

**TENDER**  
**FOR**  
**SELECTION OF AGENCY TO OPERATE, MAINTAIN & MANAGE**  
**INTEGRATED PACK HOUSE FOR FRUITS AND VEGETABLES**  
**(IPH) AT BARASAT, Dist-NORTH 24 PARGANAS, WEST BENGAL**

Through e-Tendering process only

**Re-Tender Notice**

**No.78/WBSFPHDCL/1770/2022-23**

**Date: 01.11.2022**

**WEST BENGAL STATE FOOD PROCESSING &**  
**HORTICULTURE DEVELOPMENT**  
**CORPORATION**  
**(A Government of West Bengal Undertaking)**

**Disclaime****r**

The West Bengal State Food Processing & Horticulture Development Corporation (herein after called WBSFP&HDCL or "Authority") has prepared this document solely to assist prospective bidders in making their decision of whether or not to submit a bid. While the Authority has taken due care in the preparation of information contained herein and believes it to be accurate, neither WBSFP&HDCL or any of its agencies or representatives nor any of their respective officers, employees, agents or advisors gives any warranty or make any representations, express or implied as to the completeness or accuracy of the information contained in this document or any information which may be provided in association with it.

This information is not intended to be exhaustive. Interested parties are expected to make their own inquiries and research for gathering the insights, knowledge and information that may be required for submitting a bid. The information is provided on the basis that it is non-binding on WBSFP&HDCL, any of its authorities or agencies or any of their respective officers, employees, agents or advisors.

WBSFP&HDCL reserves the right not to proceed with the bidding process at any stage without assigning any reasons thereof or to alter the timetable reflected in this document or to change the process or procedure to be applied. It also reserves the right to decline to discuss the bid further with any party submitting a bid.

No reimbursement of cost of any type will be paid to persons or entities submitting the Bid.

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## 1. Preamble

West Bengal State Food Processing & Horticulture Development Corporation. (hereinafter referred to as 'WBSFP&HDCL' or 'Authority'), invites bids through e-tendering method from interested bidders for providing Operation, Maintenance and Management of Integrated Pack House for Fruits and Vegetables at Barasat, North 24 Parganas, West Bengal, India (hereinafter referred to as 'The Facility'), on a "AS-IS-WHERE-IS" basis, under a two-packet bidding system comprising the (i) Qualification cum Technical Bid and (ii) Price Bid.

### **Main Pack House:**

Name : Barasat Multipurpose Cold Store and Pack House  
Address : Hemonta Basu Road, Subhashnagar, Block -F, Barasat, 700121

Area of land : 3.49 acres  
Covered Area : 5869 sq. ft.

Capacity : 240 MT. Unit having 4(four) nos. chambers with 60 MT capacity each. It includes 2(two) nos. of high humidity chamber, 1(one) no. pre-cooling chamber and 1(one) no. normal humidity chamber.

Other facilities : The Barasat Multipurpose Cold Store and Pack House also has facilities for sorting, grading, hot water treatment and other infrastructure capabilities with receiving area, dispatch area, office space, staff toilet and DG backup system etc.

Proposal is to be submitted by the bidders in the form of online submission of Technical Bids and Price Bids in accordance with the documents/ attachments required as per eligibility criteria set herein in the tender document.

Bids have to be submitted on-line mandatorily. All bidders shall have to submit their bid on the website at the designated place at [wbtenders.gov.in](http://wbtenders.gov.in).

Bids shall be prepared in English and all entries should be typed and written in black ink. Initials of the authorized representative of the Bidder should attest all erasures and alterations made while filling the Bids. Failure to comply with any of these conditions may render the Bid invalid. A copy of this Tender Document with all addendums, corrigendum's, drawings, etc. with on all pages duly signed should

accompany the bid.

WBSFP&HDCL shall not be responsible for any costs or expenses incurred by bidders in connection with the preparation and delivery of bids, including costs and expenses related to visits to the site. WBSFP&HDCL reserves the rights to cancel, terminate, change or modify this process and/or requirements of bidding stated in the Tender, without assigning any reason or providing any notice and without accepting any liability for the same.

## **2. Interpretation**

In the interpretation of this Tender, unless the context otherwise requires

- The singular of any defined term includes the plural and vice versa, and any word or expression defined in the singular has the corresponding meaning used in the plural and vice versa;
- A reference to any gender includes the other gender;
- Unless otherwise stated, a reference to a Clause, Sub-Clause, Paragraph, Subparagraph, Annex, Exhibit, Attachment, Schedule or Recital is a reference to a Clause, Sub-Clause, Paragraph, Subparagraph, Annex, Exhibit, Attachment, Schedule or Recital of this Tender.
- A reference to any Contract is a reference to that Contract and all annexes, attachments, exhibits, schedules, appendices and the like incorporated therein, as the same may be amended, modified, supplemented, waived, varied, added to, substituted, replaced, renewed or extended, from time to time, in accordance with the terms thereof;
- The terms "include" and "including" shall be deemed to be followed by the words "without limitation", whether or not so followed;
- Any reference to a person shall include such person's successors and permitted assignees;
- A reference to a "writing" or "written" includes printing, typing, lithography and other means of reproducing words in a visible form;
- Any date or period set forth in this Tender shall be such date or period as may be extended pursuant to the terms of this Tender;
- A reference to "Month" shall mean a calendar month, and a reference to "day" shall mean a calendar day, unless otherwise specified.
- The terms "hereof", "herein", "hereto", "hereunder" or similar expressions used in this Tender mean and refer to this Tender and not to any particular Article,
- The terms "Article", "Clause", "Paragraph" and "Schedule" mean and refer to the Article, Clause, Paragraph and Schedule of this Tender so specified;



### 3. Definitions:

**Agreement** or **The Facility Agreement** means the Agreement to be signed between WBSFP&HDCL and Successful Bidder for assigning this Project for **Operation, Maintenance and Management of Integrated Pack House for Fruits and Vegetables at Barasat, North 24 Parganas-West Bengal**, which includes, all terms and conditions of this tender document and the subsequent addendums.

**Applicable Laws** means all statutes and laws promulgated or brought into force and effect by the central government of India or state government of West Bengal or local government(s), including regulations and rules made by them, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Project.

**Authority** or **WBSFP&HDCL** shall mean WEST BENGAL STATE FOOD PROCESSING & HORTICULTURE DEVELOPMENT CORPORATION.

**Due Date** means last date & time of Bid Submission as specified in Bid Summary of this Tender document.

**Effective Date** shall mean the date of starting of operations by the Successful Bidder as an Agency. This day shall signify the beginning of the contract Period. This date would be mutually agreed by Authority and the Agency and documented in the contract Agreement and may be brought out in the previous correspondence.

**Encumbrance** shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss, payees or beneficiaries or any similar arrangement under any insurance policy pertaining to this Project, physical encumbrances, claims for any amounts due on account of taxes, cess, electricity, water and other utility charges and encroachments on the Premises

**The Facility** or **Contract** shall mean the rights of Operations, Maintenance, Marketing and Management of the Project Facility in accordance with the terms and conditions of this tender document granted by WBSFP&HDCL to Agency in return of fixed amount, to be ascertained by bidding, of 7 years contract Fee.

The Facility shall not create any property Right of any kind whatsoever on the property underlying the Project Facility or the Project Facility itself, or through lease, sale, or transfer.

**Agency** shall mean the Successful Bidder whose bid has been accepted by Authority to execute the **OM&M** contract in accordance with the terms and conditions of this tender document.

**Project Facility** shall mean all physical assets forming the facility relating to Operating, Maintenance and Marketing services for Integrated Pack House for Fruits and Vegetables at Barasat, North 24 Parganas, West Bengal as shown at site including;

(i) tangible assets such as civil works (buildings) and machineries, plants and equipment, other commercial space, electric lights, separate toilets and washrooms for men and women, administrative office, electrical system (ii) all amenities and facilities in the Project Facility (iii) Applicable Permits relating to or in respect of the Project (iv) right to access and approach the Project Facility.

