

in respect thereof and will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of the inspection.

Whenever the bidder is silent about the acceptance of RfP/IFB conditions such as bank guarantee, warranty period, liquidated damages, certification of relation clause no.1.1.2 [Conflict of Interest] etc. it shall be presumed that the bidder has accepted and certified RfP/IFB conditions and no further correspondence seeking specific confirmation about acceptance of these conditions shall be made.

The Bidder shall be deemed to have examined the Bidding document, to have obtained his own information in all matters whatsoever that might affect carrying out the Works in line with the technical specifications and Scope of Work specified in the document at the offered rates and to have satisfied himself to the sufficiency of his Bid. The bidder shall be deemed to know the scope, nature and magnitude of the work and requirement of materials, equipment, tools and labor involved, local and national wage structures and as to what all works, he has to complete in accordance with the Bid documents irrespective of any defects, omissions or errors that may be found in the Bidding documents.

1.3 Amendment to bidding documents

At any time prior to the deadline for submission of bids, the EESL may, for any reason, whether at its own initiative, or in response to a clarification requested by a prospective Bidder, amend the bidding documents.

The amendment will be notified only through the e-procurement portal. Further, the notification of amendment shall also be sent by the portal directly to all the prospective bidders who have performed the requisite activity on the e-Portal for the subject tender as per the provisions of the Portal. The amendments to the Bidding Documents will be binding on the bidders and the notification of the amendment through portal, sent to the prospective bidders, shall be deemed to be construed that such amendment(s) to the Bidding Documents have been taken into account by the Bidder in its bid.

In order to afford prospective Bidders reasonable time in which to take the amendment into account in preparing their bid, the EESL may, at its discretion, extend the deadline for the submission of bids.

1.4 Cost of tender Documents

Interested bidder/consortium of bidders may download the RfP/ Bidding documents from the website/e-portal mentioned in the BDS.

While submitting the bid (in case RfP/Bidding documents are downloaded from EESL website), bidder shall submit Tender Document Cost/fee as per the details mentioned in BDS.

B. Preparation of Bids

2.1 Procedure for Submission of Bid/RfP.

Single Stage Two Envelope Bidding Process:

The Bidder shall submit their bids as Envelope-1 and Envelope-2. Two Envelopes should contain the details of the offer as follows:

Packet-1 of Envelope-I should contain (This envelope appears ONLINE in dynamic form in case of E-tenders)

- i. Tender Document Fee in the form of DD/Pay Order/Banker's Cheque (wherever applicable) or through online as per ITB sub clause 1.4.
- ii. Letter of the bidder submitting the bid in the form as stipulated in the bid document, i.e., as per Bid Form as **Attachment-1 of Section-6** (Forms& Procedures).
- iii. Bid Security/Earnest Money Deposit in the form of Banker's Cheque/Demand Draft/Pay order in favor of "Energy Efficiency Services Limited" or in the form of Bank Guarantee as prescribed

- format as **Attachment-2 of Section-6** (Forms& Procedures). (Only EMD and Bid document fee related document to be submitted by post in sealed envelope super-scribed with RfP/Tender reference in case of e-tender).
- iv. Power of attorney to sign the bid as **Attachment-3 of Section-6** (Forms& Procedures). Bidders to use their own format.
 - v. Certificate regarding acceptance of important terms and conditions as per ITB sub-Clause No. 4.6 as **Attachment-4 of Section-6** (Forms& Procedures).
 - vi. Deviation statement as per **Attachment-5 of Section-6** (Forms& Procedures).
 - vii. Form of acceptance of EESL fraud prevention policy as per **Attachment-6 of Section-6** (Forms& Procedures).
 - viii. An undertaking by Holding company (as applicable) as per **Attachment-7 of Section-6** (Forms& Procedures).
 - ix. Format for Details regarding RTGS/NEFT Payments as per **Attachment-8 of Section-6** (Forms& Procedures).
 - x. Compliance Matrix/ CHECK – LIST FOR BIDDERS as per **Attachment-9 of Section-6** (Forms& Procedures).
 - xi. Certification regarding Declaration of Local content as per **Attachment-10 of Section-6** (Forms& Procedures).
 - xii. Certification by the Bidder as per order no. F.No.6/18/2019-PPD dated 23/07/2020 issued by Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India (DoE Order) as per **Attachment-11 of Section-6** (Forms& Procedures).
 - xiii. Techno-commercial bid as indicated in bid document. Documentary evidence regarding bidder's qualifications to perform the contract as required in qualifying Requirement as per **Attachment-12 of Section-6** (Forms& Procedures).
 - xiv. Declaration duly signed on Company Letter Head Pad with company's seal for not being under debar list/undergoing debarment period on account of breach of the code of integrity under rule 175(1)(i)(h) of general financial rules *(Scanned Copy to be uploaded at E-tendering portal)*. Bidder shall clearly mention tender reference no. and date of signing the self-declaration as per **Attachment-13 of Section-6** (Forms& Procedures).
 - xv. Certificate regarding non-debarment/blacklisting/disqualification as per **Attachment-14 of Section-6** (Forms& Procedures).

