

Sample Request for Proposals for Large Scale Power Projects

Volume I Instructions to Bidders

[date]

SAMPLE REQUEST FOR PROPOSALS FOR LARGE SCALE POWER PROJECTS

This document, consisting of four Volumes, along with their Annexes, Schedules, and Exhibits, shall be referred to as the “[date] Request for Proposals Document” or “RFP”.

Contents of RFP

Volume I	—	Instructions to Bidders
Volume II	—	Response Package
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Volume IV	—	Draft Implementation Agreement
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Abbreviations

EIA	Environmental Impact Assessment
EPC	Engineering, Procurement, and Construction
Govt	Government of [COUNTRY]
KWh	Kilowatt-hour
HFO	Heavy fuel oil
IPP	Independent Power Producer
kJ	Kilo-Joule
kVA	Kilovolt-ampere
ME	[Ministry of Energy]
MW	Megawatt
O&M	Operations and Maintenance
PPA	Power Purchase Agreement
RFP	Request for Proposals
SCC	System Control Centre
USD	United States Dollar

**SAMPLE REQUEST FOR PROPOSALS FOR LARGE SCALE POWER PROJECTS
VOLUME I — INSTRUCTIONS TO BIDDERS**

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MODEL REQUEST FOR PROPOSALS FOR LARGE SCALE POWER PROJECTS

VOLUME I — INSTRUCTIONS TO BIDDERS

1. INTRODUCTION

1.1 The Private Power Policy of [COUNTRY]

[The [Ministry of Energy] (ME) has adopted a private power policy for the power sector in [COUNTRY] (the “Private Power Policy”), the primary objective of which is to encourage private sector investment in large scale generation projects in order to increase access to electricity and to meet demand, which is currently suppressed in [COUNTRY].]

[The means of achieving this objective in an efficient and cost effective manner is to develop large scale generation projects through a competitive procurement process in accordance with the provisions of [relevant regulations] and guidelines issued under it (the “Guidelines”) by [relevant ministry]. The procurement process will be based on transparent rules designed to maximise fairness and competition and on standard model documents that minimise transaction and development costs. The model documents will be designed to ensure “bankability” of the project.

A subsidiary objective of encouraging private sector participation in large scale generation projects is to obtain economies of scale and the benefits of competition to reduce the cost of power in [country].

Overall, the goal is to encourage investors to accept reasonable risks that they are well able to manage in terms of efficient financing, construction and operation of large scale power plants that maximise generation availability and flexibility.

1.2 Introduction to [*the Procuring Entity*]

1.3 [Responsible Authority]

The Relevant Authority was established under [legislation] to regulate the power sector. The Guidelines give Responsible Authority a supervisory role in relation to compliance with the rules governing the procurement process for large scale generating plant in addition to its obligations under the [legislation] to issue generation and other licences to participants in the power sector in order to regulate them effectively.

[]

1.4 Private Sector Participation and Financing in Power Generation

In summary, the Private Power Policy aims to achieve the least cost to the consumer and to achieve a higher level of service and supply reliability, and further, to sustain an adequate level of investment in the power sector at all times, by attracting private sector investment.

The Private Power Policy will ensure the realisation of the sector's main objective, which is to meet the demand for electrical energy at all times at least economic, social and environmental cost and thereby promote economic development and social well-being.

The private sector is expected to play a key role in power sector activities. Future power large scale generation projects will be promoted by the private sector. The private sector will be expected to finance such projects through equity or a mixture of equity and debt. Selection of private sector

power developers will be through competitive bidding procedures. In selecting such power generation project developers, the price to be paid (the bid prices) for generation that complies with the technical requirements will be the principal criterion.

The process of power procurement will be transparent and enhance competition. It will create incentives for efficient procurement, protect end consumers, establish transparent and predictable mechanisms for investors to recover their costs and a reasonable rate of return and will facilitate financing and development of the sector.

2. PROJECT DESCRIPTION

2.1 Project Scope

Through a special purpose project company, the successful bidder will finance, design, procure, construct, commission, operate and maintain, a [*technology to be used*] power plant with a capacity of [XX-XX] MW (the “Facility”) with the minimum functional specification, connection point (location) and operating characteristics set forth in Schedule [X] of the draft power purchase agreement (PPA) attached to this request for proposals. The Facility shall be so designed, constructed, commissioned, operated and maintained so as to comply with the PPA which will contain technical standards that must be complied with and incentives to maximize availability. The special purpose project company shall have as its principal objects the financing, design, procurement, construction, commissioning, operation and maintenance of the Facility.

The type of equipment proposed for the project shall have a proven track record. The project company, its shareholders, its and their parents and affiliates and proposed contractors shall also have to have demonstrated success in similar projects in other countries.

2.2 The Role of the Power Station and Station Load Profile

...[XX insert description]

2.3 Transmission Connection Point

...[XX insert details]

2.4 Fuel (if applicable)

...[XX insert details]

[The project company shall obtain fuel for the Facility from [X] and shall in this regard enter into a Fuel Supply Agreement (FSA) with [X] [in the form attached] [in such form as the [*Procuring Entity*] shall approve].

[The PPA will contain an obligation to procure fuel for the Facility as economically as possible.]

[The project company shall be required to store sufficient fuel at the site to allow at least [X] days continuous operation of the Facility at full load.]

[NOTE: For hydro plant, some special conditions will be necessary, for example, if the project includes a reservoir that allows water regulation to decide reservoir operation to allocate energy during the day, or week or month(s).]

2.5 Site Location and Access

The proposed site for the Facility lies within [X]; [*description of the location, topography and other elements of the site*].

This RFP includes a map which shows the site in relation to the adjacent areas and land users.

The land area for this project will be leased from [X] at [zero cost] [insert price/cost] to the project company. [*Description of rights and obligations regarding this land.*]

2.6 Site Utilities

...[XX Insert details]

2.7 Transportation

The Bidder is responsible for determining to its satisfaction all issues arising out of the transport of plant, equipment and materials to the site of the Facility.

