

**PFC CONSULTING LIMITED**

(A wholly owned subsidiary of PFC Ltd.-  
A Government of India Undertaking)

**Electronic Tender Document**

For

**Appointment of Legal Firm for Legal and Related Aspects for Assisting PFC Consulting Ltd. in Due Diligence of Proposed Takeover of 1320 MW Sangam Power Generation Company Limited in the State of Uttar Pradesh by Uttar Pradesh Power Corporation Limited (UPPCL)**

**(Only for firms/organizations Empanelled by PFC Consulting Ltd. under Area Code (6))**



**Registered Office**

**1st Floor, "Urjanidhi" 1, Barakhamba Lane, Connaught Place,  
New Delhi – 110 001**

**August 06, 2018**

**PFC Consulting Ltd. invites E-Tenders for Appointment of Legal Firm for Legal and Related Aspects for Assisting PFC Consulting Ltd. in Due Diligence of proposed takeover of 1320 MW Sangam Power Generation Company Limited (Company) in the State of Uttar Pradesh by UPPCL.**

a)	Opening date of Tender downloading	<b>6 August, 2018 from 15.30 hrs (IST)</b>
b)	Closing date of Tender downloading	<b>13 August, 2018 till 13:00 hrs (IST)</b>
c)	Submission date of E-bids	<b>13 August, 2018 till 15:30 hrs (IST)</b>
d)	Submission of Pass-Phrase to decrypt the Bid-Part into the 'Time Locked Electronic Key Box (EKB)'	<b>13 August, 2018 (IST) (between 13:00 hrs and 15:30 hrs) (IST)</b>
e)	Opening of E-bids	<b>13 August, 2018 at 16:30 hrs (IST)</b>

Note: Tender Notice and Tender Document are available on PFC Consulting Ltd.'s website and can be downloaded from <https://www.pfcclindia.com> or from the e-Tendering portal <https://www.tcil-india-electronictender.com>. For bid submission, the tenderer will have to necessarily download an official online copy of the tender documents from TCIL's e-portal. All future Information viz. corrigendum /addendum/ amendments etc. for this Tender shall be posted on the e-Tendering Portal only. Printed copy of Tender document will not be sold from PFC Consulting Ltd.'s office.

The bidder shall bear all costs associated with the preparation, submission/participation in the bid. Purchaser in no way will be responsible or liable for these costs regardless of the conduct or outcome of the bidding process.

**BID INVITATION LETTER**  
**(Only for firms/organizations Empanelled by PFC Consulting Ltd.**  
**under Area Code '6')**

**Ref: 03/UP/Sangam/2018/Leg\_Con**

**06 August, 2018**

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**Subject: Electronic Bids are invited from the firms for Appointment of Legal Firm for Legal and Related Aspects for Assisting PFC Consulting Ltd. in Due Diligence of proposed takeover of 1320 MW Sangam Power Generation Company Limited (Company) in the State of Uttar Pradesh by UPPCL**

Dear Sir/Madam,

PFCCL wishes to avail services of a legal firm to assist PFCCL in the Legal and related aspects for Due Diligence of proposed takeover of 1320 MW Sangam Power Generation Company Limited (Company) by Uttar Pradesh Power Corporation Limited (UPPCL). The assignment will be till the proposed takeover is complete in all respects (Assignment).

The Eligibility Criteria, Scope of Work, Deliverables, Selection Procedure and criteria, Terms of payment, Terms and conditions etc. are given below:

**1.0 BACKGROUND**

Sangam Power Generation Company Limited (SPGCL) has been incorporated by UPPCL on February 13, 2007 to execute Sangam Thermal Power Project at Tehsil Karchhana, District Allahabad, Uttar Pradesh, India in accordance with Competitive Bidding Guidelines for selection of a Successful Bidder to Build, Own, Operate and Maintain the Project.

Pursuant to said bidding process, Jaiprakash Associates Ltd. (JAL) was identified as the Selected Bidder. Jaiprakash Power Ventures Ltd. (An affiliate of JAL) purchased 100% share capital of the company as per said Guidelines.

As mutually agreed, the SPGCL is now proposed to be bought back by UPPCL. SPGCL has prepared the financial statement for FY 2017-18. As per audited financial statement, Company has major non current assets in form of free hold land of Rs. 67.49 crore, Rs. 84.88 crore upfront fee paid to banks, Rs. 313.24 crore BTG advance (arbitration case) and other advance of Rs. 40.40 crore.

## **2.0 SCOPE OF WORK**

2.1 The detailed scope for the assignment includes all legal and related aspects, due diligence but not limited to conducting investigation into the company's immovable assets, advances, indebtedness, charges, mortgages and various other related issues through documents review, discussions with key employees, other data and records with the objective of establishing and understanding the actual legal status of the company's assets, liabilities, charges, mortgages, guarantees, lien etc. Review of all contracts and agreements executed & closed and subsisting as on date. Matters regarding legal cases, arbitration cases with respect to lands, licenses, service agreements, employee related matters, share purchase agreement etc. contractual agreements and other associated works, which are not listed below but are essential for completion of the Assignment, will also deemed to be included in the scope:

- 2.1.1 Detailed legal Due Diligence of Company through document review, discussions and/or interviews with senior management and key employees and on the basis of suggestions received from various stakeholders.
- 2.1.2 Due diligence for all the compliances and related issues i.e. compliance of Companies Act, 2013, Securities Contract Regulation Act, Other Rules and Regulations (if applicable) including but not limited to share transfer formalities, dematerialization related matters and NCLT matters.
- 2.1.3 Statutory compliances with respect to transferring the project to any other entity.
- 2.1.4 Due diligence of material contracts entered by Company, agreement already closed, ongoing agreement and balance to be executed etc.
- 2.1.5 Preparation of search reports of the land for the last 10 years.
- 2.1.6 Assistance in the putting through the transaction of takeover of the company from Seller including preparation /vetting of Board Agenda, documents, conducting the Board Meeting for the transfer of shares and filling of documents with RoC.
- 2.1.7 Assistance to Buyer in the preparatory activities related:
  - (a) Transfer of shares and actual transfer of shares from Seller to Buyer.
  - (b) Transfer of termination payment and actual transfer of payment to Seller from Buyer.
- 2.1.8 Preparation and assistance in execution of various documents for takeover of the Company viz. Share Purchase Agreement, Escrow Agreement etc.
- 2.1.9 Attending meetings, conferences and interaction/discussions with senior management/officials of Seller, Buyer, PFCCCL and any other related parties including making/attending presentations as intimated by PFCCCL.
- 2.1.10 Advising on and/or carry out any other tasks as required related to completion of the legal due diligence and takeover of Company by Buyer.

The scope includes due diligence of various parameters from February 2007 to till take-over balance sheet date. Any other services/activity not specifically included above but necessary, since incorporation of the company in Feb 2007 till the takeover by the client for successful completion of the Assignment shall be deemed included in the scope of the firm without any additional cost to PFCCCL.

### **3.0 DELIVERABLES**

- i. The final due diligence report after incorporating the changes suggested by PFCCL.
- ii. Submission of final agreement viz. Share Purchase, Escrow, Any other documents/Agenda etc. accepted by PFCCL.
- iii. Transfer of Company from Seller to Buyer.

There may be any other deliverables, which are not specifically mentioned above but may be required for completing the task. The Consultant shall have to provide such deliverables, as identified by PFCCL for the successful completion of the tasks as per above scope of work to its satisfaction.

