**सेंट्रल ट्रांसमिशन यूटिलिटी ऑफ इंडिया लिमिटेड**

**CENTRAL TRANSMISSION UTILITY OF INDIA LIMITED**

**(Wholly Owned Subsidiary of Power Grid Corporation of India Limited)**

**(A Government of India Enterprise)**

**CONDITIONS OF CONTRACT**

**(Section – III: Conditions of Contracts)**

**for**

**Appointment of Independent Engineer for “Transmission System for evacuation of power from potential Renewable Energy Zone in Khavda area of Gujarat under Phase-IV (7 GW) Part E2”**

**(Spec. No. CTUIL/IE/2024-25/40)**

(This document is meant for exclusive purpose of bidding against this specification only and shall not be transferred, reproduced or otherwise used for purpose other than that for which it is specifically issued)

INTRODUCTION

This section (Section–III) of the RfP Documents provides the information necessary for bidders to prepare responsive bids, in accordance with the requirements of the Employer. It also provides information on bid submission and uploading the bid on GeM portal, on line bid opening, evaluation and on contract award. This section also provides all the rights and obligations of the parties under the Contract.

This Section (Section-III) contains provisions that are to be used unchanged unless Section-IV, which consists of provisions that supplement, amend, or specify in detail, information or requirements included in Section-III and that are specific to each procurement, states otherwise. If there is a conflict between the provisions of Section – III & Section – IV, the provisions of Section – IV shall prevail.

**A DEFINITION OF TERMS**

Unless defined otherwise, the following terms wherever used in this document shall have the following meanings.

* 1. ‘Owner’ or ‘Employer’ or ‘Company’ or ‘CTUIL’ or ‘Client’ shall mean the Central Transmission Utility of India Limited, Gurgaon, Haryana India (A Government of India Enterprise) and shall include their legal representatives, successors and permitted assigns.
  2. ‘Engineer’ or ‘Engineer-in-Charge’ or ‘E.I.C.’ shall mean the officer appointed in writing by the Employer, to act as ‘Co-Ordinator’ from time to time on behalf of the Employer. ‘Engineer-in-Charge’ shall mean the Engineer authorized by the Employer for inspection, scrutiny and approval of some or all of the services rendered by the Independent Engineer under the Contract.
  3. ‘RfP Documents’ shall mean the Request for Proposal (Section-I), Terms of Reference (ToR) for Independent Engineer (Section-II), this Conditions of Contract (Section-III), Special Conditions of Contract (Section-IV) and Proposal Form, Attachments & Schedules (Section-V), which subsequently forms a part of the contract along with such other documents as may be mutually agreed upon.
  4. ‘GeM Contract Order’ shall mean the official order generated through GeM portal on behalf of the Employer notifying the Independent Engineer that his proposal has been accepted and that the Independent Engineer is required to execute the work/service as per Rfp documents/GeM contract Order.
  5. “Contract Documents” means the documents attached in GeM bid for subject tender and GeM Contract Order (including any amendments thereto).
  6. “Effective Date” means the effective date/Service Start Date of GeM Contract Order from which the Time for Completion shall be determined.
  7. A ‘Week’ shall mean a continuous period of seven (07) days.
  8. ‘Indian Rupees’ or the sign ‘Rs.’, INR, ‘₹ ‘, shall mean the currency of the Government of India.
  9. The ‘Government’ shall mean the ‘Government of India’ or an authorized representative/agency/department of the ‘Government of India’.
  10. The word imparting singular shall also include the plural and vice-versa where the context so requires.
  11. ‘Final Report’/Final Document’ or ‘Report’ will mean with final report or ‘document’ prepared by the Independent Engineer as per RfP documents/ Contract.
  12. ‘Month’ shall mean calendar month, ‘Day’ or ‘Days’ unless herein otherwise expressly defined shall mean calendar day or day of 24 hours each.
  13. The title or heading shall not alter or affect the intent of scope of the clauses or articles of the documents.
  14. **‘**Person’ shall include firms, companies, corporation and association or bodies of individuals, whether incorporated or not.
  15. ‘Independent Engineer’ or ‘Consultant’ or “Contractor” shall mean the Firm/Agency/Bidder whose proposal has been accepted by the Employer for the Award of the work and shall include his legal representatives, successors and permitted assigns.
  16. ‘Consultancy Assignment’ or ‘Work’ or ‘Study’ or ‘Assessment’ or ‘Services’ shall mean the complete study/work as specified in the RfP Documents.
  17. VOID
  18. Unless otherwise terminated under the provisions of any other relevant clause of the document, contract shall be deemed to have been completed after issuance of the certification from Engineer-in-Charge, that there is no demand outstanding against the Independent Engineer and all liabilities under the contract have been satisfactorily fulfilled by the Independent Engineer.
  19. “Contract Price” means the sum specified in the Contract/purchase order created / issued by the Buyer on GeM, subject to such additions or deductions therefrom, as may be made pursuant to the Contract. For the purpose of Contract Performance Guarantee, the “Contract Price” means the sum specified in the Contract/purchase order created / issued by the Buyer on GeM.
  20. Key Managerial Personnel (KMP) of the company shall include CEO/Managing Director/ Company Secretary/ Director/ CFO/any of the partner in case of partnership firm/any other officer entrusted with substantial powers of the management of the affairs of the company/firm

**1.0 SOURCE OF FUNDS**

1.1 The Employer named in the Special Conditions of Contract (SCC) intends to use domestic funding for this work.

All eligible payments under the contract for the packages for which this Request for Proposal (RfP) is issued shall be made by the Employer named in the SCC.

**2.0 ELIGIBLE BIDDERS**

2.1 Central Transmission Utility of India Limited (CTUIL) will select Independent Engineer from amongst the eligible bidders who have submitted their proposals in response to Request for Proposal (RfP), which is placed in Section - I, in accordance with the method of selection specified in these Conditions of Contract.

2.2 This Request for Proposal (RfP), issued by the Employer, is open to all firms including company(ies), Government owned Enterprises registered and incorporated in India as per Companies Act, 1956 or 2013, barring foreign bidders/MNCs not registered and incorporated in India and those bidders with whom business is banned by the Employer.

Any Bidder from a country which shares a land border with India will be eligible to bid only if the Bidder is registered with the Competent Authority as per order no. F.No.6/18/2019-PPD (Order Public Procurement no.1) dated 23/07/2020 and F.No.6/18/2019-PPD (Order Public Procurement no.2) dated 23/07/2020, issued by Public Procurement Division, Department of Expenditure, Ministry of Finance, Government of India (DoE Order). Registration should be valid at the time of submission of proposals as per Clause 15.0 and at the time of GeM Contract order Generation.

However, the aforesaid condition for registration of Bidders from countries (even if sharing land border with India) shall not be applicable to Bidders from such countries to which Government of India has extended lines of credit or in which Government of India is engaged in development projects.

For the aforesaid purpose,

1. “Bidder” means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of Bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
2. “Bidder from a country which shares a land border with India” for this purpose means:
3. An entity incorporated, established or registered in such a country; or
4. A subsidiary of an entity incorporated, established or registered in such a country; or
5. An entity substantially controlled through entities incorporated, established or registered in such a country; or
6. An entity whose beneficial owner is situated in such a country; or
7. An Indian (or other) agent of such an entity; or
8. A natural person who is a citizen of such a country; or
9. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
10. The beneficial owner for the purpose of (ii) (d) above will be under:
11. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has controlling ownership interests or who exercises control through other means

Explanation-

1. “Controlling ownership interest” means ownership of or entitlement to more than twenty-five percent of shares or capital or profits of the company
2. “Control” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting rights;
3. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
4. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
5. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official
6. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
7. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

The Bidder shall in its bid submit a certificate in compliance to DoE order as per the given format.

2.3 Further, the Consultant / firm has to be a ‘**Class-I local supplier**’ as defined under Public Procurement (Preference to Make in India) Order, 2017 issued by Department for promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India vide order dated 15/06/2017, its revision dated 16/09/2020 (PPP-MII Order) read in conjunction with ‘Public Procurement (Preference to Make in India) to provide for Purchase Preference (linked with local content) in respect of Power Sector’ order dated 16/11/2021 issued by Ministry of Power (MoP Order) and subsequent modifications/amendments if any.

‘Local Content’ means the amount of value added in India which shall be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

‘Class –I local supplier’ means a supplier or service provider, whose goods, services or works offered for procurement, has Local Content of minimum 60%.

Firms who are not ‘Class-I local supplier’ shall not be eligible to bid.

The ‘Class-I local supplier’ shall give a self-certification in his bid in the given format, indicating the percentage of Local Content and certifying that the item offered meets the Local Content requirement for ‘Class –I local supplier’ and shall give details of the location(s) at which value addition is made. Any false declaration regarding Local Content by the bidder shall be a transgression of RfP Documents and action shall be taken in line with provisions of the RfP Documents and in line with the provisions of the PPP-MII Order.

2.4 Consultants / Firms, who are executing contract(s) or has executed contract(s) in the past for the Employer and any of the following event(s) have been encountered during contract(s) execution, shall not be eligible to bid for the package(s) whose originally scheduled date of bid opening falls within the specified period reckoned from the date of determination by the Employer of such event as below:

| Sr. No. | Event | Period for which proposal(s) / bid(s) shall be considered as non-responsive/ not eligible |
| --- | --- | --- |
| 1. | Termination of Contract due to Consultant’s / Contractor’s default | 1 year |
| 2. | Encashment of CPG due to non-performance | 1 year |
| 3. | Firm has been referred to NCLT under Insolvency & Bankruptcy Code *(IRP has been appointed or Liquidation proceedings have been initiated under IBC)* | Till the firm comes out of Resolution process |

The Employer shall be the sole judge in this regard and the Employer’s interpretation on the aforesaid event(s) shall be final and binding.

Notwithstanding the above, in case any of the event(s) as per Clause 2.4 is encountered afresh even prior to opening of Second Envelope/Price Part Bid of any package, the bid of such bidder shall be considered as non-responsive/not eligible for that package.

2.5 CONFLICT OF INTEREST

Bidder shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the "Conflict of Interest"). Any bidder found to have a Conflict of Interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

(a) they have a controlling partner in common; or

(b) they receive or have received any direct or indirect subsidy from any of them; or

(c) they have the same legal representative for purposes of this Proposal; or

(d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Proposal of another Bidder, or influence the decisions of the Employer regarding this bidding process.