2.8 Environmental Considerations

The Bidder is required, within the scope of the project, to assess all the environmental impacts of the proposed Facility. The project company shall prepare an initial environmental impact assessment (EIA) study in accordance with the applicable legislation.

2.9 Permitting Procedures and Requirements

The successful Bidder will be responsible for investigating the need for and obtaining all necessary consents, permits, licences and approvals for design, construction, operation and maintenance of the power station and equally in meeting all appropriate legislation and regulations.

A list of such requirements, offered without commitment by [*the Procuring Entity*], is included as Annex IV of this Volume 1 of the RFP

3. PROJECT AGREEMENTS

3.1 Introduction

The Project Agreements are the draft PPA set out in Volume III of this RFP, the draft Implementation Agreement (IA) set out in Volume IV of this RFP and the draft FSA (if applicable) [*note: relevant for tolling arrangements*] set out in Volume V of this RFP. They serve to define the project and bids should be made on the basis of these Project Agreements. They are intended to represent the basis of a financeable project and have an allocation of risk to this end. Bidders should study the Project Agreements in detail when formulating their bid proposals. No significant variation of these drafts may be proposed by Bidders in making their proposals although Bidders may propose exceptions and changes which do not have any substantial effect, including the justification that such changes do not have a substantial effect.. The modification will be rejected if it has a substantial effect. The [*Procuring Entity*] will analyse any modification presented by the bidder and its justification, and analyse whether or not such changes have a substantial effect. In the following paragraphs of this Section 3, the general features of the Project Agreements are explained. The explanations are not exhaustive and Bidders cannot rely on the explanations in precedence over the Project Agreements.

3.2 The Power Purchase Agreement

The Power Purchase Agreement is set out in Volume III of this RFP. It is between [*the Procuring Entity*] and the project company and relates to the whole of the capacity and electrical output of the Facility. Its general features are:

- A two part capacity and energy charge designed to ensure that the IPP is indifferent as to whether or not the Facility is dispatched;
- Incentives to maximise availability during the year or specified periods in the year;
- Operations and maintenance obligations that support system operations and continuity of service;
- Force majeure, termination and change in law provisions that are “bankable”; and
- Contract buy-out provisions that fully compensate the project company.

3.3 The Implementation Agreement

The Implementation Agreement is set out in Volume IV of this RFP. It is between [*the Ministry of Energy*] and the project company and relates to the support given by the Govt and its agencies to the project. Its general features are:

- Requirement for provision of the development security required under the [Foreign Investment Law] by the project company;
- Support for the project company in obtaining all necessary governmental approvals and investment incentives;
- Protection against expropriation, compulsory acquisition, discriminatory action and governmental intervention in the project; and
- [Assistance in site acquisition [and] transportation of equipment, materials and fuel];
- [Provision of guarantees by the [Finance Ministry] or [Government]]

3.4 The Fuel Supply Agreement

The Fuel Supply Agreement is set out in Volume V of this RFP. It is between [*the fuel supplier*] and the project company and relates to the supply of fuel to the Facility. Its general features are:

- Fuel specification.
- Nominations of fuel requirements to be given to [*the fuel supplier*] and a firm notice of the weekly fuel requirements in any month at least [•] months in advance. The project company may revise its nomination in respect of fuel to be supplied in any week once and no later than [•] days prior to the commencement of the relevant week.
- Fuel in storage sufficient for not less than [•] days of continuous generation by the Facility at full load.

- Fuel supplied to conform to agreed specifications (merchantable quality, free of waxes and contaminants, reasonable limits of mineral contents, minimum energy value).
- Fuel testing procedures to ensure that the fuel complies with the specification.
- Fuel pricing and indexation.
- Fuel measurement.

4. INSTRUCTIONS TO BIDDERS

4.1 Introduction

A project committee will be established by *[the Procuring Entity]* to guide the project through to the execution of the Project Agreements. A diagram showing the roles, responsibilities and sequence of events is set out in the Private Power Policy Paper issued by [Ministry].

The bidding process assumes the following timetable:

- Pre-Bid Meeting [date]
- Prequalification [date]
- Closing Date for bid proposals [date]
- Evaluation of technical bid proposals, clarification of technical bid proposals and selection of bidders that fulfil technical requirements [date]
- Evaluation of financial bid proposals and selection of successful Bidder [date(s)]

[Note: There must be two dates if the auction has three stages with a first price bid and a second price bid (see Guidelines).]

- [Signature of Letter of Intent with successful Bidder No later than [date]]
- Signature of Project Agreements No later than [date]
- Financial Close No later than [date]

For the purpose of this RFP generally a Bidder is anyone who has purchased this RFP. Paragraph 4.6 explains how Bidders may be constituted to make a bid proposal. Bids will be evaluated in three stages as set out in Section 5 to this Volume 1 of the RFP, with the successful Bidder being invited to enter into a Letter of Intent with [X and X] to finalise the Project Agreements following the third stage.

4.2 Requests for Clarifications

All communications in relation to this RFP shall be in the English language. Bidders are encouraged to ask for clarification of information in the RFP, by submission of written clarification requests to:

[Entity, address and contact details]

with a copy given on the same day by the same means to:

*[Responsible Ministry
Address and contact details]*

The *[Procuring Entity]* will reply to such requests for clarification by an Additional Notification within *[ten]* business days from the date of their receipt. Additional Notifications shall be submitted to all Bidders without mentioning the source of the request. Requests for clarification must be received no later than *[45]* days prior to the Closing Date for the bids (which is *[time]* on *[date]*), and no additional notification shall be made with respect to requests received later.

4.3 Pre-Bid Meeting

[The Procuring Entity] will hold a pre-bid meeting on *[date or dates]* at *[venue]* commencing at *[time and date]*. As a part of this meeting, a site inspection will be organised for the benefit of the Bidders (from *[time]* until *[time]* on *[date]*). At least one senior representative of each Bidder is expected (but is not obliged) to attend this meeting and the site visit. Bidders are asked to confirm in writing to *[the Procuring Entity]* at least two weeks before such meeting their attendance, including the identity and number of attendees. Bidders may send a maximum of three attendees to the meeting and the site visit.