Envelope-2 should contain Price Bid, shall comprise of: (In case of E-tender Price bid is to be submitted ONLINE)

- i. Price Bid in the format prescribed in the tender document.

2.2 Cost of Bid/ RfP

The Bidder or Consortium of bidders shall bear all costs associated with the preparation and submission of its Bid/RfP, including cost of presentation for the purposes of clarification of the bid, if so desired by the EESL. EESL will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

2.3 Language of Bids

The proposal prepared by the bidder/consortium of bidders and all correspondence and documents relating to the Bid/RfP exchanged by the bidder/consortium of bidders and EESL, shall be written in English language, provided that any printed literature furnished by the bidder/consortium of bidders may be written in another language so long the same is accompanied by an English translation by authorized Translator in which case, for purposes of interpretation of the bid, the English translation shall govern.

2.4 Bid Security/Earnest Money Deposit (EMD)

Amount of Bid Security: Bid Security/Earnest Money deposit as mentioned in BDS is to be submitted.

The bidder shall furnish, as part of its bid, a bid security in a separate envelope (ITB sub clause 2.1). The bid security shall, at the bidder's option, be in the form of Demand Draft/Bank Guarantee or deposited through RTGS in favor of "**Indian Port Rail & Ropeway Corporation Limited Beneficiary**" payable at Mumbai. Bid security/EMD shall remain valid for a period of 42 days beyond the bid validity period as mentioned in BDS. If there is any extension in bid validity period, then EESL on behalf of IPRCL may ask the bidder to extend the validity of bid security.

Any bid not accompanied by an acceptable bid security, shall be rejected by EESL as being non-responsive and returned to the bidder without being opened. The bid security of a consortium must be in the name of all the partners in the consortium submitting the bid. If lead partner is mentioned in case of consortium, then bid security can be in the name of lead partner.

The bid securities of unsuccessful bidders will be returned as promptly as possible after the award is made to lowest evaluated bidder.

The bid security of the successful bidder will be returned when the bidder has signed the contract agreement, and has furnished the required performance security.

Please note that for Tender Conditions inter alia including exemption of tender fee, Bid Security etc. applicable for MSE and Start-ups, please refer **Annexure-II**:

The bid security may be forfeited if:

- a) If the bidder withdraws its bid during the period of bid validity as specified in the bid / RFP document. (Banning policy as per Annexure-IV of RfP document)
- b) If the bidder does not accept computational/arithmetical error correction made by EESL and as explained in "Financial Evaluation" section of the Bid/ RfP document.
- c) If the bidder does not accept assumptions, estimations etc. used for evaluation of bids as specified by EESL in tender documents and revision of his bid accordingly, in case other assumptions are used. If the bidder does not accept the sharing as specified in the bid.
- d) If the Bidder refuses to withdraw, without any cost to the EESL, any deviation not listed in Attachment 5 but found elsewhere in the bid; or
- e) In the case of successful bidder, if the bidder fails within the specified time limit:
 - To sign the contract agreement within 28 days of placement of LoI/Award letter.
 - To furnish the required performance security, in accordance with the tender document.

2.5 Power of Attorney as Attachment 3 of Section-6 in first envelope: A power of attorney duly authorized by a notary public, indicating that the person(s) signing the bid has/have the authority to sign the bid and thus the bid is binding upon the bidder during the full period of its validity in accordance with ITB sub clause 2.10.