The Consultant has an obligation to disclose to the Employer any situation of actual or potential conflict that impacts its capacity to serve the best interest of its Employer. Failure to disclose such situations may lead to the disqualification of the Consultant or the termination of its Contract.

Without limitation on the generality of the foregoing, the Consultant shall not be hired under the circumstances set forth below:

2.5.1 Conflicting Assignments

Conflict among consulting assignments: a Consultant (including its Experts) or any of its Affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant for the same or for another Employer.

2.5.3 Conflicting Relationships

Relationship with the Employer’s staff: a Consultant (including its Experts) that has a close business or family relationship with a professional staff of the Employer who are directly or indirectly involved in any part of (i) the preparation of the Terms of Reference for the assignment, (ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Employer throughout the selection process and the execution of the Contract.

Relationship with Transmission Service Provider (TSP) and its staff: a Consultant (including its Experts) shall not have any affiliation with TSP and shall not have close business or family relationship with staff of TSP.

**2.6.0 The bidder shall not engage the same Project Manager, Transmission line Expert & Substation Expert in more than 4 (four) nos. of active contracts. Bid shall be considered non-responsive, in case of use of any expert’s CV beyond above limit.**

**2.7.0 The bidder must ensure that proposed expert is not engaged/proposed by other bidder(s) for any IE packages of employer. In case of Non-compliance, their bids will be considered non-responsive.**

**2.8.0 Bidder must note that if the CV of any of the proposed experts are not submitted along with the bids, their bids will be considered non-responsive.**

**3.0 COST OF BIDDING DOCUMENT**

Not Applicable.

**4.0 CONTENT OF RfP DOCUMENT**

The following documents constitute the RfP documents:

1. Section – I : Request for Proposals;
2. Section – II : Terms of Reference (ToR);
3. Section – III : Conditions of Contract;
4. Section – IV : Special Conditions of Contract;
5. Section – V :  Proposal Forms (Technical), Attachments & Schedules

4.1 This document is meant for the exclusive purpose of submitting the offer by the Consultant against the RfP Documents and shall not be transferred, reproduced or otherwise used for the purposes other than for which it is specifically issued.

**5.0 CLARIFICATION OF RfP DOCUMENTS AND PRE-BID MEETING**

5.1 The bidder is required to carefully examine the specifications and documents and fully inform himself as to all the conditions and matters which may in any way affect the works or the cost thereof. If any bidder finds discrepancies or omissions in the specifications and documents or is in doubt as to the true meaning of any part, he shall seek clarification from owner, in writing at the Employer’s mailing address indicated at Clause 14.0, Section-I: Request for Proposal, at once but in no case later than Seven (07) days prior to the deadline for submission of bids prescribed by the Owner. The Employer will respond through the portal [https://bidplus.gem.gov.in/all-bids#](https://bidplus.gem.gov.in/all-bids) to any request for clarification or modification of the Bidding Documents. The Employer shall not be obliged to respond to any request for clarification received later than the above period. After receipt of such interpretations and clarifications, the bidder may submit his offer but within the time and date as specified. All such interpretations and clarifications shall form an integral part of the specifications and documents and accompany the consultant’s proposal. Further, the mere request for clarification from the Bidders shall not be a ground for seeking extension in the deadline for submission of bids. Employer’s response (including an explanation of the query but not identification of its source) will be uploaded on portal *https://bidplus.gem.gov.in/all-bids#* where all the bidders can see clarification/reply to query.

Verbal clarifications and information given by the Employer or his Employee(s) or his representative(s) shall not in any way will be binding on the Employer.

Note: It is advisable for bidder to raise their queries preferably through GeM portal.

5.2 **Pre-Bid Meeting**

The Bidder’s designated representative(s) is/are invited to attend a pre-bid meeting, which, if convened, will take place at the venue and time as indicated in Special Conditions Contract (SCC), Section-IV of RfP Document. The purpose of the meeting will be to clarify any issues regarding the e-procurement method, the Bidding Documents in general and the Terms of Reference (ToR)/Technical Specifications in particular. The Bidder is requested, as far as possible, to submit any question in writing, to reach the Employer not later than two (02) days before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted as indicated hereafter. Minutes of the meeting, including the text of the questions raised (without identifying name of the bidders) and the responses given, together with any responses prepared after the meeting, will be transmitted without delay through the e-procurement portal only. Any modification of the Bidding Documents listed in Clause 4.0 above, which may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to Clause 6.0 below and not through the minutes of the pre-bid meeting.

Non-attendance at the pre-bid meeting will not be a cause for disqualification of a bidder

**6.0 AMENDMENT OF RfP DOCUMENTS**

6.1 At any time prior to the deadline for the submission of Proposals, the Employer may, for any reason, whether at its own initiative or in response to clarification(s) requested by prospective Consultant(s), modify the RfP documents by amendment(s).

6.2 All prospective Bidders who have received the RfP documents will be notified of the amendments through GeM Portal itself.

6.3 In order to allow prospective Consultants reasonable time in which to take the amendments into account in preparing their Proposals, the Employer, may at its discretion, extend the deadline for the submission of Proposals.

**7.0 LANGUAGE OF BIDS**

The Proposal prepared by the Bidder and all correspondence and documents exchanged by the Bidder and the Employer related to the Proposal shall be written in the English language.

**8.0 DOCUMENTS COMPRISING THE PROPOSAL**

The Proposal should include a “Letter of First Envelope Proposal” along with its various Attachments/Forms (*First Envelope Proposal*) and “Second Envelope Proposal(Price Bid)” for commitments on behalf of the firm.

1. **HARD COPY PART OF THE PROPOSAL:**

Hard copy part of the proposal shall comprise of following documents to be submitted in sealed envelope as part of First Envelope:

1. Power of Attorney.
2. Bid Security as per format provided in Attachment-1 or documentary evidence in support of exemption of Bid Security.
3. Bidders shall also submit Affidavit of Self certification regarding Minimum Local Content, if applicable, duly signed and stamped on each page, in line with PPP-MII Order as per the format provided in Attachment-7.
4. Integrity Pact
5. Any other document specified, duly signed and stamped on each page

***Bidders shall note that no document is required to be submitted as part of Second envelope in Hard Copy.***

1. **SOFT COPY PART OF THE PROPOSAL:**

Soft copy part of the Proposal shall comprise of following documents to be uploaded on the portal as per the provisions therein:

1. **As part of First Envelope**
2. The Electronic Form/Template of the proposal for First Envelope, as available on the portal, shall be duly filled. (*if available*)
3. Letter of First Envelope Proposal, duly completed and signed by the Bidder, together with the following attachments as given in RfP documents:

|  |  |  |  |
| --- | --- | --- | --- |
| (a) | Attachment 1 | : | Bid Security or documentary evidence in support of exemption of Bid Security *(submission of Hard copy in “Original‟ and uploading of Scanned Copy)*. |
| (b) | Attachment 2 | : | Bidder’s Credentials towards Technical Evaluation Criteria (*uploading of Scanned Copy and Uploading of Scanned Copies of documentary evidence in support of Bidder’s qualification*)  The documentary evidence of the Bidder’s eligibility to bid shall establish to the Employer’s satisfaction that the Bidder, at the time of submission of its bid, is eligible as defined in ITB Clause 2.  The documentary evidence defining (i) the constitution or legal status; (ii) The principal place of business; (iii) The place of incorporation (for bidders who are corporations); or the place of registration and the nationality of the Owners (for applicants who are partnerships or individually-owned firms); (iv)In support of meeting the Technical experience, self-certified copy of Contract/ Award Letter and Utility Certificate.  The complete annual reports together with Audited statement of accounts of the company for last three years of its own (separate) immediately preceding the date of submission of bid. The Bidder shall also furnish documentary evidence/ declaration regarding Financial re-structuring of the company, if any.  Since the opening of the bids pursuant to Clause 19.0 or the Technical Evaluation pursuant to Clause 26.0 is carried out after 30th September, the bidder shall be required to submit the complete annual reports together with Audited statement of accounts of the company for the immediately preceding Financial Year except in cases where the Board of the Company/ Registrar of Companies has granted extension of time for finalization of accounts, for which the bidder has to submit requisite documentary evidence. In case of Bidder’s failure to submit the same along with the Bid or subsequently pursuant to Clause 20.0, the Bid shall be rejected. |
| (c) | Attachment 3 | : | Undertaking regarding unconditional acceptance of Provisions of RfP documents *(uploading of Scanned Copy)* |
| (d) | Attachment 4 | : | Information for E-payment, PF details and declaration regarding Micro/Small & Medium Enterprises *(uploading of Scanned Copy)* |
| (e) | Attachment 5 | : | Power of Attorney *(submission of Hard copy in “Original‟ and uploading of Scanned Copy)*  A power of attorney, duly notarized, indicating that the person(s) signing the Proposal has(ve) the authority to sign the Proposal and thus the Proposal is binding upon the Bidder during full period of its validity, in accordance with Clause 12.0 below.  Further, Bidder shall furnish copy of partnership deed, in case of partnership firm, Memorandum and Articles of Association, in case of limited company, ownership certificate in case of sole or proprietorship firm. *(if applicable)*  **Bidder shall furnish this PoA in its own format**. |
| (f) | Attachment 6 | : | Certification by the Bidder as per DoE Order in line with Clause 2.2 *(uploading of Scanned Copy)* |
| (g) | Attachment 7 | : | Affidavit of Self certification regarding Minimum Local Content in line with PPP-MII order (*submission of Hard Copy in ‘Original’*), to be submitted on a non-judicial stamp paper of Rs. 100/-.  In line with the PPP-MII order, the bidder shall submit the Affidavit of self-certification, in original, indicating the percentage of Local Content and certifying that the item offered meets the Minimum Local Content and shall give details of the location(s) at which value addition is made, as prescribed in the PPP-MII Order, on a non-judicial stamp paper of Rs. 100/-.    Further, Self-certification submitted by the bidder may be verified randomly by the committee constituted as per PPP-MII order. In case of false documents/ misrepresentation of the facts, requisite action against such bidder will be taken based on the recommendation of the committee and in line with provisions of the Integrity pact.  Bidder may note that the other directions of Nodal Ministry as identified under PPP-MII order shall also be suitably considered in regard to verification/ action of the certificate |
| (h) | Attachment 8 | : | Declaration by the Bidder regarding events encountered pursuant to Clause 2.4 *(uploading of Scanned Copy)* |
| (i) | Attachment 9 | : | Integrity Pact *(submission of Hard copy in “Original‟ and uploading of Scanned Copy)*  The Bidder shall complete the accompanying Integrity Pact, which shall be applicable for bidding as well as contract execution, duly signed on each page by the person signing the bid and shall be returned by the Bidder in two (2) originals alongwith the Techno - Commercial Part in a separate envelope, duly superscripted with ‘Integrity Pact’. The Bidder shall submit the Integrity Pact on a non-judicial stamp paper of Rs. 100/-. |
| (j) | Attachment 10 | : | KMP Declaration *(uploading of Scanned Copy)* |

The complete information sought above with any additional information considered necessary by the Bidder as a part of the Proposal, should be submitted.