### **4.0 PERIOD OF ENGAGEMENT**

The period of engagement would be till takeover of Sangam Power Generation Company Limited by UP Power Corporation Limited (indicative time frame is 6 (six) months. However the timeline will till takeover of the company).

### **5.0 BASIS OF OFFER**

5.1 The price offer for the Assignment should be quoted on a lump sum basis (Travelling expenses will be reimbursed separately as per Clause 12 (ii) of Other Terms & Conditions) inclusive of all taxes and duties etc. as may be applicable. No escalation for any reason whatsoever shall be allowed over and above the bid price. However, GST or any other applicable taxes at applicable rates, on the date(s) of payment(s) shall be paid over and above the payment due.

5.2 Income tax at source will be deducted by PFCCL as per the applicable law and regulation and TDS certificate shall be issued to the selected bidder by PFCCL.

### **6.0 TEAM COMPOSITION AND TEAM MEMBERS**

The team should comprise of 2 (two) identified members. The details to be given as per format provided at Form-3:

- a) **Senior Level:** One member with LLB having minimum experience of 10 years.
- b) **Junior Level:** One member with LLB having minimum experience of 1 year.

### **7.0 SUBMISSION OF BID**

7.1 The bid shall consist of two parts "Technical Proposal" and "Financial Proposal" and should be duly submitted online using the e-Procurement Portal <https://www.tcil-india-electronictender.com> before the due date.

**Note:**

- a. The Bidder should submit its empanelment letter with PFCCL.
  - b. The Bidder should agree to the entire scope of work and deliverables (given in the Covering Letter Form-1). No proposal for deviation/ part scope of work will be considered.
  - c. The Technical Proposal should contain Form-1, Form-2, Form-3, Form-4 and Form-5 duly filled and signed by Authorised signatory and authority letter as per Form-5.
  - d. Details of past experience are to be provided in Technical Bid as per format provided at Form-2. Details of past experience are to be provided in Technical Bid. Documentary evidence (e.g. Copy of work Order/Letter of Award/Lol/Purchase Order/proof of payment/in support of past experience. or any other representative documents etc.) to be provided in support of past experience.
  - e. No consortium/ sub-consulting or sub-contracting shall be allowed with/ to other organisations and/ or individuals.
  - f. PFCCL may call for any clarifications/ information if required.
  - g. The Forms mentioned above along with relevant documents, including covering letter will form part of tender documents. Each of the above Forms and also other documents to be submitted as per the bidding documents are to be duly signed on each page and stamped as required by the authorised representative of the bidder, which shall constitute the bid.
  - h. The “FINANCIAL PROPOSAL” should contain the detailed price offer for the consultancy services as per as per format provided at Form-6 of Bid Document.
- 7.2 Agencies are instructed not to approach via e-mail, fax, and telephone or contact any official in PFCCL as regards to this bid after the submission of the bids, apart from communications by PFCCL in writing, and any bidder doing so shall be summarily rejected.

## **8.0 BID OPENING AND EVALUATION OF PROPOSALS**

### **8.1 Opening of Technical Proposal**

The “Technical Proposal” will be opened on 13<sup>th</sup> August 2018 at 16:30 Hrs in the presence of the authorized representatives of the agencies, who wish to be present.

### **8.2 Technical Proposal**

The Technical proposal would be opened and seen with respect to the following:

### **A) Responsiveness check**

The check will be with respect to the following:

- i) The Bidder should be empanelled legal firm with PFCCL under area code '6' as on the date of issuance of tender.
- ii) The firm should have minimum Average Annual Turnover of Rs. 1 Crore for last three financial years as per audited annual account.
- iii) The bidder should agree to the entire scope of work and deliverables (given in the Covering Letter Form-1). No proposal for deviation/ part scope of work will be considered.
- iv) The Technical Proposal should contain Form-1, Form-2, Form-3, Form-4 and Form-5 duly filled and signed by authorised signatory and authority letter as per Form-5.
- v) Details of past experience are to be provided in Technical Bid. Documentary evidence (e.g. copy of the work Order/Letter of Award/Lol/Purchase Order/Completion certificate/ Project Report /proof of payment/ any other relevant documents etc.) to be provided in support of past experience.
- vi) Details of composition of Team and Team Leader proposed to be deployed are to be provided in Technical bid as per Form-3.

### **B) Evaluation of experience of the firm: Maximum 100 Marks**

The bidder's relevant experience in the last five years (from Indian FY 2013-14 onwards including the current Financial Year till date of issue of the tender) will be considered. Experience of the bidders would be evaluated on the following basis:

- i) The firm should have undertaken at least two (02) consultancy assignments related to Due Diligence for buyout of companies/units/segment with turnover of Rs 250 Cr or Fixed Asset of Rs 50 Cr during the last five (05) years i.e. period from Indian FY 2013-14 onwards including the current Financial Year till date of issue of the tender. Max. Assignment considered for evaluation = Four (2 Assignments: 30 marks, 3 Assignments: 40 Marks and 4 Assignments: 50 Marks)  

**(Max Marks = 50 marks)**
- ii) The firm should have minimum Average Annual Turnover of Rs. 1 Crore for last three financial years as per audited annual account. (1 Crore: 15 marks, >1 Crores <3 Crores: 25 Marks, >3 Crores: 30 Marks)  

**(Max Marks = 30 marks)**

- iii) Adequacy of the proposed methodology and work plan in responding to scope of work and deliverables.

**(Max marks = 20 Marks)**

The support provided by the consultant should be on buy side. This is to be evidenced by enclosing a copy of the work Order/Letter of Award/Lol/Purchase Order/Completion certificate/ Project Report /proof of payment/ any other relevant documents etc.

**The Bidder obtaining 70 marks or more along with 50% marks in each particular would be regarded as technically qualified Bidder and considered for opening of “Financial Proposal”.**

PFCCL may call for any clarifications/ information if required.

The agencies submitting documentary proofs as per clause 7.1(a) to (h) to the satisfaction of PFCCL would be considered as technically qualified.

### **8.3 Opening of Financial Proposal**

The “Financial Proposal” would be opened only of the technically qualified bidders. The date and time of opening of Financial Proposal would be intimated to the technically qualified Bidders separately. The Financial Proposal will be opened in the presence of the authorized representatives of the agencies, who wish to be present.

### **8.4 Evaluation of Financial Proposal**

The assignment will be awarded to the technically qualified bidder who has quoted lowest lump sum price, in Indian Rupees, without condition(s) or alternate price bid. Conditional Financial Proposals will be rejected out rightly.

In case more than one bidder qualifies for L1, the assignment will be awarded to the bidder quoting L1 price and obtaining the highest marks in technical proposal.

## **9.0 CONTRACT AGREEMENT**

- 9.1 In the event of award, the selected legal firm will be required to enter in to a Contract Agreement with the PFCCL within 7 (seven) working days from the date of the Letter of Award (LOA) or within such extended time, as may be granted by the PFCCL.
- 9.2 Formal Contract Agreement will be executed on Non-judicial stamp paper of Rs. 100/- (Rs. one hundred only) as per the format provided by PFCCL. Two sets of Non-Judicial Stamp papers of Rs.100/- each and water mark papers to be purchased by the selected consultant from Delhi State.



- 9.3 The Agreement will be signed in two originals and the selected legal firm shall be provided with one signed original Agreement.
- 9.4 The date of execution of the contract agreement in no case shall alter the date of start or completion period of the work.
- 9.5 Till the time a 'Contract Agreement' is prepared and executed, the Letter of Award shall be read in conjunction with the Bidding Documents and will constitute a binding contract

#### **10.0 VALIDITY OF BID**

The bidder shall keep their bids /proposals valid up to 120 (One Hundred Twenty) days from the date of submission of bid. The bidder may be required to further extend the validity of Bid as per the requirement of PFCCL.