2.6 Certificate Regarding Acceptance of Important Terms & conditions – Please refer Part-A of BDS.

2.7 Deviations

If any, from the terms and conditions of bidding documents or technical specifications shall be listed only in Attachment 5 of Section-6 to the bid. The Bidder shall also provide the additional price, if any, for withdrawal of the deviations. However, the attention of the bidders is drawn to the provisions of ITB sub clause 4.6 regarding the rejection of bids that are not substantially responsive to the requirements of the bidding documents.

Bidders may further note that except for the deviations listed in Attachment 5, the bid shall be deemed to comply with all the requirement in the bidding documents and the bidders shall be required to comply with all such requirements of bidding documents and technical specifications without any extra cost to the EESL irrespective of any mention to the contrary, anywhere else in the bid, failing which the bid security of the bidder may be forfeited.

At the time of award of contract, if so desired by the EESL, the bidder shall withdraw these deviations listed in Attachment-5 at the cost of withdrawal stated by him in his bid. In case the bidder does not withdraw the

deviations proposed by him, if any, at the cost of withdrawal stated in the bid, his bid will be rejected and bid security forfeited.

2.8 Bid prices

Unless otherwise specified in the technical specifications, bidders shall quote for the entire facilities on a “single responsibility” basis such that the total bid price covers all the contractor’s obligations mentioned in or to be reasonably inferred from the bidding documents in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation, survey cost, monitoring and verification cost and completion of the facilities including supply of mandatory spares or spares to be supplied during warranty (if any). This includes all requirements under the contractor’s responsibilities for testing, pre -commissioning and commissioning of the facilities and, where so required by the bidding documents, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the bidding documents, all in accordance with the requirements of the General Conditions of Contract and Technical Specification.

Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the bidding documents. If a Bidder wishes to make a deviation to the provisions of the bidding documents, such deviations shall be listed in Attachment 5 of Section-6 of its bid. The bidder shall also provide the additional price, if any, for withdrawal of the deviations, pursuant to ITB sub clause 2.7.

Bidders shall give a breakdown of the prices in the manner and detail called for in the price schedules.

2.9 Price Basis

Price quoted in the bid must be firm and shall remain firm during currency of the Contract. Hence prices in Letter of Award shall be firm and not subject to escalation till the execution of the complete order and its subsequent amendments accepted by the bidder even though the completion / execution of the order may take longer time than the delivery period specified and accepted in the Notification of Award.

Statutory variation in applicable GST shall only be on account of Employer in case bidder has shown the rates of present taxes in their bid and other prices quoted by the Bidder shall be fixed during the Bidder’s performance of the Contract and not subject to variation on any account. Even in case prices asked in Bid price Schedule are quoted as inclusive of taxes, tax rates shall be shown separately. Bidders shall quote all prices in Indian Rupees only. Employer shall bear no responsibility on account of Taxes and Duties other than GST.

2.10 Period of Validity of Bid

Bids shall remain valid for a period of Six Months from opening of Bids mentioned in BDS. A bid valid for a shorter period may be rejected by the EESL as being non-responsive. In exceptional circumstances, the EESL may solicit the bidder’s consent to an extension of the bid validity period. The request and response thereto shall be made in writing thro’ letters/ e-mails. If the bidder accepts to prolong the period of validity, the bid security/EMD shall also be suitably extended. A bidder may refuse the request for Bid Validity Extension without forfeiting its bid security. A bidder granting the request will not be required nor permitted to modify its bid.

2.11 Format and Signing of Bid

The original copy of the bid, consisting of the documents listed in ITB Sub-Clause 2.1 shall be typed or written in indelible ink and shall be signed by the bidder or a person or persons duly authorized to bind the bidder to the contract. The authorization shall be indicated by written power of attorney accompanying the bid and submitted as relevant attachment under Section-6 to the bid under ITB sub clause 2.1. All pages of the bid, except for un-amended printed literature, shall be initialed by the person or persons signing the bid.

Any interlineations, erasures or overwriting shall only be valid if they are initialed by the signatory to the bid.

