

#### 5.4 Major Deliverables:

Sr. No.	Activity
1	Draft Concept Development
2	Final Concept Development
3	Preparation and submission of various Draft RFP documents and submission of final RFP document
4	Submission of Final RFP documents and submission
5	Assistance in Bid Evaluation and Review & vetting of Techno Commercial evaluation Report
6	Vetting of Draft LoA/LoI for various contractors
7	Post – Bid Engineering Service and any other services required for completion of the RE Park infrastructures including but not limited to Detailed Engineering, Site supervision, Inspection of material etc..

#### 5.5 Scope of GIPCL

GIPCL will provide

1. Detailed Project Report of the Development of RE Park
2. Geotechnical Investigation Report
3. Topography Survey Drawing
4. Hydrology Report
5. Office space for Consultant's Engineer at site

#### 5.6 Confidentiality of Data and Documents:

All Intellectual Property Rights (IPR) of data collected as well as the deliverables produced shall remain with the GIPCL. All knowledge and information, which may be acquired during the assignment, shall be for all times and for all purposes, regarded as strictly confidential and held in confidence, and shall not be directly or indirectly disclosed to any person whatsoever, without the explicit written permission of GIPCL.

--- End of Section ---

## 6 General Terms & Conditions

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### 6.1 Use of Contract Documents & Information

- 1) The Consultant shall not, without GIPCL's prior written consent, disclose the Contract or any provision thereof or any specification, plan, drawing, pattern therewith to any person other than person employed by the Consultant in performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend strictly for purpose of performance only.
- 2) The Consultant shall not, without GIPCL's prior written consent, make use of any document or information except for purpose of performing the Contract.
- 3) Any document other than the Contract itself shall remain the property of GIPCL.

### 6.2 Patent Rights

The Consultant shall indemnify GIPCL against third party claims of infringement of patent, trademark or rights arising from use of goods/design or any part thereof.

### 6.3 Statutory Responsibility

The Consultant shall comply with all applicable laws, by laws, rules, and regulations and shall procure and maintain their validity all necessary Municipal, Panchayat and Government permits & licenses etc. at its own cost.

### 6.4 Insolvency and Breach of Contract

GIPCL may at any time by notice in writing summarily terminate the Contract without compensation to the Consultant in any of the following events:

If the Consultant at any time, is adjudged insolvent or have a receiving order or order from administration of its state made against it or shall take any proceeding for compensation under any Insolvency Act for the time being in force or make any conveyance or assignment with its creditors or suspend payment. If the Consultant being a company is wound up voluntarily or by the order of a court or a Receiver, Liquidator or manager on behalf of the Debenture holder is appointed or circumstances have arisen which entitle the Court or debenture holder to appoint a Receiver, Liquidator or Manager.

### 6.5 Project Completion Period

The proposed Park of 2375 MW is expected to be developed in 5 years span. The capacity is to be developed in such a way that individual solar/wind/hybrid Project developer within the park starts generation of electricity of at least 50% of park capacity by December 2024 and remaining by December 2026. The park development time line has to match correspondingly to offer the park to developer to enable them to construct and commission their own projects within above time line.

The consultancy assignment will cover period up to total development and completion of Park

The approximate time line will be 48 Months from date of LoI . However, the same will be linked to the final schedule drawn for execution of the project.