#### **11.0 TERMS OF PAYMENT**

- 11.1 Payments would be made as per the following stages:

<b>Sl. No.</b>	<b>Description</b>	<b>Payments as % of Lump Sum Price</b>
i)	Submission of Due Diligence Report	50%
ii)	Takeover of Sangam Power Generation Company Limited by UPPCL	50%

- 11.2 The selected firm shall submit the bills in duplicate to PFCCL addressed to ED, PFCCL, indicating the stage achieved, out of the ones indicated above.
- 11.3 In addition to the lump sum price, the Consultant would be reimbursed for the tours undertaken in connection with the Assignment as per the clause 12 (ii) of other terms and conditions.

#### **12.0 Other Terms & Conditions**

- i) The financial proposal by the consultant shall be in Indian Rupees as per format enclosed (Form 6) with no escalation provision for any reason whatsoever till the completion of the Assignment.
- ii) In case of tours and travels made beyond NCR Limits and undertaken with prior consent / requirement of PFCCL, the Consultant would be reimbursed To & Fro journey fare, Accommodation expenses, Dearness Allowance and local conveyance at the destination limited to maximum of the entitlements of Associate Vice President (AVP) level in PFCCL on production of documentary evidences / proof(s), in original, of the expenditure incurred. PFCCL would be the sole authority to decide on the number of the member(s) to undertake the tours. PFCCL reserves the right to make tour and travel arrangements on its own.

No claim for journey fare/accommodation expenses/Local Conveyance for travel within NCR limits will be admissible, in case the firm is based in NCR of Delhi.

No claim for journey fare/accommodation expenses/Local Conveyance for travel from the Organisation's office to PFCCL headquarter at New Delhi and no claim for journey fare/accommodation expenses/Local Conveyance for travel within NCR limits will be admissible, in case the firm is based outside NCR of Delhi.

- iii) The selected legal firm shall make available the services of the identified personnel as may be required for successful execution of the assignment and or as may be required by PFCCL on specified dates, venues and time in order to meet the obligations of PFCCL.
- iv) All claims shall be raised by the selected firm as per the terms of payment after being due, and would be accepted for payment based on satisfactory progress and quality of the work at the sole discretion of the competent authority.
- v) In case there is a delay by the selected firm in accomplishing the work as per scope of work which in the opinion of PFCCL is attributable to the selected consultant, PFCCL reserves the right to get such specific work(s) done through any other legal firm(s) at the risk and cost of the selected consultant for timely completion of the work.
- vi) In case the performance of the proposed team member(s) is not satisfactory, the consultant will be asked to change/replace the team member(s) within three days of receipt of such request from PFCCL with a member acceptable to PFCCL.
- vii) PFCCL with the approval of CEO cancel the contract at any stage of the work, in case it is found that the knowledge of a team/team member(s) and or his/her performance is not satisfactory, any information given at the time of submission of the bid is found to be incorrect.
- viii) Given the nature of the work being entrusted, the consultant would have to give an undertaking to the effect that the contents/ essence of any reference/ documents given would not be disclosed to any third person without the express approval of PFCCL, failing which the engagement of the consultant could be terminated.
- ix) If due to any reason or decision of the Govt./PFCCL, the Assignment is dropped and the firm is directed to discontinue work, the "Drop Dead Fee" would be limited to the payments received by the firm and the claims already raised, as per the payment terms relating to the Assignment, till the point of calling off the Assignment or as mutually agreed.
- x) **Conflict of Interest:** Organizations would not be hired for any work whose interests are in conflict with their prior or current obligations to the other organizations/ clients or that may place them in a position of being unable to carry-out the work assigned to them at any point of time during the currency of engagement by PFCCL or above all enable them to pose a threat to

PFCCL's consulting business in future. Without limitation on the generality of the foregoing, organisations would not be hired, under the circumstances set forth below:

Organisations who have business or family relationship with member(s) of PFC's and/or PFCCL's employees or persons positioned in or on the Board of these two organisations by whatever process, would not be engaged. A declaration to this effect would be taken from the organisation when being engaged, and if found incorrect, the organisation would be debarred from any further engagement by PFCCL ever.

- xi) The selected firm shall keep PFCCL, both during and after the term of this Contract, fully and effectively indemnified against all losses, damage, injuries, deaths, expenses, actions, proceedings, demands, costs and claims, including, but not limited to, legal fees and expenses, suffered by PFCCL or any Third Party, where such loss, damage, injury or death is the result of a wrongful action, negligence or breach of contract by the selected consultant, or its personnel.
- xii) No offer should be sent by Fax or E-mail.
- xiii) Offers received in the designated office after the due time and date mentioned above shall not be considered.
- xiv) PFCCL reserve the right to accept or reject any or all Proposals/Offer or annul the bid Process or modify/ change the content of the bid document without assigning any reason.
- xv) PFCCL shall not entertain any claim of any nature, whatsoever, including without limitations, any claim of expenses in relation to the preparation, submission or any other activity relating to bidding or any other expense till award of contract.

Yours sincerely,

**For and on behalf of PFC Consulting Ltd.**

**(Yogesh Juneja)**  
**Executive Director**

Encl.: As above

**FORM – 1: COVERING LETTER**

From:	To:
Name:	Executive Director
Designation:	PFC Consulting Ltd.,
Address:	First Floor, Urjanidhi
	1 Barakhamba Lane
	Connaught Place
	New Delhi – 110001

Sir,

**Sub: Appointment of Legal Firm for Legal and Related Aspects for Assisting PFC Consulting Ltd. in Due Diligence of proposed takeover of 1320 MW Sangam Power Generation Company Limited (Company) in the State of Uttar Pradesh by UPPCL**

1. We \_\_\_\_\_ (Name of Firm) herewith enclose Technical & Financial proposal for selection of legal firm for assisting PFCCL in providing consultancy services for Due Diligence of proposed takeover of 1320 MW Sangam Power Generation Company Limited in the State of Uttar Pradesh by UPPCL.
2. We are submitting our electronic bid consisting of:
  - i) **Technical Bid** consisting of:
    - a) The empanelment letter from PFCCL under area code '6'.
    - b) The Covering Letter (Form-1) in which the legal firm inter alia agrees to the entire scope of work and deliverables as proposal for deviation / part scope of work will not be considered.
    - c) Form-1, Form-2, Form-3, Form-4 and Form-5 duly filled and signed by Authorised signatory and authority letter as per Form-5.
    - d) Details of past experience in Technical Bid. Documentary evidence (e.g. Copy of work Order/Letter of Award/Lol/Purchase Order/Completion certificate/ Project Report /proof of payment/ any other relevant documents etc.) in support of past experience.
    - e) Details of key personnel proposed to be deployed as per format provided at Forms-3&4.
    - f) Letter of Authority in favour of the Authorised signatory submitting the Bid as per Form -5.