**Scope of the Project** shall have meaning set out in clause 5 of this Tender document.

**Successful Bidder** shall mean preferred bidder whose bid is accepted by Authority for awarding this contract.

**Statutory Auditors** means a firm of chartered accountants appointed in terms of Section of the Companies Act, 2013 and acting as the statutory auditors of the Bidder.

**4. Notice Inviting On-Line Tender.**

<b>NO</b>	<b>KEY INFORMATION</b>	<b>DETAILS</b>
1	<b>Re-Tender Notice No.</b>	<b>78/WBSFPHDCL/1770/22-23</b> <b>Date:</b> <b>01.11.2022</b>
2	<b>Name of the corporation</b>	WEST BENGAL STATE FOOD PROCESSING & HORTICULTURE DEVELOPMENT CORPORATION
3	<b>Tender Description</b>	Selection of Agency for providing Operation, Maintenance and Management services for Integrated Pack House for Fruits and Vegetables at Barasat, North 24 Parganas -West Bengal.
4	<b>Project Facility/ Site</b>	Integrated Pack House for Fruits and Vegetables at Barasat, North 24 Parganas, West Bengal.
5	<b>Contract Tenure &amp; Termination</b>	The contract Tenure is for a period of 7 years (Seven years) commencing from the Effective Date, <b>which may be renewed for a further period of seven years on satisfactory performance of the Bidder.</b>
6	<b>Form of Contract</b>	Operation, Managing and Maintenance of the Facility.
7	<b>Tender Currency</b>	Indian Rupee (INR)
8	<b>Consortium/ Joint Venture</b>	Maximum Two members are permitted in case of consortium. Applicable In case of consortium there should be a lead member who will have overall responsibility and WBSFP&HDCL will deal with lead member only for financial, administrative, contractual matters etc. <b>Both members will be liable jointly and severally to discharge the obligations of the project. The nomenclature shall be identical. Additional Power of Attorney shall have to be issued in favour of the Lead Member to deal with WBSFP&amp;HDCL in all matters regarding the project.</b>
9	<b>Rebate/Negotiations</b>	Applicable
10	<b>Officer Inviting Bids</b>	<b>Managing Director (MD)</b> , West Bengal State Food Processing & Horticulture Development Corporation, (Benfish Tower, 6 <sup>th</sup> floor, salt Lake, Kolkata- 700091)
11	<b>Bid Opening Authority</b>	<b>Managing Director (MD)</b> , West Bengal State Food Processing & Horticulture Development Corporation, (Benfish Tower, 6 <sup>th</sup> floor, salt Lake, Kolkata- 700091)

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12	<b>Product Category</b>	Miscellaneous
13	<b>Tender Fee</b>	Rs. 20,000 (Rs. Twenty thousand only) in the form of Demand Draft in favour of “West Bengal State Food Processing & Horticulture Development Corporation”, and payable at Kolkata.
14	<b>Earnest Money Deposit (EMD)</b>	Bid submitted shall be accompanied by an <b>(EMD) Earnest Money Deposit of Rs. 5,00,000/- (Rupees Five lakh only)</b> hereinafter referred to as “EMD” in the form of a demand draft drawn in favour of “West Bengal State Food Processing & Horticulture Development Corporation”, payable at Kolkata.
15	<b>Bid Validity</b>	The bids shall be valid for period of <b>180 Days</b> from the last Date of Bid Submission.
16	<b>Bid process</b>	The aim of the bidding process is to select the most preferred party as per the terms herein. The selection process would be carried out through two packet bid system as follows: <b>Qualification cum Technical Bid:</b> Capability of the Bidder to undertake the contract would be assessed based on Qualification criteria mentioned in Clause 6 in this tender document. <b>Price Bid:</b> The price bids of bidders qualifying as per qualification criteria shall be opened for comparison and the bidder quoting most favourable price would be the preferred bidder for awarding the contract.
17	<b>Bid Document Downloading start Date</b>	12.11.2022
18	<b>Pre-bid Meeting</b>	11.11.2022 at 2 P.M.
19	<b>Last Date of Bid Submissions</b>	21.11.2022 at 2 P.M.
20	<b>Date of opening of Technical Bids</b>	23.11.2022 at 2 P.M.
21	<b>Date of opening of Price Bids</b>	The tenderer should lodge objection to the tender inviting authority within two days (48 hours) from the date of publication of list of technically qualified bidders and beyond that time schedule no objection will be entertained by the authority
		<b>Submission Envelope</b>

22	<b>Tender Format</b>	<p><b>1: EMD and Bid Processing Fee Envelope 2: Qualification cum Technical Bid:</b>          Technical document as detailed in Documents Submission Checklist as per Clause 8.18 to be submitted on line.  <b>PRICE BIDS shall be submitted in online mode only at <a href="http://wbtenders.gov.in">wbtenders.gov.in</a>.</b> Bidder should quote the total price in the format specified on the website. The price should include maintenance costs, insurance cost etc.</p>
23	<b>Qualification Criteria</b>	<ol style="list-style-type: none"> <li>1) The Bidder should have a minimum annual turnover of <b>Rs. 4.00 Crores (Rs. four Crores)</b> for each of the last three financial years ending on <b>March 2022</b></li> <li>2) The Bidder should have minimum net worth of at least <b>Rs. 2.00 Crores (Rs. Two Crores) as on March, 2022.</b></li> <li>3) The Bidder will have to submit a Solvency Certificate of Rs. 2 Crore <b>as on 31<sup>st</sup> March 2021 &amp; 2022 from the Bidder's Banker duly Certified by a statutory Auditor/ practicing Chartered Accountant.</b></li> <li>4) Bidder should be Registered Entity in terms of being an incorporated company, partnership or proprietorship in India.</li> <li>5) Bidder should not have been blacklisted by Organization/ Government Entity/ Government Company.</li> <li>6) Last three years, would represent audited figures <b>for the financial years 2019-20, 2020-21 and 2021 - 22. If audited financial statements of year ending on March 31st, 2022</b> are not available, then audited financial statements of last three years ending on <b>March 31st, 2021</b> must be provided.</li> <li>7) The bidder should submit a copy of GST registration certificate</li> <li>8) <b>Income Tax Return for the last two financial/ assessment years to be submitted</b></li> </ol>
24	<b>Tender Evaluation</b>	<ol style="list-style-type: none"> <li>1) Test of Responsiveness of the bid based on submission of EMD and Tender Fee and timely submission.</li> <li>2) Evidence of meeting necessary Qualification Criteria.</li> <li>3) Opening of Price bids for qualified bidders.</li> </ol>

25	<b>Signing of agreement</b>	Agreement shall be signed between WBSFP&HDCL and Successful Bidder incorporating terms of the tender as directed by WBSFP&HDCL.
26	<b>Performance Guarantee</b>	<p>Successful bidder who is awarded the contract would have to present a Performance Guarantee in favour of WBSFP&amp;HDCL on receipt of Letter of Acceptance (LoA), for an amount of Rs. 25 lakh in the form of a Demand Draft or Bank Guarantee from any Nationalized/ Scheduled Bank for due and punctual performance of its obligations during operational period.</p> <ol style="list-style-type: none"> <li>1. <b>Performance Guarantee in the form of a bank guarantee shall be irrevocable and valid for the contract Tenure and a period of 180 (one hundred and eighty) days of operations thereafter. Performance Guarantee may be issued by any Nationalized Bank. Only those banks as listed in SBMS portal of Finance Department shall be accepted.</b></li> <li>2. <b>The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.</b></li> <li>3. <b>Bank shall not be released from its liability by any exercise of the Authority by reason of time being given to the bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the Bidder.</b></li> <li>4. <b>The Bank has the power to issue the Guarantee and discharge the obligations contemplated, the issuing Authority is duly authorized and has full power to execute the Guarantee for and on behalf of the Bank.</b></li> </ol> <p><b>Bank undertakes not to revoke the Guarantee during its currency except with the previous express consent of the Authority in writing.</b></p>
27	<b>Taxes</b>	<p>(a) All approvals for the Facility shall be taken in the name of WBSFP&amp;HDCL.</p> <p>(b) Agency shall be responsible for GST, stamp duty for registration if any, electricity bill, water supply, waste management and other statutory compliance to the employees, any charges and levies and various certificates related to operation of the plant.</p>
28	<b>Insurance</b>	Cost of the insurance for the plant, machinery and building shall be borne by the Agency.