#### **6.6 Delay in Execution or Failure to complete the Contract**

- i. Any delay in completion of the work shall attract liquidated damage/ penalty for late completion as per Liquidated Damage (Clause 6.7) of this Tender.
- ii. If the Consultant fails to complete the entire work ( as specified in scope of work) or fails to start the work within specified time frame after issue of LoI or fails to carry out the work as per agreed schedule or leaves the work site after partial execution of the work, GIPCL shall have the right to get the work done through any other agency at the risk and cost of the Consultant. Further to this, GIPCL may, without prejudice to the right of the Consultant to recover damages for breach of trust of the Contract, may impose penalties.
- iii. If, at any time, the CONSULTANT's actual progress falls behind or is likely to fall behind the agreed schedule of the break-up/detailed activities, the CONSULTANT shall submit to the OWNER, a revised programme with catch up schedule, taking into account the prevailing circumstances and delay in the respective activities / milestones. The CONSULTANT shall, at the same time/forthwith notify promptly to GIPCL of the steps being taken to expedite progress of the activities, so as to achieve completion of such activities within the agreed Time schedule for Completion. The Consultant shall in order to overcome the situation, forthwith mobilise required additional resources like manpower, materials, machineries etc. to achieve the prescribed timeline/schedule at his risk and cost.
- iv. In case further slippage is observed in the progress of activities, as per agreed time schedule or failure by Consultant, at any stage of the Contract, to perform the Contract diligently to fulfil his obligations as per the Contract, GIPCL reserves the right to engage any other Contractor(s)/sub-contractor(s) at any time, at the risk and cost of the Consultant to ensure completion of the work in line with the agreed time schedule. Further, GIPCL will also deduct Liquidated Damages (LD) arising out of any such delay, if any, as per the terms of this tender document or recover the costs, expenses, losses, damages incurred or suffered by GIPCL as per the recourse available under this tender document or any other law for the time being in force.

#### **6.7 Liquidated Damages for Delay**

- i. Considering the nature of assignment & role of the Engineering Consultant in such project, Liquidated Damages (LD) shall not be applicable to this Contract on individual milestone basis and shall not be recovered from invoices submitted against progressive milestone. Engineering Consultant shall ensure timely completion of all activities in his scope to match project schedule.
- ii. However, GIPCL reserves the right to levy up to 10% sum of the total order value @0.5 % per week of delay as Liquidated Damages from the Performance Bank Guarantee/Security Deposit/ final invoice payment to the Engineering Consultant at

the time of contract closing, if the delay in Project implementation is attributable to of work by Engineering Consultant.

- iii. **Maximum applicable Liquidated Damages:** The upper ceiling for total liquidated damages for delay shall be maximum 10% of the Contract Price.
- iv. The said right of the GIPCL to levy damages on account of delay shall be without prejudice to and in addition to the right of the Company to get the concerned work done from a third party at the complete risk and cost of the Consultant.
- v. Any strike / lockouts at works or site of the Consultant or his sub-supplier/sub-contractor shall not be considered as force majeure condition.
- vi. For calculation of LD, date of issue of LOI shall be the reference date.
- vii. GIPCL reserves the right to forfeit Bid security/ Security Deposit or deduct payment or claim damages from the Engineering Consultant if during tendering or during project execution stage it is found that Bidder has violated any terms and condition of the tender

#### **6.8 Termination for Default**

- i. The Owner may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Consultant, terminate the Contract in whole or in part if the Consultant fails to deliver or execute any or all of the works within the time period(s) under the Contract or any extension thereof granted by GIPCL pursuant to the clause for Delay in Execution or Failure to Supply or, If the Consultant fails to perform any other obligations(s) under the Contract.
- ii. In the event the Owner terminates the Contract in whole or in part, pursuant to above, the Owner may procure, upon such terms and in such manner as it deems appropriate, goods similar to those undelivered, the Consultant shall be liable to the Owner for any excess costs for such similar goods. However, the Consultant shall continue the performance of the Contract to the extent not terminated.

#### **6.9 Breach and Cancellation of the Contract**

- i. In case of non-performance in any form or change of the covenant and conditions of the Contract by the Consultant, the Owner shall have the power to annul, rescind, cancel or terminate the order and upon its notifying in writing to the Consultant that it has so done, this Contract shall absolutely determine. The decision of the Owner in this regard shall be final and binding.
- ii. The Owner may cancel the order or a portion thereof, and if so purchase or authorize purchase of the Services not so delivered or order assignments or services of similar description (opinion of the Owner shall be final) at the risk and cost of the Consultant.

#### **6.10 Force Majeure**

- i. In the event of either party being rendered unable by Force Majeure to perform any obligation required to be performed by them under this Contract, relative obligation of the party affected by such Force Majeure shall be treated as suspended during which the Force Majeure Clause lasts.

