

**SELECTION OF DEVELOPER  
TO DESIGN,  
FINANCE, MANUFACTURE,  
SUPPLY, INSTALL, TEST,  
COMMISSION, OPERATE  
AND MAINTAIN ROOF TOP  
SOLAR PV SYSTEMS FOR 25  
YEARS ON DISCOUNT OVER  
RETAIL TARIFF BASIS FOR  
SELECTED GOVERNMENT  
BUILDINGS**

**VOLUME I  
REQUEST FOR PROPOSAL**

**JANUARY 2018**

**MANGALURU SMART CITY LIMITED**

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## GLOSSARY

Facilitator	As defined in Clause 1.1
Bid(s)	As defined in the Disclaimer
Bidders	As defined in Clause 1.2.1
Bidding Process	As defined in Clause 1.2.1
Bid Due Date	As defined in Clause 1.2.2
Earnest Money Deposit	As defined in Clause 1.2.4
Bid Validity Period	As defined in Clause 2.17
Conflict of Interest	As defined in Clause 2.1.13
Consortium	As defined in Clause 2.1.2
Developer	As defined in Clause 1.1.1
Discount over Retail Tariff	As defined in Clause 1.2.5
Eligibility Criteria	As defined in Clause 1.2.4(B)
Financial Capacity	As defined in Clause 3.3.2
Government	Government of Karnataka
Jt. Bidding Agreement	As defined in Clause 2.1.16(i)
Lead Member	As defined in Clause 2.1.16 (d)
LOA	As defined in Clause 3.4.5
Member	Member of a Consortium
Other Members	As defined in Clause 2.1.16 (d)
Performance Security	As defined in Article 1 of PDIA
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
Request for Proposal (RFP)	As defined in Clause 1.1.7
Right	As defined in Clause 1.1.6
Project Development and Implementation Agreement	As defined in Clause 1.1.1
SPV	As defined in Clause 2.1.16
Technical Capacity	As defined in Clause 3.3.2

The words and expressions beginning with capital letters and defined in this document shall, unless the context otherwise requires, have the meaning ascribed thereto herein, shall, unless the context otherwise requires, have the meaning ascribed thereto therein

## DISCLAIMER

The information contained in this Request for Proposal document (the “RFP”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Facilitator or any of their employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Facilitator to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in preparing their proposal pursuant to this RFP (the “Bid”). This RFP includes statements, which reflect various assumptions and assessments arrived at by the Facilitator in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Facilitator, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Facilitator accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Facilitator, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Bidding Process.

The Facilitator also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The Facilitator may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Facilitator is bound to select a Bidder or to appoint the Developer, as the case may be, for the Project and the Facilitator reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Facilitator or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the

Facilitator shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

## 1. INTRODUCTION

### 1.1. Background

Government of Karnataka has identified Government, Municipal and School Buildings for installation of roof top Solar PV systems as very potent area in its Smart City Project. To save energy produced by conventional methods, it is envisaged to develop solar rooftop projects on large scale by utilizing vacant roofs of buildings.

Ministry of New and Renewable Energy, Government of India (MNRE) desires to implement grid connected rooftop solar PV projects on the roofs of Government buildings/offices Solar PV systems as a part of its Renewable Energy Initiatives.

The Ministry of Urban Development (MoUD), Government of India (GoI) has initiated the Smart City Mission (SCM) and selected Mangaluru city to be developed as Smart City. Under the Smart City Scheme, Government has emphasized to improve the basic civic amenities of the cities on one hand and the provision of modern technological advances for ease of living on the other hand.

The Smart City Proposal (SCP) for Mangaluru envisions implementing a number of projects divided into Area Based Development (ABD) projects and Pan City components. Rooftop Solar Panels is one of the ABD project.

Under smart city development, roof top solar PV installations are proposed for all new development structures and also for the existing Government Buildings. Various Government Buildings in the Mangaluru City surveyed and assessed for the suitability of Rooftop Solar PV installations. Energy consumption pattern, sanctioned power from MESCOM, power evacuation facility and structural capability of the buildings were also evaluated.

The regulations and policies of Government bodies -MNRE, KERC, MESCOM for Rooftop PV installations were reviewed to assess the Financial viability of the Rooftop PV installation.

As part of this initiative, the MANGALURU Smart City Limited (MSCL) (the “**Facilitator**”), hereby invites proposal from reputed bidders to Design, Finance, Manufacture, Supply, Install, Test, Commission, Operate and Maintain Rooftop Solar PV Systems for 25 years on Discount over KERC Tariff basis for selected Government Buildings under MSCL ABD area (hereinafter referred to individually as the “**Project**”).

The indicative potential capacity of 1288 KW across the seventeen (17) Government Buildings campuses (the “**Government Buildings**”) under the current Bidding Process is as attached separately with the schedule 3 of draft concession agreement (PDIA/CA) with the RFP.

The selected Bidder (“**Selected Bidder**”) shall have to enter into an Agreement (hereinafter referred to as the “**Project Development and Implementation Agreement/PDIA**”) as provided in **Volume-II** with each of the individual Building owners.

1.1.1. The developer (hereinafter referred to as “**Developer**”) shall be responsible for **Design, Finance, Manufacture, Supply, Install, Test, Commission, Operate and Maintain Rooftop Solar PV Systems for 25 years on Discount over Retail Tariff basis** in accordance with the provisions of the Project Development and Implementation Agreement to be entered into by the Developer in the form provided by the Facilitator as part of the Bidding Documents pursuant hereto.

1.1.2. Connectivity with the Grid

The Developer shall be responsible to evacuate the power from Rooftop Solar PV Power Plant to Grid as per the Net Metering scheme.

1.1.3. The scope of work will broadly include Design, Finance, Manufacture, Supply, Install, Test, Commission, Operate and Maintain Rooftop Solar PV Systems and carry out all the necessary activities as defined in **Article 2** of the draft Project Development and Implementation Agreement, preparing reports and receiving payments as per the **Article 13** of the draft Project Development and Implementation Agreement.

1.1.4. The Bidding Documents include this RFP and the draft Project Development and Implementation Agreement.

1.1.5. The draft Project Development and Implementation Agreement sets forth the detailed terms and conditions for grant of the right to the Developer to supply solar power to the Government buildings where the Rooftop Solar PV Power Plant are to be commissioned (the “**Right**”), including the scope of the Developer’s services and obligations and is enclosed as Volume II of this RFP.

1.1.6. The statements and explanations contained in this RFP are intended to provide a proper understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Developer set forth in the draft Project Development and Implementation Agreement or the Facilitator’s right to amend, alter, change, supplement or clarify the scope of work, the Right to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this Volume I-Request for Proposal (“**RFP**”) are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Facilitator.

1.1.7. The Facilitator shall receive Bids in accordance with the terms set forth in this RFP and other documents to be provided pursuant to this RFP (collectively the “**Bidding Documents**”), as modified, altered, amended and clarified from time to time by the Facilitator, and all Bids shall be prepared and submitted in accordance with such terms.

- 1.1.8. Under this RFP, a Bidder shall submit only one Bid for the Project. In the event that the evidence provided by the Bidder is found to be unsatisfactory by the Facilitator, such Bids shall be summarily rejected. However, the Project would be awarded to the Bidder subject to it meeting the Eligibility Criteria set out for the Project. For the purpose of identifying the Bidder to implement the Project, the Bids submitted by each Bidder would be evaluated on the basis of the evaluation criteria set out in **Section 3** of this RFP.

## 1.2. Brief Description of Bidding Process

- 1.2.1. The Facilitator has adopted a single stage process (the “**Bidding Process**”) for selection of Bidders for award of the Projects and invites Bids from eligible parties (“**Bidders**”), which expression shall, unless repugnant to the context include the members of the Consortium, for the Project electronically in the unified e-procurement platform of the Government of Karnataka [www.eproc.karnataka.gov.in](http://www.eproc.karnataka.gov.in) (hereinafter referred to as “**E-Procurement Website**”) in accordance with the terms of this RFP. The Facilitator or any of its assignee shall not be held responsible for failure on part of the Bidder to furnish all or any of the documents as part of its Bid through E-Procurement Website or for rejection of Bids by E-Procurement for whatsoever reasons. No correspondence shall be entertained by Facilitator in this regard.
- 1.2.2. The Bidders are requested to submit their Bids in accordance with the Bidding Documents. The Bid shall be valid for a period of not less than 180 (One Hundred and Eighty) days from the date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).
- 1.2.3. The Bidding Documents include the Request for Proposal and draft Project Development and Implementation Agreement for the Project. The Bidding Documents and any addenda issued subsequent to this RFP, but before the Bid Due Date, will be deemed to form part of the Bidding Documents.
- 1.2.4. The Bidders are required to deposit, along with its Bid, an EMD (“**EMD**”) of Rs. 10,50,000/- (**Rupees Ten Lakhs & fifty thousands only**) for the proposed capacity. The EMD shall be refundable as per Clause 2.19.2 except in the case of the Selected Bidder(s) whose EMD shall be retained till it has provided a Performance Security under the Project Development and Implementation Agreement. The EMD shall be paid only through E-Procurement Website, through any one of the following e-Payment options only.
- Online payments:
1. Credit Card
  2. Direct Debit
  3. Internet Banking
- Offline payments:
4. Remittance at the Bank Counter using challan (ICICI Bank only)
  5. NEFT/RTGS

Please note that payment submitted through cheque or demand draft shall not be accepted. For further details regarding e-payment, please refer to E-Procurement Website.

