

Draft Guidelines

NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

NOTIFICATION

Islamabad, the November 2016

S.R.O _____ In exercise of the power conferred by Section 7(2)(i) of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997), the National Electric Power Regulatory Authority, in order to bring transparency for selection of Engineering Procurement Construction Contractor by Independent Power Producers, hereby notifies the following guidelines.

CHAPTER I

Title, Commencement, Scope, Definitions and Interpretation

1. **Title and Commencement.**— (1) These guidelines may be called the National Electric Power Regulatory Authority (Selection of Engineering, Procurement and Construction Contractor by Independent Power Producers) Guidelines, 2016.

(2) These guidelines shall come in force at once.
2. **Scope.**— These guidelines are applicable to Independent Power Producers whose projects are being implemented on Cost-Plus Tariff basis or are being implemented under NEPRA's Interim Power Procurement (Procedures and Standards) Regulations, 2005, and which intend to award EPC Contracts for construction of the power projects (or part of the projects).
3. **Definitions.**— (1) In these guidelines unless there is anything repugnant in the subject or context,-

(a) "Act" means the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997);

- (b) “Alternate Bid” means the optional bid that a bidder may submit based on improved design than the one specified in the feasibility study;
- (c) “Authority” shall bear the meaning ascribed thereto in the Act;
- (d) “Conflict of Interest” shall bear the meaning ascribed thereto in sub clause (2) of clause 6 of these guidelines;
- (e) “Cost Plus Tariff” means a tariff based on the estimated costs of the power project (or part(s) thereof) and a profit margin as approved by the Authority;
- (f) “EPC Contract” or “Contract” means the engineering procurement and construction contract duly executed by the IPP with the prospective bidder;
- (g) “EPC Contractor” means a bidder who has been awarded the EPC Contract;
- (h) “Independent Consultant” means a consultant who does not have any conflict of interest *vis-à-vis* the Company or the bidder;
- (i) “Independent Power Producer” or “IPP” or “Company” means a company carrying out the bidding process for selection of EPC Contractor;
- (j) “Primary Bid” means the bid made by the bidder that is based on the design and parameters given in the feasibility study;
- (k) “Relevant Agency” means any functionary of Federal Government or Provincial Government or any agency authorized by the Federal Government or Provincial Government that has approved the feasibility study of the project;

(2) Words and expressions used but not defined in these guidelines shall have the same meaning as in the Act.

(3) Words importing the singular shall include the plural and vice versa.

CHAPTER II

Pre-Qualification and Advertisement

4. Pre-Qualification.— (1) Only pre-qualified bidders shall be eligible to participate in the bidding process for selection of EPC Contractor.

(2) The pre-qualification criteria shall be based on eligibility; history of non-performance and chronic litigation history; professional competence of staff and equipment, relevant experience, financial capability and integrity.

(3) The evaluation for pre-qualification shall be carried out by an Independent Consultant, not having any Conflict of Interest *vis-à-vis* the Company or the bidders.

(4) A minimum of three pre-qualified bidders are required for proceeding further with the tendering process:

Provided that in case less than three bidders are pre-qualified in the first attempt, the process of pre-qualification may be repeated with possible adjustment in the pre-qualifying criteria.

5. Advertisement.— (1) The advertisements for pre-qualification and subsequent tendering process shall be widely circulated in at least two national newspapers, three international newspapers of repute with global circulation, on the website of the Company and two international tendering websites.

(2) At least fifteen working days may be given to the bidders for collection of documents following the date of the advertisement.

(3) The time required for submission of bids by the bidders shall be in conformity with the nature, scope and magnitude of the project with minimum of four months being provided to the bidders for site visits, bid clarification meetings and preparation of bids.

CHAPTER III

Eligible Bidders and Request for Proposal

6. **Eligible Bidders.**— (1) In addition to being pre-qualified, a bidder may be a firm/company/body corporate, privately owned or a state-owned enterprise or institution, or any combination of such entities in the form of a joint venture (JV).

(2) A bidder shall not have a Conflict of Interest and any bidder having a Conflict of Interest is to be disqualified.

Explanation: A bidder may be considered to have a Conflict of Interest for the purpose of the bidding process, if the bidder:

- a) is a shareholder or stakeholder in the project for which the bidding is being held; or
- b) directly or indirectly controls, is controlled by or is under common control with another bidder; or
- c) receives or has received any direct or indirect subsidy from another bidder; or
- d) has the same legal representative as another bidder; or
- e) has a relationship with another bidder, directly or through common third parties, that puts it in a position to influence the bid of another bidder, or influence the decisions of the Company regarding this bidding process;
- f) or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the plant and installation services that are the subject of the bid; or
- g) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or

h) has a close association or is related to a professional staff of the Company (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly involved in the preparation of the bidding document or specifications of the Contract, and/or the bid evaluation process of such Contract; or (ii) would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved throughout the bidding process and execution of the Contract.

(3) A firm that is a bidder (either individually or as a JV member) shall not participate as a bidder or as JV member in more than one bid. Such participation shall result in the disqualification of all bids in which the firm is involved.

(4) Any firm /company/body corporate or individual which is barred by any law in force in Pakistan or a decision of the Government or is subject to United Nations sanction shall be ineligible to participate as a bidder.