ii) **Price Offer** as per format provided at Form 6 of Bid document

3. \_\_\_\_\_ [Name and contact information of one of the team member] shall be the Team Leader for the assignment.
4. We declare that the quoted lump sum price is firm and shall remain valid for the entire period of the assignment. We further declare that the above quoted lump sum fee includes all taxes (excluding GST), duties & levies etc. payable by us under this assignment.
5. We hereby confirm that if any Income Tax, Surcharge or any other Corporate Tax is attracted under the law, we agree to pay the same to the concerned authorities.
6. We confirm that the prices and other terms and conditions of this proposal are valid for a period of 120 days from the date of submission of bid.
7. We declare that the services will be rendered strictly in accordance with the specifications. We confirm our acceptance/compliance to the 'Terms of payment' clauses as stipulated in the bid documents.
8. We hereby declare that only the company, persons or firms interested in this proposal as principal or principals are named herein and that no other company, person or firm other than one mentioned herein have any interest in this proposal or in the contract to be entered into, if we are awarded this contract.
9. We declare that the services will be rendered strictly in accordance with the specifications and we do not have any deviation to any of the terms and conditions of the bidding documents.
10. We confirm and certify that all the information / details provided in our bid are true and correct.
11. We give our unconditional acceptance to the Bid Documents issued by PFCCL and as amended. We shall execute the Contract Agreement as per the provisions of the Bid Document.
12. Further, we confirm that we agree to and seek no deviations from the scope of work, time schedule, payment terms and all other terms and conditions as contained in the 'Bid Document'. The proposal is unconditional.
13. We certify that all the information provided in our bid are true. We understand that any willful misstatement in the bid may lead to disqualification or cancellation of award if made or termination of contract.
14. We also declare that by taking this assignment we do not have any conflict of Interest with any of our prior or current obligations to other organisations/clients and also do not have business or family relationship with member(s) of PFC's and/or PFCCL's employees or persons positioned

in or on the Board of these two organisation by whatever process and if found incorrect, we may be debarred from any further engagements by PFCCL forever.

15. We certify that all the information provided in our bid, including the information regarding the team members, is true. We understand that any willful misstatement in the bid may lead to disqualification or cancellation of award if made or termination of contract. We also understand that in such a case we may be debarred for future assignments with PFCCL for a period of maximum three years from the date of such disqualification.
16. Further, we undertake that in the event of our appointment, given the nature of the work being entrusted, the contents/ essence of any reference/ documents given would not be disclosed to any third person without the express approval of PFCCL, failing which the engagement of the organisation would be terminated.

Signature of Authorized Person

Name

Designation & seal

Date:

Place:

**FORM – 2: EXPERIENCE OF FIRM**

1. Brief Description of the Legal Firm:
2. Outline of experience on assignments:

Sl. No.	Name of Assignment with work order no. and date	Name(s) of member(s) associated with the assignment	Client	Date of Commencement	Scope in brief	Details of Tasks Completed
1						
2						
3						

1. It is hereby certified that the above mentioned details are true and correct.
2. It is hereby certified that our company has actually carried out the above mentioned work/assignments

List of documents attached:

- 1.
- 2.

Signature of Authorized Signatory

Full Name

Address

Note:

1. The Firm's relevant experience from Indian FY 2013-14 onwards including the current Financial Year till date of issue of the tender will be considered.
2. Please attach documentary proof for claimed experience; the proofs could be namely, Copy of work Order/Letter of Award/Lol/Purchase Order/Completion certificate or any other representative documents etc.

**FORM – 3: QUALIFICATION, EXPERIENCE & COMPETENCY OF KEY PERSONNEL WHO SHALL BE WORKING FOR THE PROPOSED ASSIGNMENT**

The Team shall include the following members:

- a) **Senior Level:** One member with LLB having minimum experience of 10 years.
- b) **Junior Level:** One member with LLB having minimum experience of 1 year.

**The above required experience of the Experts shall be provided in the CVs as per proforma provided.**

Signature of Authorized Signatory

Full Name

Address



**FORM – 4: CURRICULUM VITAE FOR EACH MEMBER OF FIRM’S TEAM**

Name: \_\_\_\_\_

Profession/ Present Designation: \_\_\_\_\_

Total post qualification experience: \_\_\_\_\_ Years with organisation: \_\_\_\_\_

Educational Qualification: \_\_\_\_\_

*(Under this heading, summarise college/ university and other specialized education of staff member, giving names of colleges, etc. degrees obtained.)*

*(Please enclose attested copy of educational qualifications)*

Experience:

*(Under this heading, list of positions held by staff member since graduation, giving dates, names of employing organisation, title of positions held and location of assignments.)*

Language:

*(Indicate proficiency in speaking, reading and writing of each language by ‘excellent’, ‘good’ or ‘poor’)*

**Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to disqualification of the firm.

Signature of Team member

Full Name

Date

Signature of Authorized Signatory

Full Name

Address

**FORM – 5: AUTHORISATION LETTER**

(ON THE LETTER HEAD OF THE FIRM)

I \_\_\_\_\_ certify that I am \_\_\_\_\_ of the Firm, organised under the laws of \_\_\_\_\_ and that \_\_\_\_\_ who signed the above Proposal is authorised to bind the firm by authority of its governing body.

Signature:

Full Name:

Address:

(Seal)

**FORM – 6: SCHEDULE OF PRICE BID**  
(To be submitted as Financial Proposal)

**Sub: Selection of Legal Firm for Legal and Related Aspects for Assisting PFC Consulting Ltd. in Due Diligence of proposed takeover of proposed takeover of 1320 MW Sangam Power Generation Company Limited in the State of Uttar Pradesh by UPPCL**

I \_\_\_\_\_ (Name) on behalf of \_\_\_\_\_ (Name of the firm) herewith submit the Financial Proposal for **“Appointment of legal firm for Legal and Related Aspects for Assisting PFC Consulting Ltd. in Due Diligence of proposed takeover of 1320 MW Sangam Power Generation Company Limited in the State of Uttar Pradesh by UPPCL”**

Sl. No	Description	Unit	Total Lump Sum Price in INR (In Words Also)
1	Appointment of Legal Firm for Legal and Related Aspects for Assisting PFC Consulting Ltd. in Due Diligence of proposed takeover of 1320 MW Sangam Power Generation Company Limited in the State of Uttar Pradesh by UPPCL	Lump sum	
	<b>Total</b>		

**Note:**

1. The price offer for the Assignment should be quoted on lump sum basis inclusive of all taxes and duties etc. as may be applicable. No escalation for any reason whatsoever shall be allowed over and above the bid price till completion of the assignment. However, GST and any other applicable taxes at applicable rates, on the date(s) of payment(s) shall be paid over and above the bid price.
2. The firm shall quote prices taking into consideration of the complete scope of work, any item left out and not specifically mentioned but are required for completion of the work shall be carried out by the firm without any additional cost to PFCCL.
3. Income tax at source will be deducted by PFCCL as per the applicable law and regulation and TDS certificate shall be issued to the firm by PFCCL
4. In addition to the lump sum price, the Consultant would be reimbursed for the tours undertaken in connection with the Assignment as per the clause 12 (ii) of other terms and conditions of tender document.
5. The financial proposal with condition(s) or alternate price bid will be summarily rejected.

Seal

Authorised Signatory

Full Name

Address

## **Form – 7: CONTRACT AGREEMENT**

This CONTRACT (hereinafter, together with all Appendices attached hereto and forming an integral part hereof, called the "Contract") is made this day of the month of \_\_\_\_\_, 2018, between:

**PFC Consulting Limited** (a wholly owned subsidiary of Power Finance Corporation Limited, a Government of India Company) incorporated under the Indian Companies Act 1956/2013, having its registered office at First Floor, Urjanidhi,1-Barakhamba Lane, Connaught Place New-Delhi-110001 hereinafter referred to as "Owner"(which expression shall unless repugnant to the context or the meaning thereof include its successors and permitted assigns)

AND

\_\_\_\_\_ having its office at

\_\_\_\_\_ hereinafter called the "Consultant" (which expression shall unless repugnant to the context or the meaning thereof include its successors and permitted assigns)

WHEREAS the Owner is in the process of selection of a Consultant for **"Assisting PFCL in Legal and Related Aspects for Due Diligence of proposed takeover of 1320 MW Sangam Power Generation Company Limited in the State of Uttar Pradesh by UPPCL**

AND WHEREAS the Owner is intending to hire an experienced and qualified Consultant who has undertaken similar projects and is capable of providing "Services".