29	<b>Sub contract</b>	The Agency is not permitted to sublet or subcontract the facility for use of any party other than for itself.
30	<b>Capital Expenditure</b>	During the contract period, any capital expenditure shall be borne by the Agency.

## 5. Scope of Work for the Contract

### 5.1 Operation and Management Obligations of Agency

During the contract Period, the Agency shall Operate, Maintain and Manage the Project Facility in accordance with this tender. The rights and obligations of the Agency include the following:

- a) Right to Operate, Maintain and Manage Integrated Pack House for Fruits and Vegetables and its storage for contract period.
- b) Carrying routine and periodic preventive and corrective maintenance of the Facility.
- c) Generate business for the Integrated Pack House by marketing the facility to various industries/departments desirous of processing their fruits and vegetables.
- d) Operate and maintain the facility as required by various laws/accrediting institutions/GMP requirements.
- e) Apply, Coordinate and Obtain various approvals/certifications and accreditations for the facility and production batches as required.
- f) Handover the premises with all the fixtures, fitting and all the equipment as per inventory at the time of handing over and additions made if any as per contract in working condition at the time of cessation of contract/agreement.
- g) Ensuring employment of standard operation and maintenance practices of all equipment as per manufacturer's manual and warranties in a way that condition of equipment employed are not deteriorated beyond regular wear and tear.
- h) Attempt to mitigate any adverse environment, social and health impacts of the Facility on the employees, customers or any other stakeholders.
- i) In case of disruption or breakdown, taking immediate measures to repair and rectify the defect in the Facility to bring it to normal



operational conditions.

- j) Employ Good Market Practices, ISO 2000 and other standard processing practices for the Operation, Maintenance and Management of the Facility.
- k) Comply with Safety standards as given in the Annexure 7 and ensure safety and security of the Project Facility.
- l) Agency shall indemnify Authority against all the losses, injuries and any kind of damage incurred due to its activities or its employees.
- m) Ensure that Project Facility or any part of them are not used for unlawful or anti-social activities and are used solely for the purpose of this contract during the contract period.
- n) Bear the replacement cost and expenses of any natural damages or vandalism, theft, tampering of any asset at the Facility. The Agency shall take out an adequate insurance cover for the purpose whereby the insurance proceeds may be applied for meeting such replacement cost and expenses and shortfall, if any, shall be borne by the Agency.
- o) Provide the man power required as per the industry norms at its own cost for operation, maintenance, housekeeping, building and asset security and all other requirements pertaining to Operation, Maintenance and Management of the project facility.
- p) Adequately stock spares and ensures maintenance of facility equipment at all times such that the condition of machines are as per original state, subject to the wear and tear due to the regular operation.
- q) Purchase and maintain required spares, materials and other consumables for regular operation and maintenance of the Facility.
- r) Meet all the finances required for operation, maintenance and management of the Project Facility including payment for utilities like power and water, local authorities, municipal property taxes etc.
- s) The Agency shall be entitled to during the term of this contract and on the Transfer Date, to remove and take away the facility equipment installed by it that does not form an integral part of the Project Facility.
- t) Any expenses towards repair, maintenance, operations and marketing of the facility shall be to the account of the Agency during the contract Period. The Agency can claim any manufacturer's guarantee / warranty to be effected if and as applicable for this purpose and will coordinate with the manufacturer for this purpose.

- u) The Agency shall operate the facility as per the requirement of the Authority.
- v) The Agency should ensure maximum capacity utilization of the plant.
- w) The Agency shall charge such fees from customers availing the services at the Facility as have been arrived at with the express permission of the Authority.
- x) The Agency shall provide the services of the Facility to all members of the public who are willing to avail of the services of the Facility at the prescribed rates, on a 'FIRST COME-FIRST SERVE' basis.

## **5.2 Damages for Breach of Maintenance Obligations**

In the event that Agency fails to repair and rectify any defect or deficiency in Facility brought in its notice vide complaint/ notice from Agency's customers and/or Authority within a reasonable time commensurate with the nature of the defect or deficiency, Authority shall without prejudice to its rights under this tender including termination thereof, be entitled to undertake such repair and remedial measures at the risk and cost of Agency and to recover its cost from Agency. In addition to recovery of the aforesaid cost, a sum equal to 20% of such cost shall be paid by Agency to the Authority as damages within 3 (three) days of the notice from Authority. Authority shall provide adequate evidence supporting the above cost.

## **5.3 Modifications to the Facility**

The Agency shall not carry out any material modifications to the Project Facility, but if such modifications are deemed necessary for the Project Facility to operate in conformity with the provisions of this tender, it may do so with the prior approval of the Authority and by incorporating any suggestions that the Authority may make in this regard.

## **5.4 Monitoring of operations and maintenance**

### **5.4.1 Monthly Reports**

During contract Period, the Agency shall, no later than 7 (seven) days after the expiry of each month, furnish to Authority a report stating in reasonable detail the condition of the Project Facility- including its compliance or otherwise with general maintenance requirements, Suppliers Manual and Safety Standards, all accounts of works undertaken and revenue generated and shall promptly give such other relevant information of marketing development also as may be required by the authorized representative of the Authority.

### **5.4.2 Inspection**

The authorized representative of the Authority shall be entitled to inspect

the Project Facility as frequently as desired. The authorized representative shall make a report of such inspection (the "O&M Inspection Report") stating in reasonable detail the defects or deficiencies, problems and complaints of its customers if any, issues related to safety and security and send a copy thereof to the Authority and the Agency.

## 6 Qualification Criteria

### *Evaluation of Technical Bids - Qualification Criteria*

In order to be qualified for tender, the bidder must demonstrate its capability in terms of following.

<b>Sr. No</b>	<b>Qualification Criteria</b>	<b>Documentary Proof to be attached</b>
1	The Bidder should have a minimum annual turnover of Rs. <b>4.00 Crores (Rs. Four Crores)</b> for each of the last three financial years ending on <b>March 2022</b>	Audited Financial Statements for the last three financial years i.e. <b>2019-20, 2020-21 and 2021 - 22</b> duly certified by the Chartered Accountant.  <b>If audited financial statements of year ending on March 31st, 2022 are not available, then audited financial statements of last three years ending on March 31st, 2021 must be provided.</b>  <b>Income Tax Return for the last two financial/ assessment years to be provided.</b>
2	The Bidder should have minimum Net worth of at least Rs. <b>2.00 Crores (Rs. Two Crores) as on March, 2022.</b>	Audited Financial Statements duly certified by Chartered Accountant for the last financial year along with net worth certificate signed by the auditor.
3	The Bidder will have to submit a Solvency Certificate of Rs. 2 Crore <b>as on 31<sup>st</sup> March 2021 &amp; 2022 from the Bidder's Banker duly Certified by a statutory Auditor/ practicing Chartered Accountant.</b>	The Bidder will have to submit a Solvency Certificate of Rs. 2 Crores <b>as on 31<sup>st</sup> March 2021 &amp; 2022 from the Bidder's Banker duly Certified by a statutory Auditor/ practicing Chartered Accountant.</b>
4	Bidder should be Registered Entity in terms of being an incorporated company , partnership or proprietorship in India	Incorporation Certificate/ Partnership Deed/ GST Registration Certificate, whichever applicable
5	Bidder should not have been blacklisted by Organization/ Government Entity / Government Company	Non-blacklisting affidavit in format given in Annexure 4 on Stamp Paper.