2.12 Contents of the Bid/proposal

The Bidder or consortium of bidders is expected to examine all instructions, forms, terms & conditions and scope of work in the RfP documents. Failure to furnish all information required or submission of a bid not substantially responsive to the RfP/Bidding Document in every respect will be at the bidder's risk and may result in the rejection of the bid.

2.13 Disclaimer

EESL and/or its officers, employees disclaim all liability from any loss or damage, whether foreseeable or not, suffered by any person acting on or refraining from acting because of any information including statements, information, forecasts, estimates or projections contained in this document or conduct ancillary to it whether or not the loss or damage arises in connection with any omission, negligence, default, lack of care or misrepresentation on the part of EESL and/or any of its officers, employees.

2.14 Authorized Signatory (Bidder or Consortium of bidders)

The bidder or consortium of bidders as used in the RfP document shall mean the one who has signed the bid document. The bidder or consortium of bidders should be the duly authorized representative of the bidder/consortium of bidders, for which a certificate of authority/power of attorney will be submitted along with the offer. This should clearly define the authority provided to the authorized representative. Complete offer, all certificates and documents (including reply to any clarifications sought and any subsequent correspondences) shall be furnished and signed on all pages by the authorized representative.

The power of attorney or authorization, or any other document consisting of adequate proof of the ability of the signatory to bind the bidder or consortium of bidders shall be annexed to the bid as Attachment 3 in Envelope 1. EESL may reject outright any proposal not supported by adequate proof of the signatory's authority.

2.15 Consortium related conditions

The bidder shall have the option to submit the bid/proposal either alone or along with other partner companies. Prerequisites for bidder have been specified in qualifying requirement and other parts of the RfP document. The lead partner shall be the sole point of contact for all purposes of the Contract. The lead partner will have the prime responsibility for the execution of the scope of work. Any information/clarification submitted to the lead partner by EESL will mean that the same has been conveyed to all partners. However, the partner companies should not be involved in any major litigation that may have an impact of affecting or compromising the delivery of services as required under this contract. The bidder or any of the partner companies should not have been black-listed by any Central / State Government or Public Sector Undertakings. If at any stage of tendering process or during the currency of the contract, any suppression / falsification of such information is brought to the knowledge, EESL shall have the right to reject the proposal or terminate the contract, as the case may be, without any compensation to the tenderer & forfeiture of bid security/EMD/CPG. All partners of the consortium/joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms

2.16 Contact details of the Bidder or Consortium of bidders

Bidder or Consortium of bidders who wants to receive EESL's response to queries should give their contact details to EESL. The Bidder or Consortium of bidders should send their contact details in writing at the EESL's contact address.

2.17 Taxes, Levies and Duties

Bidders are required to quote their prices inclusive of all taxes and duties except applicable GST. The Input Tax Credit (ITC) available, if any, under the GST Law as per the relevant Government policies wherever applicable shall be taken into account by the Bidder while quoting bid price. EESL's liability shall be only for applicable GST. Bidder is to arrange on its own to deliver the material at site. No road permit shall be provided by EESL.

C. Submission of Bids

Bids shall be submitted as per clause ITB sub clause 2.1 above and in line with the provisions of Annexure-I to this RfP Documents.

3.1 The Bidder shall upload the soft copy part of the bid as per the provisions of the e-portal (refer ITB sub clause 2.1 above) and submit the hard copy of documentary evidence towards Document fee or documentary evidence in support of exemption of Document fee (as applicable), Bid Security or documentary evidence in support of exemption of Bid Security (as applicable).

The envelope in hard copy shall

(a) be addressed to the Employer at the address given in this RfP Documents, and

(b) bear the tender name, the Invitation for Bids title and number indicated in the BDS, and the statement “Do Not Open Before [date],” to be completed with the time and date specified.

All the envelopes shall also indicate the name and address of the Bidder. If the envelope is not sealed and marked as required, the Employer will assume no responsibility for the bid’s misplacement or premature opening.

3.2 Deadline for Submission of Bids

Bids must be received at the address specified in the BDS but no later than the time and date stated in the BDS. In the event of the specified date for submission of bids being declared a holiday for the EESL, the bids will be received up to the appointed time on the next working day.