The purpose of the pre-bid meeting will be to clarify and answer questions on any technical or implementation matter that may be raised at that stage in relation to this RFP. Bidders are requested to formally submit any such questions by way of a request for clarification under paragraph 4.2, not later than *[5]* days before the pre-bid meeting. Bidders may nevertheless raise additional requests for clarification without going through the formal process under paragraph 4.2 in relation to the technical and implementation aspects of the project at the meeting. No requests for clarification under paragraph 4.2 or otherwise will be taken in relation to the pre-bid meeting on any decision of *[the Procuring Entity or Responsible Ministry]* as to the fundamental structure of the project. Further, *[the Procuring Entity or Responsible Ministry]* may reserve their position on requests for clarification made at the pre-bid meeting.

The minutes of the pre-bid meeting and a summary of the requests for clarification relating to or arising at the pre-bid meeting (without disclosing the Bidder's identity), together with answers to those requests (by way of additional notification), will be transmitted without undue delay to all Bidders. In the case of any discrepancy between any answer given at the pre-bid meeting and that confirmed in writing the answer given in writing by way of an additional notification shall prevail. Any modification to this RFP or the Project Agreements, which may become necessary on the basis of any request for clarification raised in relation to the pre-bid meeting, will be made by the *[Procuring Entity]* exclusively through the issue of an addendum to all Bidders under paragraph 4.5, and not through the minutes of the meeting.

Non-attendance at the pre-bid meeting or a decision not to raise any requests for clarification in relation to the pre-bid meeting will not be a cause for disqualification of the Bidder. Bidders who purchase this RFP after the date of the pre-bid meeting will also receive copies of the minutes, the

summary of requests for clarification, corresponding additional notifications, surveys and investigations and any other written information given to Bidders at the pre-bid meeting.

4.4 Pre-Bid Site Visit

Bidders are expected to visit the project site on the occasion of the pre-bid meeting (under the escort of [*the Procuring Entity or Responsible Ministry*]) and shall ascertain its nature and location, and assess the general conditions of the site which may affect the total project cost. [*The Procuring Entity*] shall extend reasonable assistance and co-operation in showing the project site to the Bidders. However, [*the Procuring Entity*] shall not be responsible for any misunderstanding or misrepresentations concerning the project site or information given by any of its officers or agents in the case of the site visit. If a Bidder makes a request for clarification during a site visit this will be dealt with in accordance with paragraph 4.3.

Additional visits to view the site may be arranged by agreement with [*the Procuring Entity*]. However, Bidders are asked to note that the time available for such visits will depend on the availability of [*the Procuring Entity*]'s staff resources and the number of requests for such visits from Bidders. Such additional visits will only be arranged between the hours of [*time*] and [*time*] and will not be possible at weekends and on public holidays. Further, Bidders may not put questions to [*the Procuring Entity*] concerning the project during such additional visits. [*The Procuring Entity*] shall be under no obligation to answer any questions raised during such additional visits and take no responsibility for any misunderstanding or misrepresentation concerning the project site or information given by any of its officers or agents at such a site visit.

All visits to [*the Procuring Entity*] sites and installations are at the Bidders' own cost and risk.

4.5 Amendments of the RFP and Project Documents

[*The Procuring Entity*] reserves the right to amend, revise or modify this RFP and the Project Agreements. Any amendments, revisions or modifications, of this RFP and the Project Agreements shall be made through the issuance of addenda and a copy of each addendum shall be sent to all Bidders on the same date by same means. The RFP and the Project Agreements may be so amended, revised, or modified by way of such addenda up to 30 days before the Closing Date.

If any addendum is of a nature which may require substantial changes in the proposals, the Closing Date will be extended by such addendum and by a number of days as in the reasonable opinion of [*the Procuring Entity*] shall enable all Bidders to review the project risks and to reconsider or revise their bid proposals.

4.6 Bidders

Bidders who wish to submit a bid proposal may do so either as an individual, a single corporation, a prospective project company, an incorporated joint venture company, an un-incorporated joint venture or any other form of partnership.

Where Bidders submit a bid proposal as a prospective project company or an incorporated joint venture company then the shareholders in that company shall be treated as Bidders for the purposes of this RFP. Where Bidders submit a bid proposal as an un-incorporated joint venture or any other form of partnership, then the participants in such a bid proposal identified as intending to take equity in the project shall be treated as Bidders for the purposes of this RFP. In either case though only one bid proposal needs to be made by the company or other joint venture or partnership. However it should be noted:

- shareholders of a prospective project company or an incorporated joint venture, or who are participants in an un-incorporated joint venture or other form of partnership (intending to subscribe equity to the project), in any one bid proposal may not appear in another bid proposal in any such role;
- nevertheless, any such shareholder or participant or an affiliate of any such shareholder or participant may appear in another bid proposal on the basis that it would be a contractor to the project company taking no equity in the project; and
- shareholders in a prospective project company or incorporated joint venture or participants in an un-incorporated joint venture or other form of partnership (intending to subscribe equity to the project), in a successful bid proposal and who are party to the Letter of Intent may not dispose of their interest or withdraw in relation to the bid proposal prior to execution of the Project Agreements.

In the case of a bid proposal by a proposed project company or an incorporated joint venture company, then the company shall provide its constitutional documents and details of shareholdings and the role of each shareholder in relation to the project. In the case of an un-incorporated joint venture or other partnership arrangement, the participants shall provide in the bid proposal details of role of each member in relation to the project, their intended equity commitment and the organisation of the venture and a memorandum amongst the members demonstrating their commitment to the project and the equity contributions that may be required of them. If an un-incorporated joint venture or other form of partnership agreement is adopted, one of the members shall be nominated as the leading member (who, it is intended, shall have a substantial, if not majority equity shareholding in the prospective project company) as evidenced by the written authority of the other participants. The leading member will be responsible for all communications with and for the Bidder.