The Bid shall be summarily rejected if it is not accompanied by the EMD.

Note: Facilitator or any of its assignee shall not be held responsible in case of failure on part of the Bidder to furnish the EMD through E-Procurement Website or for rejection of Bids by E-Procurement for whatsoever reasons. No correspondence shall be entertained by Facilitator in this regard. Bid shall be summarily rejected if it is not accompanied by EMD.

1.2.4(A) Bidders would need to submit the following sets of documents as part of their Bid;

- a. “**Key Submissions**” to be submitted through E-Procurement Website as provided in Clauses 2.10.
- b. “**Financial Bid**” to be submitted only through E-Procurement Website.

1.2.4 (B) The evaluation of the Bid submissions would be carried out in the following stages:

- a. The first stage would involve opening and evaluation of the Key Submissions and a test of responsiveness based on the provisions of **Clause 3.2** of the RFP. Those Bids found to be substantially responsive would be evaluated in the second stage. Facilitator reserves the right to seek any document submitted in the E-Procurement Website in the form of hard copy for the purpose of clarification.
- b. In the second stage, the information furnished by the Bidders relating to their eligible experience, Technical Capacity and Financial Capacity (“**Eligibility Criteria**”) would be evaluated as per **Clause 3.3** of the RFP. Bidders who meet the Eligibility Criteria would qualify for their Financial Bid opening.
- c. In the third stage, the Financial Bid of only the Bidders meeting the Eligibility Criteria would be opened in accordance with the provision of **Clause 3.4** and evaluated to identify the Selected Bidder.

1.2.5. Financial Bids are invited for the Project on the basis of discount over the retail tariff of electricity supplied to the Government Buildings (the “**Discount over Retail Tariff**”) provided by the Bidder to each of the Government Buildings for implementation of the Project. The Discount over Retail Tariff at which the Bidder shall supply power to the Government Building owner shall constitute the sole criteria for evaluation of the Financial Bids.

1.2.6. Generally, the Bidder who quotes the highest Discount over Retail Tariff will be selected. The remaining Bidders may be kept in reserve and may be invited to match the Bid submitted by the highest bidder in case such highest bidder withdraws, or is not selected for any reason in accordance with the process specified in this RFP and as explained in **Clause 3.4**. In the event that

the other Bidders withdraw, the Facilitator may, in its discretion, invite fresh Financial Bids from the remaining Bidder or annul the Bidding Process as the case may be.

- 1.2.7. The Developer shall be entitled for the revenues from the Project in accordance with the terms of the Project Development and Implementation Agreement (PDIA/CA).
- 1.2.8. Further, any other details of the process to be followed and the terms thereof are spelt out in this RFP.
- 1.2.9. Any queries (including any discrepancy, ambiguity and error with specific clause number) or request for additional information concerning this RFP shall be submitted in writing through post/courier to the Office of the Managing Director, MANGALURU Smart City Limited. The envelopes shall clearly bear the following identification/ title:

“Queries/Request for Additional Information: RFP for **“Selection of Developer for development of Rooftop Solar PV Systems for Government Buildings under the jurisdiction of MSCL ABD area”**”

### 1.3. Schedule of Bidding Process

The Facilitator shall endeavour to adhere to the following schedule:

**Table 1: Schedule of Bidding Process**

Tender Name	RFP for selection of Developer to Design, Finance, Manufacture, Supply, Install, Test, Commission, Operate and Maintain Rooftop Solar PV Systems for 25 years on Discount over Retail Tariff basis for selected Government Buildings under MSCL ABD area.
Tender Reference Number	PPP/01/MSCL/6/2017-18
Tender Processing Fee	As indicated by the e-Procurement Portal
Date of publishing tender documentation the E-Procurement Website <a href="http://eproc.karnataka.gov.in">http://eproc.karnataka.gov.in</a>	Date: February 15, 2018 Time: 05:00 P.M.
Last date and time for submission of written queries for clarifications	Date: March 15, 2018 Time: 05:00 P.M.
Date, time and venue of Pre-bid Conference	Date: March 9, 2018 Time: 11:00 A.M. Conference Hall, Mangaluru City Corporation
Earnest Money Deposit (EMD)	As per instructions in this tender document
Bid Due Date for submission of Bids in the E-Procurement Website	Date: March 15, 2018 Time: 04:30 P.M
Date and time for opening of the Technical Bid	Date: March 17, 2018 Time: 05:00 P.M

Date and time for opening of the Financial Bid	Will be Intimated to the qualified tenderer
Bid Validity Period	90 days from Bid Due Date
Contact Person and Address for Communication	Executive Engineer, <b>Mangaluru Smart City Ltd (MSCL)</b> Lalbagh, MG Road, Mangaluru-575 003.

## 2. TERMS OF BIDDING

### A. GENERAL

#### 2.1. General terms of Bidding

- 2.1.1. A Bidder is eligible to submit only one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be for the Project.
- 2.1.2. a. The Bidder may be a single business entity ("**Single Business Entity**") or a group of entities (the "**Consortium**"), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be a member of another Consortium. The term Bidder used herein would apply to both a Single Business Entity and a Consortium.
- b. A Single Business Entity, government-owned entity and in case of Consortium, all the entities forming a Consortium, bidding for the Project, shall be a Company incorporated under the Companies Act 1956/2013 or under an equivalent law abroad, if it is a foreign company. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.1.16 below. Unless the context otherwise requires, the terms not defined in this RFP, but defined in the draft Project Development and Implementation Agreement for the Project shall have the meaning assigned thereto in the draft Project Development and Implementation Agreement.
- 2.1.3. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Project Development and Implementation Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under Project Development and Implementation Agreement.
- 2.1.4. The Financial Bid should be furnished in electronic mode only clearly indicating the Discount over Retail Tariff. The Financial Bid must clearly indicate the bid value in Percentages. In the event of any difference between the figures and words, the higher of the two shall be taken into account. Any Financial Bid received in the physical form shall be considered as a non-responsive Bid and would be rejected.
- 2.1.5. The Financial Bid shall consist of Discount over Retail Tariff per unit of energy supplied to the Building owner from the Rooftop Solar PV Power Plant to be quoted by the Bidder as per Clause 2.13.
- 2.1.6. The Bidder shall furnish an EMD as per Clauses 1.2.4 and 2.19 and in accordance with the provisions of this RFP.

- 2.1.7. The validity period of the EMD shall not be less than 180 (One hundred and Eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Facilitator and the Bidder. The EMD shall be refundable as per the Clause 2.19.2 except in the case of the Selected Bidder whose EMD shall be retained till they have provided a Performance Security under the Project Development and Implementation Agreement.
- 2.1.8. The Bidder should submit a Power of Attorney as per the format at **Appendix – II**, authorizing the signatory of the Bidder to commit the Bid.
- 2.1.9. In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at **Appendix – III**.
- 2.1.10. Any condition or qualification or any other stipulation contained in the Bid submission shall render the Bid submission liable to rejection as a non-responsive Bid submission.
- 2.1.11. The Bid submission and all related correspondence and documents in relation to the Bidding Documents shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.
- 2.1.12. The Bidding Documents including this RFP and all attached documents are and shall remain the property of the Facilitator and are transmitted to the Bidders solely for the purpose of preparation and submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Facilitator will not return any Bid or any information provided along therewith.
- 2.1.13. A Bidder shall not have a conflict of interest (the “Conflict of Interest”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Bidding Process, if:
  - a. such Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding in a Bidder or a constituent thereof in the other Bidder(s) (or any of its constituents) is less than 25% of its paid up and subscribed capital; or
  - b. a constituent of such Bidder is also a constituent of another Bidder; or
  - c. such Bidder has the same legal representative for purposes of this Bid as any other Bidder  
or

- d. such Bidder, has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Bid of either or each; or
- e. such Bidder has participated as a consultant to the Facilitator in the preparation of any documents, design or technical specifications of the Project.

2.1.14. This RFP is not transferable.

2.1.15. Any award of Right pursuant to this RFP shall be subject to the terms of Bidding Documents.

2.1.16. The Bidder may at its option, form an appropriate Special Purpose Vehicle under the Companies Act, 2013 (the "SPV<sub>1</sub>") to execute the draft PDIA and implement the Project. In case foreign company bids as a Single Business Entity, it shall, prior to execution of the Project Development and Implementation Agreement, incorporate an appropriate "SPV" to execute the Project Development and Implementation Agreement and implement the Project.

In case the Bidder is a Consortium and does not intend to incorporate an SPV for implementation of the Project, the Lead Member of the Consortium shall execute the Project Development and Implementation Agreement on behalf of the Consortium for implementation of the Project.

In case the Bidder is a Consortium and intends to incorporate an SPV, it shall, prior to execution of Project Development and Implementation Agreement, incorporate as per the terms of the RFP, an appropriate "SPV" to execute the Project Development and Implementation Agreement and implement the Project.