1. Scanned copies of all the documents mentioned at Clause 8.0 (I) above.
2. Scanned copies of any other documents which Consultant consider relevant along with First Envelope.
3. **Uploading Price Bid in any form with first envelope proposal will be at the Bidder’s risk and may result in rejection of its proposal**.
4. **As part of Second Envelope**
5. Price bid shall be fill/uploaded on GeM portal only as per GeM guidelines.

1. The Bidders shall upload the break-up of Price Schedule/Price bid on GeM portal as per GeM guidelines/procedure along with applicable GST (it should not be the part of 1st Envelope/Tech bid). Format for Price breakup is available with the RfP documents.

Submission of Soft Copy of any documents by any other means shall not be accepted by the Employer in any circumstances.

**9.0 PROPOSAL PRICE**

9.1 The Bidder shall quote their Proposal Price (in Indian Rupees) on GeM Portal for the scope of work as specified in the Section-II: TOR of RfP Documents as per Clause 8.0 II (b) (i) above and price breakup of the proposal price in format available in RfP Document as per Clause 8.0 II (b) (ii) above. Further, such Proposal Price of the Consultant covers all the Consultants’ obligations mentioned in or to be reasonably inferred from the RfP Documents to successfully execute the intended services, on a “**single responsibility” basis**.

9.2 The Proposal Prices quoted by the Bidder shall be **fixed** during the performance of the contract and not subject to variation on any account. A Proposal submitted with an adjustable price quotation will be treated as nonresponsive and rejected.

9.3 The Proposal Prices quoted by the Bidder shall be inclusive of all charges, incl applicable GST. Taxes should be indicated separately while raising the bills for payment of the Charges. The Employer will not have any additional financial liability. Employer shall, however, be making deductions, at source as per relevant Laws/ other applicable laws in India, if any.

9.4 VOID

9.5 The Employer does not bind itself to accept the lower or any offer or to give any reasons for its decision. The participating Consultants may note that the decision of Employer shall be final and binding on all matters/issues arising out the bidding process.

9.6 The Bidder shall furnish the details of Bank Account in the prescribed format along with Bid in order to facilitate the Employer to release payments electronically through Electronic Fund transfer System, wherever technically feasible.

9.7 Quoted unit rate shall be rounded off to two decimals places *(if required)* for evaluation/payment purpose.

**10.0 PROPOSAL CURRENCIES**

The Bidder is required to quote charges in Indian Rupees (INR) and shall remain FIRM during the course of the contract. The charges quoted by the bidder should be inclusive of all charges incl applicable GST, which shall be as applicable. Taxes should be indicated separately while raising the bills for payment of charges. Withholding taxes, as applicable, will be deducted at the time of making payment. All payments shall be made in the currency of Proposal.

**11.0** **PROPOSAL SECURITY**

11.1 The Bidder shall furnish, except as exempted herein below, as part of its bid, a proposal security for an amount specified in Special Conditions of Contract (SCC), Section-IV of RfP Document. The proposal security must be submitted in the form provided in the RfP Documents (***Proforma at Attachment-1, Section-IV of RfP documents***).

11.2 Micro and Small Enterprises (MSEs) registered with Udyam Registration Portal as specified by Ministry of Micro, Small and Medium Enterprises are exempted from submission of Bid Security as per the Provisions of the Public Procurement Policy for Micro and Small Enterprises (MSEs) order 2012, Notification dated 01/06/2020 and 26/06/2020 read in conjunction with related notifications issued from time to time for such enterprises. This shall be subject to submission of ‘Udyam Registration certificate’ with regard to registration with authorities mentioned above in accordance with the relevant notifications/orders.

11.3 The proposal security shall, at the bidder’s option, be in the form of a crossed bank draft/pay order /banker certified cheque in favour of Employer i.e. ‘Central Transmission Utility of India Limited’ payable at Gurgaon or a bank guarantee, which should be issued either:

1. by a Public Sector Bank located in India, or
2. a scheduled Indian Bank having paid up capital (net of any accumulated losses) of Rs. 1,000 Million or above (the latest annual report of the Bank should support compliance of capital adequacy ratio requirement), or
3. by a foreign bank or a subsidiary of a foreign bank, acceptable to the Employer, with overall international corporate rating or rating of long-term debt not less than A- (A minus) or equivalent by a reputed rating agency. Further, the Bank Guarantee should be confirmed by either (i) its corresponding bank located in India; or (ii) a Public Sector Bank located in India; or (iii) a scheduled commercial private bank located in India as per para (b) above.

The format of the bank guarantee shall be in accordance with the form of proposal security included in the RfP Documents. proposal Security shall be valid upto date specified in Special Conditions of Contract (SCC), Section-IV of RfP Document, or any other date as subsequently requested under Clause 12.2 below.

Alternatively, Proposal security can be submitted as online payment through National Electric Funds Transfer (NEFT)/Real-time gross settlement (RTGS). Details of Bank Account for transfer of tender through NEFT/RTGS are as follows:

|  |  |  |
| --- | --- | --- |
| Beneficiary Name | : | Central Transmission Utility of India Ltd |
| Bank Name | : | ICICI Bank |
| Branch Address | : | Plot No. 2, Sec-29, Gurgaon, Haryana |
| Account No. | : | 057205000382 |
| IFSC Code | : | ICIC0000572 |

The copy of ‘Online Payment Acknowledgement’ generated subsequent to the payment shall be submitted along with hard copy part of the bid.

11.4 In case, pursuant to Ministry of Finance, GOI’s Circular dated 17th July, 2012, the Bank Guarantee is issued using SFMS Platform by the banks located in India, the copy of such Bank Guarantee shall be submitted by the bidder along with the First Envelope.

At the time of issuance of the BG (including its extensions), in order to avail BG verification through SFMS facility, the issuing Bank will input the IFSC code as SBIN0017313 which is the bank of the beneficiary i.e. Central Transmission Utility of India Limited (CTUIL), in the Advising Bank field in their Trade Finance Portal for BG issue. The Account details of CTUIL for the purpose of Bank Guarantee (towards Bid Security) to be issued using SFMS Platform are as given below:

* Account No. : 40007029694
* IFSC Code : SBIN0017313
* Branch : CAG-II New Delhi (17313)

Following additional paragraph regarding issuance of Bank Guarantee through SFMS Platform consisting of the following should be added at the end of the proforma of the Bank Guarantee (i.e. end paragraph of the Bank Guarantee preceding the signatures of the issuing authority of the BG)

**“This Guarantee has been issued using SFMS Platform and the requisite communication in this regard has been forwarded to the Beneficiary Bank.”**

In addition to the above, the Bank Guarantee (towards Proposal Security) should be submitted in the Physical form as specified in Clause 11.1 above.

11.5 Any proposal not accompanied by an acceptable proposal security or Online Payment Acknowledgement towards Proposal Security, except as exempted at Clause 11.2 above, shall be rejected by the Employer as being nonresponsive.

11.6 The proposal securities of unsuccessful bidders will be returned as promptly as possible, but not later than twenty-eight (28) days after the expiration of the proposal validity period.

11.7 The successful Bidder shall be required to keep its proposal security valid for a sufficient period till the performance security(ies) pursuant to Clause 37.0 of Section-III (Conditions of Contract) are furnished to the satisfaction of the Employer. The proposal security of the successful Bidder will be returned when the Bidder will get the GeM Contract Order, and has furnished the required performance security, pursuant to Clause 37.0 of Section-III (Conditions of Contract).

11.8 The proposal security may be forfeited

(a) if the Bidder withdraws its proposal during the period of proposal validity specified by the Bidder in the Bid Form; or

(b) In case the Bidder does not withdraw the deviations proposed by him, if any, at the cost of withdrawal stated by him in the bid; or

(c) If a Bidder does not accept the corrections to arithmetical errors identified during preliminary evaluation of his proposal pursuant to Clause 31.0 of Section-III, Conditions of Contract; or

(d) in the case of a successful Bidder, if the Bidder fails within the specified time limit:

(i) to accept GeM Contract Order, or

(ii) to furnish the required performance security(ies), in accordance with Clause 37.0 of Section-III (Conditions of Contract) and/or to keep the proposal security valid as per the requirement of Clause 11.3 of Section-III (Conditions of Contract).

11.9 No interest shall be payable by the Employer on the above Proposal Security.

**12.0** **PERIOD OF VALIDITY OF PROPOSAL**

12.1 Proposals shall remain valid for the period of **180 (One Hundred and Eighty) days** from the bid submission end date, prescribed by the Employer, pursuant to Clause 15.0 given below. A Proposal valid for a shorter period shall be rejected by the Employer as being non-responsive.

12.2 In exceptional circumstance, the Employer may solicit the Bidder’s consent to an extension of the Proposal validity period. The request and responses thereto shall be made in writing or by cable. If a Bidder accepts to prolong the period of validity, the validity of proposal security shall also be suitably extended. A Bidder may refuse the request without forfeiting its proposal security. A Bidder granting the request will not be required or permitted to modify its proposal.

**13.0 SIGNING AND FORMAT OF PROPOSAL**

13.1 The proposal must contain the name, designation, residence and place of business of the person or persons making the offer and must be duly signed and stamped on each page by the Consultant with his usual signature.

13.2 Proposals by corporation/company must be signed with the legal name of the corporation/company by the President, Managing Director or by the Secretary or other person or persons authorized to furnish proposal on behalf of such corporation/company in the matter.