The project shall be undertaken by a special purpose company incorporated in [COUNTRY]. Where the bid proposal is made by a prospective project company or a joint venture (whether or not incorporated) or other form of partnership, then the lead member shall submit an undertaking satisfactory to [*the Procuring Entity*] that it will maintain not less than [15] % of the required equity for the project for a period of not less than 5 years from the Operation Date. In the case of a bid proposal made by a Bidder acting as an individual not bidding in a joint venture or other form of partnership, the Bidder shall submit an undertaking satisfactory to [*the Procuring Entity*] that it will maintain not less than [15]% of the required project equity for a period of not less than [5] years from the Operation Date. For these purposes the Operation Date is as established in the PPA and for the purposes of the PPA any such Bidder shall be the Identified (Lead) Shareholder.

Further, in the case of a bid proposal by a prospective project company or a joint venture (whether or not incorporated) or other form of partnership there must be at least one shareholder/member who has demonstrated experience of reaching financial close (on a project finance basis), in power or other infrastructure projects in the last 5 years, where the total project cost exceeded [US\$X million]. In the case of a bid proposal by a Bidder acting as an individual not bidding in a joint venture or other forms of partnership, the Bidder shall demonstrate experience of reaching financial close (on a project finance basis), in a power or other infrastructure projects in the last [5] years, where the project cost exceeded [US\$X million]. Any such member (if different from the lead member above), shall submit an undertaking satisfactory to [*the Procuring Entity*] that it will maintain not less than [10]% of the required equity for the project for at least [5] years from the Operation Date under the PPA. For the purposes of the PPA such a member shall be the identified (project) shareholder.

The bid proposal shall state the proposed arrangements for the financing, design, procurement, construction, commissioning, operation and maintenance in respect of the project. Further, in the bid proposal the Bidder or each Bidder making such proposal must show that it has the technical capability, experience and expertise (either directly, in combination or through proposed contractors) to finance, design, procure, construct, commission, operate and maintain the Facility. The proposal shall contain details of the arrangements that are capable of satisfying [*the Procuring Entity*] that the member(s) and/or proposed contractors have the technical capability for the operation and maintenance of the project and will maintain that participation or relationship with the project for at least 5 years from the Commercial Operation Date under the PPA.

Bidders shall also to meet the following criteria:

- No Bidder or its parent/affiliate companies shall have been suspended or black listed by [*the Procuring Entity or Responsible Ministry*], whether as an individual contractor or corporation or as a member of a joint venture.
- No Bidder or its parent/affiliate companies shall have a poor record of unsatisfactory past performance, particularly non-compliance with contract terms, plans and specifications; nor any record of defective workmanship and materials supplied, abandonment of work or similar deficiencies.
- No Bidder or its parent/affiliate companies shall have inordinate overdue debts toward the insurance, tax or customs authorities of [COUNTRY] or their country of incorporation.
- No Bidder or its parent/affiliate companies shall have a record of criminal or civil cases in court pending or finally decided against them involving non-payment of tax, duty or other undertaking with [*the Procuring Entity*] or any of its sub-divisions, or instrumentalities including government-owned or controlled corporations, both local and foreign.

4.7 Bid Proposals

4.7.1 Proposals to be Prepared in Compliance with RFP

All bid proposals (Proposals) made by the Bidders must be submitted in strict compliance with this RFP or shall otherwise be disqualified. Volume 2 contains more detail as to the format and contents of Proposals to guide Bidders and to aid comparability.

4.7.2 Making of Proposals

Proposals shall be prepared in the English language in two parts, firstly, a Technical and Commercial Proposal, and secondly a Financial Proposal. Bidders shall submit one original and three copies of the Technical and Commercial Proposal and one original of the Financial Proposal in accordance with paragraphs 4.8 and 4.9 accompanied by a Proposal Security given in accordance with paragraph 4.10.1.

In the case of the Technical and Commercial Proposal where there is any discrepancy between the original and a copy the original shall prevail.

The letters comprised in the Proposal required under Volume 2 of this RFP shall be complete and without modification other than inclusion of dates, references to addenda, signatories and addresses. Such letters shall be duly signed. Each sheet of the proposal forms submitted under cover of the proposal letters required under Volume 2 of this RFP shall conform to the forms set out in Volume 2 of this RFP, and shall be initialled by the signatories (if more than one), to the

proposal letters. Signatures and initials shall be in black indelible ink. Proposals shall be in typescript using black ink and be suitable for copying. No erasures, interlineations or alterations are permitted other than those necessary to correct errors made by the Bidder and provided that hand written erasures, interlineations or alterations are kept to a minimum they may be hand written in black ink. Each erasure or change shall be dated and initialled by the Proposal signatories (if more than one). Any interlineation or alteration which is not dated and initialled by the person(s) signing the Proposal or is not legible, will not be taken into consideration. Appendices to the proposal forms included by the Bidder shall be clearly divided and identified and each page initialled by the person(s) signing the Proposal.

Technical data as well as dimensions and measurements on the drawings submitted with the Proposal shall be quoted in [X] units.

4.7.3 Amending or Withdrawing Proposals Prior to Closing Date

At any time prior to the Closing Date, a Bidder may amend its Proposal whether in respect of an extension given under paragraph 4.5 or otherwise. If a Bidder wishes to amend a Proposal it has submitted it shall submit to [*the Procuring Entity*] a new Proposal prior to the Closing Date incorporating such amendment(s). On receipt of the new Proposal, [*the Procuring Entity*] shall return to the Bidder its prior unopened Proposal (including Proposal Security), if the Bidder so requests in writing. At any time prior to the Closing Date the Bidder may request in writing that its unopened Proposal be withdrawn, and provided such request is received prior to the Closing Date such Proposal (including Proposal Security), shall be returned to the Bidder.