The Consortium shall also comply with the following requirements:

- a. The number of members in a Consortium would be limited to 2 (two);
- b. In case an SPV is proposed to be incorporated, the shareholding commitments of all the members of the Consortium shall be in accordance with Clause 2.2;
- c. The Bid should contain the information required for each member of the Consortium;
- d. Members of the Consortium shall nominate one member as the lead member (the "Lead Member"). The other member of the Consortium shall be termed as "Other Member". The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix - III, signed by all the members of the Consortium;
- e. If an SPV is proposed to be incorporated, the Lead Member shall have an equity share holding of at least 26% (twenty six percent) of the paid up and subscribed equity of the SPV throughout the Agreement Period. Members of the Consortium shall collectively hold at least 51% of subscribed and paid up equity share capital of the SPV at all times until third anniversary of the Commercial Operations Date of the Project.

- f. The Bid should include a brief description of the status of the Consortium members (Lead Member or Other Member), and the respective equity shareholding commitment, if an SPV is proposed to be incorporated;
- g. An individual Bidder cannot at the same time be member of a Consortium applying for qualification. Further, a member of a particular Bidder Consortium cannot be a member of any other Bidder Consortium applying for qualification;
- h. The Parties to the Consortium may establish an SPV and execute the Project Development and Implementation Agreement in respect of the Project awarded to such Consortium. In case the Consortium does not intend to establish an SPV, the Lead Member may execute the Project Development and Implementation Agreement on behalf of the Consortium.
- i. Members of the Consortium shall enter into a binding Joint Bidding Agreement (the “Jt. Bidding Agreement”), as per the format provided in Appendix – IV, for the purpose of submitting Bid and should submit the same along with the Bid. The Jt. Bidding Agreement should be specific to the Project and should fulfill the requirements set out below, failing which the Bid shall be considered non-responsive. The Jt. Bidding Agreement shall, inter alia:
  - i. convey the intent carry out all the responsibilities in terms of the draft PDIA, in case the Project is awarded to the Consortium
  - ii. clearly outline the proposed roles and responsibilities of each member at each stage;
  - iii. commit the minimum equity stake to be held by each member, in case an SPV is proposed to be incorporated;
  - iv. include a statement to the effect that all members of the Consortium shall under the draft PDIA, be liable jointly and severally for all obligations of the Developer in relation to the Project in accordance with the draft PDIA; and
  - v. In case the Consortium does not intend to incorporate an SPV for implementation of the Project, then the Other Member shall have no direct financial claim on the Facilitator.

2.1.17. Any entity which has been barred by the Central/ any State Government, or any entity controlled by them, from participating in any project, and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as member of a Consortium.

2.1.18. A Bidder/ Consortium Member should, in the last three years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, nor been expelled from any project or contract nor have had any contract terminated for breach by such Bidder/ Consortium Member.

2.1.19. The following conditions shall be adhered to while submitting a Bid:

- a. Bidders should upload clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes to Appendices is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- b. information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder or Member named in the Bid and not, unless specifically requested, to other associated companies;
- c. Bidders should demonstrate their Eligibility Criteria in accordance with Clause 3.3 of this RFP.

2.1.20. While qualification is open to persons from any country, the following provisions shall apply:

- a. Where, on the date of the Bid, more than 25% (Twenty Five percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where the Bidder or its Member is controlled by persons resident outside India; or
- b. if at any subsequent stage after the date of the Bid, there is an acquisition of more than 25% (Twenty five percent) of the aggregate issued, subscribed and paid up equity share capital or control (by persons resident outside India) in or of the Bidder or its Member; then the qualification of such Bidder or in the event described in sub-clause (b) above, the continued qualification of the Bidder shall be subject to approval of the Facilitator from national security and public interest perspective. The decision of Facilitator in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Facilitator shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2015, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the Facilitator of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

## **2.2. Shareholding Commitments**

- 2.2.1. In case the Selected Bidder is a Consortium and forms an SPV, Members of the Consortium shall collectively hold at least 51% of subscribed and paid up equity share capital of the SPV at all times until third anniversary of the Commercial Operations Date of the Project. Lead Member shall have

26% shareholding of the SPV throughout the Agreement Period. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the draft PDIA, and a breach hereof shall, notwithstanding anything to the contrary contained in the draft PDIA, be deemed to be a breach of the draft PDIA and dealt with as such thereunder.

- 2.2.2. In case the Selected Bidder is a Single Business Entity and exercises its option to incorporate a SPV, then it shall hold at least 51% (fifty one percent) of subscribed and paid up equity share capital of the SPV, until third anniversary of the Commercial Operations Date of the Project. This condition is applicable only in case the Single Business Entity incorporates an SPV to execute the draft PDIA and implement the Project. In case a foreign company bids as a Single Business Entity, it shall incorporate an appropriate SPV and it shall hold at least 51% (fifty one percent) of subscribed and paid up equity share capital of the SPV, until third anniversary of the Commercial Operations Date of the Project.

### **2.3. Cost of Bidding**

- 2.3.1. The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Facilitator will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

### **2.4. Site visit and verification of information**

- 2.4.1. Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations and any other matter considered relevant by them.
- 2.4.2. It shall be deemed that by submitting a Bid, the Bidder has:
- a. made a complete and careful examination of the Bidding Documents;
  - b. received all relevant information requested from the Facilitator;
  - c. acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents;
  - d. satisfied itself about all matters, things and information necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
  - e. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents shall not be a basis for any claim for

compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Facilitator, or a ground for termination of the Project Development and Implementation Agreement; and

f. agreed to be bound by the undertakings provided by it under and in terms hereof.

2.4.3. The Facilitator shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Facilitator.

## **2.5. Right to accept and to reject any or all Bids**

2.5.1. Notwithstanding anything contained in this RFP, the Facilitator reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

2.5.2. The Facilitator reserves the right to reject any Bid if:

- a. at any time, a material misrepresentation is made or uncovered, or
- b. the Bidder does not provide, within the time specified by the Facilitator, the supplemental information sought by the Facilitator for evaluation of the Bid.

Such misrepresentation/improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium shall be disqualified / rejected. If such disqualification/rejection occurs after the Bids have been opened and one of the Selected Bidder gets disqualified/ rejected, then the Facilitator reserves the right to:

- (i) invite the remaining Bidders in accordance with Clause 3.4; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Facilitator, including annulment of the Bidding Process.

2.5.3. In case it is found at any time before signing of the Project Development and Implementation Agreement or after its execution and during the period of subsistence thereof, including the Right thereby granted by the Facilitator or the individual Government Building owner, that one or more of the qualification conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Developer either by issue of the LOA or entering into the Project Development and Implementation Agreement, and if the Bidder has already been issued the LOA or has entered into the Project Development and Implementation Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Facilitator or the individual Government Building owner to the Bidder, without the Facilitator or the individual

Government Building owner being liable in any manner whatsoever to the Bidder or Developer, as the case may be. In such an event, the Facilitator or the individual Government Building owner shall forfeit and appropriate the EMD or Performance Security, as the case may be, as genuine compensation and damages payable to the Facilitator for, inter alia, time, cost and effort of the Facilitator, without prejudice to any other right or remedy that may be available to the Facilitator.

The Facilitator or the individual Government Building owner reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Failure of the Facilitator or the individual Government Building owner to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any right of the Facilitator or the individual Government Building owner thereunder.

## **B. DOCUMENTS**

### **2.6. Contents of the RFP**

2.6.1. This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.8.

**a. Instructions to Bidders (Volume I)** Section 1. Introduction Section 2. Terms of Bidding

Section 3. Evaluation of Bids

Section 4. Fraud and Corrupt Practices Section 5. Pre-Bid Conference Section 6.

Miscellaneous

#### **Appendices**

**Appendix I - Letter of Bid** Annexes to Appendix I Annex I - Details of Bidder

Annex II A - Technical Criteria of the Bidder

Annex II B - Format for Certificate for Technical Experience Annex III - Financial Capacity of the Bidder

Annex IIIA - Format for certificate from Statutory Auditor/Independent Auditor for Financial Capacity

Annex IV - Statement of Legal Capacity Annex V - Anti Collusion Certificate Annex VI - Anti Blacklisting Affidavit

Annex VII - Declaration of Shareholding Pattern of the Bidder Annex VIII - No Deviation Certificate

Annex IX – Integrity Pact

**Appendix II - Power of Attorney for signing of Bid**

**Appendix III - Power of Attorney for Lead Member of Consortium Appendix IV - Joint Bidding Agreement (Applicable in case of Consortium)**

**b. Draft Project Development and Implementation Agreement (Volume II)**

The draft Project Development and Implementation Agreement provided by the Facilitator as part of the RFP Documents shall be deemed to part of this RFP.

### **2.7. Clarifications**

- 2.7.1. Bidders requiring any clarification on the RFP may notify the Facilitator in writing to the address provided in Clause 1.3. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Facilitator shall endeavour to respond to the queries within 7 (seven) days prior to the Bid Due Date. The responses will be published in the E-Procurement Website without identifying the source of queries.
- 2.7.2. The Facilitator shall endeavour to respond to the queries raised or clarifications sought by the Bidders. However, the Facilitator reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause 2.7.2 shall be taken or read as compelling or requiring the Facilitator to respond to any question or to provide any clarification.
- 2.7.3. The Facilitator may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders through E-Procurement Website. All clarifications and interpretations issued by the Facilitator shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Facilitator or its employees or representatives shall not in any way or manner be binding on the Facilitator.

## **2.8. Amendment of RFP**

- 2.8.1. At any time prior to the Bid Due Date, the Facilitator may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.8.2. Any Addendum thus issued will be published in E-Procurement Website. The published details on the said sources will be binding on the participating Bidders.
- 2.8.3. In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Facilitator may, at its own discretion, extend the Bid Due Date. Information about extension of the deadline will be published in E-Procurement Website vide corrigendum.