The EESL may, at its discretion, extend this deadline for submission of bids by amending the bidding documents in accordance with ITB sub clause 1.3, in which case all rights and obligations of EESL and bidders will thereafter be subject to the deadline as extended.

3.3 Late Bids:

The bidder shall not be permitted to submit the soft copy part of the bid by any mode other than uploading on the portal within the specified deadline for submission of bids. The e-Procurement system would not allow any late submission of bids through the portal after due date & time as specified in ITB sub clause 3.2.

In case Hard copy part of the bid is received by the Employer after the deadline for submission of the same prescribed by the Employer in the ITB sub clause 3.2, but the bidder has uploaded the soft copy part of the bid, the bid will be considered as late bid. In such a case, the soft copy part of the first envelope bid uploaded on the portal shall be opened in line with the provisions of Bidding Documents. Such bids will be rejected during preliminary examination. However, in case of MSEs who are exempted from submission of Document fee and Bid security in line with Annexure-II, submission of hard copy part after the deadline for submission of the same prescribed by the Employer in the ITB sub clause 3.2, shall not lead to outright rejection of the bid., but the documents required to be submitted in the hard copy part shall be sought through clarifications as brought out at ITB sub clause 4.2

No bid may be withdrawn in the interval between the bid submission deadline and the expiration of the bid validity period specified in ITB sub clause 2.10. Withdrawal of a bid during this interval may result in the Bidder’s forfeiture of its bid security, pursuant to ITB sub clause 2.4

(D) Bid Opening and Evaluation.

4.1 Bid Opening Process

The Employer will open the Envelope -1 (First Envelope) i.e., Techno – Commercial Part in public in the presence of bidders’ designated representatives who choose to attend, at the time, date, and location stipulated in the ITB

sub clause 3.2. The bidders' representatives who are present shall sign a register evidencing their attendance. Bidder who has submitted their bid may view on line tender opening on the portal from their end. In the event of the specified date for the submission of bids being declared a holiday for the Employer, the bids will be received upto the appointed time on the next working day.

The bidders' names, the presence of bid security, and any such other details as the Employer may consider appropriate, will be get declared through the Portal by the Employer. However, opening of bid, whether or not accompanied with the Tender fee and/or bid security, shall not be construed to imply its acceptability which shall be examined in detail pursuant to the provisions contained in the Section-2 & 3.

The Employer shall prepare minutes of the bid opening in the form of Bid Opening Statement, including the information disclosed to those present.

Bids not opened at bid opening shall not be considered further for evaluation, irrespective of the circumstances and shall be send to archive unopened

4.2 Clarification on Bids

During bid evaluation, the EESL may, at its discretion, ask the bidder for a clarification of its bid as per the BDS. The request for clarification and the response shall be in writing, and no change in the price or substance of the bid shall be sought, offered or permitted. The address for communication will be same as ITB sub clause 1.2.

4.3 Preliminary Examination of Bids.

The Employer will examine the bids to determine whether they are complete, whether required sureties have been furnished, whether the documents have been properly signed, and whether the bids are generally in order.

In case of non-submission of bid in the portal (soft copy part of the bid) within the stipulated deadline, then even if the bidder has submitted the specific documents in hard copy part in original within the stipulated deadline pursuant to ITB sub clause 3.2 its bid shall be considered as incomplete bid, which shall be summarily rejected. Similarly, in case of non-submission of Hard copy part of the bid, but the bidder has uploaded the soft copy part of the bid, the bid will be considered as incomplete bid. In such a case, the soft copy part of the first envelope bid uploaded on the portal shall be opened. Such bids will be rejected during preliminary examination. However, in case of MSEs who are exempted from submission of tender fee and Bid Security, non-submission of Hard copy part shall not lead to outright rejection of the bid.

4.4 Arithmetical errors rectification process

Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price, which is obtained by multiplying the unit price and quantity, or between sub totals and the total price, the unit or subtotal price shall prevail, and the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail. If the Bidder does not accept the correction of errors, its bid will be rejected and the bid security will be forfeited in accordance with ITB sub clause 2.4.

The EESL may waive any minor informality, nonconformity or irregularity in a bid that does not constitute a material deviation, whether or not identified by the bidder in Attachment 4 to its bid, and that does not prejudice or affect the relative ranking of any bidder as a result of the technical and commercial evaluation, pursuant to ITB sub clauses 4.7 and 4.8.