*Bidders shall have to make a presentation on a date and time, after the opening of the Technical Bids, to be intimated later, on the following points:*

1. The Bidder should have and present a definitive, week-scaled plan of

- operationalizing the facility within a period of 90 (Ninety) days from the issuance of the work order.
2. The Bidder should have and present a definitive plan for commitment of appropriate human resources, with job description for the facility.
  3. The Bidder should have and present an annual work plan for the facility for the **full period of 7 (seven) years**
  4. The Bidder should have and present the workflow system intended to be deployed at the facility, using the installed and machinery/ies proposed to be installed.
  5. All farmers/ exporters / traders/ others must be provided equal opportunity of usage of the facilities in the Pack House. The bidder should clearly mention the procedure to fix up service charges from the users of the pack house and the rates to run the facility.

The Technical Evaluation will be marked as follows:

1	Financial Strength of the Bidder		<b>50</b>
1.1	Average Annual turnover during the last three financial years as on 31.03.2022	<b>(Maximum 15 Marks)</b> i. Bidders having prescribed turnover as per the RFP =20 Marks  ii. For each <b>additional annual average turnover of Rs.50 lakh</b> = 1 mark (Maximum 5 marks).	(25)
1.2	Net worth of the bidder as on the RFP issue date	<b>(Maximum 15 Marks)</b> i. Bidders having prescribed Minimum Net Worth as per RFP=20 Marks  ii. For each additional Net Worth of Rs. 50 lakh = 1 Mark (Maximum 5 marks)	(25)
2	Technical Presentation. Covering: about the Organisation, proposed Investment, Business Plan, procurement plan, Operation & Management Strategy for		<b>50</b>
	<b>Total</b>		<b>100</b>

Bidders who score more than **70% marks in Technical evaluation** shall be considered for further evaluation. The technically qualified bidder quoting **highest Annual Contract Rate, discounted at 6% to arrive at the Highest Net Present Value for 7 (seven) years shall be the selected.**

**Notes:**

1. The MD, WBSFP&HDCL reserves the right to verify the claims made by the bidder and to carry out the capacity assessment of the bidder and the MD, WBSFP&HDCL's decision shall be final in this regard.
2. The contract Tenure is for a period of 7 years (Seven years) commencing from the Effective Date, **which may be renewed for a further period of seven years on satisfactory performance of the Bidder.**

**7 Termination Clause**

WBSFP&HDCL shall have the right to terminate the contract at any stage without giving any notice, in case competent authority of WBSFP&HDCL is satisfied that the contractor has obtained the contract by indulging in fraud, cheating and submission of forged, false fabricated, tempered and falsified documents etc. in such case the performance guarantee shall be forfeited.

## **8 Instruction to bidders**

### **8.1 About the Contract**

The contract for agency for providing Operating, Maintenance and Management services for the Project Facility is to be awarded for a contract Tenure as mentioned in the Bid Summary.

### **The contract shall come into force only if following conditions have been satisfied:**

- 1) Performance security has been paid within stipulated time period
- 2) Agreement between the Authority and Agency incorporating all the terms of this tender and documenting the grant of contract has been executed within time period stipulated by the Authority.
- 3) Contract terms fee for contract period shall be paid upfront within seven days of Effective Date or at time as stated by Authority.

### **8.2 Due Diligence**

Bidder is expected to examine all instructions, forms, terms and specifications in the tender. The Bid should be precise, complete and in the prescribed format as per the requirement(s) of the tender. Failure to furnish all information required by the tender or submission of a Bid not responsive to the tender in every respect will be at the Bidder's risk and may result in rejection of the Bid.

### **8.3 Cost of Bidding**

Bidder shall bear all costs associated with the preparation and submission of its Bid and Authority will in no case be held responsible or be liable for these costs, regardless of the conduct or outcome of the Bidding Process.

### **8.4 Tender Fee**

The cost of the tender document Rs. 20,000/- shall be payable in the form of a Demand Draft drawn in favour of "WEST BENGAL STATE FOOD PROCESSING & HORTICULTURE DEVELOPMENT CORPORATION" payable at Kolkata. This Demand Draft for cost of document shall be non refundable and should be submitted along with the Bid.

### **8.5 Clarification/Queries to tender document**

In the event that any Bidder requires any clarification on the tender document, such Bidders are expected to send their queries to WBSFP&HDCL before the pre-bid meeting date in the specified format.

Nothing in this section shall be taken to mean or read as compelling or requiring WBSFP&HDCL to respond to any questions or to provide any clarification to a query. WBSFP&HDCL reserves the right to not respond to questions it perceives as irrelevant which may be raised by a Bidder or

not to provide clarifications if WBSFP&HDCL in its sole discretion considers that no reply is necessary. No extension of due dates for submission of bids will be granted on the basis or grounds that WBSFP&HDCL has not responded to any question or provided any clarification to a query.

### **8.6 Amendment of Bidding Documents**

At any time before the due date for submission of bids, WBSFP&HDCL may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective bidder, modify the tender document by amendment. Any amendments/ modifications to the tender document, which may become necessary for any reason, shall be through the issue of addendum(s) to the tender which shall set forth the said amendments/ modifications thereto. The addendum any shall be downloadable from the website [www.wbtenders.gov.in](http://www.wbtenders.gov.in) and WBSFP&HDCL's website [www.ipshabengal.com](http://www.ipshabengal.com). If required, in order to allow prospective bidders reasonable time in which to take the Addendum(s) into account in preparing their respective Bids, WBSFP&HDCL reserves the right to extend the due date for the submission of bids. However, no request from the prospective Bidder(s), shall be binding on WBSFP&HDCL for the same.

### **8.7 Language of Bid**

Bid prepared by the Bidder, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and WBSFP&HDCL shall be written in English language only.

### **8.8 Bid Currencies**

All prices quoted in the Bid and all amounts payable shall be in Indian Rupee(s) (INR) only.

### **8.9 Authentication of Bid**

Copy of the Bid shall preferably be type /written and shall be signed by a person duly authorized by the Bidder in this behalf by way of a Power of Attorney/ authorization of bidder's signatory duly executed by the Bidder in the format set forth in Annexure 5. The person signing the bid shall initial all pages of the bid.

### **8.10 Validation of interlineations of Bid**

Any interlineations, erasures or overwriting shall be valid only if the person or persons signing the Bid have authenticated the same with their respective signature alongside such interlineations, erasures or overwriting.

### **8.11 Bid Validity Period**

Bids shall remain valid for a period of 180 days from the date of bid submission as mentioned in the Bid Summary. WBSFP&HDCL reserves the right to reject a Bid as non-responsive if such Bid is valid for a period which is less than specified and WBSFP&HDCL shall not be liable to send an intimation of any such rejection to such Bidder.

### **8.12 Modification and Withdrawal of Bid**

No bid may be withdrawn in the interval between the deadline for submission of bid and the expiration of the bid validity period and if a Bidder withdraws its bid, then the EMD shall be forfeited.

### **8.13 Last Date of Submission of Bid**

The Bids must be received latest by the due date of submission of Bids specified in Bid Summary section. In the event of the specified date which is stipulated as the Bid Due Date is declared as a holiday for WBSFP&HDCL, the Bids will be received up to the appointed time on the next working day.

### **8.14 Late Bids**

Any Bid received after the bid due date prescribed by WBSFP&HDCL will be summarily rejected. No further correspondence on this subject shall be entertained by WBSFP&HDCL.

### **8.15 Bidding Format**

The Bidding is a Two- packet system comprising

1. **Technical Bid Packet:** In this bid, the Bidder is required to present Qualification Information. The purpose of this Bid is to ensure the technical and financial capability of the Bidder to implement the contract. The evaluation of the Bid would be done by a Committee appointed by WBSFP&HDCL which constituted by the MD, WBSFP&HDCL. The decision of the committee shall be final and binding on all matters.
2. **Price Bid:** Price Bid of only those bidders will be opened who are technically qualified.