AND WHEREAS the Consultant, have represented to the Owner that they have the requisite experience, professional skills, adequate manpower and technical resources and personnel, to render the Services required by the Owner in a timely and efficient manner.

AND WHEREAS based on above representations of the Consultant, the Owner has agreed to appoint the Consultant to render services on the terms and conditions hereafter contained:

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREIN CONTAINED, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

### **1.0 GENERAL PROVISIONS**

#### **1.1 Definitions**

Unless the context otherwise requires, the following terms whenever used in this Contract, Appendices, Schedules and Exhibits shall have the following meanings:

- (a) "Approvals" shall mean all consents, licenses and approval of any local, municipal, State or National Authority necessary to carry out the services for each and every phase of the assignment.

- (b) "Contract" means this Contract together with all Appendices and including all modifications made in accordance with the provisions of Clauses 12 hereof between the Owner and the Consultant.
- (c) "Consultant" means [Name of Firm]\_\_\_\_\_.
- (d) "Confidential Information" means any material, proprietary, non-public information acquired, developed, disclosed or exchanged among the parties pursuant to this Agreement.
- (e) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause 3.1 hereof;
- (f) "Personnel" means persons hired by the Consultant as employees, for the purposes of rendering services or any part thereof; Personnel include:
- (i) "Local Personnel" mean such persons who at the time of being so hired have their domicile in India and;
  - (ii) "Foreign Personnel" mean such persons who at the time of being so hired had their domicile outside India
- (g) "Parties" means the Owner or the Consultant, as the case may be;
- (h) "Contract time" means the duration of time of the Contract as referred to Clause 3.
- (i) "No claim Certificate" means certificate issued by the Owner after the Contract has expired and the consultant has performed all his Services as per the terms and conditions envisaged in this Contract and all undisputed payments of remuneration and reimbursable expenditures payable by the Owner to the Consultant has been made.
- (k) "Services" means the works to be provided/performed by the Consultant for completion of various tasks as described in Letter of Award (LoA) hereto;
- (l) "Starting Date" means the date referred to in Clause 3.3 hereof;
- (m) "Third Party" means any person or entity other than the Owner and the Consultant.

## **2.0 LOCATION FOR PERFORMANCE OF THE SERVICES:**

The Consultant shall render/performance services at PFCCL office in Delhi or as mentioned in Bid document/necessary to discharge the scope of work or any other place as intimated by PFCCL.

## **3.0 COMMENCEMENT, COMPLETION, AND TERMINATION OF CONTRACT**

### **3.1 Commencement of Contract**

This contract shall come into force from the date ("effective date") on which the Owner and the Consultant have signed the present contract.

### **3.2 Termination of Contract for Failure to Become Effective**

- a) If this Contract has not become effective within 15 days from the date of Letter of Award (LoA), the Owner has the right to declare the same to be null and void, and in the event of such a declaration the consultant shall not have any claim against the Owner.
- b) In case the contract is rendered null and void on account of failure/inaction on the part of the consultant, the consultant shall be liable to pay damages to the Owner.

### **3.3 Commencement of Services**

The Consultant shall begin carrying out the Services immediately viz. from the date of issue of Letter of Award (the "Starting Date"), or on such date as the Parties may agree in writing

### **3.4 Expiration of Contract**

Unless terminated earlier pursuant to Clause 10 hereof, this Contract shall expire after the consultant has performed all his Services as per the terms and conditions envisaged in this Contract and the Owner has issued a 'No claim Certificate' to the Consultant.

The Owner shall issue the "No claim certificate" after being satisfied that the Consultant has performed/rendered all the services to the satisfaction of the Owner, as per the contract and all undisputed payments of remuneration and reimbursable expenditures payable by the Owner to the Consultant has been made.

### **4.0 Contract Performance Guarantee**

Not Applicable.

## **5.0 OBLIGATIONS OF THE CONSULTANT**

### **5.1 Standard of performance**

The Consultant shall perform the Services and carry out his obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted techniques and practices used with professional engineering and consulting standards recognized by professional bodies, and shall observe sound management, and technical and engineering practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods in award of project. The Consultant shall always act, in

respect of any matter relating to this Contract or to the Services, as faithful advisers to the Owner, and shall at all times support and safeguard the Owner's legitimate interests in any dealings with Third Parties.

## **5.2 COMPLIANCE WITH RULES AND REGULATIONS**

The Consultant agrees that it shall be responsible and liable to comply with all the rules and regulations of various concerned government authorities and departments for the services rendered under this agreement.

## **5.3 CONFLICT OF INTEREST**

The consultant shall hold the Owner's interest paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their corporate interests.

## **5.4 Benefit from Commissions, Discounts etc.**

Payment to the Consultant shall constitute the Consultant's only payment in connection with this Contract or the Services, and the Consultant shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Consultant shall use their best efforts to ensure that the Personnel shall not receive any such additional benefits.

## **5.5 Consultant and Affiliates not to be otherwise interested in Project**

The Consultant agrees that, during the term of this Contract, the Consultant, Personnel and/or any entity affiliated with the Consultant shall not provide services resulting from or directly related to the Consultant's Services to any third party. In the event of breach of the aforesaid condition the Owner shall be entitled to disqualify such Consultant or any of their Personnel from providing services to the Owner and further claim damages for breach.

## **5.6 Prohibition of Conflicting Activities**

The Consultant shall not engage, and shall cause their Personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.

## **5.7 Insurance to be taken out by the Consultant**

The Consultant shall take out and maintain, at its own cost, insurance against risks etc.

## **5.8 Liability of the Consultant**



The Consultant and each of his Members (consultant personnel) shall be jointly and severally liable to the Owner for the performance of the Services under this Contract and further for any loss suffered by the Owner as a result of a default of the Consultant or his members in such performance, subject to the following limitations:

- (a) The Consultant shall not be liable for any damage or injury caused by or arising out of the act, neglect, default or omission of any persons other than the Consultant or its Personnel; and
- (b) The Consultant shall not be liable for any loss or damage caused by or arising out of circumstances of Force Majeure.

#### **5.9 Documents Prepared by the Consultant to be the Property of the Owner**

All plans, drawings, specifications, designs, reports and other documents prepared by the Consultant in performing the Services shall become and remain the property of the Owner, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Owner, together with a detailed inventory thereof.

### **6.0 CONSULTANT'S PERSONNEL**

#### **6.1 Agreed Personnel**

The Consultant hereby agrees to engage the personnel in order to fulfill his contractual obligations under this contract.

#### **6.2 General**

The Consultant shall employ and provide such qualified and experienced Personnel as are required to carry out the Services.

#### **6.3 Removals and/or Replacement of Personnel**

- a) Except as the Owner may otherwise agree, no changes shall be made in the Personnel. If, for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Personnel, the Consultant shall forthwith provide as a replacement a person of equivalent or better qualifications.
- (b) If the Owner:
  - i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or
  - (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel,

then the Consultant shall, at the Owner's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Owner.