13.3 The power of attorney in the name of the person signing on behalf of the Consultant shall be furnished along with the proposal.

13.4 The Bidder’s name stated on the proposal shall be the exact legal name of the firm.

13.5 Erasures or other changes in the proposal shall be authenticated by the initials of the persons signing the Proposal.

**14.0** **SEALING AND MARKING OF PROPOSALS**

As per Clause 8.0 above, the Bidders shall upload the soft copy of the proposal as per the provisions of the Portal and submit the hard copy of Power of Attorney, Bid Security, Affidavit of Self certification regarding Minimum Local Content under PPP-MII order, if applicable and Integrity Pact duly marked as hard copy part of First Envelope Proposal in the following manner:

Envelope-1: Proposal Security/ documentary evidence in support of exemption of Proposal Security

Envelope-2: Power of Attorney and any other documents as required, Affidavit of Self certification regarding Minimum Local Content under PPP-MII order, if applicable, Integrity Pact

**15.0 SUBMISSION OF PROPOSALS**

The envelope shall

(a) be addressed to the Employer at the address given below; and

(b) bear the package name/title and number indicated in the ‘Request for Proposal’, and the statement “**Do Not Open Before [*date*]**,” to be completed with the time and date as specified below:

Address for submission of Hard copy of Documents;

Address in Person or by Post:

**Central Transmission Utility of India Limited**

**‘Saudamini’, 3rd Floor, Plot No.-2, Sector-29**

**Gurgaon (Haryana) - 122001.**

**Kind Attention: Mr. Rahul (Manager, C&M-CTUIL)/ Mr. Dwaipayan Sen (Manager, C&M-CTUIL)**

**(Thru Board) +91-124-282-2369**

**Mobile: +91- 9205472328/9205287422**

Deadline for submission of Soft copy part of Proposal is:

*As provided in Special Condition of Contract (SCC), Section-IV of RfP Documents*

Deadline for submission of Hard copy part of Proposal:

*As provided in Special Condition of Contract (SCC), Section-IV of RfP Documents*

Proposal submission timelines will be defined as per the e-Procurement/GeM server clock only.

Bidders may submit any other documents which they consider relevant along with First Envelope.

All the envelopes shall also indicate the name and address of the Bidders so that the proposal can be returned unopened in case it is declared “late.”

15.1 If the envelope is not sealed and marked as required by Clause 14.0 above, the Employer will assume no responsibility for the Proposal’s misplacement or premature opening.

**16.0 DEADLINE FOR SUBMISSION OF PROPOSAL:**

16.1 Soft copy of the proposal shall be uploaded through the Portal at or before the submission time and date as stipulated in Section-IV of the RfP document. Hard copy of documents stipulated at Clause 8.0 (I) above, must be received by the Employer at the address specified no later than the time and date stated in Clause 15.0 above. In the event of the specified date for the submission of proposals being declared a holiday for the Employer, the proposals will be received/uploaded upto the appointed time on the next working day.

16.2 The Employer may, at its discretion, extend this deadline for submission of proposals by amending the RfP Documents in accordance with Sub-Clause 6.1 above for the reasons specified therein at any time prior to opening of proposals by the Employer pursuant to Sub-Clause 6.3 above, in which case all rights and obligations of Employer and consultants will thereafter be subject to the deadline as extended.

Further the Employer also reserves the right to extend Proposal submission timeline or recall the tender if Portal’s server is down (i.e. inaccessible / inoperative) for a prolonged period of time within the last 24 hours of the Proposal submission due date.

**17.0 LATE PROPOSALS**

The Bidder shall not be permitted to submit the soft copy part of the Proposal by any mode other than uploading on the Portal within the specified deadline for submission of Proposals. The e-Procurement system would not allow any late submission of Proposals through the Portal after due date & time as specified under Clause 15.0 above.

In case Hard copy part of the Proposal is received by the Employer after the deadline for submission of the same prescribed by the Employer in the Clause 15.0 above, but the Bidders has uploaded the soft copy part of the Proposal, the Proposal will be considered as late Proposal. In such a case, the soft copy part of the first envelope Proposal uploaded on the Portal shall be opened. Such Proposals will be rejected during preliminary examination.

**18.0 MODIFICATION AND WITHDRAWAL OF PROPOSALS**

18.1 Bidder may modify its Proposals through the relevant provisions on the GeM Portal. The Bidder may modify or withdraw its Proposal after submission, provided that modification is done on the portal as well as notice is received by the Employer prior to the deadline prescribed for Proposal submission.

18.2 The Bidder’s modifications shall be done and submitted as follows:

(i) Modified Electronic form/Template of the Proposal as per the provision of portal therein.

(ii) Soft copy of the entire Proposal if any modification is there.

18.3 Bidder may withdraw its Proposal through the relevant provisions of portal only.

18.4 No Proposal may be withdrawn in the interval between the Proposal submission deadline and the expiration of the Proposal validity period. Withdrawal of a Proposal during this interval may result in the forfeiture of Bidder’s Proposal security, pursuant to Sub-Clause 11.7 above.

**19.0 OPENING OF FIRST ENVELOPE PROPOSAL BY EMPLOYER**

19.1 The Employer will open the First Envelope Proposal in public as per GeM procedure, including withdrawals and modifications made pursuant to Clause 18.0 above, in the presence of consultants’ designated representatives who choose to attend, at the time, date, and location stipulated below. The consultants’ representatives who are present shall sign a register evidencing their attendance. Consultants who have submitted their Proposal may view on line Proposal opening on the portal from their end. In the event of the specified date for the submission of Proposals being declared a holiday for the Employer, the Proposals will be received upto the appointed time on the next working day.

**Time and date for Proposal Opening – First Envelope:**

*As provided in Special Condition of Contract (SCC), Section-IV of RfP Documents*

**Address for Proposal Opening:**

CENTRAL TRANSMISSION UTILITY OF INDIA LIMITED.

“SAUDAMINI”, First/Second Floor, Plot No.2, Sector-29,

Gurgaon, Haryana – 122 001.

19.2 During the opening of Proposals, Envelopes marked “Withdrawal” shall be opened first. Proposals withdrawn pursuant to Clause 18.0 above shall not be opened. Softcopy of such Proposal shall be sent to archive unopened.

19.3 For all other Proposals, the consultants’ names, and any such other details as the Employer may consider appropriate, will be get declared through the Portal by the Employer. Subsequently, all envelopes marked “Modification” shall be opened. No Proposal shall be rejected at Proposal opening. However, opening of Proposal, whether or not accompanied with the undertaking etc., shall not be construed to imply its acceptability which shall be examined in detail pursuant to the provisions contained in this Section-III.

19.4 The Employer shall prepare minutes of the Proposal opening in the form of Bid Opening Statement, including the information disclosed to those present in accordance with Sub-Clause 19.3 above.

19.5 Proposals not opened at Proposal opening shall not be considered further for evaluation, irrespective of the circumstances and shall be returned to the Consultant unopened/send to archive unopened.

###### Note : The offers of such Consultants who have withdrawn their offers, who have not submitted Proposal Security, whose offers are not responsive as per the provisions of the RFP Documents will be rejected during evaluation of 1st Envelope Proposals. The financial Proposal (Second Envelope) of such Consultant(s) will not be opened and shall be sent to archive unopened.

**20.0 CLARIFICATION OF PROPOSALS**

During proposal evaluation, the Owner may, at its discretion, ask the Consultant for a clarification of its proposal. In case of erroneous/non-submission of documents related to/identified in Sub-Clause 8.0(II)(a)(ii) - (b), (c), (d), (e), (f), (g), (h), (i) & (j) and **complete annual reports of Last three financial years together with Audited statement of accounts, Online Payment acknowledgment towards Bid Security (in cases where online payment has been made prior to the deadline for submission of hardcopy part of the bids),  documentary evidence with regard to registration with designated Authority of GoI under the Public Procurement Policy for MSEs** required to be submitted by the Consultant as per the provisions of the RfP Documents, the Employer may give the Consultant not more than 07(Seven) days’ notice to rectify/furnish such documents, failing which the Proposal shall be rejected. The request for clarification and the response shall be in writing, and no change in the price **and CVs** or substance of the Proposal shall be sought, offered or permitted.

**21.0 OPENING OF FINANCIAL PROPOSALS (SECOND ENVELOPE) BY EMPLOYER:**

21.1 The Second Envelope i.e., Price Part of only those Bidders shall be opened who are determined as having submitted substantially responsive First Envelope Proposals as a result of First Envelope evaluation as per Clause 25.0 and 26.0 below. Such Bidders shall get intimated through GeM portal about the date and time for opening of Price Part i.e., Second Envelope of the Proposals by the Employer. A negative determination of the proposal pursuant to Clause 25.0 and 26.0 below, shall be notified by the Employer to such Consultants and the Second Envelope submitted by them shall be sent to archive unopened and the Proposal Security shall be returned.

21.2 The Employer will open Second Envelope i.e., Price Part at the specified time and date in the presence of bidder’s designated representatives who choose to attend, at the time, date, and location stipulated in the intimation for opening of Second Envelope. The Consultants’ representatives who are present shall sign a register/paper evidencing their attendance. Consultants who have submitted their proposal and found qualified as mentioned at Sub-Clause 21.1 above may view online tender opening on the GeM portal from their end.

21.3 The Bidders’ names, the Proposal Prices, or any discounts, and any such other details as per Electronic form filled in by the Consultant on the portal will become viewable at the time of opening of Proposals as per GeM guidelines. The prices and details as filled up in Electronic Form/Template by the bidder and opened during the Proposal 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.

21.4 The Employer shall get bid opening statement of the proposal opening, including the information disclosed to those present in accordance with Sub-Clause 21.3 above.

24.5 Proposals not opened and read out at Proposal opening shall not be considered further for evaluation, irrespective of the circumstances.

**25.0 QUALIFICATION CRITERIA**

The Bidder(s) meeting the minimum qualification criteria specified at **Annexure-I to Section-III** and whose proposals are eligible in line with the Clause 2.0 above will be short-listed for technical evaluation through **Quality and Cost Based Selection (QCBS)** methodology. The criteria for Technical Evaluation through QCBS methodology are given at Clause 26.0 below.