## C. PREPARATION AND SUBMISSION OF BIDS

### 2.9. Format and Signing of Bid

- 2.9.1. The Bidder shall provide all the information sought under this RFP in electronic mode. The Facilitator will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable to rejection.
- 2.9.2. All the documents of the Bid sought under this RFP shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid. The Bid shall contain page numbers.
- 2.9.3. All documents of the Bids submitted in electronic mode under this RFP shall be uploaded on E-Procurement Website: [www.eproc.karnataka.gov.in](http://www.eproc.karnataka.gov.in) using digital signature.

### 2.10. Submission of Bid

- 2.10.1. The Bidder shall submit the Bid(s) in the form specified in Clause 2.10.2.
- 2.10.2. The Bidder shall submit following documents in the electronic mode using their digital signatures in the correct slots in E-Procurement Website. The documents accompanying the Bid(s) submission shall include.

#### “Key Submissions”

- a. Scanned copy of the Letter of Bid in the prescribed format provided in Appendix - I along with Annexes and supporting documents
- b. Scanned copy of the Power of Attorney for signing of Bid in the prescribed format (**Appendix – II**);
- c. If applicable, the scanned copy of Power of Attorney for Lead Member of Consortium in the prescribed format (**Appendix – III**);
- d. Scanned copy of Certificate of Incorporation and a copy of Memorandum and Articles of Association of the Bidder;
- e. If applicable, scanned copy of the certificate from the Statutory Auditor/ Independent Auditor for Group Business Entity (format provided as Annex IV of Appendix I);
- f. Copies of Bidder’s or each Consortium Member’s duly audited annual reports and financial statements (balance sheets and profit and loss account) for the financial year 2014-15 to 2016-17.

- g. Scanned copy of the Jt. Bidding Agreement, in case of a Consortium in the format provided in **“Appendix IV”**;
- h. Scanned copy of the Anti-Collusion Certificate in the format provided in Annex V of Appendix –I;
- i. Scanned copy of the Anti-Blacklisting Affidavit in the format provided in Annex VI of Appendix –I;
- j. Annex-IX of Appendix – I – Integrity Pact; and
- k. A copy of the draft Project Development and Implementation Agreement with each page **initialed** by the person signing the Bid in pursuance of the Power of Attorney’s referred to in sub-clause (b) and sub-clause (c) hereinabove. No change whatsoever to the financial and commercial conditions will be made after accepting the Bid.

2.10.3. The Financial Bid of the Bidder shall be submitted only through E-Procurement Website.

2.10.4. If the documents are not uploaded in the manner as instructed in this RFP document, Facilitator assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

### **2.11. Bid Due Date**

2.11.1. Bids through electronic mode in E-Procurement Website should be submitted up to the Bid Due Date in the manner and form as detailed in this RFP.

2.11.2. The Facilitator may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.8m uniformly for all Bidders.

2.11.3. The Facilitator reserves the right to seek original documents for verification of any of the documents or any other additional documents upon opening of the Bidding Documents.

### **2.12. Late Bids**

Bids received by the Facilitator after the specified time on the Bid Due Date for submission shall not be eligible for consideration and shall be summarily rejected.

### **2.13. Financial Bid**

2.13.1. The Financial Bid submission shall be submitted only electronically on the e-procurement website.

2.13.2. The Financial Bid shall consist of **Discount over Retail Tariff** to be quoted in percentage by the Bidder. The Discount over Retail Tariff shall be provided by the Selected Bidder to the Government

Building owner signing the PDIA with the Developer in accordance with this RFP and the provisions of the draft PDIA.

2.13.3. The Project will be awarded to the Bidders on the basis of highest quoted percentage of Discount over Retail Tariff in accordance with the procedure described in the Clause 3.4.

2.13.4. The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.

2.13.5. A tender submitted with an adjustable /conditional quotation will be treated as non-responsive and rejected.

#### **2.14. Withdrawal of Bids**

2.14.1. The Bidder may withdraw its Bid after submission of the Bids electronically prior to Bid Due Date. No Bid can be withdrawn by the Bidder after the Bid Due Date.

2.14.2. Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by Facilitator, shall be disregarded.

2.14.3. No Bid may be withdrawn during the period after Bid Due Date and during Bid Validity Period. Withdrawal of a Bid during this period may result in the forfeiture of its EMD, pursuant to Clause 2.19.5.

#### **2.15. Rejection of Bids**

2.15.1. The Facilitator reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever. It is not obligatory for the Facilitator to accept any Bid or to give any reasons for their decision.

2.15.2. The Facilitator reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

#### **2.16. Validity of Bids**

The Bids shall be valid for a period of not less than 180 (One Hundred and Eighty) days from the Bid Due Date (the “**Bid Validity Period**”). The Bid Validity Period may be extended by mutual consent of the respective Bidders and the Facilitator.

#### **2.17. Confidentiality**

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Facilitator in relation to or matters arising out of, or concerning the Bidding Process. The Facilitator will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the

same in confidence. The Facilitator may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Facilitator.

## **2.18. Correspondence with the Bidder**

The Facilitator shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

## **D. EARNEST MONEY DEPOSIT 2.19. Earnest Money Deposit**

2.19.1. The Bidder shall furnish as part of its Bid, an EMD for an amount and in the manner provided in Clause

2.19.2. Any Bid not accompanied by the EMD shall be rejected by the Employer as non-responsive.

2.19.3. Save and except as provided in Clause 1.2.4, the EMD of unsuccessful Bidders will be returned by the Facilitator, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder and successful completion of the Bidding Process or when the Bidding process is cancelled by the Facilitator. With respect to EMD paid through e-payment, the refund shall be made through electronic transfer. The Bidders shall furnish the information regarding RTGS, Account number etc details as may be required by the Facilitator.

2.19.4. The Selected Bidder's EMD will be returned, without any interest, upon the Bidder signing the Project Development and Implementation Agreement with the individual Government Building owner and furnishing the Performance Security in accordance with the provisions thereof.

2.19.5. The Facilitator shall be entitled to forfeit and appropriate the EMD as genuine compensation / damages to the Facilitator in any of the events specified in Clause 2.19.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Facilitator will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the Bid Validity Period. No relaxation of any kind on EMD shall be given to any Bidder.

2.19.6. The EMD shall be forfeited and appropriated by the Facilitator as genuine compensation and damages payable to the Facilitator for, inter alia, time, cost and effort of the Facilitator without prejudice to any other right or remedy that may be available to the Facilitator hereunder or otherwise, under the following conditions:

- I. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
- II. If a Bidder withdraws its Bid after opening of the Financial Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;

- III. In case the Bidder fails to acknowledge the Letter of Award and/or Allotment Letter, and fails to fulfil conditions of the Letter of Award and/or Allotment Letter.
  
- IV. In the case of Selected Bidder, if it fails within the specified time limit -
  - i) to sign the Project Development and Implementation Agreement and/or
  - ii) to furnish the Performance Security

### 3. EVALUATION OF BIDS

#### 3.1. Opening and Evaluation of Bids

- 3.1.1. The Facilitator shall open the Bids as per the Schedule of Bidding process specified in Clause 1.3, at the place specified in Clause 1.3 and in the presence of the Bidders who choose to attend.
- 3.1.2. The Facilitator will examine and evaluate the Bids in the manner set out in Clause 1.2.4 (B) and in accordance with the provisions set out in this Section 3.
- 3.1.3. To facilitate evaluation of Bids, the Facilitator may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.
- 3.1.4. Any information contained in the Bid shall not in any way be construed as binding on the Facilitator, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it under the Bidding Process on the basis of such information.
- 3.1.5. The Facilitator reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any Bid without assigning any reasons.

#### 3.2. Tests of responsiveness

- 3.2.1. Prior to evaluation of Bids, the Facilitator shall determine whether each Bid is responsive to the requirements of RFP. A Bid shall be considered responsive only if:
  - a. it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.11;
  - b. it is submitted electronically on the E-Procurement Website in the manner stipulated in Clause 2.10.2;
  - c. it is signed and submitted as stipulated in Clause 2.9;
  - d. Scanned copy of the Jt. Bidding Agreement, in case of a Consortium in the format provided in **“Appendix IV”**;
  - e. copy of Certificate of Incorporation and a Copy of Memorandum and Articles of Association of the Bidder;
  - f. Copies of Bidder’s or each Consortium Member’s duly audited annual reports and financial statements (balance sheets and profit and loss account) for the financial year 2013-14, 2014-15 and 2015-16;

- g. it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
- i. it provides information in reasonable detail. (“Reasonable Detail” means that, but for minor deviations, non-material non – conformities, the information can be reviewed and evaluated by Facilitator without communication with the Bidder). Facilitator reserves the right to determine whether the information has been provided in reasonable detail;
- j. A copy of the draft Project Development and Implementation Agreement with each page initialed by the person signing the Bid in pursuance of the Power of Attorney’s referred to in sub-clause (b) and sub-clause (c) hereinabove. No change whatsoever to the financial and commercial conditions will be made after accepting the Bid;
- k. it does not contain any condition or qualification; and
- l. it is not non-responsive in terms hereof.