- (c) The new personnel provided as a replacement shall be governed by the same the terms and conditions of employment as the replaced personnel.
- (d) The Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement.

## **7.0 OBLIGATIONS OF THE OWNER**

### **Payment**

In consideration of the Services performed by the Consultant under this Contract, the Owner shall make to the Consultant such payments and in such manner as is provided by **Clause 8** of this Contract.

## **8.0 PAYMENTS TO THE CONSULTANT**

**8.1** The cost of services payable in Indian Rupees is set forth in **LoA**.

### **8.2 Mode of Payment**

Payments will be made by the Owner to the consultant in accordance with the terms of payment as per Letter of Award. Any deviation in the payment terms is not permitted.

**8.3** The Consultant shall submit the bills in duplicate to PFCCL addressed to Executive Director (Unit#1,4 &5), PFCCL.

**8.4** The Owner shall cause the payment of the Consultant as per the above given schedule of payment within 30 days of the receipt of the bills raised along with supporting documents. However, it is agreed between the parties that the Owner may restrict or withhold the payment if the performance or progress of the services rendered by the Consultant is not satisfactory and not in accordance with the scope of work.

**8.5** The final payment under this Clause shall be made only after satisfactory completion of all the activities as per scope of work in LoA and after the issuance of No Claim Certificate.

**8.6** All payments under this Contract shall be made to the account of the Consultant with:  
Account No \_\_\_\_\_ Bank Name \_\_\_\_\_

## **9.0 Suspension**

The Owner may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder:

- (a) if the Consultant fails to perform any of its obligations under this Contract, including carrying out of the Services, provided, that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension
- or**
- (b) if at any stage it is found that the Consultant has provided any wrong information/ false information/ mis-represented the fact.

## **10.0 Termination**

### **10.1 By the Owner**

The Owner may terminate this contract, by issuing a written notice not less than thirty (30) days, from the date of occurrence of any of the events as specified in sub clause (a) to (e) of this Clause.

The Owner may terminate this contract, by issuing a written notice not less than sixty (60) days, from the date of occurrence of the event as specified in sub clause (f) of this Clause.

- (a) if the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 9 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the Owner may have subsequently approved in writing;
- (b) if the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to **Clause 17** hereof;
- (c) if the Consultant submits to the Owner a statement which has a material effect on the rights, obligations or interests of the Owner and which the Consultant knows to be false;
- (d) if, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (e) if Consultant become Bankrupt and the company has been wound up through liquidation proceedings.
- (f) if the Owner, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

## **10.2 Cessation of Rights and Obligations**

Upon termination of this Contract pursuant to Clauses 10 hereof, or upon expiration of this Contract pursuant to Clause 3 hereof, all rights and obligations of the Parties hereunder shall cease, except

- (a) such rights and obligations as may have accrued on the date of termination or expiration,
- (b) the obligation of confidentiality set forth in Clause 16 hereof,
- (c) any right which a Party may have under the Applicable Law.

## **10.3 Cessation of Services**

Upon termination of this Contract by notice to pursuant to Clauses 10 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

## **10.4 Payment upon Termination**

Upon termination of this Contract pursuant to **Clause-10** hereof, the Owner shall make the following payments to the Consultant:

- (a) remuneration pursuant to **Clause 8** hereof for Services satisfactorily performed prior to the effective date of termination;
- (b) reimbursable expenditures pursuant to **Clause 8** hereof for expenditures actually incurred prior to the effective date of termination; and
- (c) except in the case of termination pursuant to paragraphs (a) to (d) of Clause 10.1 hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract including the cost of the return travel of the Consultants' personnel and their eligible dependents.

## **11.0 Force Majeure**

### **11.1 Definition**

- (a) For the purposes of this Contract, "Force Majeure" means an event or circumstance or combination of events and circumstances, the occurrence of which is beyond the reasonable control of either party and which materially affects the performance by either Party of its obligations under this agreement, provided such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected party and includes, but is not limited to, war, riots, civil disorder,

earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

(b) It is however agreed that 'Force Majeure' shall not mean or include:

- (1) any event caused by the negligence or intentional action of a Party or employees, nor
- (2) any event which a diligent Party could reasonably have been expected take into account at the time of the Award of this Agreement, and avoids or overcome in the carrying out of its obligations hereunder.

(c) The Consultant shall not be paid /reimbursed any further price or cost or any additional cost in re-activating the services after the end of Force Majeure event.

#### **11.2 No Breach of Contract**

Neither party shall be responsible or be liable for, or deemed to be in breach hereof because of any failure or delay in complying with its obligations under or pursuant to this Agreement due to one or more events of Force Majeure or its effects or any combination thereof, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract. However it is agreed that in no event shall Force Majeure shall exclude any Party's obligation to pay monies under this Agreement.

#### **11.3 Measures to be taken**

- (a) A Party affected by an event of Force Majeure or any combination of events shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event or any combination of events of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

#### **11.4 Extension of Time**

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

#### **11.5 Consultation**

Not later than thirty (30) days after the Consultant, as the result of an event of Force Majeure, have become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

#### **12.0 Amendment/Modification**

This Agreement may not be altered, modified, revoked or cancelled in any way unless such alteration, modification or cancellation is in writing and duly signed by or on behalf of the parties which shall not be effective until the consent of the parties has been obtained. However, it is agreed between the parties that each Party shall give due consideration to any proposals for modification made by the other Party.

#### **13.0 Amicable Settlement**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof. Any dispute between the parties as to matters arising pursuant to this Contract which cannot be settled amicably shall be resolved as per the Indian Arbitration Act, 1996 as amended from time to time.

#### **14.0 FAIRNESS AND GOOD FAITH**

##### **14.1 Good Faith**

The Parties hereunder undertake to act in good faith with respect to their performance, obligations and rights under this Agreement and further undertake, during the tenure of this Agreement, to take all reasonable measures, to ensure the achievement/realization of the objectives of this Agreement.

##### **14.2 Operation of the Contract**

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but on failure to agree on any action pursuant to this clause shall give rise to a dispute subject to arbitration in accordance with clause 17 hereof.

## **15.0 TAXES AND DUTIES/CHANGE IN LAW.**

It is hereby agreed between the parties that the Consultant and its personnel shall pay the taxes, duties, fees, levies and other impositions levied under the existing, amended or enacted laws during life of this contract and the Owner shall deduct the taxes, duties and levy whatsoever as may be lawfully imposed.

## **16.0 Law Governing Contract**

This Agreement, its meaning and interpretation, and the relation between the Parties shall be governed by Indian Laws or any statutory modifications thereof, and shall be subject to the exclusive jurisdiction of the Courts of Delhi in any matter arising under this Agreement and or in matters pertaining to the conduct of arbitration, enforcement of the award or obtaining of interim relief(s) etc.

## **17.0 SETTLEMENTS OF DISPUTES/ ARBITRATION.**

**17.1** The parties shall endeavor to resolve amicably, in the first instance, all disputes, controversies or differences which may arise between the Parties, out of or in relation to or in connection with this Agreement, or for breach thereof.

**17.2** In the event, the parties are unable to resolve such dispute/difference amicably within **ninety (90)** days after the same has arisen then the dispute shall be referred to arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and such arbitration shall be conducted in accordance with the rules of ICA. The place of arbitration shall be New Delhi or any other place mutually agreeable by the parties and the language of arbitration shall be English

The Arbitration shall be conducted by panel of 3 Arbitrators, one to be appointed by each party and third Arbitrator to be appointed by two Arbitrators as the Chairman of the Tribunal.