### **8.16 Bid Submission Format**

The Bidders will submit the Qualification cum Technical Bid in two envelopes, the details for which are specified below.

#### **Envelope 1**

- (1) Tender Fee and (2) EMD

#### **Envelope 2**

- i. Forwarding Letter as per Annexure2
- ii. Bidder information as per Annexure3.
- iii. Authorization of signatory in the form of Board Resolution/



Partner's Resolution or Power of Attorney, as applicable (Annexure5).

- iv. Copy of Tender document signed on every page by the Authorized representative of the Bidder.
- v. Other details as per document submission checklist.

### Price Bid

Price bid shall be submitted online only. Bidder has to quote: CONTRACT PRICE PER MONTH, FOR 7 YEARS, WITH ESCALATION OF 10% FROM THE 3RD YEAR ONWARDS.

WBSFP&HDCL shall raise and submit an invoice on Agency for payment is **exclusive of GST**. The invoice shall demand the **GST is applicable** as per existing rates and the same shall be payable separately by the Agency.

The bidder may use the online format available for submission of Price Bids which shall be similar to Annexure 1 in this document. Physical submission of price bid shall invite disqualification of bidder.

On the day of Bid opening, Envelope 1 would be opened first and the EMD and Tender Fee would be verified for bidders. On successful verification of the same, Envelope 2 would be opened.

The bidders shall be declared qualified after assessment of evidences provided in the envelope. Also, the evaluation shall be done on the basis of the contents of Envelope 2 as against the Qualification criteria stated in Clause 6 and submission of all documents as stated in Clause 8.18 below.

Bidder has to quote contract bid for 7 years. Contract will be awarded to the bidder whose Net Present Value (NPV) for 7 years comes highest at a discounted value of 6% of the quoted rates.

The formats and checklists for each submission are explained below

### 8.17 Documents Submission Checklist

Bidders would be required to submit the following documents.

Envelope No.	Documents	Relevant Annexure for format/guidelines
1	-Tender document fee -EMD in the form of demand draft in favour of "West Bengal Agro Industries Limited", and payable at Kolkata.	-20,000 -5,00,000/-

2	<p>Qualification cum Technical Bid:</p> <ul style="list-style-type: none"> <li>- Forwarding Letter</li> <li>- Bidder Information</li> <li>- Non-blacklisting Affidavit</li> <li>- Format of Power of attorney of Bidder</li> <li>- Format of security Deposit in form of Bank Guarantee</li> <li>- Details of the Project</li> <li>- Safety Standards</li> <li>- Other required documents as per tender document</li> </ul>	Annexure 2, 3,4, 5, 7,
3	<p>Price quotation to be submitted online only. The bidder may use the online format available for submission of Price Bids which shall be similar to Annexure 1 in this document. Physical submission of price bid shall invite disqualification of bidder.</p>	Annexure 1

### **8.18 Tender Fee and EMD**

Bids submitted shall be accompanied by Tender Fee and Bid Security as mentioned in the Bid Summary of this Tender document.

- 1) EMD furnished by the successful Bidder shall be refunded after the acceptance of Performance Security.
- 2) Bids not accompanied with requisite EMD shall be summarily rejected.
- 3) EMD shall be returned to the Bidder-
  - a) Whose bid has not been accepted by Authority
  - b) Whose bid has been accepted by Authority but after receipt of Performance Security
- 4) EMD is a non interest bearing deposit.
- 5) Tender fee is nonrefundable.

### **8.19 Discharge of EMD of successful Bidder**

The EMD of a Successful Bidder shall be discharged only after the Performance Security is furnished by the Bidder as per the requirement. The Successful Bidder's Bid Security shall not be adjusted against the Performance Security.

*EMD shall stand forfeited in the following situations:*

- 1) In case of unclear offer and/ or conditional offer, such Bid is not acceptable and so the EMD shall be forfeited.
- 2) In case of revision and/or modification of terms of bid or withdrawal of bid during the validity period.

- 3) In case of Bidder demands transfer of Contract before acceptance of offer or after acceptance of offer
- 4) For the successful Bidder, if the performance security is not deposited within the time period as mentioned in the Bid Summary of this Tender document.
- 5) In case of fraudulent practices of fraudulent bid as described in Clause 8.25.

## **8.20 Performance Bank Guarantee/ Performance Security**

### **8.21.1 Performance Security Payment**

- 1) The Successful Bidder who is awarded the contract shall be required to furnish a Performance Security of Rs 25 lakh (twenty five lakh) only. The EMD shall be returned back to the Agency on receipt of Performance Security.
- 2) Provided that if the contract is terminated for reasons other than that which can be attributable to the Agency, the Performance Security, shall, subject to the Authority's right to receive amounts, if any, due from the Agency under this Contract, be duly discharged and released to the Agency.

3. **Performance Guarantee in the form of a bank guarantee shall be irrevocable and valid for the contract Tenure and a period of 180 (one hundred and eighty) days of operations thereafter. Performance Guarantee may be issued by any Nationalized Bank. Only those banks as listed in SBMS portal of Finance Department shall be accepted.**
4. **The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.**
5. **Bank shall not be released from its liability by any exercise of the Authority by reason of time being given to the bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the Bidder.**
6. **The Bank has the power to issue the Guarantee and discharge the obligations contemplated, the issuing Authority is duly authorized and has full power to execute the Guarantee for and on behalf of the Bank.**
7. **Bank undertakes not to revoke the Guarantee during its currency except with the previous express consent of the Authority in writing.**

#### **8.21.2 : Encashment of Performance Security**

Authority shall be entitled to encash the Performance Security fully or partially as the case may be, through a notice of 30 days ("Encashment Notice") under the following circumstances:

Non payment of any dues by the Agency to Authority as required to be paid under this tender including all contract Fees and damages as provided.

- (i) An Event of Default not being remedied by the Agency despite notice as provided in this tender document.
- (ii) Non removal of deficiencies during the Handover and Defect liability period.
- (iii) The Agency willing to end the contract period voluntarily before end of the contract period, in which case the full amount of the performance security along with any other outstanding shall remain forfeited.

Provided the extent of such encashment shall be no greater in amount than that required to remedy the circumstances warranting encashment stipulated above and provided further that in case of any encashment of the Performance Security pursuant to the Encashment Notice, the Authority shall return the amount so encashed if the circumstances requiring the encashment have been remedied to the full satisfaction of the Authority.

In the case of the Agency willing to end the contract period voluntarily before end of the contract period, 50% of the Performance Security amount shall remain forfeited.

#### **8.21.3 : Fresh Performance Security**

In the event of the encashment of the Performance Security by the Authority pursuant to Encashment Notice issued, the Agency shall within 30 (thirty) days of the Encashment Notice furnish Fresh Performance Security to the Authority, failing which the Authority shall be entitled to terminate this contract by giving 30 days notice in accordance with the

provisions herein.

### **8.21 : Acceptance of Tender**

Authority will accept a tender which will be the best suited in terms of technical, commercial and economical aspects. The decision of the Authority shall be final in these aspects. The Authority also reserves following rights without any kind of liability.

- 1) To accept or reject any or part of any tender or all the tenders without assigning any reason thereof.
- 2) Not to accept the highest tender or assign reasons for not accepting the highest tender.
- 3) Not to proceed ahead in the tender without assigning any reason thereof at any stage.

### **8.22 Consortium/ Joint Venture**

**A consortium consisting of two members only is permitted.**

In case of consortium there should be a lead member who will have overall responsibility and WBSFP&HDCL will deal with lead member only for financial, administrative, contractual matters etc. **Both members will be liable jointly and severally to discharge the obligations of the project. The nomenclature shall be identical. Additional Power of Attorney shall have to be issued in favour of the Lead Member to deal with WBSFP&HDCL in all matters regarding the project.**

Authority retains the right to ask for any further information, document or clarification that may be required from the Bidder for evaluation purposes.