- ii. The term “Force Majeure” shall have herein mean riots (other than among the Consultant’s employee), Civil commotion, War (whether declared or not), invasion, act of foreign enemies hostilities, civil war, rebellion, revolution, insurrection, military coup, damage from aircraft, nuclear fission, embargoes, quarantines, acts of god such as earthquake (above 7.0 magnitude on Richter scales), lightning, unprecedented floods, fires not caused by the Consultants negligence and other causes which the Consultant has no control and accepted as such by GIPCL whose decision shall be final and binding. Normal rainy season and monsoons are not Force Majeure.
- iii. Upon occurrence of such causes and upon its termination, the party alleging that it has been rendered unable as aforesaid, thereby, shall notify the other party in writing by registered notice within 24 (twenty four) hours of the alleged beginning and ending thereof giving full particulars and satisfactory evidence in support of its claim.
- iv. Time for performance of the relative obligation suspended by the Force Majeure shall stand extended by the period for which such clause lasts.
- v. If works are suspended by Force Majeure conditions lasting for more than two (2) months, GIPCL shall have the option of cancelling this Contract in whole or part thereof, at its discretion.
- vi. The Consultant shall not claim any compensation for Force Majeure conditions and shall take appropriate steps to insure men and materials utilized by it under the Contract well in advance.

#### **6.11 Insurance**

- i. The Consultant shall arrange for providing insurance coverage to its workmen under Workmen’s Compensation Act or similar Rules and Acts as applicable during execution of work for covering risk against any mishap to its workmen. The Consultant shall also undertake a Third Party Insurance. The Owner shall not be responsible for any such loss or mishap.

#### **6.12 Software, Tools and Tackles**

The Consultant shall provide technically suitable tools and tackles, equipments, Machineries, Software (like PVsyst, WASP, Stadd) etc. conforming to relevant BIS safety and technical standards for proper execution of work. The Owner, in no way, shall be responsible for supply of any tools and tackles, equipments, Machineries etc for execution of the work.

#### **6.13 Responsibility of the Bidder**

The Bidder shall provide guarantee and be entirely responsible for the execution of the Contract in accordance with this tender including but not limited to its specification, schedules, and annexure.

#### 6.14 Governing Language

The Contract shall be written in English Language. All correspondence and documents pertaining to the Contract, which are exchanged by the Owner and Consultant, shall be written in English.

#### 6.15 Order Amendments

No variation in or modification of the terms of the contract shall be made except by written amendments issued by the Owner.

#### 6.16 Assignments or Subletting of Contract

The Consultant shall not, without the prior consent in writing of the Owner, assign or sublet or transfer its Contract in whole or in part, its obligations to perform under the Contract or a substantial part thereof, or for any part of the work of which makers are named in the Contract, provided that any such consent shall not relieve the Consultant from any obligation, duty or responsibility under the Contract.

#### 6.17 Subcontracts

- (i) The Consultant shall notify the Owner in writing of all subcontracts awarded under the Contract if not already specified in his Bid. Such notification in its original Bid or later shall not relieve the Consultant from any liability or obligation under the Contract.
- (ii) Subcontracting a work shall not, under any circumstances, relieve the Consultant from its obligations towards the Project and the Owner.
- (iii) In case, the Consultant engages any Subcontractor to carry out a part of the work, the Subcontractor should have requisite Government License/permits for carrying out such part of the work.

#### 6.18 Terms of Payment

##### 1) Terms of Payment up to Contract Signing (Pre Award Engineering).

Sr.	Milestone for Works	Amount
1	Advance Payment against (i) Acceptance of LOI (ii) Submission of Advance Bank Guarantee of equivalent amount (iii) Submission of Performance Bank Guarantee 10% of the total Contract Price	5% of the (A+B) Price (As per schedule of price of respective Phase)
2	Preparation and submission of final Bid Documents (RfP) and accepted by GIPCL on pro-rata bases depending upon total Nos. of RfPs decided during concept planning.	45% of the A Price (As per schedule of price of respective phase)
3	Submission of final Bid evaluation report & recommendations for acceptance of bids on pro-rata bases depending upon total Nos. of RfPs decided during concept planning.	30% of the A Price (As per schedule of price of respective phase)