4.5 Preliminary Evaluation

Prior to the detailed evaluation, the EESL will determine whether each bid is of acceptable quality, is generally complete and is substantially responsive to the bidding documents. For purposes of this determination, a substantially responsive bid is one that conforms to all the terms, conditions and specifications of the bidding documents without material deviations, objections, conditionality's or reservations. A material deviation, objection, conditionality or reservation is one (i) that affects in any substantial way the scope, quality or performance of the contract; (ii) that limits in any substantial way, inconsistent with the bidding documents, the

EESL's rights or the successful bidder's obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other bidders who are presenting substantially responsive bids.

4.6 Acceptance of Important Condition

No deviation, whatsoever, is permitted by the EESL to the provisions relating to the following clauses (Important Conditions). Party is to submit the following as Attachment 4 of Section-6 in Envelope 1:

Governing Laws	-	Clause 13 of GCC
Settlement of Disputes	-	Clause 14 of GCC
Terms of payment	-	Clause 21 of GCC
Contract Performance Security-	-	Clause 24 of GCC
Taxes and Duties	-	Clause 25 of GCC
Completion Time Guarantee	-	Clause 19 of GCC
Defects Liability	-	Clause 30 of GCC
Patent Indemnity	-	Clause 31 of GCC
Limitations of Liability	-	Clause 46 of GCC
Project information, Estimation, Assumptions and conditions for Evaluation	-	As per Tables in price bid

Bidders are required to furnish a certificate as per Attachment 4, indicating their compliance to the provisions of the above clauses.

At the time of award of contract, if so desired by the EESL the bidder shall withdraw the deviations listed in attachment 5 at the cost of withdrawal stated by him, in his bid. In case the bidder does not withdraw the deviations proposed by him in Attachment 5 to his bid, if any; at the cost of withdrawal stated in his bid, his bid will be rejected and security will be forfeited.

The EESL's determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence. If a bid is not substantially responsive, it will be rejected by the EESL, and may not subsequently be made responsive by the bidder by correction of the nonconformity.

4.7 Technical Evaluation

The EESL will carry out a detailed evaluation of the bids previously determined to be substantially responsive 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 EESL will examine and compare the technical aspects of the bids on the basis of the information supplied by the bidders, taking into account the following factors:

- Overall completeness and compliance with the technical specifications and drawings; deviations from the technical specifications as identified in Attachment 5 to the bid; suitability of the facilities offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the bid. The bid that does not meet minimum acceptable standards of completeness, consistency and detail will be rejected for non-responsiveness.
- Achievement of specified performance criteria by the facilities as per scope of work
- Type, quantity and long-term availability warranty spare parts and also mandatory and recommended spare parts and maintenance services

- d) Any other relevant factors, if any, listed in the tender document, or that the EESL deems necessary or prudent to take into consideration.

4.8 Commercial Evaluation

The EESL's evaluation of a bid will take into account, in addition to the bid prices indicated in price schedules in section 4 along with the corrections pursuant to ITB sub clause 4.3, the following costs and factors that will be added to each bidder's bid price in the evaluation using pricing information available to the EESL, in the manner and to the extent indicated in ITB sub clause 4.9 and in the technical specifications:

- a) The cost of all quantifiable deviations and omissions from the contractual and commercial conditions and the technical specifications as identified in Attachment 5 to the Bid.
- b) Compliance with the time schedule called for and evidenced as needed in a milestone schedule provided in the bid.
- c) The functional guarantees of the facilities offered as per scope of work.
- d) The extra cost of work, services, facilities etc., required to be provided by the EESL of third parties.

4.9 Evaluations of Deviations:

Pursuant to ITB Sub-Clause 4.8, the following evaluation methods will be followed:

a) Technical and Commercial Deviations

The evaluation shall be based on the evaluated cost of fulfilling the contract in compliance with all commercial, contractual and technical obligations under this bidding document. In arriving at the evaluated cost, the price for withdrawal of deviations shown in Attachment 5 to the bid will be used if necessary. If such a price is not given in Attachment-5, the EESL will make its own assessment of the cost of such a deviation for the purpose of ensuring fair comparison of bids.

b) Time schedule (program of performance)

The plant and equipment covered by this bidding are required to be transported/ shipped and installed, and the facilities are to be completed within the period as mentioned below.