The Parties agree that the arbitrator's decision shall be final and conclusive. The costs of arbitration (including without limitation, those incurred in the appointment of the arbitrators) shall be borne equally by the Parties hereto; however each Party shall pay its respective legal charges. The Award shall be final and binding and non-appeal able. Judgment on the award may be entered and enforced in any court of competent jurisdiction. By execution and delivery of this Agreement, each Party agrees and consents to the jurisdiction of the aforesaid arbitration panel and solely for the purpose of enforcement of an arbitral award, as referred to hereinabove, in any court of competent jurisdiction for itself and in respect of its property and waives in respect of both itself and its property, any defense it may have to or based on sovereign immunity, jurisdiction, improper venue or inconvenient forum.

## **18.0 GENERAL PROVISIONS**

### **18.1 Language**

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

### **18.2 Headings**

The headings shall not limit, alter or affect the meaning of this Contract.

### **18.3 Notices**

Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, or facsimile to such Party at the following address:

1. For the Owner: **Executive Director**  
**PFC Consulting Limited.**  
**(A Subsidiary of Power Finance Corp. Ltd.)**  
**First Floor, 'Urjanidhi', 1, Barakhamba Lane,**  
**New Delhi - 110001**

Attention: Mr. \_\_\_\_\_  
Facsimile: 011- \_\_\_\_\_,

2. For Consultant:

Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

### **18.4 Notice will be deemed to be effective as follows:**

- (a) in the case of personal delivery or registered mail, on delivery;
- (b) in the case of facsimiles, forty eight (48) hours following confirmed transmission.

### **18.5 A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to this Clause.**

### **18.6 Authority of Consultant in Charge**



The Consultant hereby authorize: Mr./Ms. \_\_\_\_\_ to act on their behalf in exercising all the Consultant's rights and obligations towards the Owner under this Contract, including without limitation the receiving of instructions and payments from the Owner.

#### **18.7 Authorised Representatives**

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract, may be taken or executed:

- (a) on behalf of the Owner by \_\_\_\_\_ or his designated representative;
- (b) on behalf of the Consultant \_\_\_\_\_ or his designated representative.

#### **18.8 WAIVER OF RIGHT**

The failure of either party to enforce at any time or for any period of time, the provisions hereof shall not be construed to be waiver of any provision or of any right and shall not preclude such party from subsequently enforcing such provisions or right.

#### **18.9 SEVEREABILITY CLAUSE**

If any provision of this Agreement shall be determined to be void or unenforceable, such provision shall be amended or deleted in so far as is reasonably consistent with the provisions of this Agreement and to the extent necessary to conform to applicable law and the remaining provision of this Agreement shall remain valid and enforceable in accordance with their terms.

- 18.10** This Agreement may be executed in any number of counterparts which together shall constitute a single agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day.....Month.....and year..... first above written.

FOR AND ON BEHALF OF  
[OWNER]

By:  
Authorized Representative

FOR AND ON BEHALF OF  
[CONSULTANT]

By :  
Representative

Authorized

***LIST OF APPENDIX***

A. Letter of Award

## Form – 8: SPECIAL INSTRUCTIONS TO BIDDERS FOR E-TENDERING

### General

The Special Instructions (for e-Tendering) supplement 'Instruction to Bidders', as given in this Tender Document. Submission of Online Bids is mandatory for this Tender. E-Tendering is a new methodology for conducting Public Procurement in a transparent and secured manner. Now, the Government of India has made e-tendering mandatory. Suppliers/ Vendors will be the biggest beneficiaries of this new system of procurement. For conducting electronic tendering, PFC Consulting Ltd. has decided to use the portal <https://www.tcil-india-electronictender.com> through TCIL, a Government of India Undertaking. This portal is based on the world's most 'secure' and 'user friendly' software from Electronic Tender. A portal built using Electronic Tender's software is also referred to as Electronic Tender System (ETS). Benefits to Suppliers is outlined on the Home-page of the portal.

### Instructions

#### Tender Bidding Methodology:

- **Electronic Bid System**
- **Single Stage Two Envelope (Technical & Financial)**

Broad Outline of Activities from Bidder's Perspective:

1. **Procure a Digital Signing Certificate (DSC)**
2. Register on Electronic Tendering System (ETS)
3. Create Marketing Authorities (MAs), Users and assign roles on ETS
4. View Notice Inviting Tender (NIT) on ETS
5. For this tender -- Assign Tender Search Code (TSC) to a MA
6. Download Official Copy of Tender Documents from ETS
7. Clarification to Tender Documents on ETS
  - Query to **PFC Consulting Ltd.** (Optional)
  - View response to queries posted by **PFC Consulting Ltd.**
8. Bid-Submission on ETS
9. Attend Public Online Tender Opening Event (TOE) on ETS
  - Opening of relevant Bid-Part
10. Post-TOE Clarification on ETS (Optional)
  - Respond to **PFC Consulting Ltd.** Post-TOE queries
11. Attend Public Online Tender Opening Event (TOE) on ETS
  - Opening of relevant part (i.e. Financial-Part)  
(Only for Technical Responsive Bidders)

For participating in this tender online, the following instructions are to be read carefully. These instructions are supplemented with more detailed guidelines on the relevant screens of the ETS.

### Digital Certificates

For integrity of data and authenticity/ non-repudiation of electronic records, and to be compliant with IT Act 2000, it is necessary for each user to have a Digital Certificate (DC). Also referred to as Digital Signature Certificate (DSC), of Class 2 or above, issued by a Certifying Authority (CA) licensed by Controller of Certifying Authorities (CCA) [refer<http://www.cca.gov.in>].

### Registration

To use the Electronic Tender® portal <https://www.tcil-india-electronictender.com>, vendors need to register on the portal. Registration of each organization is to be done by one of its senior persons who will be the main person coordinating for the e-tendering activities. In ETS terminology, this person will be referred to as the Super User (SU) of that organization. For further details, please visit the website/portal, and click on the 'Supplier Organization' link under 'Registration' (on the Home Page), and follow further instructions as given on the site. Pay Annual Registration Fee as applicable.

After successful submission of Registration details and Annual Registration Fee, please contact TCIL/ ETS Helpdesk (as given below), to get your registration accepted/activated.

**Important Note:** To minimize teething problems during the use of ETS (including the Registration process), it is recommended that the user should peruse the instructions given under 'ETS User-Guidance Center' located on ETS Home Page, including instructions for timely registration on ETS. The instructions relating to 'Essential Computer Security Settings for Use of ETS' and 'Important Functionality Checks' should be especially taken into cognizance.

Please note that even after acceptance of your registration by the Service Provider, to respond to a tender you will also require time to complete activities related to your organization, such as creation of users, assigning roles to them, etc.

TCIL/ ETS Helpdesk	
Telephone/ Mobile	Customer Support: +91-11-26202699(Multiple Lines) Emergency Mobile Numbers: +91-9868393775, 9868393717, 9868393792
E-mail ID	ets_support@tcil-india.com

PFC Consulting Ltd. Contact	
Contact Person	Mr. Yogesh Juneja, Executive Director Mr. Manish Agrawal, Senior Manager
Telephone	011-23443911 011-23443912 [between 10:00 hrs to 17:00 hrs on working days]
E-mail ID	mk_agrawal@pfcindia.com and nk_nagar@pfcindia.com

### **Some Bidding related Information for this Tender (Sealed Bid)**

The entire bid-submission would be online on ETS. Broad outline of submissions are as follows:

- Submission of Bid-Parts
  - Technical Part
  - Financial Part
  - Submission of digitally signed copy of entire Tender Documents/Addendum

#### **Offline Submissions:**

No offline submission is required.