3.2.2. The Facilitator reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Facilitator in respect of such Bid.

### **3.3. Evaluation of Eligibility Criteria and Technical Bid**

3.3.1. Only those Bidders whose Bids are responsive in accordance with provisions of Clause 3.2.1 above shall be considered for evaluation under this Section 3.

3.3.2. The Bidders’ competence and capacity is proposed to be established by following parameters:

- I. Technical Criteria; and
- II. Financial Criteria.

#### **(a) Technical Criteria**

- I. The bidder should have designed, supplied, erected and commissioned as a Developer or Contractor, Solar Photo Voltaic based grid connected power plant(s) of cumulative installed capacity of 1500 kWp or above in the last three years of which at least 750 kWp should be Grid-Connected Rooftop Solar PV Power Plants. Each Rooftop Solar PV Power plant shall be at least 20 kW or above and should be operational during twelve (12) months period prior to the Bid Due-Date.
- II. The Bidder shall furnish a Performance Certificate issued by the Competent Authority; clearly mentioning that the Bidder has successfully commissioned projects (including scope such as designed, engineered, procured, constructed, installed) and that the plant is operational during twelve (12) months period prior to the Bid Due-Date.

Competent Authority shall mean Client who has issued the work order and for whom the bidder had successfully Designed, Engineered, Procured, Constructed, Installed, Tested, Commissioned solar projects and supplied power during the last financial year

For the purpose of ascertaining qualification, Technical Criteria of group business entity (“**Group Business Entities**”) can also be submitted by the Bidder in addition to its own Technical Criteria.

**(b) Financial Criteria:**

- I. Net Worth: The „Net Worth“ of the Bidder should be at least of Rs. 200 Lakhs for the last Financial Year and shall be profit making organization during the last three financial years i.e. 2014-15, 2015-16 and 2016-17.

In addition, the Application must be accompanied by the Audited Annual Reports of the Bidder for the last three Financial years (FY 2014-2015, FY 2015-2016 and FY 2016-17).

For the purpose of ascertaining qualification, Technical Criteria/Financial Criteria of group business entity (“**Group Business Entities**”) can also be submitted by the Bidder in addition to its own Financial Criteria. The Financial Criteria would be summation of the Financial Criteria of the Bidder and the Group Business Entities. For the purpose of this RFP, a Group Business Entity shall mean-

- (a) A Business Entity, which directly or indirectly holds not less than 26% of voting securities in the Bidder; or
- (b) A Business Entity in which the Bidder directly or indirectly holds not less than 26% of voting securities.

The Group Business Entity shall be a Company incorporated under the Companies Act 1956/2013 or under an equivalent law abroad, if it is a foreign company. The details of Group Business Entities must also be provided as per Annex-I of the RFP.

In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.

**3.4. Selection of Bidder**

3.4.1. The Financial Bid of the Bidders adjudged as responsive in terms of Clause 3.2.1, and who meet the Eligibility Criteria shall be opened.

3.4.2. All the Financial Bids received for the Projects would be opened and the Discount over Retail Tariff offered by the Bidder under the Bid would be determined. The Bidder offering the highest Discount over Retail Tariff will be selected (the “**Selected Bidder**”). In the event where two or more Bidders

have same Discount over Retail Tariff, the Facilitator shall by draw of lots, which shall be conducted, with prior notice, in the presence of the tie Bidders who choose to attend, select the priority of Bidder for selection.

- 3.4.3. In the event that the Selected Bidder withdraws or is not selected for any reason in the first instance, the Facilitator may shortlist the remaining Bidders. The Facilitator may in accordance with the process specified in the RFP, invite the other Bidders to match the Bid submitted by the highest Bidder. In the event that none of the Bidders match the Bid of the highest bidder, the Facilitator may, in its discretion, invite fresh financial Bids from the remaining Bidder or annul the Bid process as the case may be.
- 3.4.4. In the event that the remaining Bidders want to withdraw from the process, the Facilitator may, in its discretion annul the Bidding Process.
- 3.4.5. After selection of Successful Bidder, a letter of Award (LOA) will be issued to Successful Bidder stating that the Facilitator want to appoint the Successful Bidder as the Developer. Bidder shall have to send the acknowledgement for the same within three days. After issuance of Letter of Award (“**LOA**”) by the Facilitator, Successful Bidder shall have to pay Performance Security in the form of Bank Guarantee and in the manner specified in the draft PDIA within 30 days of LOA and sign the PDIA with the individual Government Building owner. Successful Bidder shall not be entitled to seek any deviation from the Draft PDIA, as may have been amended by the Facilitator prior to the Bid submission date.

Failure of the Selected Bidder to comply with the requirements of Clause 3.4.5 shall constitute sufficient grounds for the annulment of the LOA, as the case may be, and forfeiture of the EMD. In such an event, the Facilitator reserves the right to take any such measure as may be deemed fit in the sole discretion of the Facilitator.

### **3.5. Contacts during Bid Evaluation**

Bids shall be deemed to be under consideration from the time immediately after they are opened until such time the Facilitator makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain from contacting by any means, the Facilitator and/ or their employees/ representatives on matters related to the Bids under consideration.

### **3.6. Financial Close**

The Selected Bidder shall achieve Financial closure within 45 (Forty five) days from the signing of this Agreement.

## 4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Project Development and Implementation Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Project Development and Implementation Agreement, the Facilitator shall reject a Bid or withdraw the LOA, as the case may be, 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 in the Bidding Process. In such an event, the Facilitator shall forfeit and appropriate the EMD as genuine compensation and damages payable to the Facilitator towards, inter alia, time, cost and effort of the Facilitator, without prejudice to any other right or remedy that may be available to the Facilitator hereunder or otherwise.
- 4.2 Without prejudice to the right of the Facilitator under Clause 4.1 hereinabove and the right and remedies which the Facilitator may have under the LOA, if a Bidder is found by the Facilitator 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 Bidding Process, or after the issue of the LOA or the execution of the Project Development and Implementation Agreement, such Bidder or Developer shall not be eligible to participate in any tender or RFP issued by the Facilitator or the individual Government Building owner during a period of 2 (two) years from the date such Bidder or Developer, as the case may be, is found by the Facilitator or the individual Government Building owner to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Article 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- a. **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Facilitator who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Project Development and Implementation Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Facilitator, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Project Development and Implementation Agreement, as the case may be, any person in respect of any matter relating to the Package or the LOA or the

Project Development and Implementation Agreement, who at any time has been or is a legal, financial or technical adviser of the Facilitator in relation to any matter concerning the Package;

- b. “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- c. “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- d. “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Facilitator with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e. “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## 5. PRE-BID CONFERENCE

- 5.1 A pre-bid conference of the Bidders shall be convened at the designated date, time and place as mentioned in Clause 1.3. A maximum of three representatives of each Bidder shall be allowed to participate.
- 5.2 During the course of the pre-bid conference, the Bidders will be free to seek clarifications from the Facilitator. The Facilitator shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process. Further, a presentation, to inform the Bidders on submission of Bids on E-Procurement platform would also be arranged by the Facilitator during the Pre-Bid Conference.

## 6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Mangaluru shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Facilitator, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- a. suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - b. consult with any Bidder in order to receive clarification or further information;
  - c. retain any information and/ or evidence submitted to the Facilitator by, on behalf of, and/ or in relation to any Bidder; and/ or
  - d. independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Facilitator, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any right and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all right and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

## APPENDIX – I

### Letter of Bid

(On the Letterhead of the Bidder / Lead Member of the Consortium)

Dated:

To,  
The Managing Director,  
Mangaluru Smart City Limited (MSCL)  
MCC Building, MG Road  
Lal Bagh, Mangaluru-575003  
Dakshinna Kannada, Karnataka.

**Sub: Bid for Selection of Developer to Design, Finance, Manufacture, Supply, Install, Test, Commission, Operate and Maintain Rooftop Solar PV Systems for 25 years on Discount over Retail Tariff basis for selected Government Buildings under MSCL ABD area.**

Dear Sir,

- 1 With reference to your RFP document dated \*\*\*\*\*, I/we, having examined the documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
- 2 I/We intend to participate in the bidding process as single entity/consortium.
- 3 All information provided in the Bid and in the Appendices is true and correct.
- 4 This statement is made for the express purpose of qualifying as a Bidder for the design, finance, construction and operation & maintenance of the aforesaid Project.
- 5 I/ We shall make available to the Facilitator any additional information it may find necessary or require to supplement or authenticate the Bid.
- 6 I/ We acknowledge the right of the Facilitator to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
- 7 We certify that in the last three years, we/ any of the Consortium Members have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
- 8 I/ We declare that:

- a. I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Facilitator.
  - b. I/ We do not have any Conflict of Interest in accordance with Clauses 2.1.13 of the RFP document;
  - c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Facilitator or any other public sector enterprise or any government, Central or State; and
  - d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
  - e. The undertakings given by us along with the Bid in response to the RFP for the Project were true and correct as on date of making the Bid and are also true and correct as on the Bid Due Date and I/We shall continue to abide them.
- 9 I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.5 of the RFP document.
- 10 I/ We believe that we/ our Consortium satisfy(ies) the Financial Capacity and meet(s) the requirements as specified in the RFP document and are/ is qualified to submit a Bid in accordance with the RFP document
- 11 I/ We declare that we/ any Member of the Consortium are/ is not a Member of a/ any other Consortium submitting a Bid for the Project.
- 12 I/ We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
- 13 I/ We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us.
- 14 The Statement of Legal Capacity as per format provided at Annex-IV in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid [and the power of attorney for Lead Member of consortium (strike out if not applicable),] as per format provided at Appendix II and III respectively of the RFP, are also enclosed.