Bidder(s) should clearly indicate, giving explicit supporting documentary evidence, with respect to the above, in absence of which their proposals will be rejected summarily at the pre-qualification stage itself and shall not be considered for further evaluation.

25.1 The following requirements shall strictly be complied by the Bidders.

1. Proposals taking any exception to scope of work and any conditions specified in the RfP documents shall be liable for rejection.
2. Proposals should be submitted strictly as per the prescribed format/GeM format. Proposals not in the prescribed format are liable for rejection.

**26.0 EVALUATION OF TECHNICAL PROPOSALS THROUGH QCBS METHODOLOGY**

26.1 Only those Bidders who meet the minimum Qualification Criteria specified in Clause 25.0 above shall qualify for evaluation through QCBS method. Proposals of firms who do not meet these criteria shall be rejected.

26.2 The scoring criteria to be used in the detailed technical evaluation are attached as ***Annexure-I to Section-III.***

**27.0 SHORTLISTING OF BIDDERS IN TECHNICAL EVALUATION**

27.1 The Technical Proposal will be evaluated as per Sub-Clause 26.2 above. Only those bidders whose Technical Score is 70 (Seventy) marks or more out of 100 (One Hundred) shall be shortlisted for opening of financial proposals. The Proposal of the bidder(s) whose Technical Score is less than 70 shall not be considered for further evaluation. The marks/ Technical score evaluated by Employer shall be final and binding on the Bidder(s).

**28.0 SELECTION CRITERIA UNDER QCBS METHODOLOGY**

28.1 After Shortlisting of Bidders in Technical Evaluation as per Clause 27.0 above, the Financial Proposals of shortlisted Bidders shall be opened.

28.2 For calculation of weighted score of technical and financial proposals of the technically qualified proposal (scoring more than 70% marks), following methodology shall be used:

28.2.1 The technically qualified proposal with highest score in technical evaluation shall be given weighted technical score of 100 marks and other proposal shall be given weighted technical score that are directly proportional to their technical score on pro rata basis. Score will be rounded off to three decimal places (Or As per GeM features).

28.2.2 Similarly, the technically qualified proposal with the lowest price bid shall be given financial score of 100 marks and other proposal shall be given financial score that are inversely proportional to their prices on pro rata basis. Score will be rounded off to three decimal places (Or As per GeM features).

**29.0 COMBINED SCORE**

29.1 Combined score will be calculated using the formula given below:

S=ST x TW + SF x FW

Where,

ST = Weighted Technical Score of Proposal under evaluation

SF = Financial Score of Proposal under evaluation

S is the combined score, TW and FW are weightage assigned to Technical Proposal and Financial Proposal, which shall be **0.70** and **0.30** respectively

*Note: (i) Combined Score will be rounded off to three decimal places(*Or As per GeM features).

*(ii) An illustration on QCBS method is attached in bidding document.*

29.2 The combined score on the basis of Quality and Cost Based Selection (QCBS) of technical and financial proposals will determine the H1, H2, H3 and so on(Or as per GeM nomenclature) . The bidder scoring the highest points/marks i.e. H1 bidder based on the above principles would be selected for the carrying out the work. The final decision for award of work shall be at sole discretion of Employer.

29.3 Selected bidder shall enter into a contract with Employer for execution of the said mandate.

29.4 In case two or more bidders obtain same combined score as per clause 29.1 above, proposal with highest technical score shall be selected as successful bidder. In case where technical score of such bidders are also found to be same, bidder having higher MAAT Value shall be considered as successful bidder.

**30.0 e-Reverse Auction (e-RA)**

The electronic Reverse Auction (e-RA) is not applicable.

**31.0 DISCREPANCIES AND ADJUSTEMNT OF ERRORS**

31.1 The RfP documents are mutually explanatory of one another. If there are varying or conflicting provisions made in any one of the RfP documents, CTUIL shall be deciding authority with regard to the intention of the document.

31.2 Any error in description, quantity or rate in the price schedule of the Proposal Form or any omission there from shall not vitiate the Contract or release the Bidder from the execution of the whole or any part of the works comprised therein according to entire scope of work as specified in the RfP Documents.

31.3 The Bidder should ensure that the price(s) furnished at more than one place in the Proposal are consistent with each other.

In case of any discrepancy between the Lump Sum quoted price on the GeM portal and uploaded Price breakup by the bidder with H1 score ( as per clause No. 29 of Conditions of Contract, Section–III of RfP Documents), the Lump Sum quoted price on the GeM portal shall prevail. In such case, the Employer shall ask the bidder with H1 score for revised price breakup matching the total Lump Sum price on the GeM portal, through e-mail.

In case of above condition, if the Bidder with H1 score does not provide price breakup within 3 (three) working days from the date of intimation by employer, its proposal may be rejected, and the amount of Proposal Security shall be forfeited.

31.4 The Employer will determine whether each Proposal is of acceptable quality, is generally complete and is substantially responsive to the RfP documents. For purposes of this determination a substantially responsive Proposal is one which conforms to all the terms and conditions of the RfP documents without material deviations, objections, conditionalities or reservations. A material deviation, objections, conditionalities or reservations 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 RfP documents, the Employer’s rights or the successful Consultant’s obligations under the contract, or (iii) whose rectification would unfairly affect the competitive positions of the other Consultants who are presenting substantially responsive Proposals. The Employer’s determination of Proposal’s responsiveness is to be based on the contents of the Proposal itself without re-course to extraneous evidence.

31.5 A Proposal determined as not substantially responsive will be rejected by the Employer and may not subsequently be made responsive by the Bidder by correction of the non-conformity.

31.6 The Employer may waive any minor informality or non-conformity or irregularly in a Proposal, which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Consultant.

**32.0 CONFIDENTIALITY AND CONTACTING THE EMPLOYER**

32.1 After the public opening of proposals, information relating to the examination, clarification, and evaluation of proposals and recommendations concerning awards shall not be disclosed to Bidders or other persons not officially concerned with this process until the publication of contract award. From the time of proposal opening to the time of contract award, if any Bidder wishes to contact the Employer on any matter related to its proposal, it should do so in writing.

32.2 Any effort by a Bidder to influence the Employer in the Employer’s proposal evaluation, proposal comparison or contract award decisions may result in rejection of the Bidder’s proposal. The Employer shall be the sole judge in this regard.

**33.0 AWARD CRITERIA**

33.1 Subject to Clause 29.0 above, the Employer will award the contract to the successful bidder through GeM portal (also referred to as the H1 Bidder) whose Proposal has been determined to be substantially responsive and to be the highest scoring Proposal.

33.2 The mode of contracting with the successful Consultant will be as per below:

The successful Bidder, determined as per Clause 29.0 above, shall be awarded a single contract for the entire scope of works for providing all services as specified in the Contract Documents.

**34.0 EMPLOYER’S RIGHT TO ACCEPT ANY PROPOSAL AND TO REJECT ANY OR ALL PROPOSALS**

The Employer reserves the right to accept or reject any proposal and to annul the bidding process and reject all proposals at any time prior to award of Contract, without thereby incurring any liability to the Bidders. In case of annulment, all proposals submitted and specifically, proposal securities shall be promptly returned to the Bidders.

**35.0 GEM CONTRACT ORDER**

**35.1** Prior to the expiration of the period of Proposal validity, the Employer will notify the successful Bidder through GeM Portal in the form of GeM Contract Order that its Proposal has been accepted. The GeM Contract Order will constitute the formation of the contract.

**35.2** The Employer shall publish the results on its website, identifying the proposal and Specification numbers and the following information: (i) name of each Bidder who submitted a proposal; (ii) name of responsive Firms after evaluation of First Envelope; (iii) name of the winning Firm, and the price it offered.

The Employer shall promptly respond in writing to any unsuccessful Bidder who, after GeM Contract Order in accordance with above, requests in writing the grounds on which its proposal was not selected.

**36.0 VOID**

**37.0** **CONTRACT PERFORMANCE GUARANTEE/ PERFORMANCE SECURITY**

37.1 The successful Bidder to whom the work is awarded shall be required to furnish a Contract Performance security in favour of the Employer. The performance security shall, at the Consultant’s option, be in the form of a crossed bank draft/pay order /banker certified cheque in favour of Employer or in the Form of unconditional Bank Guarantee in proforma enclosed as ***Annexure-A to this Conditions of Contract***, from a bank acceptable to the owner, within fifteen Days (15) after the date of Award of the contract as per Clause 35.0 above.

Alternatively, if performance security is to be submitted in favor of CTUIL, the same can be submitted as online payment through National Electric Funds Transfer (NEFT)/Real-time gross settlement (RTGS). Details of Bank Account for transfer of tender through NEFT/RTGS are as follows:

|  |  |  |
| --- | --- | --- |
| Beneficiary Name | : | Central Transmission Utility of India Ltd |
| Bank Name | : | ICICI Bank |
| Branch Address | : | Plot No. 2, Sec-29, Gurgaon, Haryana |
| Account No. | : | 057205000382 |
| IFSC Code | : | ICIC0000572 |

The copy of Online Payment Acknowledgement generated subsequent to the payment shall be submitted by the Consultant.

37.2 No interest shall be payable by the Employer on the performance Security.

37.3 During execution of contract the Consultant, after submission of Performance Security in form of a crossed bank draft/pay order /banker certified cheque/ online payment through IMPS/NEFT, may opt to furnish the Performance Security in form of bank guarantee for the same amount and as per same terms of the Contract. On acceptance by the Employer of Performance Security submitted in the form of Bank Guarantee following receipt of confirmation from the issuing Bank, the said amount shall be refunded.

37.4 The Bank Guarantee for Performance Security are to be provided by the Consultant, which should be issued either:

1. by a Public Sector Bank located in India, or
2. a scheduled Indian Bank having paid up capital (net of any accumulated losses) of Rs. 1,000 Million or above (the latest annual report of the Bank should support compliance of capital adequacy ratio requirement), or
3. by a foreign bank or a subsidiary of a foreign bank, acceptable to the Owner, with overall international corporate rating or rating of long-term debt not less than A- (A minus) or equivalent by a reputed rating Consultant. Further, the Bank Guarantee should be confirmed by either (i) its corresponding bank located in India; or (ii) a Public Sector Bank located in India; or (iii) a scheduled commercial private bank located in India as per para (b) above

37.5 The CPG amount shall be equal to **Five** **percent (5%)** of the total Contract Price (Incl GST) in accordance with the terms and conditions specified in the contract and in the RfP documents. The Contract performance Guarantee shall be valid till the expiry of Ninety (90) days beyond scheduled date of final acceptance of work (i.e. till date of expiry of validity of Contract). However, if the contract period is extended then the validity of the Contract Performance Guarantee is to be correspondingly extended by the Consultant.