*Note: The Bidder should also upload the scanned copies of all the documents as Bid-Annexures during Online Bid-Submission.*

### **Special Note on Security and Transparency of Bids**

Security related functionality has been rigorously implemented in ETS in a multidimensional manner. Starting with 'Acceptance of Registration by the Service Provider', provision for security has been made at various stages in Electronic Tender's software. Specifically for Bid Submission, some security related aspects are outlined below:

As part of the ElectronicEncrypter functionality, the contents of both the 'ElectronicForms' and the 'Main-Bid' are securely encrypted using a Pass-Phrase created by the Bidder himself. Unlike a 'password', a Pass-Phrase can be a multi-word sentence with spaces between words (eg I love this World). A Pass-Phrase is easier to remember, and more difficult to break. It is recommended that a separate Pass-Phrase be created for each Bid-Part. This method of bid-encryption does not have the security and data-integrity related vulnerabilities which are inherent in e-tendering systems which use Public-Key of the specified officer of a Buyer organization for bid-encryption. Bid encryption in ETS is such that the Bids cannot be decrypted before the Public Online Tender Opening Event (TOE), even if there is connivance between the concerned tender-opening officers of the Buyer organization and the personnel of e-tendering service provider.

CAUTION: All bidders must fill Electronic Forms for each bid-part sincerely and carefully, and avoid any discrepancy between information given in the Electronic Forms and the corresponding Main-Bid. For transparency, the information submitted by a bidder in the Electronic Forms is made available to other bidders during the Online Public TOE. If it is found during the Online Public TOE that a bidder has not filled in the complete information in the Electronic Forms, the TOE officer may make available for downloading the corresponding Main-Bid of that bidder at the risk of the bidder. If variation is noted between the information contained in the Electronic Forms and the 'Main-Bid', the contents of the Electronic Forms shall prevail. Alternatively, **PFC Consulting Ltd.** reserves the right to consider the higher of the two pieces of information (eg the higher price) for the purpose of short-listing, and the lower of the two pieces of information (eg the lower price) for the purpose of payment in case that bidder is an awardee in that tender.

Typically, 'Pass-Phrase' of the Bid-Part to be opened during a particular Public Online Tender Opening Event (TOE) is furnished online by each bidder during the TOE itself, when demanded by the concerned Tender Opening Officer.

**The bidder shall make sure that the Pass-Phrase to decrypt the relevant Bid-Part is submitted into the 'Time Locked Electronic Key Box (EKB)' after the corresponding deadline of Bid Submission, and before the commencement of the Online TOE.** The process of submission of this Pass-Phrase in the 'Time Locked Electronic Key Box' is done in a secure manner by first encrypting this Pass-Phrase with the designated keys provided by the PFC Consulting Ltd.

There is an additional protection with SSL Encryption during transit from the client-end computer of a Supplier organization to the e-tendering server/ portal.

### **Public Online Tender Opening Event (TOE)**

ETS offers a unique facility for 'Public Online Tender Opening Event (TOE)'. Tender Opening Officers, as well as, authorized representatives of bidders can simultaneously attend the Public Online Tender Opening Event (TOE) from the comfort of their offices. Alternatively, one/ two duly authorized representative(s) of bidders (i.e. Supplier organization) are requested to carry a Laptop with Wireless Internet Connectivity, if they wish to come to **PFC Consulting Ltd.** office for the Public Online TOE.

Every legal requirement for a transparent and secure 'Public Online Tender Opening Event (TOE)', including digital counter-signing of each opened bid by the authorized TOE-officer(s) in the simultaneous online presence of the participating bidders' representatives, has been implemented on ETS.

As soon as a Bid is decrypted with the corresponding 'Pass-Phrase' as submitted online by the bidder himself (during the TOE itself), salient points of the Bids (as identified by the **PFC Consulting Ltd.**) are simultaneously made available for downloading by all participating bidders. The medium of taking notes during a manual 'Tender Opening Event' is therefore replaced with this superior and convenient form of 'Public Online Tender Opening Event (TOE)'.

ETS has a unique facility of 'Online Comparison Chart' which is dynamically updated as each online bid is opened. The format of the chart is based on inputs provided by the Buyer for each Bid-Part of a tender. The information in the Comparison Chart is based on the data submitted by the Bidders. A detailed Technical and/ or Financial Comparison Chart enhance Transparency. Detailed instructions are given on relevant screens.

ETS has a unique facility of a detailed report titled 'Minutes of Online Tender Opening Event (TOE)' covering all important activities of 'Online Tender Opening Event (TOE)'. This is available to all participating bidders for 'Viewing/Downloading'.

There are many more facilities and features on ETS. For a particular tender, the screens viewed by a Supplier will depend upon the options selected by the concerned Buyer.

## **Other Instructions**

For further instructions, the vendor should visit the home-page of the portal <https://www.tcil-india-electronictender.com>, and go to the **User-Guidance Center**.

The help information provided through 'ETS User-Guidance Center' is available in three categories – Users intending to Register / First-Time Users, Logged-in users of Buyer organizations, and Logged-in users of Supplier organizations. Various links (including links for User Manuals) are provided under each of the three categories.

Important Note: It is strongly recommended that all authorized users of Supplier organizations should thoroughly peruse the information provided under the relevant links, and take appropriate action. This will prevent hiccups, and minimize teething problems during the use of ETS.



### **SIX CRITICAL DO'S AND DON'TS FOR BIDDERS**

Specifically for Supplier organizations, the following 'SIX KEY INSTRUCTIONS for BIDDERS' must be assiduously adhered to:

1. Obtain individual Digital Signing Certificate (DSC or DC) well in advance of your first tender submission deadline on ETS
2. Register your organization on ETS well in advance of the important deadlines for your first tender on ETS viz 'Date and Time of Closure of Procurement of Tender Documents' and 'Last Date and Time of Receipt of Bids'. Please note that even after acceptance of your registration by the Service Provider, to respond to a tender you will also require time to complete activities related to your organization, such as creation of users, assigning roles to them, etc.
3. Get your organization's concerned executives trained on ETS well in advance of your first tender submission deadline on ETS
4. Submit your bids well in advance of tender submission deadline on ETS (There could be last minute problems due to internet timeout, breakdown, et al)
5. It is the responsibility of each bidder to remember and securely store the Pass-Phrase for each Bid-Part submitted by that bidder. In the event of a bidder forgetting the Pass-Phrase before the expiry of deadline for Bid-Submission, facility is provided to the bidder to 'Annul Previous Submission' from the Bid-Submission Overview page and start afresh with new Pass-Phrase(s)
6. ETS will make your bid available for opening during the Online Public Tender Opening Event (TOE) 'ONLY IF' your 'Status pertaining Overall Bid-Submission' is 'Complete'. For your record, you can generate and save a copy of 'Final Submission Receipt'. This receipt can be generated from 'Bid-Submission Overview Page' only if the 'Status pertaining overall Bid-Submission' is 'Complete'.

**NOTE:**

*While the first three instructions mentioned above are especially relevant to first-time users of ETS, the fourth, fifth and sixth instructions are relevant at all times.*

#### **Minimum Requirements at Bidder's End**

- Computer System with good configuration (Min PIV, 1 GB RAM, Windows 7 or above)
- Broadband connectivity
- Microsoft Internet Explorer 6.0 or above
- Digital Certificate(s)