4.7.4 Cost and Risk in Preparation of Proposals

Bidders shall bear all costs incurred by them associated with the preparation and submission of their Proposal and [*the Procuring Entity*] will in no case be responsible or liable for those costs, including but not limited to those of professional advisors. Neither [*the Procuring Entity, Responsible Ministry*] or any representative of these parties shall have any liability whatsoever to any Bidder in respect of any decision taken by the Bidder in relation to its bid whether or not in reliance on any matter supplied by [*the Procuring Entity, Responsible Ministry*] or any of their representatives.

4.7.5 Exceptions to Project Agreements

Exceptions to or changes from the conditions given in the Project Agreements are not encouraged. However, if there are any exceptions or changes proposed by the Bidder which do not have a substantial effect on the Project Agreements, such exceptions may be included in the Proposal. Any exceptions or changes claimed by the Bidder which are not clearly stated and justified or which have a substantial effect on the Project Agreements shall not be taken as part of the Bidders proposal and the Bidder may not rely on them.

4.7.6 Bidder's Acknowledgement

The submission of a Proposal will be construed as acknowledgment by the Bidder that it has satisfied itself as to the nature and location of the works, general and local conditions, equipment to be furnished or installed, and other matters which may affect the performance of the work under the Project Agreements.

The Bidder acknowledges by submitting a Proposal that it has carefully examined this RFP and is fully familiar with the Project Agreements. The Bidder also acknowledges that it has familiarized itself with the laws and regulations of [COUNTRY] including labour, environmental and financial laws and that complying with these laws and regulations will not affect completion of the works under the Project Agreements. The Bidder accepts that no verbal agreement or conversation with

any representative of [*the Procuring Entity*], shall affect or modify any of the terms or obligations contained in the Project Agreements.

Bidders shall obtain or arrive at their own interpretations or conclusions from the information contained within this RFP and the Project Agreements, and [*the Procuring Entity*] shall have no responsibility with regard to such interpretations or conclusions.

The failure or omission of any Bidder to receive or examine any form or document, or to visit the site of the prospective Facility and acquaint itself with conditions existing there shall in no way relieve it from any obligations with regard to its proposal and the contingent Project Agreement.

4.8 Preparation of the Technical and Commercial Proposal

The Technical and Commercial Proposal to be completed by the Bidder must demonstrate a firm knowledge of the project requirements and an understanding of the requisite tasks to be carried out by the project company, as set out in the PPA and particularly in Schedule [X] of the PPA (*Minimum Functional Specification*). The Technical and Commercial Proposal shall be provided under cover of the technical and commercial proposal letter [and in the prescribed format given in Volume 2 of this RFP]. Failure to provide this information in full shall be a cause to reject the Proposal on grounds of non-conformity. To the extent that proposal forms do not cover information requested of the Bidders in this RFP (except information which is the subject of the Financial Proposal), then Bidders shall append such information in the Technical and Commercial Proposal.

Bidders are required to enclose Technical and Commercial Proposal in a sealed envelope, separate from the Financial Proposal, with identification marks as indicated in Clause 4.11 below. In addition to any relevant information (except information which is the subject of the Financial Proposal), required elsewhere in this RFP, the Technical and Commercial proposal should also include the following information.

4.8.1 Project Technical Details

Bidders shall provide general technical information, with technical literature where available, to enable [*the Procuring Entity*] to understand the operation of the Facility and its peripherals/auxiliaries. The following information shall be provided as part of the Technical and Commercial Proposal:

- ...
- ...

4.8.2 Availability

The project company will contract under the PPA to provide a [*plant availability targets*] (taking account of planned maintenance outages and forced outages). The Bidder shall give an initial target availability for each month/year as required in Volume 2 of this RFP, which shall be not lower than the stated minimum target.

4.8.3 Environmental Implications

A description is required of the potential environmental impact of the Facility and the environmental protection measures to be applied. The project company will be required to carry out an Initial Environmental Examination/Environmental Impact Assessment and will be obliged

to comply with the applicable environmental standards during both construction and operation of the Facility.

Bidders shall provide full information in relation to the quantities and types of all liquid and solid effluents including sewage that will be produced at the site, and give details of the methods to be employed for neutralizing these effluents. The proposed methods for disposal of all liquid and solid wastes from the power station including any fuel sludge/wastes should be clearly outlined in the Proposal.

Bidders shall provide all information related to quantities and rates of emissions of pollutants, including the types of pollutants, and details of the proposed methods of pollution control and types of pollution control equipment and other mitigatory measures. Guaranteed emission rates should also be provided.

4.8.4 Domestic Participation

[Bidders are asked to provide information of the extent to which they plan to employ local contractors during the construction and/or operational stages of the project.]

4.8.5 Other Documents

Bidders are invited to submit any other documents which they consider important to demonstrate their ability to efficiently undertake the work to be contracted.

IMPORTANT: Any other document containing information related to the proposed Capacity Charge and Energy Charge or any other information/data related to pricing shall NOT be enclosed with the Technical and Commercial Proposal

4.9 Financial Proposal

Bidders shall submit their Financial Proposal on the basis of the Capacity Charge/Energy Charge tariff structure specified in the PPA and the instructions provided in this RFP. Bidders shall submit the financial proposal letter, duly completed proposal forms in the prescribed format given in Volume 2 of this RFP and any additional documents required for the Financial Proposal in this RFP. Failure to provide such information in full shall be a cause to reject the Proposal on the basis of non-conformity.

In making the Financial Proposal, Bidders are required to furnish a cash flow statement for the full Term of the Power Purchase Agreement. This should indicate all sources and uses of funds.

Bidders are required to enclose its Financial Proposal in a sealed envelope, separate from the Technical and Commercial Proposal, with identification marks as indicated in Clause 4.11 below. The Financial Proposal should include the following information:

4.9.1 Project Cost

The capital element of the tariff is intended to cover the projected service and repayment of all project debt and to provide a reasonable return on invested equity. Bidders should quantify the estimation of the following cost components:

- ...
- ...

Bidders shall include the total project cost mentioned above in the financial template for the purpose of calculating projected cash flow statement as requested in Volume 2.