37.6 The contractor has the option to submit BG (towards Performance Security) using SFMS Platform.

At the time of issuance of the BG (including its extensions), in order to avail BG verification through SFMS facility, the issuing Bank will input the IFSC code as SBIN0017313 which is the bank of the beneficiary i.e. Central Transmission Utility of India Limited (CTUIL), in the Advising Bank field in their Trade Finance Portal for BG issue. The Account details of CTUIL for the purpose of Bank Guarantee (towards Bid Security) to be issued using SFMS Platform are as given below:

* Account No. : 40007029694
* IFSC Code : SBIN0017313
* Branch : CAG-II New Delhi (17313)

Following additional paragraph regarding issuance of Bank Guarantee through SFMS Platform consisting of the following should be added at the end of the proforma of the Bank Guarantee (i.e. end paragraph of the Bank Guarantee preceding the signatures of the issuing authority of the BG)

**“This Guarantee has been issued using SFMS Platform and the requisite communication in this regard has been forwarded to the Beneficiary Bank.”**

In addition to the above, the Bank Guarantee (towards Performance Security) should be submitted in the Physical form as specified in Sub-Clause 37.1 above.

37.7 The Contract performance Guarantee is intended to secure the performance of the entire contract. However, it is not to be construed as limiting the damages stipulated in other clauses in the RfP documents.

37.8 The Contract Performance Guarantee will be returned to the Consultant, without any interest, at the end of validity period as mentioned at Clause 37.5 above and on successful completion of scope of the work, whichever is later.

**38.0 FRAUD AND CORRUPT PRACTICES**

38.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RfP, employer shall reject a proposal without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “Prohibited Practices”) in the Selection Process.

38.2 Without prejudice to the rights of Employer, if a Bidder or Consultant, as the case may be, is found by the employer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the notification of Award, such bidder or Independent Engineer shall not be eligible to participate in any tender or RfP issued by Employer during a period of 2 (two) years from the date such bidder or Independent Engineer, as the case may be, is found by Employer to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.

38.3 For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them:

“Corrupt Practice” means offering, giving, receiving, or soliciting anything of value to influence the action of Employer official(s) in the procurement process.

“Fraudulent Practice‟” means any act including suppression/ misrepresentation of facts, submissions of forged/ false documents, making false declarations etc. that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial gain or benefit, or to avoid an obligation, or to influence procurement process to the detriment of interest of the Employer, including collusive practices among bidders (prior to or after bid submission) to establish bid prices at artificial, non-competitive levels and to deprive Employer of the benefits of competitive prices.

“collusive practice” shall also include an arrangement between two or more parties designed to achieve an illegitimate purpose to the detriment of interest of Employer.

“coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

“Obstructive practice” means

(a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/ or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation,

or

(b) acts intended to materially impede the exercise of the contractual rights or audit or access to information

In persuasions of its policy, the Employer will sanction a firm or individual, including declaring 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, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a contract.

**39.0 TIME FOR COMMENCEMENT AND COMPLETION OF WORK**

39.1 The Consultant shall commence work from the Effective Date of Contract (i.e., **15 days from the date of issuance of GeM Contract Order**) and without prejudice to Clause 46.0 below hereof.

39.2 The Consultant shall attain Completion of the work within the time as specified in the Section – IV: SCC or within such extended time to which the Contractor shall be entitled under Clause 48.0 hereof.

**40.0 CONTRACT PRICE**

40.1 The Contract Price shall be as specified in GeM Contract order to be generated through GeM portal. The Contract Price shall be FIRM and FIXED.

**41.0** **TERMS OF PAYMENTS**

41.1 In accordance with the provisions of RfP documents, the Employer shall pay the Consultant in the following manner and at the following times after fulfilling the following requirements:

1. Submission of Performance Security as per Clause 37.0 above.
2. Submission of Declaration regarding engagement of Key personnel as per format “Form-3” provided in Bidding Document.
3. Submission of Declaration regarding field engineer experts as per format “Form-4” provided in Bidding Document.

Payments will be made in Indian Rupees unless otherwise agreed between the parties. Payment shall be made to consultant in the following manner:

|  |  |  |
| --- | --- | --- |
| S.N. | Milestones | Payment |
| 1. | Pro-rata monthly payment for entire course of contract upon submission of the monthly progress report in prescribed format | 90% of Monthly payment |
| 2. | Upon submission & Approval of the Completion Report/Final Report | Balance Payment |

**41.2 Terms of Payment in case of Extension/Foreclosure of Work:**

41.2.1 In case of extension of work for a period provided by employer or in case of foreclosure of work, pro-rata monthly payment shall be made on the same terms and conditions as stipulated at Clause 41.1 (1) above.

41.2.2 Balance payment shall be made on same terms and conditions as stipulated at Clause 41.1 (2) above upon submission and approval of Completion/final report and acceptance of “Deliverables” as specified in Section-II: ToR.

41.3 The above payments shall be made after deducting therefrom such other amounts as may be deductible or recoverable under the Contract.

41.4 No interest is admissible on amounts payable by the Employer.

41.5 Applicable GST will be paid/reimbursed as GeM terms & Conditions.

**42.0** **PROCEDURE OF PAYMENT**

42.1 All payments shall be made against GST invoices to be raised by the Consultant(s) as specified under the GST Act and related Rules, Notifications, etc as notified by the Government in this regard along with submission of Declaration regarding engagement of Key personnel as per format “Form-3” and Declaration regarding field engineer experts as per format “Form-4” provided in Bidding Document.

In the event that the Consultant fails to provide the invoice in the form and manner prescribed under the GST Act and Rules along with submission of Declaration regarding engagement of Key personnel as per format “Form-3” and Declaration regarding field engineer experts as per format **“**Form-4**”** provided in Bidding Document, Employer shall not be liable to make any payment against such invoice.

All the invoices of payment shall be supported by necessary documents and submitted in quadruplicate for the certification of Engineer-in-Charge for which he will require a maximum time of fifteen (15) days before the same are submitted for processing the payment of amount admitted. The Employer shall pay the consultant all the payments and other costs within fifteen (15) days of certification by the Engineer-in-Charge of the amount payable for the services. Wherever technically feasible, such payments shall be made electronically only as per details of Bank Account furnished by consultant alongwith their Proposal. In the event, there is any query in respect of any item of such invoice requiring clarification, the Engineer-in-Charge shall notify the same within 15 days of receipt of such invoice by the Employer that such a query has arisen, and both the parties shall endeavour to reach an agreement within a period of 30 days thereafter. If no mutual agreement can be reached within a period of forty-five (45) days after receipt of the invoices by the Engineer-in-Charge, the Employer shall make payment against the balance of invoice (original amount less the amount in question) to the consultant within fifteen (15) days thereafter i.e., within sixty (60) days from the date of receipt of invoice by the Engineer-in-Charge. The invoice for the balance amount under question shall be separately submitted for future consideration of the Owner.

**43.0 TAXES, DUTIES AND INSURANCE**

43.1 All charges such as but not limited to insurance charges, license fees, etc. as applicable to the subject contract shall be included in the quoted price. CTUIL shall not bear any expenditure whatsoever on this account. The liability of CTUIL shall only be limited to payment of applicable GST.

However, if there is difference in SAC classification and corresponding rate of GST of an item as quoted by the Consultant in its proposal and SAC and corresponding rate of GST as interpreted under any interpretation/ judgment/ Notification/ Circular issued under the GST law before or after the award of contract, GST reimbursable to the Consultant shall be lower of the GST applicable at the rate as quoted in the proposal or actual GST paid/payable by the Consultant for that item.

43.2 Tax liability, if any, on deputation of any of the consultant’s Personnel shall also be borne by the consultant and shall be the responsibility of the Consultant as per Tax Laws of India.

43.3 The Contractor shall comply with all tax laws in force in India. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, interest, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such tax laws by the Contractor or its personnel, including the Subcontractors and their personnel.

43.4 The Consultant shall be liable to take /maintain all necessary insurances at its own cost.

**44.0 HANDLING OF DOCUMENTS**

44.1 All documents prepared by the Independent Engineer in connection with the services to be provided by the Independent Engineer shall be the property of the Employer. As and when required or upon termination/completion of the consultancy work, the aforesaid documents prepared specifically for this Assignment (including originals) shall be handed over to the Employer before final acceptance or thereafter. The Independent Engineer can retain one copy of the documentation (including working papers) relating to advice or report it may provide as a part of this assignment subject to confidential obligation specified in Clause 44.2 below. Further, the documents to be handed over to the Employer would not include the internal checklist and discussion/review notes prepared.

44.2 The Independent Engineer shall take all necessary steps to ensure confidential handling of all matters pertaining to any information developed or acquired by him from Employer/TSP under terms of the contract or in performance thereof. Independent Engineer, under no circumstances, shall share the data/document provided by TSP with any third party failing which Independent Engineer shall be liable for legal consequences arising due to breach in this aspect.

44.3 The Independent Engineer shall not prepare articles or photographs for publication or speeches about the work or contracts in which Employer has an interest without prior written consent of Employer.

44.4 The Independent Engineer shall take necessary steps to ensure that all persons employed on any work in connection with this contract have noticed that the Indian Official Secrets Acts, 1923 (XIX of 1923) applies to them and shall continue to apply even after the execution of such work(s) under the contract.

**45.0 INDEPENDENT ENGINEER'S PERSONNEL**

**45.1 General**

The Independent Engineer shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

**45.2 Deployment of Key Personnel**

45.2.1 The designations, names, roles in carrying out the Services by each of the Independent Engineer's Key personnel shall be provided as per **Attachment-2** of the Bidding Document. Further, the CV in prescribed format for each expert shall be furnished by the consultant along with the bid.

45.2.2 Consultant must deploy their experts within 15 days from the issuance of GeM Contract Order.

**45.3 Approval of Key Personnel**

The Key Personnel listed at **Attachment-2** shall be approved by the Employer. No other Professional Personnel shall be engaged without prior approval of the Employer.