4	Upon issue of LoI(s) and acceptance of it by successful Bidder (s) on pro-rata bases depending upon total Nos. of RfPs decided during concept planning.	10% of the A Price (As per schedule of price of respective Phase )
5	Upon Successful completion of the work by contractor(s)/ acceptance of PG test results of the unit, Contract closing with contractors.	10% of the A Price (As per schedule of price of respective phase)

**2) Terms of Payment for Post-Contract signing/issue of LoI to issued for Detailed Engineering services(Post Award Engineering)**

Sr. No.	Milestone for Works	Amount
1	Monthly installments linked with mutually agreed Project Progress Milestones on pro-rata bases depending upon total nos. of RfPs decided during concept planning.	85% of the B Price(As per schedule of price of respective phase)
2	Upon Successful completion of the work by contractor(s)/ acceptance of PG test results of the unit, Contract closing with contractors.	10% of the B Price(As per schedule of price of respective phase)

**3) Terms of Payment for deputation of Employees of consultant at site**

- i. 90% Payment for deployment of man Power shall be released based on actual deployment of Man-day /Man-month basis.
- ii. 10% Upon Successful completion of the work by contractor(s)/ acceptance of PG test results of the unit, Contract closing with contractors.

**Note:** Manpower deputation shall be as directed by GIPCL and pre-approved by GIPCL.

**4) Terms of Payment for Inspection and Expedition Service.**

Payment for deployment of Man power shall be released based on actual inspection and expedition work. Invoices to be raised on Monthly basis.

**6.19 Payments Procedure**

Subject to any deduction which the Owner may be authorized to make under this Contract, and or to any additions or deductions provided for in this Contract, the Consultant shall be entitled to payment as follows

- a. All payments shall be made in Indian Rupees (INR), unless otherwise specified in the LoI/Contract Agreement. All payment shall be made on the basis of actual measurement for the quantified items as per schedule of works.
- b. The Consultant shall submit the bill for claim in three copies with all supporting documents as per the Contract condition to GIPCL. After due verification and

- recommendation, GIPCL shall process verified bills for release of payment. Payments shall be released in 30 (Thirty) days by A/c payee cheque / RTGS/ NEFT from date of submission of clear invoice.
- c. The Consultant shall submit the bill / invoice for the work executed showing separately GST and any other statutory levies in the bill / invoice.
  - d. All taxes and deductions shall be applicable as per prevailing income tax and other statutory rules and provisions in force.
  - e. In case Consultant fails to submit the invoice with all the required documents to process payments, GIPCL reserves the right to hold the payment of the Consultant against such bills.

## **6.20 Arbitration**

- i. All matters, questions, disputes, differences and / or claims arising out of and / or concerning, and /or in connection with, and /or in consequence of, and /or relating to this contract which may arise between the parties in connection with the Contract or any matter arising out of or in relation thereto shall be reported to Gujarat Public Work Contract Dispute Arbitration Tribunal and provision of Gujarat Public Work Contract Disputes Arbitration and Tribunal Act 1996 shall be applied as updates time to time.
- ii. The Arbitrator may, from time to time, with the consent of the parties to the contract enlarge the time for making the award. The venue of the arbitration shall be the place from which the acceptance of offer is issued or such other place as the Arbitrator, in his discretion, may determine.

## **6.21 Court of Competent Jurisdiction**

The Courts of Vadodara for GIPCL shall have exclusive jurisdiction in all matters arising under the Contract.

## **6.22 Law and Procedure**

- i. The law which is to apply to the Contract and under which the Contract is to be construed shall be Indian Law.
- ii. The law governing the procedure and administration of any arbitration instituted under the clause for arbitration shall be the Indian law.

## **6.23 Construction of Contract**

The Contract shall in all respect be construed and operated, as a Contract as defined in the Indian Contracts Act, 1872, and all the payments there under shall be made in Indian Rupees unless otherwise specified.