### **8.23 Contacting of Authority**

Unless specifically requested by Authority for a clarification, no Bidder shall contact the Authority on any matter relating to its Bid, from the time of the Qualification Bid opening to the time the contract Agreement is executed with the Successful Bidder/s.

### **8.24 Fraudulent or corrupt Practices by the Bidder**

Authority will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question. Authority will declare the firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract by WEST BENGAL STATE FOOD PROCESSING & HORTICULTURE DEVELOPMENT CORPORATION if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for the contract, or during execution.

- "corrupt practice" means behaviour on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of anything of value to

influence the action of any such official in the procurement process or in contract execution;

And

- “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.

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

Bidders are required to submit their respective Bids after visiting the Project Facility and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, market conditions and any other matter considered relevant by them. Any disputes regarding the above shall not be entertained later.

## **9. Obligations and Undertakings**

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Tender, the Parties shall agree and undertake as under:

### **9.1 General Obligations of the Agency:**

In case of the contract being awarded to “the Agency”, it shall at its own cost and expense:

- (a) Operate and Maintain the Facility in accordance with the provisions and scope of work of this tender, and Applicable Laws.
- (b) During the warranty period of the equipment and machinery forming part of the facility, operate the Facility so as ensure compliance with the requirements of the Equipment Supplier’s Manual.
- (c) Arrange necessary manpower as per industry norms and in doing so abide by all the Applicable Laws including Labour Laws at its own cost for operation, maintenance, business development, office work, maintaining of equipment, utilities, buildings, security etc.
- (d) During the period of contract Agency shall submit audited reports of each financial year to WBSFP&HDCL. Agency shall facilitate all necessary documents to WBSFP&HDCL / their representative. WBSFP&HDCL have the absolute right at its own discretion and intervals as may be deemed fit to inspect the facilities, documents, quality check, statutory compliances if any etc.
- (e) Business Plan submitted by the bidder shall be part of final Agreement

with WBSFP&HDCL.WBSFP&HDCL shall have the absolute authority for periodic performance monitoring during the contract period and WBSFP&HDCL shall have the authority to make suggestions for amendments / improvements in Business performance if required.

- (f) Procure and maintain in full force and effect, as necessary, appropriate rights, agreements and permissions for materials, methods, processes and systems used in or as applicable to the operation and maintenance of the Project Facility.
- (g) Agency shall pay the electricity charges, water charges, etc. for the utilities consumed by it at the Facility based on the invoices issued by the relevant utility company at actual.
- (h) Take all reasonable precautions for the prevention of accidents on or about the Project Facility and provide all reasonable assistance and emergency medical aid to accident victims.
- (i) Hand over the Project Facility with all equipment, fixtures, fittings and other assets forming part of the Facility in working condition commensurate to the life of asset and hours of operation undergone by it at the time of expiry or early termination of the contract. The spares and consumables shall be replenished to the level found at the time of taking possession of the Project Facility by the Agency.
- (j) Agency shall be entitled to bring in, make additions to and take back any equipment and assets brought in by the Agency for the operations and management of the Facility. In case it requires removing or replacing any equipment or assets forming part of the Facility in order to carry out its obligations, it may do so with approval of the Authority.
- (k) The Agency shall print/ affix on the packaging of all its packaged products, the symbol and full name of Authority as subtitle and thereby state that all such products are stored, sorted and packaged at Authority's unit.
- (l) Allow and entitle the Authority or a nominee of the Authority to step into this contract at the Authority's discretion, in place and substitution of the Agency in the event of Termination pursuant to the provisions of this Tender;
- (m) Develop, implement and administer a Surveillance and Safety Program for the plant and the users thereof and the Agency's personnel engaged in the provision of any services including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice
- (n) Remove promptly upon installation and according to Good Industry

Practice, from the Project Facility, all surplus installation machinery and materials, waste materials, rubbish and other debris and keep the site in a neat and clean condition at all times.

(o) Have requisite organization and designate and appoint suitably qualified manpower to implement the contract and to deal with the Authority or its representative and to be responsible for all necessary exchange of information required pursuant to this tender;

(p) Agency shall ensure that any existing utility on, under, above, adjacent, adjoining or near the Project Facility is kept in continuous satisfactory use, if necessary, by the use of suitable temporary or permanent diversions with prior approval of the Authority.

(q) Outgoings including any stamp duty (including stamp duty for registration of contract agreement), other duties, taxes, charges, levies, bills, penalties, etc. whatsoever during the subsistence of this contract shall be paid by Agency.

(r) The bidder shall at no time and under no circumstances employ person of unsound physical or mental health or below 18 years of age.



(s) The bidder will be responsible and liable for registration, compliance and payments under all applicable laws and shall comply with and make all statutory payments, contributions, taxes, fees, levies etc., as may be due and payable such laws including, but not limiting to The Factories Act or The Shops and Establishments Act as applicable, The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, ESI Act, 1948, The payment of Bonus Act 1965, The payment of Gratuity Act 1972, The Contract Labour (R&A) Act 1970, The payment of Wages Act, 1936, The Finance Act 1991 and The Minimum Wages Act, the Industrial Disputes Act.

(t) The bidder shall maintain all the prescribed registers under the various statutes and produce them for inspection as and when required by the Authority or by any authority under these statutes.

(u) The bidder shall produce all documents for inspection as and when required by the authorities under the concerned Acts.

(v) In no case, the Authority will be liable or required to make any payment whether to any Government authority or any person in connection with the employment of personnel by the bidder in connection with the said services.

(w) The Authority shall stand fully indemnified by the bidder in respect of any claim or liability arising in respect of the labour or any employee engaged by the bidder, whether on account of wages or otherwise, including the labour or employees engaged through the contractor (s) of the bidder even if such a claim or liability arises during, on or after the contract period.

## **10. Insurance and Safety**

### **Requirements**

#### **10.1) Insurance during the contract**

##### **Period**

The Agency shall, at its cost and expense, purchase and maintain during the contract Period, such insurances as are necessary including but not limited to the following:

- a) Insurance against business loss due to any shutdown of the facility.
- b) Comprehensive third party liability insurance including injury or death to such third parties who may enter or are in the vicinity of the Project Facility;
- c) Workmen's compensation insurance;

- d) Any other insurance that may be necessary to protect the Agency, its employees and the Facility against loss, damage or destruction at replacement value including all Force Majeure Events that are insurable.

### **10.2) Validity of the Insurance Cover**

The Agency shall pay the premium payable on such insurance Policy/Policies so as to keep the insurance in force and valid throughout the Contract Period and furnish copies of the same to the Authority for policy period.

### **10.3) Safety Requirements**

- a) The Agency shall in complying with the provisions of this tender comply with the Applicable Laws and terms of the Applicable Permits and conform to Good Manufacturing Practice (GMP). The Agency shall develop, implement and administer a surveillance and Safety Program for providing a safe environment at the Facility and shall comply with Safety Standards set forth in Annexure 7 ("Safety Standards") and shall provide additional safety features which are not mentioned this tender document.
- b) The safety audit of the operations at the Facility may be conducted by the Authority/authorized representative of the Authority.
- c) Agency shall take actions necessary for securing compliance with the general safety standards. In the event such action is not taken, the Authority is entitled to promptly take such safety measures as it deems necessary at the risk and cost of the Agency. Repeated failure by the Agency to comply with safety requirements after adequate notice will be deemed to be an Event of Default.

### **10.4 Expenditure on Safety Standards**

All costs and expenses arising out of or relating to meeting the Safety Standards and all additional expenditure incurred for the safety of the site and operations hereto shall be borne by the Agency.

## **11 General Tender Conditions**

### **11.1 Use of the Facility**

The Agency shall not without prior written consent or approval of the Authority use the Facility for any purpose other than for the purposes of operations, maintenance and marketing of the Facility and for providing the Services and purposes incidental thereto as permitted under this tender or as may otherwise be approved by the Authority.