7. **Request for Proposal (RFP) .—** (1) A detailed RFP document must be prepared by the Company calling for bids which shall contain information including but not limited to following:

- a) Background Information;
- b) Scope of Work;
- c) Technical Specifications;
- d) Instruction to Bidders;
- e) Timelines for Deliverables;
- f) Conditions of Contract;
- g) Penalties & Incentives;
- h) Evaluation Criteria; and

i) the Feasibility Study/design of the project on which the bids are to be based.

(2) All incentives being offered to power projects by the GOP and Authority, such as exemption from certain taxes and openers allowed by Authority for cost escalation of four (4) Civil Work items i.e. cement, labour, fuel and steel in case of hydropower projects etc., must be clearly stated in the RFP and be made part of the EPC Contract in order to avoid double-counting.

CHAPTER IV

Tendering Process and Price Negotiation with Selected Bidder

8. **Tendering Process.**— (1) At least two bids may be received for the tendering process to proceed:

Provided that if only a single bid (or no bid) is received, re-bidding shall be carried out.

(2) A Single-stage two envelope bidding procedure shall be adopted for selection of the EPC Contractor.

(3) The bids comprising a single package shall contain two envelopes titled “the Technical Proposal” and “the Financial Proposal” respectively.

(4) Initially, only the Technical Proposal shall be opened in the presence of authorized representatives of the bidders while the financial proposal shall be kept unopened until the evaluation of the technical bid is complete.

(5) The technical bid shall be evaluated by an Independent Consultant in a manner prescribed in advance (specifying points for experience, equipment and staff, and Construction Methodology amongst others; as well as the minimum points required for technical qualification) without reference to the price.

(6) The technical bid evaluation shall ensure that the technical solution offered by a bidder is feasible, deliverable and robust and is based on reliable technologies while meeting all

minimum technical requirements; any proposal not conforming to the specified requirements/minimum points earned shall stand disqualified.

(7) The points/score of the technical bid shall not be carried forward in the final evaluation score for selection of the winning bid, which shall be based on the evaluated financial bid:

Provided that it shall be ensured that the financial bid and the costs and financial structure proposed by the bidder are consistent with the technical solution offered.

(8) After evaluation of the technical bids, the financial bids of only the technically qualified bidders shall be opened in the presence of authorized representatives of the bidders for evaluation.

(9) The evaluation of the financial bids would be done by an Independent Consultant in a manner prescribed in advance broadly following the Evaluation Criteria attached as Schedule-I.

9. **Price Negotiation with Selected Bidder.**— Price negotiation may only be carried out with the winning bidder, provided it is done in an open and transparent manner for cost effectiveness and further lowering of the lowest evaluated bid price.

CHAPTER V

Change in Design/Alternate Bid and Written Record

10. **Change in Design/ Alternate Bid.**— (1) In order to ensure a level playing field for all bidders, all the Primary Bids shall be based on the design specified in the Feasibility Study of the Project and provided to the bidders as part of the RFP and only the Primary Bids would be used for determining the winning bid:

Provided that the bidders may also submit an Alternate Bid based on an improved design/and or better financial terms and such Alternate Bids of only the lowest evaluated

bidder (the winning bidder) would be opened for further evaluation and if found to be technically viable and based on better financial terms, could be considered for approval.

(2) Any subsequent major change in design, following acceptance of a bid would have to be approved by the Relevant Agency and any savings in costs as a result of the design change would be accounted for by Authority in the Cost-Plus Tariff.

11. **Written Record.**— The written record of all activities relating to the pre-qualification and tendering process, including bid evaluation and EPC Contract shall be kept and made available to Authority.

Schedule-I

Evaluation Criteria

The Financial Bids shall be evaluated as follows:

Criteria	Evaluation	Score
(a) Bid Price	The Bid Price will be evaluated to determine the Evaluated Bid Score using the criteria defined in the notes below.	70
(b) Reasonableness of pricing	The pricing structure will be reviewed. Higher marks will be awarded to Bidders with pricing consistent with the technical proposal	5
(c) Financial Strength	Higher marks will be awarded for stronger balance sheet, greater financial resources, and larger annual turnover.	10
(d) Conditions of Contract/Deliverables	Lower marks will be awarded for exceptions to the Conditions of Contract/Deliverables specified in the RFP	15
Score		Max 100

Notes: The Evaluated Bid Score shall be obtained by adjusting the Bid Price as follows:

- The Bid Price will be adjusted for correction of arithmetical errors;
- Price adjustment will be made to account for any quantifiable material nonconformities and work, services, facilities, etc., to be provided by the Company.
- The value of energy and capacity will be determined based on the Plant performance/efficiency guaranteed in the Bid, i.e., Bids guaranteeing higher efficiency/capacity/energy shall earn higher marks
- Differences in the scheduled completion for the COD will be valued.
- The value of the cash flow proposed by the Bidder will be determined by discounting payments to present value as of the Contract Commencement Date. The cash flow shall include an allowance for interest during construction.

The Evaluated Bid Price shall be obtained by the summation of the effect of the above factors. The lowest Evaluated Bid Price will be awarded an Evaluated Bid Score of 70 points. Other Bids will be assigned points on a pro-rata basis as:

$$\text{Evaluated Bid Score} = \frac{\text{Lowest Evaluated Bid Price}}{\text{Evaluated Bid Price}} \times 70$$