15 I/ We further certify that we are not barred by the Central/ State Government, or any entity controlled by them, from participating in any project, and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as member of a Consortium.

16 I/ We further certify that no investigation by a regulatory authority is pending either against us or against our CEO or any of our Directors/ Managers/ employees.

17 I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Facilitator of the same immediately.

18 In an event the SPV is incorporated by a Consortium;

We acknowledge that all the members of the Consortium shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the third anniversary of the commercial operation date of the Project. Lead Member shall hold 26% shareholding of the SPV throughout the Agreement Period. (Strike out if not applicable)

or, in an event the SPV is incorporated by a Single Business Entity;

I acknowledge that the Selected Bidder shall hold at least 51% (fifty one percent) of subscribed and paid up equity share capital of the SPV to implement the Project, until the third anniversary of the Commercial Operations Date and 26% shareholding of the SPV for the remaining duration of the Agreement Period. (Strike out if not applicable).

19 In case the Bidder is a Consortium and does not intend to incorporate an SPV –  
We \_\_\_\_\_ (Lead Member) of the Consortium acknowledge that we shall enter into the Project Development and Implementation Agreement on behalf of the Consortium for implementation of the Project. Further, we have executed the Joint Bidding Agreement as per the format annexed at Appendix – IV and we agree that all the Consortium members shall be jointly or severally responsible for the implementation of the Project (if awarded). Further, we agree and accept that Other Members shall have no direct financial claim on the Facilitator or the individual Government Building owner.

20 We understand that in case Bidder/any of the members of the Consortium is a company as per Clause 2.1.20, the continued eligibility shall be subject to approval of the Facilitator from national security and public interest perspective. The decision of the Facilitator in this behalf shall be final and conclusive and binding on the Bidder.

21 I/We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Facilitator in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

- 22 In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into a Project Development and Implementation Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
- 23 I/We have studied all the Bidding Documents carefully. We understand that except to the extent as expressly set forth in the draft Project Development and Implementation Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Facilitator or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of Rights.
- 24 The **Discount over Retail Tariff** has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP; draft Project Development and Implementation Agreement, our own estimates of costs and revenues and all the conditions that may affect the Bid.
- 25 I/We offer a EMD of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) for the proposed capacity to the Facilitator in accordance with the RFP Document.
- 26 I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Bid is not opened.
- 27 I/We agree to keep this offer valid for 180 (One Hundred and Eighty) days from the Bid Due Date specified in the RFP.
- 28 I/We agree and undertake to abide by all the terms and conditions of the RFP document.

In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Date: Yours faithfully,  
(Signature of the Authorised signatory)

Place: (Name and designation of the of the Authorised signatory)  
Name and seal of Bidder/Lead Member

## ANNEX-I

### Details of Bidder

#### *(On the Letterhead of the Bidder)*

1.
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
  - (d) Date of incorporation and/ or commencement of business:
  
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in [this/ these Project(s)]:
  
3. Details of individual(s) who will serve as the point of contact/ communication for the Facilitator:
  - (a) Name:
  - (b) Designation:
  - (c) Company:
  - (d) Address:
  - (e) Telephone Number:
  - (f) E-Mail Address:
  - (g) Fax Number:
  
4. Particulars of the Authorised Signatory of the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
  - (e) Fax Number:
  
5. In case of a Consortium:
  - (a) The information above (1-4) should be provided for all the Members of the Consortium.
  - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.1.16 (i) should be attached to the Bid.
  - (c) Information regarding role of each Member should be provided as per table below and the same shall be in accordance with the requirements set out in Clause 2.1.16 of this RFP:

Sr. No	Name of the Member	Status (Mention Lead Percentage of Equity in the SPV or Other Member)

- \* The status of each Member, as may be determined by the Bidder, should be indicated.
  
- 6. A statement by the Bidder and each of the Members of its Consortium (where applicable) disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary).

## ANNEX-II A

### Technical Criteria of the Bidder (Refer to Clauses 1.1.2 and 3.3.2 of the RFP)

#### Projects Undertaken

#### Member Code

Item	Particulars of the Project
Title & nature of the Renewable project	
Type of Renewable energy source (Solar, Wind, Other)	
In case of Solar PV Project, type of Project (Ground Mounted or Rooftop or Other)	
In case of Rooftop Solar PV Project, No. of sites where the Plant was commissioned	
Entity for which the project was developed	
Location	
Installed Capacity (in kWp)	
Project cost (Rs. Lakhs)	
Date of commencement of project	
Date of completion/ commissioning	
Equity shareholding (with period during which equity was held)	
Whether credit is being taken for demonstrating Eligibility Criteria from Group Business Entity (Yes/No)	
Total Units generated from the Project during the last two financial years	2015-16 – MU 2016-17 – MU

#### Instructions:

1. Bidder shall submit Technical Criteria as per Clause 3.3.2.
2. Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by a Group Business Entity specified in Clause 3.3.2.

3. A separate sheet should be filled for each project.
4. Member Code shall indicate NA for Not Applicable in case of Single Business Entity. For member of consortium the following abbreviation are suggested viz., LM for Lead Member and OM for Other Member.

(Signature of the Authorized signatory)

(Name and designation of the of the Authorized signatory)

Name and seal of Bidder

## ANNEX-II B

### Format for Certificate for Technical Experience

Date:

**[Certificate I – In case of experience of the Bidder as developer]**  
*(On the Letterhead of the Statutory Auditor)*

#### TO WHOMSOEVER IT MAY CONCERN

Based on its books of accounts and other published information authenticated by it, this is to certify that ..... (name of the Bidder) is/ was an equity shareholder in ..... (title of the project company) and holds/ held Rs. .... cr. (Rupees ..... crore) of equity (which constitutes .....% of the total paid up and subscribed equity capital as on the date of commissioning) of the project company from ..... (date) to ..... (date). The project was commissioned on ..... (date of commissioning of the project). The Project

\_\_\_\_\_ (name of the Project) has generated \_\_\_\_\_ (units of power) and the \_\_\_\_\_ (name of the Bidder) has operated the plant for during the years from \_\_\_\_\_ to \_\_\_\_\_.

We further certify that the total estimated capital cost of the project is Rs. .... crores and the capacity of the project is \_\_\_kW \_\_\_\_\_ (Wind / Solar PV) Power Plant.

This certificate is being issued to be produced before The Managing Director, MANGALURU Smart City Limited, for the “Rooftop Solar PV Power Plant Projects on the selected Government Buildings under MSCL ABD area”.

Signature and Seal of the  
Statutory Auditor clearly indicating his/her  
Membership number

**[Certificate II – In case of EPC experience of the Bidder]**  
*(On the Letterhead of the Client)*

**TO WHOMSOEVER IT MAY CONCERN**

Based on books of accounts and other published information authenticated, this is to certify that ..... (name of the Bidder) was an EPC Contractor for \_\_\_\_\_ (name of the Project). The project was commissioned on ..... (date of commissioning of the project). The Project has generated \_\_\_\_\_ (units of power) and the plant is satisfactorily working since \_\_\_\_\_.

We further certify that the total estimated capital cost of the project is Rs. .... crores and the capacity of the project is \_\_\_kW \_\_\_\_\_ (Wind / Solar PV) Power Plant.

This certificate is being issued to be produced before \_\_\_\_\_ for the “Rooftop Solar PV Power Plant Projects on the selected Government Buildings under MSCL ABD area”.

[Signature and Seal of the Client]

## ANNEX - III

**Financial Criteria of the Bidder**  
**(On the Letterhead of the Bidder/Lead Member)**  
 (Refer to Clauses 3.3.2 of the RFP)

<b>Bidder type</b>	<b>Member Code</b>	<b>Net Worth as on 31<sup>st</sup> March 2017 (Rs. Crores/US \$)</b>
Single Business Entity Bidder		
Lead Member		
Other Member		
<b>TOTAL</b>		

Name & address of Bidder's Bankers:

1. A Bidder consisting of a Single Business Entity should fill in details as per the row titled Single Business Entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single Business Entity Bidder may be ignored.
2. The Bidder should provide the Financial Capacity based on its own or the Group Business Entity's financial statements. For the purpose of Financial Capacity the Bidder may, in addition to its own net worth, provide net worth of any other Group Business entity. The Financial Capacity would be summation of the net worth of the Bidder and the net worth of the Group Business Entity. In case the Bidder claims the net worth of Group Business Entity, it shall submit a certificate from the Statutory Auditor for claiming financial capability of Group Business Entity in the format set out as Annex- IV
3. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, OM means Other Member.
4. For conversion of US Dollars to Rupees, the rate of conversion shall be exchange rate as on the Bid Due Date as issued by Reserve Bank of India. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date

**Instructions:**

1. The Bidder shall provide a statutory Auditor's Certificate specifying the net-worth and turnover of the Bidder and also specifying the methodology adopted for calculating such net-worth and turnover. In addition to the Statutory Auditor Certificate, the Bidder shall provide the Audited Annual Report / Audited Financial Statement, as the case may be, of the Bidder. (of each member in case of a consortium)

2. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports / Audited Financial Statement as the case may be. The Audited Financial Statement/ Audited Annual Report shall:
  - a. reflect the financial situation of the Bidder and its Group Business Entity where the Bidder is relying on its Group Business Entity's financials;
  - b. be audited by a Statutory Auditor;
  - c. be complete, including all notes to the financial statements; and
  - d. Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
3. Net Worth shall mean
  - a. For company = (Subscribed and Paid-up Capital + Reserves) - (Revaluation reserves + Miscellaneous expenditure not written off) + (Reserves not available for distribution to Equity Shareholders)  
Paid up share capital will include
    - i. Paid– up equity share capital, and
    - ii. Fully, compulsorily and mandatory convertible Preference Shares, and
    - iii. Fully, compulsorily and mandatory convertible Debentures
4. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.1.16 (i) of the RFP document.
5. The Bidder shall also provide the name and address of the Bankers to the Bidder.
6. The Bidder shall provide a Statutory Auditor's certificate specifying the net-worth and turnover of the Bidder and also specifying the methodology adopted for calculating such net worth and turnover (of all members in case of Consortium).