4.9.2 Financing Plan

Bidders shall provide a detailed Financing Plan for the Project. The Financing Plan should clearly indicate the equity component and its break up to show the commitments by each of the equity participants. Bidders shall also furnish details of the expected loan capital of the project, giving full details of the amount of loan each lending institution is prepared to commit, subject to their credit committee approval, their debt service plans (interest moratorium, capital moratorium, if any, terms of repayment etc.), the interest rates and details of other charges, if any, should be indicated clearly. The Financing Plan should not only show the division between shareholder equity and debt at the date of execution of the PPA, but should also indicate its evolution during the project's construction and operational periods. The expected debt finance for the project should be committed only in [US\$] terms and at fixed interest rates. Project sponsors may obtain debt finance in any other currencies other than US dollars, provided that the currency exposure will not be passed on to the power purchaser.

4.9.3 Tariff and Supporting Cost Data

In the Financial Proposal, Bidders shall indicate the proposed base rates of the applicable Capacity Charge and Energy Charge components in the relevant currency. They must also indicate that they accept the split of fixed costs between the Capacity Charge and the Energy Charge and the profit element under the fixed costs component [within a range specified by the *Procurement Entity*.]

Bidders may be required to justify their tariff calculations with cost data.

The contracted Capacity and Energy Charges shall be paid in accordance with the terms and conditions of the PPA. All payments for the purchase of capacity and energy in respect of this project will be calculated in [US Dollars] and will be paid [US Dollars].

4.10 Performance Security Requirements

4.10.1 Proposal Security

A Proposal Security to the value of [US Dollars] payable in [COUNTRY] shall be furnished to [*the Procuring Entity*] with each Proposal. This security shall be in the form of a Bank Guarantee issued by a reputable bank operating in [COUNTRY], in the form provided in RFP Volume 1, Annex II. Any Proposal not secured in accordance with this paragraph will be rejected. The Proposal Security shall be valid for not less than [one hundred and fifty (150)] calendar days from the Closing Date.

The Proposal Securities of the unsuccessful Bidders shall be returned on the earlier of the expiry dates of the Proposal Securities or the signature date of the Letter of Intent with the successful Bidder.

The Proposal Security of the successful Bidder will be discharged or returned, or both, without interest, upon the Bidder's signature of the Letter of Intent pursuant to Section 5, and furnishing of the Performance Security.

The Proposal Security may be forfeited if a Bidder withdraws its Proposal during the period of the Proposal Validity specified by the Bidder in the Proposal Forms. In the case of a successful Bidder, the Proposal Security may be forfeited if it fails to:

- a) sign acceptance of the Letter of Intent in accordance with Section 5, herein or
- b) furnish the Performance Security in accordance with paragraph 4.10.2.

4.10.2 Performance Security

Within five [5] days of the receipt of notice from [*the Procuring Entity*] that the bid has been successful, but prior to or concurrent with the signing of the Letter of Intent, [*the Procuring Entity*] will be furnished with a Performance Security in respect of the Proposal to the value of [X], in accordance with this section and Section 5 hereof, in the Performance Security Form provided in the RFP Volume 1 Annex III or in another form acceptable to [*the Procuring Entity*].

The Performance Security may be forfeited in the event of the successful Bidder's failure to comply with the requirements of paragraph 4.6 (where a shareholder or participant disposes of or withdraws its interest prior to execution of the Project Agreement), or the Letter of Intent or to furnish the Preliminary Obligations Bond in accordance with paragraph 4.10.3.

The successful Bidder's Performance Security will be discharged or returned, or both, without interest, upon signing of the PPA, IA and FSA (if applicable) and the issuance by the Bidder of the Preliminary Obligations Bond.

4.10.3 Preliminary Obligations Bond

Prior to the signing of the PPA, FSA and IA (if applicable), the project company shall furnish to [*the Procuring Entity*] a Preliminary Obligations Bond, in a form acceptable to [*the Procuring Entity*], to the value of 10% of the estimated total cost of the project or [X], whichever is lower.

The Preliminary Obligations Bond will be discharged or returned, or both, (without interest) upon achievement of Financial Close.

4.11 Format, Sealing and Marking

Where the Bidder is an individual not acting in a joint venture or other partnership arrangement the Proposal shall be signed by the Bidder. Where the Bidder is an incorporated joint venture, or the prospective project company, then the Proposal shall be signed by each shareholder. Where the Bidder is an un-incorporated joint venture, or other partnership arrangement, then the proposal shall be signed by each participant.

The Proposal containing the Technical, Commercial and Financial Proposal shall be delivered together in a sealed package submitted to the following address no later than the Closing Date:

[Procuring Entity's address and contact details]

The package shall also be clearly labeled as a Proposal under this RFP giving the Bidder's name and address. Proposals received after the Closing Date will be rejected even if a delay had been caused because of circumstances beyond the Bidder's control. Bidders are reminded the Closing Date is [*time*] and [*date*].

The package may be delivered by hand through an authorized representative, by registered mail or by courier. However, hand delivery is strongly recommended. If the outer envelopes are not sealed and marked as above, [*the Procuring Entity*] will assume no responsibility for misplacement or premature opening of the Proposal. If the envelope is not sealed, marked and addressed as required above, the Proposal may be rejected as non-conforming.

The Technical and Commercial Proposal shall be enclosed in the Proposal package in a separate sealed inner envelope bearing the following identification:

Inner Envelope 1

TECHNICAL & COMMERCIAL PROPOSAL FOR [NAME OF THE PROJECT]
PROPOSAL REFERENCE BIDDER..... FULL NAME AND ADDRESS.....

One envelope shall contain one set of documents clearly marked "Original" on the first and last page and three further envelopes shall each contain the copies of the Financial and Technical Proposal clearly marked Copy on the first and last page. The name and address of the Bidder on the inner envelope will allow the return of the Proposal unopened, in the event of revision or withdrawal (prior to the Closing Date), or late delivery.