**45.4 Substitution of Key Personnel**

45.4.1 Except as the Employer may otherwise agree, no changes shall be made to the Key Personnel whose CVs have been submitted and accepted/evaluated during the Bid. If, for any reason beyond the reasonable control of the Independent Engineer, such as resignation, retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Key Personnel, the Independent Engineer shall provide as a replacement a person of equivalent or better qualifications.

However, any substitution due to resignation shall be permitted only after approval of Employer and subject to reduction of renumeration equal to 5% (Five per cent) of the monthly remuneration specified for the Key Personnel who is proposed to be substituted.

45.4.2 If the Employer (i) finds that any of the Personnel has committed serious misconduct or has been charged with a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultants shall, at the Employer's written request provide a replacement with qualifications acceptable to the Employer.

45.4.3 Substitution of Key Personnel (s), due to reasons provided at Clause 45.4.1 and 45.4.2 above, should be submitted to Employer for approval before deployment. No substitution shall be allowed without prior approval of the employer. However, in some compelling situations some key personnel is substituted without approval of the Employer, IE shall submit the request for approval of substitution as soon as possible. Remuneration towards such substituted personnel shall be kept on hold and may be paid only after approval of Employer. In case such substitution is found to be not suitable, and approval is not accorded by the Employer, no remuneration shall be paid for the period of such deployment.

The Independent Engineer shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

45.4.4 Substitution of Key Personnel, due to reasons not covered under Clause 45.4.1 and 45.4.2 above, shall be permitted only after approval of Employer subject to reduction of remuneration equal to 5% (Five per cent) of the monthly remuneration specified for the Key Personnel who is proposed to be substituted. In the case of a second substitution, such reduction shall be equal to 10% (Ten per cent) of the monthly remuneration specified for the Key Personnel who is proposed to be substituted. Maximum 02 (Two) substitutions shall only be allowed under the subject contract, if not covered under Clause 45.4.1 and 45.4.2 above.

45.4.5 VOID

45.4.6 In the case of extension of contract, the Consultant can propose one-time replacement of each key personnel without attracting any penalty or reduction in remuneration, subject to approval of the Employer taking into consideration the progress of work. The qualifications of replacements shall be better or equivalent to the original key personnel. Any further replacement will be governed as per contract provisions.

45.5 **Penalty for Non-deployment**

In case key personnel is not deployed by consultant, no remuneration shall be paid for that period plus additional deduction shall be made at the rate of 15% (Fifteen per cent) of the remuneration specified for the Key Personnel in the contract as a penalty. Further, non-deployment of Key personnel for consecutive 2 months shall be treated as default and action may be taken in line with clause 50.0 below.

Note:

1. Qualification mentioned in cl. 45.0 refers to the marks obtained by experts during evaluation as per Annexure-I to Section-III\_QR.
2. An illustration for substitution of Key Personnel is attached herewith.

**46.0 PENALTY FOR DELAY IN SERVICES**

46.1 Monthly Progress Report shall be submitted before the 12th day of every month after placement of award on consultant. In case the award is placed after 12th day of the month, the first report shall be submitted after completion of succeeding calendar month after award.

46.2 If the report is submitted between 12th to 19th day of the month, 0.5% of monthly due payment plus GST per day shall be deducted as penalty from the next due monthly payment.

46.3 Further, if the report is submitted after 19th day of the month, total 5% of monthly due payment plus GST shall be deducted as penalty from the next due monthly payment.

**47.0 LIABILITY OF THE CONSULTANT**

47.1 The Independent Engineer’s liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.

47.2 Any mistake or inadequacy appear in the documents submitted by the Independent Engineer, the Independent Engineer shall perform at its own initiative and no extra cost to Employer, all such services as shall be necessary to remedy the said mistake or inadequacy.

47.3 The Independent Engineer shall be further liable for the consequences resulting from errors and commissions due to negligence or from inadequacy on its part or on the part of its employees or associates or experts to the extent of the fees actually received by the Independent Engineer.

**48.0 EXTENSION OF CONSULTANCY WORK**

Employer may in its discretion provide extension by giving written notice to consultant for a period:

1. Upto 06(six) months on the same rate, terms and conditions under this contract.
2. Further extension beyond 48.0(i), but not greater than 01(one) year with 10% escalation in rates of the awarded contract on same terms & conditions.

Reasons and Causes for extension cannot be attributable to Independent Engineer.

**49.0 FORECLOSURE OF CONSULTANCY WORK**

49.1 The Employer may be giving written notice to the Independent Engineer, terminate the contract at any time for its convenience or for any cause or reasons which cannot be attributed to the Independent Engineer. The notice of termination/foreclosure shall specify the termination is for Employer’s convenience and the date upon which such termination becomes effective.

49.2 The services that are completed and ready for final reporting within thirty (30) days after the consultant’s receipt of notice of termination/ foreclosure shall be submitted to the Employer at the same rates, terms and conditions as stipulated at Sub-Clause 41.3 above.

**50.0 TERMINATION FOR DEFAULTS:**

50.1 The Employer may without prejudice to any other remedy for breach of contract, by written notice of default sent to the Independent Engineer, terminate the contract in whole:

1. if the Independent Engineer fails to deliver any or all of the services within the time period(s) specified in the contract or any extension thereof granted by the Employer in writing.
2. if the Independent Engineer fails to perform any other obligation(s) under the contract; or
3. if the Independent Engineer in either of the above circumstances, does not cure its failure within a period of 30 days after receipt of the default notice from the Employer.

50.2 In the event of Employer terminating the contract, pursuant to clause 50.1. the Employer shall forfeit the submitted CPG (Contract Performance Guarantee). Further, the Employer may get the services done, upon such terms and in such manner as it deems appropriate, similar to those not rendered and the Independent Engineer shall be liable to the Employer for any excess costs for such similar services. However, The Independent engineer shall be paid for the services provided up to the date of termination provided no adverse findings in executed works.

**51.0 TERMINATION FOR INSOLVENCY**

51.1 The Employer may at any time terminate the contract by giving written notice to the Independent Engineer, without compensation to the Independent Engineer, if the Independent Engineer becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Employer.

**52.0.0 SETTLEMENT OF DISPUTE**

52.1.0 If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities, whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference, to the extent possible, amicably by mutual consultation.

52.1.1 If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute shall be referred by the Contractor to the Engineer In Charge (EIC), who, within a period of thirty (30) days after being requested by Contractor to do so, shall give written notice of his decision.

52.1.2 The decision/instruction of the Engineer In Charge (EIC) shall be deemed to have been accepted by the Contractor unless notified by the Contractor of his intention to refer the matter for Arbitration/Conciliation within thirty (30) days of such decision/instruction.

52.1.3 In the event the Engineer In Charge (EIC)fails to notify his decision as aforesaid within thirty (30) days, the Contractor, if he intends to go for Arbitration/Conciliation, shall notify his intention to the Engineer In Charge (EIC)within 30 days of expiry of the first mentioned period of thirty days failing which it shall be deemed that there are no dispute or difference between the Employer and the Contractor.

52.1.4 In case of dispute or difference between the Employer and the Contractor, if the Employer intends to go for Arbitration/Conciliation, he shall notify such intention to the Contractor.

52.1.5 All disputes or differences in respect of which the decision, if any, of the Engineer In Charge (EIC) and/or the Head of the Implementing Authority has not become final or binding as aforesaid shall be settled by arbitration/conciliation in the manner provided herein below.

**53.1.0 ARBITRATION**

53.1.1 In the event of any question, dispute or difference arising out of or in connection with this work, whether during the progress of the work after its completion, abandonment or breach of contract, the same shall be referred for arbitration.

The arbitration shall be conducted by a sole arbitrator in case the amount of claim is less than Rs. 25 Crore and by three member arbitral tribunal in case the amount of claim is greater than Rs. 25 Crore.

**Sole Arbitration**

The sole Arbitrator shall be chosen from a panel of empanelled Arbitrators maintained by POWERGRID/CTUIL. The same shall comprise of retired Judges and retired Senior executives of PSUs other than POWERGRID/CTUIL. Further, the choice of sole Arbitrator shall be governed by the amount of claim in the following manner:

|  |  |  |
| --- | --- | --- |
| Sl no | Claim amount | Work Experience/Qualifications |
| 1 | < Rs. 10 Crore | Sole arbitrator-Retired Senior Executives of PSUs other than POWERGRID or CTUIL/Retired Distt Judges/ High Court Judges. |
| 2 | Rs.10 Crore- Rs.25 Crore | Sole arbitrator- Retired High Court/Supreme Court Judges |

1. In case of invocation of arbitration by CTUIL, CTUIL shall, within 30 days, send a list of names of 3 arbitrators from its list/database of Arbitrators and the contractor shall within the period of further 30 days select any one person to act as “Sole Arbitrator”, which will be confirmed by CTUIL and matter will be referred to such appointed Arbitrator for further arbitration proceedings.
2. In case of invocation of arbitration by the Contractor, the Contractor shall request CTUIL for its database of Arbitrators/ chose from the list of Arbitrators available on POWERGRID’s/CTUIL’s website, and the contractor shall, within 30 days, select any one Arbitrator from the above to act as “Sole Arbitrator”, which will be confirmed by CTUIL within 30 days and matter will be referred to such appointed Arbitrator for further arbitration proceedings.

If the parties fail to appoint sole arbitrator within sixty (60) days after receipt of a notice from the other party invoking Arbitration, the appointment of sole arbitrator shall be done by Courts as per the provisions of Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

**Three member arbitral tribunal**

The arbitration shall be conducted by three arbitrators, who are retired High Court/Supreme Court Judges, one each to be nominated by the Contractor and the Employer and the third to be appointed by both the arbitrators in accordance with the Indian Arbitration & conciliation Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the Arbitration clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus regarding appointment of presiding Arbitrator, within a period of 30 days from the appointment of the arbitrator appointed subsequently, the presiding arbitrator shall be appointed by Courts as per the provisions of Arbitration & conciliation Act.

53.1.2 The cost of arbitral proceedings inter-alia including the Arbitrators’ fee, logistics and any other charges shall be equally shared by both parties.