## ANNEX – III A

### Format for Certificate from Statutory Auditor/ Independent Auditor for Financial Criteria of the Bidder

*(On the Letterhead of the Statutory Auditor/Independent Auditor)*

Date:

We have verified the relevant statutory and other records of M/s \_\_\_\_\_ [Name of the Single Business Entity/Consortium Member], and certify that the net worth<sup>3</sup> is Rs \_\_\_\_\_ Crores (Rupees \_\_\_\_\_ Crores) as on March, 31, 2017.

This certificate is being issued to be produced before \_\_\_\_\_ for the **“Selection of Developer to Design, Finance, Manufacture, Supply, Install, Test, Commission, Operate and Maintain Roof Top Solar PV Systems for 25 years on Discount over Retail Tariff basis for selected Government Buildings under MSCL ABD area”**.

Signature and Seal:

Registration number of Statutory Auditor/ Independent Auditor

<sup>3</sup> As derived based on the formula given in Instruction 3 of Annexure – III of this RFP document

## ANNEX - IV

### Statement of Legal Capacity

(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)

Ref.

Date:

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Dear Sir,

I/We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that ..... (insert member"s name) will act as the Lead Member of our consortium.\*

We have agreed that ..... (insert individual"s name) will act as our representative/ will act as the representative of the consortium on its behalf\* and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation)

For and behalf of \_\_\_\_\_ (name of the company)

\*Please strike out whichever is not applicable.

## ANNEX - V

### Anti-Collusion Certificate

*(On the Letterhead of the Bidder)*

We hereby certify and confirm that in the preparation and submission of our Bid for the **Selection of Developer to Design, Finance, Manufacture, Supply, Install, Test, Commission, Operate and Maintain Roof Top Solar PV Systems for 25 years on Discount over Retail Tariff basis for selected Government Buildings under the MSCL ABD area**, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with the instant Bid.

Dated this .....Day of ....., (month/year)

.....

(Name of the Bidder)

.....

(Signature of the Authorised Person)

.....

(Name of the Authorised Person)

Note:

1. On the Letterhead of the Bidder  
To be executed by all members in case of a Consortium

## ANNEX VI

### **Format for Affidavit certifying that the Entity/Promoter/s / Director/s of Entity are not blacklisted (On a Stamp Paper of appropriate value)**

#### **Anti-Blacklisting Affidavit**

I, M/s. .... (Single Business Entity / Lead Member/ Other Member /s), (the names and addresses of the registered office) hereby certify and confirm that we or any of our promoter/s / director/s are not barred by MANGALURU Samrt City Limited/MANGALURU Corporation/ any other entity of Government of Karnataka or blacklisted by any state government or central government / department / agency in India from participating in Project/s, either individually or as member of a Consortium as on the \_\_\_\_\_ (Bid Due Date).

We further confirm that we are aware that our Bid for the Project would be liable for rejection in case any material misrepresentation is made or discovered with regard to the requirements of this RFP at any stage of the Bidding Process or thereafter during the agreement period.

Dated this .....Day of ....., 20....

Name of the Bidder

Signature of the Authorized person

Name of the Authorized Person

*To be executed separately by all the Members in case of Consortium*

## ANNEX –VII

### Declaration of Shareholding Pattern of the Bidder

I/We hereby Declare information of all the entities holding 15% or more shareholding in the Bidder, directly/indirectly. The information includes any compulsorily convertible Preference Shares and/or Debentures, a declaration of the likely shareholding after conversion of such instruments. The information provided herein clearly indicates the foreign shareholding and domestic shareholding in the Bidder (Differentiate between Foreign Shareholding and Domestic Shareholding):

(Information on shareholding)

Sl. No	Name of the Shareholder	Percentage of Shareholding
1.		
2.		
...		

Yours faithfully,  
(Signature of the Authorised signatory)

## ANNEX –VIII

### No Deviation Certificate

*(On the Letterhead of the Bidder)*

To,

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**Dear Sir,**

Sub Bid for the Selection of Developer to Design, Finance, Manufacture, Supply, Install, Test,  
: Commission, Operate and Maintain Roof Top Solar PV Systems for 25 years on Discount over Retail Tariff basis for selected Government Buildings under the MSCL ABD area.

We, \_\_\_\_\_ (Bidder"s name), confirm our acceptance to all terms and conditions mentioned in the RFP document, and all subsequent clarifications, in totality and withdraw all deviations raised by us, if any.

Date:

Yours faithfully,  
(Signature of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory) Name  
and seal of Bidder

## ANNEX –IX

### INTEGRITY PACT

Between

---

hereinafter referred to as

" \_\_\_\_\_ ",

and

\_\_\_\_\_ having its Registered Office at

---

Hereinafter referred to as

**"The Bidder"**

#### **Preamble**

In its efforts to move towards self-sustenance and given the rooftop space available with it, MSCL intends to set up rooftop solar systems on the selected Government Buildings under MSCL ABD area. As part of this initiative, the MSCL hereby invites proposal from reputed bidders to Design, Finance, Manufacture, Supply, Install, Test, Commission, Operate and Maintain Rooftop Solar PV Systems for 25 years on Discount over Retail Tariff basis for selected Government Buildings under MSCL ABD area (hereinafter referred to individually as the **"Project"**) under relevant laws and regulations, and the principles of economical use of resources, and of fairness and transparency in its relations with its Bidders. In order to achieve these goals, MSCL and the above named Bidder enter into this agreement called **'Integrity Pact'** which will form a part of the bid.

It is hereby agreed by and between the parties as under:

#### **Section I - Commitments of MSCL**

- (1) MSCL commits itself to take all measures necessary to prevent corruption and to observe the following principles:
  - a. No employee of MSCL, personally or through family members, will in connection with the bid, or the execution of the contract, demand, take a promise for or accept, for him/herself or third person, any material or other benefit which he/she is not legally entitled to.
  - b. MSCL, during the bidding process treat all Bidder(s) with equity and fairness. MSCL will in particular, before and during the bid process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information

through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution

- c. MSCL will exclude from evaluation of Bids its such employee(s) who has any personnel interest in the Companies/Agencies participating in the Bidding process
- (2) If Managing Director, MSCL obtains information on the conduct of any Employee of MSCL which is a criminal offence under the relevant Anti-Corruption Laws of India, or if there be a substantive suspicion in this regard, he will inform its Chief Vigilance Officer and in addition can initiate disciplinary actions under its Rules.

## **Section II - Commitments of the Bidder**

- (1) The Bidder commits himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution:
- a. The Bidder will not, directly or through any other person or firm, offer, promise or give to MSCL, or to any of MSCL's employees involved in the bid process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange an advantage during the tender process or the execution of the contract.
  - b. The Bidder will not enter into any illegal agreement or understanding, whether formal or informal with other Bidders. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or actions to restrict competitiveness or to introduce cartelization in the bidding process.
  - c. The Bidder will not commit any criminal offence under the relevant Anti- corruption Laws of India; further, the Bidder will not use for illegitimate purposes or for purposes of restrictive competition or personal gain, or pass on to others, any information provided by MSCL as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
  - d. The Bidder of foreign origin shall disclose the name and address of the Agents / representatives in India, if any, involved directly or indirectly in the Bidding. Similarly, the Bidder of Indian Nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the Bidding.
  - e. The Bidder will, when presenting his bid, disclose any and all payments he has made, or committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract and/or with the execution of the contract.
  - f. The Bidder will not misrepresent facts or furnish false/ forged documents/ information in order to influence the bidding process or the execution of the contract to the detriment of MSCL.
- (2) The Bidder will not instigate third persons to commit offences outlined above or be an accessory to such offences.

### **Section III- Disqualification from tender process and exclusion from future Contracts**

- (1) If the Bidder, before contract award, has committed a serious transgression through a violation of Section II or in any other form such as to put his reliability or credibility as Bidder into question, MSCL may disqualify the Bidder from the bidding process or terminate the contract, if already signed, for such reason.
- (2) If the Bidder has committed a serious transgression through a violation of Section II such as to put his reliability or credibility into question, MSCL may after following due procedures also exclude the Bidder from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder and the amount of the damage. The exclusion will be imposed for a minimum of 12 months and maximum of 3 years.
- (3) If the Bidder can prove that he has restored/recouped the damage caused by him and has installed a suitable corruption prevention system, MSCL may revoke the exclusion prematurely.