### **11.2 Rights and Title over the Facility**

The Agency hereby assures and undertakes that:

- a) Agency shall have rights to the use of the Facility only in accordance with the provisions of this tender.
- b) Agency shall allow access to and use of the Facility, without any demand or pre condition, for telegraph lines, electric lines or such other utilities and public purposes including as the Authority may specify at the Authority's sole discretion.
- c) Agency shall not part with or create any Encumbrance on the whole or any part of the Facility.
- d) The Project Facility is being granted to the Agency purely on a contract basis for the specific purpose of operations, management and maintenance of the Facility, which shall during the subsistence of this remain contract property fully controllable by the Authority. Under no circumstances shall this contract create any interest of the Agency in the property of any nature analogous to lease, ownership, partial or full title.

### **11.3 Existing Structure and Surroundings of the Facility**

The Agency shall have to ensure that any activity of the Agency in the Project Facility during the contract Period will not damage any existing surrounding structure, assets or people. The cost / compensation for any such damages caused by the Agency directly / indirectly or due to negligence shall have to be borne by the Agency.

### **11.4 Site to be free from Encumbrances:**

The Agency shall not part with or create any encumbrance on the whole or any part of the Facility, and shall not place or create nor permit any Contractor or other person to place or create any encumbrance or other interest over all or any part of the Project Facility, save and except as may be expressly provided in this contract.

### **11.5 Letter of Acceptance & Contract**

As the first step for the assignment, the Authority shall issue the successful Bidder a Letter of Acceptance. This letter will refer to the proposal and confirm its acceptance. The parties agree to enter into a Contract in due course which shall consist of these Terms and Conditions- as mutually agreed between the parties and the additional terms that the Authority finds suitable for the execution of the Contract.

### **11.6 Force Majeure:**

#### **11.6.1. Force Majeure Event:**

As used in this tender, Force Majeure Event means occurrence of any act, event or circumstance or a combination of events and circumstances which affects the Party claiming such Force Majeure Event from performing its obligations under this tender ("Affected Party"), which act or event satisfies all the following conditions:

- i. are beyond the reasonable control of the Affected Party and materially and adversely affects the performance of an obligation by a

- Party;
- ii. the Affected Party could not have prevented or reasonably overcome the event or circumstance with the exercise of Good Manufacturing Practices or reasonable skill and care;
  - iii. does not result from the negligence or misconduct of the Affected Party or the failure of such Party to perform its obligations hereunder; and
  - iv. Any consequences of which, prevent, hinder or delay in whole or in part the performance by such Party of its obligations under this tender.

Force Majeure includes the following events and/ or circumstances to the extent that they or their consequences satisfy each of the requirements set forth in this tender.

- a) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion, or politically motivated sabotage, act of terrorism, Industry wide or state wide or India wide strikes or industrial action which prevents the operation of the contract for a period exceeding a continuous period of 10 (Ten) days in an accounting year.
- b) The occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, fire or explosion, radioactive or chemical contamination or ionizing radiation directly affecting the contract, unless the source or cause of the explosion, contamination, radiation or hazardous substance is brought to or near the Project Facility by the Agency or any
- c) Affiliate of the Agency or any sub- contractor or any such affiliate or any of their respective employees, servants or agents;
- d) Strikes, go-slows and/or lockouts or other industrial action or labour dispute which are in each case widespread, nationwide or political and other than those involving the Agency, Contractors or their respective employees/representatives or attributable to any act or omission of any of them.
- e) Any effect of the natural elements, including lightning, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon or tornado, and other unusual or extreme adverse weather or environmental conditions or actions of the elements within India;
- f) Epidemic or plague within India;
- g) Global epidemic/pandemic
- h) Compliance with a request from the Authority pursuant to the directions of any Government decree, the effect of which is to close all or any part of the Facility.
- i) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Agency in any proceedings for reasons other than failure of the Agency to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, or enforcement of this tender or exercise of any of its rights under this tender by the Authority;
- j) Any public agitation which prevents the operation of the Facility for a continuous period exceeding 10 (Ten) days in an accounting year.

- k) Change in Law, only when provisions pertaining to the Clause on Change in Law cannot be applied; expropriation or compulsory acquisition by any Government Agency of the Project Facility or Facility site or rights of the Agency or,
- l) Any unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Agency or any of the Contractors to perform their respective obligations under the contract provided that such delay, modification, denial, refusal or revocation did not result from the Agency's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.
- l) Any event or circumstances of a nature analogous to any events set forth above within India( **only numbering of this Sub- clause has been changed**)
- Provided that none of the following matters or their consequences shall be capable of constituting or causing Force Majeure Event:
  - Failure or inability to make any payment, or the effects of market condition.

#### **11.6.2. Procedure in case of Force Majeure Event:**

If a Party (Affected Party) claims relief on account of a Force Majeure Event, then the Party claiming to be affected by the Force Majeure event shall, immediately on becoming aware of the Force Majeure Event, give notice of and describe in detail:

- i. the Force Majeure Event(s) that has occurred
- ii. the date of commencement, nature and estimated duration of such event of Force Majeure Event
- iii. the manner in which the Force Majeure event affects the Affected Party's obligation(s) under this contract
- iv. the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage in terms of Clause 11.6.4
- v. Any other relevant information.

Within a reasonable time following the date of such notice of such event of Force Majeure Event, the Affected Party having invoked such Force Majeure Event as a cause for such delay shall submit to the other Party sufficient proof of the nature of such delay or failure and its anticipated effect upon the time for performance. No Party shall be able to suspend or excuse the non-performance of its obligations hereunder unless such Party has given the notice specified above. The Affected Party shall be excused from its obligations as per Clause 11.6.6.

#### **11.6.3 Consequences of Force Majeure Event:**

Provided it complies with Clause 11.6.2, if the Affected Party is rendered

unable to perform any of its obligations under this tender because of a Force Majeure Event, it shall be excused from performance of such obligations as per Claus11.6.6 to the extent it is unable to perform the same on account of such Force Majeure Event.

In the event the Affected Party is the Agency and is unable to perform the entire operations as stipulated in this tender, the Performance Bank Guarantee shall stand suspended until such time as the Force Majeure event subsists. Also, the contract Period shall be extended suitably by the period for which the operations have been suspended due to the said Force Majeure Event, provided that the Performance Bank guarantee for such extended period shall be payable on pro- rata basis. Provided that where the Force Majeure Event has only rendered the Agency partially unable to perform its obligations under the tender, the Performance Bank Guarantee for that Period and any further action to be taken in this regard shall be decided by mutual agreement between the two Parties.

The Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this tender.

#### **11.6.4 Mitigation**

During the period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under this contract. The Affected Party shall also make efforts to resume performance of its obligations under this tender as soon as possible and upon resumption shall notify the other Party of the same in writing shall take all reasonable steps to prevent, reduce to a minimum and mitigate the effect of such event of Force Majeure Event. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

#### **11.6.5 Extended Force Majeure Event**

If Force Majeure event continues for more than 180 (one hundred and eighty) days then either Party shall have the right to terminate this contract by giving a notice of 30 days in respect thereof ("**Termination Notice**") and the date of which Termination shall become effective will be called the "**Termination Date**".

#### **11.6.6. Indemnity from performance of obligations by Party affected by Force Majeure:**

If the Affected Party is rendered wholly or partially unable to perform its obligations under this contract because of a Force Majeure Event, it shall be excused from performance of such of its obligations, upon delivery of the notice of the occurrence of a Force Majeure Event to the other Party to the extent it is unable to perform on account of such Force Majeure Event provided that:

- a) the Suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event [and to cure the same with due diligence]
- c) When the Affected Party is able to resume performance of its obligations under this contract, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.
- d) Where the Affected Party is the Agency and the Force Majeure Event has reduced the Agency incapable /unable to perform the Scope of work, then in such an event the performance bank guarantee shall stand suspended until such time as the Agency resumes activities in terms of the contract.