#### 6.24 Notices

- i. For all purpose of the Contract, including arbitration there under, the address of the Consultant mentioned in the Bid shall be the address to which all communications addressed to the Consultant shall be sent, unless the Consultant has notified a change by a separate letter containing no other communication and sent by registered post with acknowledgement due to GIPCL. The Consultant shall be solely responsible for the consequence of an omission to notify change of address in the manner aforesaid.
- ii. Any communication or notice on behalf of the Owner in relation to the Contract Agreement may be issued to the Consultant by the Owner and all such communication and notice may be served on the Consultant either by registered post or under certificate of posting or by ordinary post or by hand delivery at the option of the officer.
- iii. Instructions or notices to the Consultant and notices from the Consultant to GIPCL recorded in a minute signed by the authorized representatives of both GIPCL and the Consultant. Such notice or instruction shall be valid notice of instruction for the purpose of the Contract.

#### 6.25 Risk Purchase

If the Consultant fails, on receipt of the LoI, to take up the work within a reasonable period or leave the work Site after partial execution of the work, GIPCL shall have the liberty to get the work done through other agency at the Consultant's own risk and additional cost if any. If the situation, so warrants, to compel GIPCL to cancel the LoI placed on the Consultant, it shall be liable to compensate the loss or damage, which GIPCL may sustain due to reasons of failure on Consultant's part to execute the work in time.

#### 6.26 Confidential Information

- i. GIPCL and the Consultant shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Consultant may furnish to its Subcontractor(s) such documents, data and other information it receives from GIPCL to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Consultant shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Consultant
- ii. Notwithstanding the generality of the foregoing all maps, plans, drawings, specifications, schemes and the subject matter contained therein and all other information given to the Consultant, by the Company in connection with the performance of the Contract shall be held confidential by the Consultant and shall remain the property of the Company and shall not be used or disclosed to third parties by the Consultant for any purpose other than for which they have been supplied or prepared. The Consultant may disclose to third parties, upon execution of secrecy agreements satisfactory to the Company, such part of

- the drawings, specifications or information if such disclosure is necessary for the performance of the Contract under this Clause
- iii. Maps, layouts and photographs of the unit/integrated plant including its surrounding region's showing vital installation for national security shall not be published or disclosed to the third parties or taken out of the country without prior written approval of the Company and upon execution of secrecy agreements satisfactory to the Company with such third parties prior to disclosure.
  - iv. Title to secret processes, if any, developed by the Consultant on an exclusive basis and employed in the design of the unit shall remain with the Consultant. The Company shall hold in confidence such process and shall not disclose such processes to the third parties without prior approval of the Consultant and execution by such third parties of secrecy agreements satisfactory to the Consultant prior to disclosure.
  - v. Technical specifications, drawings, flow sheets, norms, calculations, diagrams, interpretations of the test results, schematics, layouts and such other information which the Consultant has supplied to the Company under the Contract shall be passed on to the Company. The Company shall have the right to use these for construction erection, start-up, commissioning, operation, maintenance, modifications and/ or expansion of the unit including for the manufacture of spare parts.
  - vi. The obligation of a party under this Clause 6.26, however, shall not apply to that information which:
    - a. now or hereafter enters the public domain through no fault of that Party
    - b. can be proven to have been possessed by that Party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other Party hereto, or
    - c. Otherwise lawfully becomes available to that Party from a third party that has no obligation of Confidentiality
  - vii. The above provisions of this Clause 6.26 shall not in any way modify any undertaking of Confidentiality given by either of the Parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.
  - viii. The provisions of this Clause 6.26 shall survive Termination, for whatever reason, of the Contract.

#### **6.27 Limitation of Liability (LLP)**

- i. The total liability of the Consultant under or in connection with this Tender and the consequent Contract shall not exceed the full Contract Price inclusive of taxes and duties.
- ii. This sub-Clause shall not limit the liability in case of fraud, deliberate default/ negligence, reckless misconduct or illegal or unlawful acts by the Consultant.

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