Section 3.16. MSEDCL reserves the right to seek additional information relating to shareholding in promoter companies, their parents/ ultimate parents and other group companies to satisfy themselves that RfS conditions have been complied with and the bidder will ensure submission of the same within the required time lines.
- vi) Certified copies of annual audited accounts for the last financial year shall be required to be submitted; OR in case the Bidder is a newly formed company, supported by documentary evidence of its recent formation at RoC, then the certificate issued by a Chartered Accountant with certified copy of Balance sheet, Profit & Loss account, Schedules and cash flow statement as on latest available date supported with bank statement (if available) shall be required to be submitted. In case Final Audited Annual Accounts for the last financial year are not available, then MSEDCL shall accept the Provisional Accounts which are duly certified by a practicing Chartered Accountant of India. Provided that an undertaking is submitted by the bidder confirming that Final Audited Annual Accounts for the last financial year are not available as on date of bid submission. Foreign Bidders shall be required to submit their audited annual accounts of previous two years as per relevant laws / acts of their country of origin and the same shall be duly certified by a practicing Chartered Accountant of India.
- vii) Certificate from Chartered Accountants, certifying the Networth of the bidder per MW of quoted capacity as per Section 2 of the Companies Act