Completion of all facilities/work: As per year/months indicated in SCC.

The above date will be the effective date specified in the contract agreement. Bidders are required to base their prices on the time schedule or, where no time schedule is given, on the completion date(s) given above. No credit will be given for earlier completion.

The master network and the key milestone dates will be discussed with the successful bidder and agreed upon in pre-award discussion before issuance of Letter of Award. Engineering drawing and data submission schedule shall also be discussed and finalized before the issuance of Letter of Award.

After the Letter of Award, the contractor shall plan the sequence of work manufacture, supply, installation to meet the above stated dates of successful completion of facilities and shall ensure all work, manufacture, shop testing, inspection and shipment of the equipment in accordance with the required sequence.

c) Functional Guarantees of the facilities (if Applicable)

Bidders shall state the functional guarantees (e.g., performance, efficiency, consumption) of the proposed facilities in response to the technical specifications. In case a minimum (or a maximum, as the case may be) level of functional guarantees is specified in the technical specifications for the bids to be considered responsive, bids offering plant and equipment with such functional guarantees less (or more) than the minimum (or maximum) specified shall be rejected.

d) Work, services, facilities etc., to be provided by the EESL

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Where bids include the undertaking of work or the provision of services or facilities by the EESL in excess of the provisions allowed for in the bidding documents, the EESL shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

4.10 Opening of Second Envelope

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. Such Bidders shall be intimated through portal only about the date and time for opening of Price Part i.e., Envelope-2 (Second Envelope) of the Bids by the Employer. A negative determination of the bids shall be notified by the Employer to such Bidders through portal only and the Second Envelope submitted by them shall be sent to archive unopened and the bid security shall be returned.

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

- (a) The Employer's evaluation of a bid will take into account, in addition to the bid prices indicated in online Price Schedule (Second Envelope), the following costs and factors that will be added to each Bidder's bid price in the evaluation using pricing information available to the Employer, in the manner and to the extent indicated herein and in the Technical Specifications:
- (b) the cost of all quantifiable deviations and omissions from the contractual and commercial conditions and the Technical Specifications as identified in the evaluation of First Envelope, and other deviations and omissions not so identified;
- (c) any other relevant factors listed in this RfP Documents.

Pursuant to aforesaid, the evaluation shall be based on the evaluated cost of fulfilling the contract in compliance with all commercial, contractual and technical obligations under this Bidding Documents. In arriving at the evaluated cost, towards deviations whether material or minor identified in the evaluation of First Envelope, the cost of withdrawal indicated by the bidder in Attachment-5 of the First Envelope will be used. If such a price is not given except for material deviation, the Employer will make its own assessment of the cost of such a deviation for the purpose of ensuring fair comparison of bids. In those cases, where the bidder has taken a material deviation but has not indicated the cost of withdrawal, the bid shall be treated as non-responsive and shall not be considered further

4.11 Contacting the Employer

Subject to GCC Clause 20, no Bidder shall contact the Employer on any matter relating to its bid, from the time of the opening of bids to the time the contract is awarded.

Information relating to the examination, evaluation and comparison of bids and recommendations for the award of contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful bidder has been announced. Any effort by a Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in rejection of the Bidder's bid.

E. Award of Contract

5.1 Award criteria

Subject to ITB Clause 5.5, the EESL will award the contract to the successful Bidder whose bid has been determined to be substantially responsive and to be the lowest evaluated technically acceptable bid or bid offering highest return to EESL as the case may be as per RfP/Bidding documents, further provided that the Bidder is determined to be qualified to perform the contract satisfactorily

Except for the deviations listed in Attachment-5, the bidder would be required to comply with all the requirements of bidding documents without any extra cost to EESL failing which his bid security will be forfeited. Further, the EESL may request the bidder to withdraw any or all of the deviations listed in Attachment – 5 to the winning bid, at the price shown for the deviation in Attachment 5 to the bid. In case the bidder does not withdraw the deviations proposed by him, if any, at the cost of withdrawal stated in the bid, his bid will be rejected and bid security forfeited.