### **Section IV - Liability for violation of Integrity Pact**

- (1) If MSCL has disqualified the Bidder from the bid process prior to the award under Section III, MSCL may forfeit the EMD under the Bid.
- (2) If MSCL has terminated the contract under Section III, MSCL may forfeit the Performance Security of this contract besides resorting to other remedies under the contract.

### **Section V- Previous Transgression**

- (1) The Bidder shall declare in his Bid that no previous transgressions occurred in the last 3 years with any other Public Sector Undertaking or Government Department that could justify his exclusion from the bid process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the bid process or the contract, if already awarded, can be terminated for such reason.

### **Section VI - Equal treatment to all Bidders**

- (1) MSCL will enter into agreements with identical conditions as this one with all Bidders.
- (2) MSCL will disqualify from the bid process any bidder who does not sign this Pact or violate its provisions.

### **Section VII - Punitive Action against violating Bidders / Contractors**

If MSCL obtains knowledge of conduct of a Bidder or a Contractor or his subcontractor or of an employee or a representative or an associate of a Bidder or Contractor or his Subcontractor which constitutes corruption, or if MSCL has substantive suspicion in this regard, MSCL will inform the Chief Vigilance Officer (CVO) / Competent authority.

### Section VIII - Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Developer after the closure of the Agreement and for all other Bidder's six month after the contract has been awarded.

### Section IX - Other Provisions

- (1) This Pact is subject to Indian Law. Place of performance and jurisdiction is the establishment of MSCL. The Arbitration clause provided in the main bid document / contract shall not be applicable for any issue / dispute arising under Integrity Pact.
- (2) Changes and supplements as well as termination notices need to be made in writing.
- (3) Views expressed or suggestions/submissions made by the parties and the recommendations of the competent authority/CVO in respect of the violation of this pact, shall not be relied on or introduced as evidence in the arbitral or judicial proceedings (arising out of the arbitral proceedings) by the parties in connection with the disputes/differences arising out of the subject contract.
- (4) Should one or several provisions of this pact turn out to be invalid, the remainder of this pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

**(Signature)**

(For & On behalf of \_\_\_\_\_)

(Office Seal)

Name:

Designation:

Witness 1: (Name and Address)

Witness 2: (Name and Address)

**(Signature)**

(For & On behalf of Bidder)

(Office Seal)

Name:

Designation:

Witness 1: (Name and Address)

Witness 2: (Name and Address)

## APPENDIX – II

### Power of Attorney for signing of Bid

(To be executed on Stamp paper of appropriate value)

Know all men by these presents, We, \_\_\_\_\_ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr. / Ms (Name), Son/daughter/wife of \_\_\_\_\_ and presently residing at \_\_\_\_\_, who is [presently employed with us/ the Lead Member of our Consortium and holding the position of \_\_\_\_\_], as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the **Selection of Developer to Design, Finance, Manufacture, Supply, Install, Test, Commission, Operate and Maintain Roof Top Solar PV Systems for 25 years on Discount over Retail Tariff basis for selected Government Buildings under MSCL ABD area**, proposed by MSCL (the “Facilitator”) including but not limited to signing and submission of all applications, Bids and other documents and writings, participate in Bidders' and other conferences and providing information / responses to the Facilitator, representing us in all matters before the Facilitator, signing and execution of all contracts including the draft Project Development and Implementation Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Facilitator in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or till the entering into the Project Development and Implementation Agreement with the respective Government Buildings owner.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, \_\_\_\_\_, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\*\*.

For \_\_\_\_\_  
(Signature)  
(Name, Title and Address)

Witnesses:

1  
2

Accepted

[Notarized]

(Signature)

(Name, Title and Address of the Attorney)

**Notes:**

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Appostille certificate.*

## APPENDIX – III

### **Power of Attorney for Lead Member of Consortium** (To be executed on Stamp paper of appropriate value)

Whereas the \_\_\_\_\_ (“the Facilitator”) has invited Bids from qualified parties for the **“Selection of Developer to Design, Finance, Manufacture, Supply, Install, Test, Commission, Operate and Maintain Roof Top Solar PV Systems for 25 years on Discount over Retail Tariff basis for selected Government Buildings under the MSCL ABD area”** (“the Project”).

Whereas, \_\_\_\_\_, and \_\_\_\_\_ (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s Bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, \_\_\_\_\_ having our registered office at \_\_\_\_\_, and M/s. \_\_\_\_\_, having our registered office at \_\_\_\_\_, [the respective names and addresses of the registered office] (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s \_\_\_\_\_, having its registered office at \_\_\_\_\_, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process and, in the event the Consortium is awarded the Right, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its Bid for the Project, including but not limited to signing and submission of all applications, Bids and other documents and writings, participate in Bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Consortium and generally to represent the Consortium in all its dealings with the Facilitator, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s Bid for the Project and/ or upon award thereof till the Project Development and Implementation Agreement is entered into with the individual Government Building owner.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\*\*.

For \_\_\_\_\_ (Name & Title)

For \_\_\_\_\_ (Name & Title)

For \_\_\_\_\_ (Name & Title)

Witnesses:

1

2

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- ☐ *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- ☐ *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- ☐ *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

## APPENDIX IV

### Joint Bidding Agreement

(To be executed on Stamp paper of appropriate value)

(Refer Clause 2.1.16(i))

THIS JOINT BIDDING AGREEMENT is entered into on this the ..... day of ..... 20...

#### AMONGST

1. {..... } having its registered office at ..... (hereinafter referred to as the “First Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

#### AND

2. {.....} having its registered office at ..... (hereinafter referred to as the “Second Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)}<sup>⊠</sup>

The above mentioned parties of the FIRST and SECOND PART are collectively referred to as the “Parties” and each is individually referred to as a “Party”

#### WHEREAS,

- A. MANGALURU Smart City Limited (MSCL), established under the \_\_\_\_\_, represented by its \_\_\_\_\_ and having its principal offices at \_\_\_\_\_] (hereinafter referred to as “the Facilitator” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the “Bids”) by its Request for Proposal ..... dated .....(the “RFP”) for selection of bidders for “**Design, Finance, Manufacture, Supply, Install, Test, Commission, Operate and Maintain Roof Top Solar PV Systems for 25 years on Discount over Retail Tariff basis for selected Government Buildings under MSCL ABD area**” (the “Project”).
- B. The Parties are interested in jointly bidding for the Project(s) as members of a Consortium and in accordance with the terms and conditions of the RFP document and other documents in respect of the Project.

<sup>⊠</sup> The number of Parties will be shown here, as applicable, subject however to a maximum of 2 (two).

- C. It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

**NOW IT IS HEREBY AGREED as follows:**

## 1. Definitions and Interpretations

In this agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

## 2. Consortium

The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.

The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly.

## 3. Covenants

[The Parties hereby undertake that in the event the Consortium is declared as the selected Bidder and awarded the Project, it shall incorporate a Special Purpose Vehicle (the “SPV”) under the Indian Companies Act 2013 for entering into a PDIA with the individual Government Building owner and for performing all its obligations as the Developer in terms of the PDIA for the Project.]<sup>4</sup>

[The Parties hereby undertake that in the event the Consortium is declared as the selected Bidder and awarded the Project, the Lead Member shall enter into a PDIA with the individual Government Building owner to perform all obligations of the Developer in terms of the PDIA for the Project.

The Other Members of the Consortium viz. \_\_\_\_\_ shall not have any financial claim on the Facilitator or the individual Government Building owner, in case the Project is awarded to the Consortium. The Lead Member shall be the single point of contact, on behalf of the Consortium with the individual Government Building owner on all matters pertaining to the Project. ]<sup>5</sup>

## 4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the

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<sup>4</sup> Applicable in case Consortium intends to establish an SPV

<sup>5</sup> Applicable in case Consortium does not intend to establish an SPV

Consortium during the Bidding Process and until the Financial Close is met under the Project Development and Implementation Agreement when all the obligations of the SPV shall become effective;

b) {Party of the Second Part shall be \_\_\_\_\_ }

**5. Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP document.

**6. Shareholding in the SPV**

The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

The Parties undertake that the members in the consortium shall hold equity as follows:

- 7.** The Members of the Consortium shall collectively hold at least 51% of subscribed and paid up equity share capital of the SPV at all times until third anniversary of the commercial operations date of the Project. Lead Member shall have 26% shareholding of the SPV throughout the Agreement Period.

**8. Representation of the Parties**

Each Party represents to the other Parties as of the date of this agreement that:

- a. Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this agreement;
- b. The execution, delivery and performance by such Party of this agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this agreement for the delegation of power and authority to execute this agreement on behalf of the Consortium Member is annexed to this agreement, and will not, to the best of its knowledge:
  - i. require any consent or approval not already obtained;

- ii. violate any Applicable Law presently in effect and having applicability to it
  - iii. violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - iv. violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this agreement;
- c. This agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d. There is no litigation pending or, to the best of such Party's knowledge, threatened to which it is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this agreement.

## **9. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the expiry/termination of the PDIA, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified or upon return of the Bid Security by the Facilitator to the Bidder, as the case may be.

## **10. Miscellaneous**

This Joint Bidding Agreement shall be governed by laws of India.

The Parties acknowledge and accept that this agreement shall not be amended by the Parties without the prior written consent of the Facilitator or the individual Government Building owner.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED For and on behalf of

LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SECOND PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this agreement for the delegation of power and authority to execute this agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.