In case of Sole Arbitrator, the fees to be paid to the sole Arbitrator shall be as per the terms of empanelment in POWERGRID/CTUIL whereas in case of the three member tribunal, the Arbitrator’s fees shall be as agreed upon by the Arbitrators in line with the Arbitration & Conciliation Act. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings shall be borne by each party itself.

53.1.3 The language of the arbitration proceedings and that of the documents and communications between the parties shall be English. The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof. The venue of arbitration shall be New Delhi.

53.1.4 The decision of the sole arbitrator/ the majority of the arbitrators, as the case may be, shall be final and binding upon the parties. In the event of any of the sole arbitrator/ any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the parties to nominate another sole arbitrator/ another arbitrator in place of the outgoing arbitrator.

53.1.5 Notwithstanding the above, in case the contractor is a Central Public Sector Enterprise (CPSE)/Government Organization or Department then the dispute/ difference (other than those related to taxation matters) between the Employer and the Contractor shall be settled through Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22.05.2018 and DPE OM No. DPE-GM-05/0003/2019-FTS-10937 dated 20.02.2020. The decision through AMRCD will be final and binding on all the concerned.

53.1.6 During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the Contract.

**53.2.0 CONCILIATION**

53.2.1 The mechanism of Dispute resolution through Conciliation shall be available in cases where the amount involved in the dispute exceeds INR 1 Cr.

53.2.2 The settlement of Disputes through conciliation mechanism shall be done by the Conciliation Committee of Independent Experts (CCIE) constituted by Ministry ofPower, Govt. of India as per the procedure outlined in its OM dated 29.12.2021 as detailed herein below and its subsequent amendments/modifications (if any).

53.2.2.1 Each member of CCIE would be paid a sum of Rs. 50,000/- as sitting fee per sitting. In addition, Rs. 5,000/- per sitting will be paid for local transport charges for each day of proceeding. The conciliation proceedings shall be completed in each case through 5 sittings in a period of not more than three months from the date the reference made to the CCIE. In exceptional cases, if any dispute so merits, the time period may be extended at the discretion of Conciliation Committee (with reasons to be recorded in writing), for a further period of three months. In case, a particular dispute requires more than 5 sittings, the same may be held at the discretion of the CCIE but with a cap on payment of fee for 5 sittings only. The local transport charges shall, however, be paid as provided for each day of sitting beyond the 5 sittings.

53.2.2.2 The CCIE shall hold day to day sitting at the Headquarter of the Employer or New Delhi and may hold as many sittings every month as it deems appropriate keeping in view the volume of work.

53.2.2.3 All expenditure incurred on the conciliation proceedings including payment of fees to the Conciliators, office space, logistic, secretarial assistance and other incidental expenses etc. shall be borne by the Employer initially. Thereafter it shall be shared equally by both parties on completion of the conciliation process.

53.2.3 The procedure of CCIE shall not be treated as alternate arbitration proceedings where both parties come with Statement of claims/defence, arguments/counter arguments, rejoinders, written submissions etc., aided by their respective lawyers. The forum of CCIE is a conciliation forum, where mutual give and take constitutes the essence, rather than strict legal positions of the parties. Hence, the parties are expected to be brief and to the point before the committee with regard to their respective stance and view the exercise in the spirit of conciliation / settlement.

**53.2.4 The Standard Operating Procedure for the conciliation mechanism shall be as follows:**

1. On receipt of a reference from the Contractor for conciliation of dispute, the concerned Executive Director of the Employer shall send a communication within 7 working days thereby inviting the Contractor to depute a team of their representatives to interact with the Employer to crystallize the issues and prepare the agenda containing the gist on each dispute.
2. **O**nce a conciliation request has been raised by the contractor, within 30 days the same shall be referred to the CCIE in the event of the matter remaining unresolved internally.
3. The Employer will also be free to suggest the option of resolution of disputes by conciliation in case a dispute has arisen. The contractor may select any one of the CCIEs as constituted by MOP after leaving out those CCIEs which are unavailable due to work load or any other reason as maintained by Central Electricity Authority (CEA).
4. The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation Act, 1996.
5. The Conciliation Committee would either be able to resolve and settle the dispute(s) between the parties, or the process may fail.
6. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996.
7. After successful conclusion of Conciliation, proceedings, the Parties to the conciliation process, have to undertake and complete all necessary actions for implementation of the terms of settlement within a period of 30 days from execution of settlement agreement, unless a different timeline not exceeding 60 days is agreed upon in settlement agreement. All pending claims of parties, in connection with the dispute, before any other legal forum are to be withdrawn within the said 30 days in pursuance of the settlement agreement.
8. In case of failure of the conciliation process at the level of the Conciliation Committee, the parties may withdraw from conciliation process and take recourse to Arbitration proceedings or the laid down legal process of Courts.

53.2.5 In cases of disputes pending before the Arbitration Tribunals or the Courts, both the parties (i.e. Employer and Contractor) need to agree to explore the possibilities of conciliation through the Conciliation Committee of Independent Experts. In case of such agreement, an appropriate reference shall be made to the Conciliation Committee, upon which the Committee shall proceed to examine such reference(s). In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996. However, the parties may resume the Arbitration proceedings or take recourse to any other legal remedies in the event of the conciliation proceedings not being successful.

53.2.6 During settlement of disputes and conciliation proceedings, both parties shall be obliged to carry out their respective obligations under the Contract.

**54.0 GOVERNING LAWS**

This consultancy work shall be governed by the Indian Laws for the time being in force and the Delhi Courts shall have the exclusive jurisdiction.

**55.0 SUSPENSION OF THE OBLIGATION**

55.1 The obligations stipulated in this RfP documents can only be suspended in the case of work, in the event of Force Majeure as defined in Clause 56.0 herein below or as a result of an agreement between the parties.

55.2 In the event of Force Majeure, neither of the Parties may be considered in default of its obligations under the terms of the RfP documents.

**56.0 FORCE MAJEURE**

56.1 Force Majeure is hereby defined as any cause which is beyond the control of the Independent Engineer or the Employer as the case may be, which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affect the performance of contract such as:

a) Natural phenomena including but not limited to floods, droughts, earthquakes and epidemics.

b) Acts of any government, domestic or foreign, including but not limited to war, declared or undeclared, priorities, quarantines, embargoes.

provided either party shall within 15 days from the occurrence of such a cause notify the other in writing of such causes.

56.2 The Independent Engineer or the Employer shall not be liable for delays in performing his obligations resulting from any force majeure cause as referred to and/or defined above. The date of completion will, subject to hereinafter provided, be extended by a reasonable time even though such cause may occur after Independent Engineer’s performance of his obligations has been delayed for other causes.

**57.0 SUB-CONTRACT**

Sub-contracting of the assignment will not be allowed. The appointed Consultant shall be solely responsible for all the required deliverables.

**58.0** **NO WAIVERS**

If Employer, in any instance, does not insist upon strict performance of any of the terms of the assignment, it shall not be construed as a waiver or relinquishment in the future till the assignment is in force and shall not relieve Consultant of any of its responsibilities under the assignment.

**59.0** **INSTRUCTIONS AND NOTICES**

59.1 All notices to be given on behalf of Employer and all other actions to be taken on its behalf may be given or taken by the Engineer-in-Charge or any officer for the time being entrusted with the functions, duties and powers of the Engineer-in-Charge.

59.2 All instructions, notices and communications, etc., shall be given in writing and if sent by registered / speed post to the last known place of business of the consultant, shall be deemed to have been served on the dates when in the ordinary course of post these would have been delivered to him.

**60.0 BANKRUPTCY**

60.1 If the Independent Engineer has become bankrupt or have a receiving order made against him or compound with his creditors or being a corporation commence to be wound up, not being a voluntary winding up for the purposes only or amalgamation or reconstruction or carry on their business under a receiver for the benefit of their creditors or any of them, Employer shall be at liberty.

1. to terminate the assignment forthwith without any notice in writing to the Independent Engineer or to the liquidator or receiver or to any person in whom the Independent Engineer may become vested.
2. to give such liquidator receiver or other person the option of carrying out the consultancy assignment subject to their providing a guarantee for the due and faithful performance of the assignment upto an amount to be determined by Employer.

**61.0 PROGRESS REPORT**

61.1 The Independent Engineer shall prepare and submit to the Engineer-in-Charge progress report Monthly in line with Section-II: ToR, showing the progress and status of the ‘Works being performed by him including such materials as charts, networks and photograph (if any) as per the directives of the Engineer-in-Charge. Draft formats of progress reports shall be finalized in consultation with the Engineer-in-Charge.

61.2 It is understood that submission of such reports and reviews thereof by Employer shall not absolve the Independent Engineer of his responsibility of timely completion of the Assignment as per the time schedule indicated herein.

**62.0 EMPOYER’S RIGHT**

Employer reserves the right for the following: -

62.1 Rejection of any or all offers without assigning any reason whatsoever.

62.2 Rejection of any offer with incomplete scope of works or which is an incomplete offer in the opinion of the Employer.

62.3 Review of the work performed by the Independent Engineer and ask for any clarification and changes/modifications to the work performed by the Independent Engineer. Such changes shall be mutually discussed and agreed between the Employer and the Independent Engineer and the same shall be incorporated by the Independent Engineer in his work without any cost to the Employer and without any dilution of the responsibility of the Independent Engineer.

62.4 Seek changes in the Independent Engineer’s personnel deployed for the assignment on grounds of quality of work, timely completion or other reasons. Such changes shall be mutually discussed and agreed between the Employer and the Independent Engineer without any cost to the Employer and without any dilution of the responsibility of the Independent Engineer. Further, the replaced personnel shall have similar or higher competency level and designation.

**63.0 CORRESPONDENCE AND CONTRACT CO-ORDINATION PROCEDURE**

All correspondence during execution of the contract shall be made as per following procedure:

63.1 On all matters pertaining to execution of the contract, the Independent Engineer shall directly interact with the Engineer-in-Charge.

63.2 All correspondence from the Employer to the Independent Engineer shall be made with the full-time coordinator i.e. Team Leader cum Project Manager to be identified by the Independent Engineer and agreed by Employer.

**64.0 INDEMNITY**

Independent Engineer shall indemnify the Employer and every member, officers and employees of the Employer against all actions, proceedings, claims, demands, costs and expenses whatsoever arising out of any negligent act of omission or failure by Independent Engineer in the performance of Independent Engineer’s obligations under this Contract.

---End of Section-III---