The mode of contracting with the Successful Bidder will be as per stipulation briefly indicated below:

Single Contract shall be placed for following Price Components:

- a) For supply of plant and equipment;
- b) For providing all services i.e., inland transportation for delivery at site, inland transit insurance, unloading, storage, handling at site, installation (including civil. Structural steel work & allied work, if applicable) insurance covers other than inland transit insurance, erection, testing & commissioning in respect of all the Goods supplied under the 'First Contract' and all other
- c) Any other Services as specified in the Contract Documents.

5.2 EESL's right to accept any bid and to reject any or all bids

The EESL 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 assigning any reason thereof and incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the EESL's action.

5.3 Notification of Award

Prior to the expiration of the period of bid validity, the EESL will notify the successful bidder in writing by issuing Notification of Award (NOA) either through telefax/ scanned e-mail or through registered/speed post/couriered letter, that its bid /offer has been accepted. The Notification of Award (NOA) will constitute the formation of the contract.

The bidder shall return duplicate copy of the NOA/contract and the other enclosed documents duly signed as a token of acknowledgement, within 07 days from the date of receipt of this order. Bidder is to make two original copies of Contract Agreement as per the format attached in the RFP Documents.

Upon the successful bidder's furnishing of the performance security pursuant to ITB Clause 5.6, the EESL will promptly notify each unsuccessful bidder and will discharge its bid security.

5.4 Cancellation

EESL reserves the rights to cancel the order in the part or in full by giving one-week advance notice thereby if-

- The bidder fails to comply with any of the terms of the order.
- The bidder becomes bankrupt or goes in to liquidation.
- The bidder makes general assignment for the benefit of the creditors and any receiver is appointed for the property owned by the bidder.

5.5 Modifications

This order constitutes an entire agreement between the parties hereto. Any modifications to this Order shall become binding only upon the same being confirmed in writing duly signed by both the parties.

5.5.1 Signing the Contract Agreement

At the same time as the EESL notifies the successful Bidder that its bid has been accepted, the EESL will send the bidder the contract agreement provided in the bidding documents, incorporating all agreements between the parties.

5.6 Contract Performance Security

Within twenty-eight (28) days after receipt of the Notification of Award, the successful bidder shall furnish the performance security for five percent (5%) of the contract price or as specified in RfP/Bidding Documents and in the form provided in the section "Forms and Procedures" of the bidding documents or in another form acceptable to the EESL.

In case Joint Deed(s) of Undertaking by the Contractor along with his associate(s)/collaborator(s) form part of the Contract, then, unconditional Bank Guarantee(s) from such associate(s)/collaborator(s) for amount(s) specified in Bid

Failure of the successful Bidder to comply with the requirements of ITB Clause 5.4 and/ or Clause 5.6 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security, in which event the EESL may make the award to the next lowest evaluated bidder or call for new bids.

5.7 Corrupt or Fraudulent practices:

The EESL requires that bidders observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the EESL: defines, for the purposes of this provision, the terms set forth below as follows:

- (i) "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
- (ii) "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the EESL, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the EESL of the benefits of free and open competition;
- (iii) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- (iv) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract of the EESL (as per Annexure-IV of RfP Document)

5.8 Ineligibility for Future Tenders

Notwithstanding the provisions specified in ITB sub clause 2.4 and ITB sub clause 5.4 and 5.5, if a bidder after having been issued a Notification of Award, either does not sign the Contract Agreement pursuant to ITB sub clause 5.5 and/or does not submit an acceptable Contract Performance Security pursuant to ITB sub clause 5.6, such bidder may be considered ineligible for participating in future tenders of EESL for a period as may be decided by the EESL.

Successful bidder is to submit interchangeability certificate for its product supplied for replacement during warranty and maintenance period and even when it is purchased from open market. In case due to change in technology, the supplied product is not available during warranty/ maintenance period than the improved version of product can be used in warranty/ maintenance period with same or improved technical parameters or the combination thereof after written communication of Engineer in Charge at same cost& terms and conditions. Successful Bidder, on whom letter of award has been placed, has also to confirm that the prices of improved version of product is not lesser than the original product or its parts in comparison.

----- End of Section-2 (ITB) ---