The Financial Proposal shall be enclosed in the Proposal package in a separate inner sealed envelope bearing the following identification:

Inner envelope 2

DO NOT OPEN
FINANCIAL PROPOSAL FOR [NAME OF THE PROJECT]
PROPOSAL REFERENCE..... BIDDER..... FULL NAME AND ADDRESS.....

and shall contain one set of documents clearly marked "Original" on the first and last page. The name and address of the Bidder on the inner envelope will allow the return of the Proposal unopened, in the event of revision or withdrawal (prior to Closing Date), or late delivery or in the event of the Proposal concerned not reaching the stage of financial evaluation under Section 5 of this RFP.

A third inner envelope in this package shall be marked "Proposal Security" and should carry the name of the Bidder. This envelope shall contain the original of the Proposal Security.

4.12 Validity of the Proposal

Each Proposal shall constitute a firm offer and that shall remain in force and be valid for a period of [one hundred and eighty (180)] days following the Closing Date. During this period the proposed prices shall remain valid and no Bidder shall withdraw its Proposal.

In the event that a Letter of Intent is not signed during this period, [the Procuring Entity] may approach each Bidder by fax at least 14 days prior to the expiration date, requesting an extension of the Proposal validity period. If any Bidder does not agree to such extension, it may advise [the Procuring Entity] of its decision in writing prior to the expiration of the original period without forfeiting its Proposal Security, and withdraw its Proposal.

If the notice of withdrawal is not received by [*the Procuring Entity*] prior to the expiration date of the original validity period following the issuance by [*the Procuring Entity*] of a notice of extension, the extension shall be considered to have been accepted by the Bidder and the Bidder shall extend the effective period of the Proposal Security accordingly or be disqualified.

4.13 Closing Date and Late Proposals

Proposals must be received by [*the Procuring Entity*] at the address given in paragraph 4.11 by [time] local time on [date], the Closing Date. Proposals received after this time shall not be considered whatever the reason for delay in receipt (including circumstances outside the control of the Bidders), and shall be rejected.

4.14 Proposal Opening

4.14.1 Technical & Commercial Proposals

All Technical and Commercial Proposals and the envelope containing the corresponding Proposal Security will be opened at the offices of [*the Procuring Entity*] immediately following the Closing Date. Bidders who wish to attend the opening may do so.

Bidders' names, any withdrawals, the presence or absence of Proposal Security, and such other details as [*the Procuring Entity*] may consider appropriate, will be announced by [*the Procuring Entity*] on the day of opening of the Technical and Commercial Proposals.

The Financial Proposals given by the Bidders shall be submitted to the Custodian Bank pending the opening of the Financial Proposals in accordance with paragraph 4.14.2.

[*the Procuring Entity*] will prepare Minutes of the openings at the Technical and Commercial Proposals including all information disclosed to those present.

4.14.2 Financial Proposals

Financial Proposals of the Bidders whose Technical and Commercial Proposal have passed the first two evaluation stages set out in Section 5 shall be opened at the offices of [*the Procuring Entity*] on a date to be announced later. Those short-listed Bidders who wish to attend the opening of the Financial Proposals may do so. Tariff details as given in the Proposal Forms and such other details as [*the Responsible Ministry*] may consider appropriate, will be announced by [*the Procuring Entity*] on the day of opening of the Financial Proposals.

[*The Procuring Entity*] will prepare minutes of the openings of the Financial Proposal, including all the information disclosed to those present.

4.15 Confidentiality

[*The Procuring Entity*] reserves the right to release information contained in the Proposals to EAC, the Ministry of Industry, Mines and Energy and to its agents, consultants and advisers for purposes of verifying and evaluating the Proposals. Neither [*The Procuring Entity*] and its agents, consultants and advisers will be liable for any damages resulting from any disclosure of information before, during or after the bidding process.

5. EVALUATION CRITERIA

5.1 Outline of Evaluation Procedure

The actual evaluation process is a staged process. In the first stage, the compliance of the Proposals with the procedures and technical requirements laid out in this RFP are reviewed. The first stage of the evaluation process concentrates on the technical aspects of the Proposal, to verify whether the Proposal is technically capable of delivering the requirements of the PPA, including the [Minimum Functional Specification] set out in Schedule [X] of the PPA, and on the capabilities of the project participants to actually finance and manage the implementation of the project. Proposals that are deemed to be so compliant and capable will go through to the second stage. In this stage, the proposed tariff is the determinant factor. The Bidder proposing the lowest [average energy bid price] in the final bidding round shall be invited to sign the Letter of Intent, which will give this Bidder an exclusive period to develop the project to execution of the Project Agreements and sign the corresponding PPA. *[Note: Insert further details consistent with the Guidelines as necessary.]*

5.2 Right to Reject Proposals

[The Procuring Entity] reserves the right to reject the Proposal of any Bidder who has qualified on the basis of fraudulent, suppressed or incomplete information.

...

5.3 First Stage Evaluation: Responsiveness

At the first stage of evaluation of the Proposals, [the Procuring Entity] will determine the substantial responsiveness of each proposal to the RFP. [The Procuring Entity] will examine the Proposals to determine whether they are complete, whether the required Proposal Security has been furnished, whether the documents have been properly signed, whether all annexes as required in the RFP are furnished and whether the Proposals are generally in order. A Proposal may be disqualified and excluded from further consideration for any valid reason including but not limited to, the reasons listed below:

- Failure to submit under the required package or envelope as described in paragraph 4.11 above.
- Receipt by [the Procuring Entity] of a Proposal after the Closing Date.
- Failure to submit any clarification or documents requested by [the Procuring Entity] within the required time frame.
- Failure to provide the Proposal Security.
- Failure to provide complete information as requested in this RFP.
- Willful misrepresentations in the Proposal.
- Illegal conduct or attempts to influence [the Procuring Entity], EAC or any Ministry or agency of the Government of [COUNTRY] in evaluation of a Proposal outside the solicitation process.
- Determination by [the Procuring Entity] that the Bidder is likely to be unable to fulfill the terms or conditions of the Proposals.

Proposals which are accepted by [the Procuring Entity] in accordance with these principles will be deemed as qualifying for the second stage of the evaluation. If a Proposal is found to be substantially not responsive, it will be rejected by [the Procuring Entity], and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.

5.4 First Stage Evaluation: Technical & Commercial Proposals

The part of the first stage evaluation will then be conducted on the basis of satisfactory responses to the information requirements set out in the RFP, including compliance with the [Minimal Functional Specification]. The evaluation will be based on the information provided in the Proposal. The Proposals will be judged on the following criteria:

1. Equity Participation and Development Experience	
1.1	...
1.2	...
1.3	...
2. Tariff (Note: Bidder to supply this information in the Technical Proposal)	
2.1	...
2.2	...
2.3	...
3. Financeability of the Project (Note: Bidder to supply this information in Technical Proposal as Financial Proposal is not yet opened)	
3.1	...
3.2	...
3.3	...
4. Plant Availability	
4.1	...
4.2	...
4.3	...
5. Equipment Reliability	
5.1	...
5.2	...
5.3	...
6. Timely Completion	
6.1	...
6.2	...
6.3	...

Non-compliance with any one of the above criteria will disqualify the Bidder from the third stage evaluation.

5.5 Second Stage Evaluation: Evaluation of the Financial Proposal

All Proposals that have passed both parts of the first stage of the evaluation process will proceed to the second stage.

Following the opening of the Financial Proposals of the Bidders who have achieved the second stage of the evaluation process, the Proposals will be examined to determine whether:

- a) they are complete,
- b) the documents have been properly signed,
- c) all annexes that are required by the RFP are furnished, and
- d) the Proposals are generally in order.

The data forming the Financial Proposal will then be entered into a computer spreadsheet evaluation model to compute the [average energy bid price].

If the Financial Proposal of only three or fewer Bidders comply with the requirements referred to above in subparagraphs a) to d), the Bidder that proposed the lowest evaluated bid price shall become the successful Bidder.

If the Financial Proposals of four or more Bidders comply with the requirements referred to above in subparagraphs a) to d), [the Procuring Entity] shall announce the results and may request the four bidders offering the lowest [average energy bid prices] within a period of [xx] days to submit further Financial Proposals (meeting the requirements of this Request for Proposals) in which they may either reconfirm or reduce the costs and prices that they bid. The Bidder with the lowest evaluated bid price calculated using the bids made or maintained in the second round of price bids shall become the successful Bidder.

[The Procuring Entity] will prepare a report containing a summary that describes the number of Bidders, the prices offered by each Bidder, the calculated evaluated bid price of each Bidder, and the selection order (the ranking of bids). Copies of the summary will be provided to each Bidder that participated in the second round of price bids and to Responsible Ministry.

5.6 Letter of Intent

The successful Bidder will be notified that [the Procuring Entity] is prepared to issue a Letter of Intent (LOI) and will be invited to undertake detailed negotiations leading to signature of the PPA, IA and FSA (if applicable). On signature of the LOI, any unopened envelopes containing the Financial Proposals and the Proposal Securities of the other Bidders will be returned, and such Bidders will be informed of the identity of the successful Bidder, the tariff offered by that Bidder, their own calculated tariff and their position in the rank order of total tariff. Should negotiations with the successful Bidder prove unsuccessful, the other third stage Bidders or any one of them may be invited to negotiations leading to project implementation.

Prior to signature of the LOI, it will be necessary for the successful Bidder to form the prospective project company which shall be incorporated in [COUNTRY]. The successful Bidder will furnish [the Procuring Entity] with duly certified copies of the following documents together with the Performance Security in accordance with paragraph 4.9.2:

- Certificate of Incorporation;
- List of the Board of Directors;

- Location of the Registered Office; and
- [Resolution of the Board of Directors authorizing the persons entitled to witness the affixing of the Company Seal.]

The Bidder will also supply information confirming the Lenders initial Expression of Interest for the Project, and the Lenders willingness to be actively involved in the negotiations. Following receipt of these documents by [*the Procuring Entity*], the LOI will be issued. Failing receipt or if the successful Bidder does not promptly enter into the LOI, the other third stage Bidders or any one of them may be invited to negotiations leading to project implementation.

5.7 Insufficient Competition

[Note: This section shall be used if Responsible Ministry deems appropriate to introduce this scheme in order to protect consumers from insufficient competition.]

The procurement process will be considered competitive if more than two Proposal pass both parts of the first stage of the evaluation process [and comply with the following conditions: insert if applicable].

Responsible Ministry will establish maximum capacity and energy prices for the Project and present them in a sealed envelope on the date of presentation of Proposals. These maximum prices will only apply if the procurement does not qualify as competitive in accordance with this paragraph 5.7.

If only two or fewer bids pass both parts of the first stage of the evaluation process [and comply with the abovementioned conditions], the sealed envelope containing the maximum price will be opened at the end of the opening of the Financial Proposals. If none of the bid prices is less than the maximum price, the Procuring Entity shall not accept the bid prices but may negotiate changes to the terms and duration of the PPA in order to achieve agreement with a Bidder on capacity and energy prices that do not exceed the maximum prices stipulated by Responsible Ministry.

5.8 Cost and Risk in Finalising Project Agreements

The successful Bidder shall bear all costs incurred by it in relation to any negotiation and finalisation of the Project Agreements, including but not limited to those of professional advisers. Neither [*the Procuring Entity or Responsible Ministry*] or any representative of these parties shall have any liability whatsoever to the Bidder for any decision taken by the Bidder in relation to decisions taken by it in finalising and entering into the Project Agreements, whether or not in reliance on any matter supplied or represented by [*the Procuring Entity or Responsible Ministry*] or their representatives.

LIST OF ANNEXES

Annex I	ENVIRONMENTAL INFORMATION
Annex II	FORM FOR PROPOSAL SECURITY
Annex III	FORM FOR PERFORMANCE SECURITY
[Annex IV	LIST OF REQUIRED PERMITS AND CONSENTS]
[Annex V	CLARIFICATION FORM]
[Annex VI	FORMAT OF LETTER OF INTENT]