#### **11.6.7 Dispute Resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled by Arbitration provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

#### **11.6.8 Arbitration**

In the event of a dispute or difference of any nature whatsoever between the Agency and the Authority during the course of Contract Period, the same will be referred for arbitration to an Arbitrator, to be nominated with mutual consent of the Authority and the Agency. Arbitration will be carried out at Kolkata. The Arbitration shall be conducted as per provision of The Arbitration and Conciliation Act, 1996. [as amended up to date].

#### **11.6.9 Liability for other losses, damages etc.**

Save and except as expressly provided in this Article, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this Article.

#### **11.7 Events of Default and Termination:**

##### **11.7.1 Event of Default:**

Event of Default means the Agency Event of Default or the Authority Event of Default or both as the context may admit or require.

##### **(a) Agency Event of Default:**

Any of the following events shall constitute an event of default by the Agency ("Agency Event of Default") unless such event has occurred as a

result of Authority Event of Default or a Force Majeure Event;

- 1) Any representation made or warranties given by Agency under this contract are found to be false or misleading.
- 2) Agency creates any Encumbrance on the Project Facility in favour of any person save and except as otherwise expressly permitted under this tender.
- 3) Agency is in material breach of operation and maintenance requirements (as set out in Clause 5.1 hereto).
- 4) Performance Security has been encashed and appropriated in accordance with Clause 8.21.2 and Agency fails to replenish or provide fresh Performance Security within 30 (Thirty) days.
- 5) Agency sub lets or sub-contracts the Project Facility to any party for use other than for itself.
- 6) Agency has failed to make any payment due to the Authority within the period specified in this tender document.
- 7) Agency submits to the Authority any statement which is false in material particulars and which has a material effect on Authority's right, obligations or interests.
- 8) A resolution is passed by the shareholders of the Agency for the voluntary winding up of the Agency.
- 9) Any petition for winding up of the Agency is admitted by a court of competent jurisdiction or Agency is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Agency are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Agency under this tender and provided that:
  - the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this contract;
  - the amalgamated or reconstructed entity has the financial standing to perform its obligations under this contract and has a credit worthiness at least as good as that of the Agency as at Effective Date; and
  - Each of the Project Agreements remains in full force and effect.
- 10) Agency suspends or abandons the operations of the contract without the prior consent of Authority, provided that Agency shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was as a result of Force Majeure Event and is only for the period such Force Majeure is continuing
- 11) Agency repudiates the contract or otherwise evidences an intention not to be bound by this contract.
- 12) Agency suffers an attachment being levied on any of its assets causing a Material Adverse Affect on the contract and such attachment continues for a period exceeding 45 days.
- 13) Agency has delayed any payment that has fallen due under this tender and if such delay exceeds 30 (Thirty) days of this tender.
- 14) Agency is otherwise in Material Breach of this contract or commits a default in complying with any other provision
- 15) In case of none or poor maintenance of Project Facility.



- 16) In case of insolvency of the Agency
- 17) Substantial shortcoming is observed in achieving the estimated revenue as shown in business plan for continuous two years will be considered as "default" and contract shall be terminated.

### **11.7.2 Termination due to Events of Default and Termination Payment:**

#### **(a) Termination for contract event of Default:**

Without prejudice to any other right or remedy which Authority may have in respect thereof under this contract, upon the occurrence in the Event of Default on part of the Agency, Authority shall be entitled to terminate this contract by issuing a Termination Notice of 30 days in writing to the Agency.

Further the authority shall be entitled to forfeit/en cash the Performance Guarantee, only in case of default on part of the Agency

#### **11.7.3 Agency's Authority for Termination**

The agency has option to discontinue the contract with prior notice of 30 days. In such case the performance guarantee will be forfeited.

### **11.8 Dispute Resolution**

#### **A. Amicable Resolution**

- (a) Save where expressly stated otherwise in this tender, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this tender between the Parties and so notified in writing by either Party to the other (the "**Dispute**") in the first instance shall be attempted to be resolved amicably by the Authority and the Agency.

(b) Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause B below.

## **B. Arbitration**

### **(a) Arbitrators:**

In the event of a dispute or difference of any nature whatsoever between the Agency and the Authority during the course of Contract Period, the same will be referred for arbitration to an Arbitrator, to be nominated with mutual consent of the Authority and the Agency. Arbitration will be carried out at Kolkata. The Arbitration shall be conducted as per provision of The Arbitration and Conciliation Act 1996.

### **(b) Place of Arbitration**

The place of arbitration shall be Kolkata.

### **(c) English Language**

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

### **(d) Procedure:**

The procedure to be followed within the arbitration, including appointment of arbitrator / arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996 (as amended up to date)

### **(e) Enforcement of Award:**

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any court or tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that any judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

### **(f) Fees and Expenses**

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by Party.

### **(g) Performance during Arbitration:**

Pending the submission of and/or decision on a Dispute, difference or

claim or until the arbitral award is published; the Parties shall continue to perform all of their obligations under this contract without prejudice to a final adjustment in accordance with such award.

**11.9 : Confidentiality:**

Agency and Authority shall agree not to disclose to any third party or use confidential or proprietary information of the other which each learns during the course of the Work. Authority shall not disclose or disseminate Agency's Confidential Information to any person other than those employees of Authority, or its affiliates, who have a need to know it in order to assist Authority in performing its obligations, or to permit Authority to exercise its rights hereunder. The provisions of Confidentiality in respect of Confidential Information shall not apply to the extent that such Confidential Information is:

- 1) Already known to the Receiving Party free of any restriction at the time it is obtained from the Disclosing Party,
- 2) Subsequently learnt from an independent third party free of any restriction and without breach of the Contract;
- 3) Is or becomes publicly available through no wrongful act of the Receiving Party or any third party;
- 4) Is independently developed by the Receiving Party without reference to or use of any Confidential Information of the Disclosing Party and without the participation of individuals who have had access to Confidential information of the Disclosing Party; or
- 5) Is required to be disclosed pursuant to an applicable law, rule, regulation, government requirement or court order, or the rules of any stock exchange (provided, however, that the Receiving Party shall advise the Disclosing Party of such required disclosure promptly upon learning thereof in order to afford the Disclosing Party a reasonable opportunity to contest, limit and/or assist the Receiving Party in crafting such disclosure).
- 6) The Receiving party will ensure that all their employees who are provided access to the Disclosing Party's Confidential Information, shall sign confidentiality Contracts with the Disclosing party incorporating the same restrictive conditions as are set out in this clause, if so required by the Disclosing party. The confidentiality obligations in terms of this clause shall survive for the term of this arrangement and for a period of two years thereafter.

**11.10 Liability:**

In no event shall the Agency or the Authority be liable, one to the other, for special or, indirect damages in connection with or arising out of the furnishing, performance or use of the services or deliverables provided by Agency under the terms of this Tender and Contract.

**11.11 Indemnity:**

- a) Agency shall at all times, i.e. during the subsistence of this contract and at any time thereafter, defend, indemnify and hold Authority harmless from and against all claims (including without limitation claims for breach of contract, death or injury to person or injury to

property, or other tort claims), all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority or Authority indemnified persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims including third party claims and expenses (including court costs) arising out of or relating to the breach by Agency of any covenant representation or warranty or from any act or omission of the Agency or his agents or employees.

- b) The Agency shall at all times, i.e. during the subsistence of this contract, shall fully indemnify, hold harmless and defend the Authority and Authority indemnified persons from and against any loss or damages arising out of or with respect to.
- Failure of Agency, approvals, certification to comply with Applicable laws and Applicable permits from local, state, central government authorities. Also approvals from Department of Atomic Energy Department.
  - Payment of taxes required to be made by Agency in respect of income or other taxes of Agency's contractors, suppliers and representatives.
  - Non-payment of amounts due as a result of materials or services furnished to the Agency or any of its contractors which are payable by the Agency and its contractors.
- c) It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for Claims, Losses, Damages, Costs, Expenses or Liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

### **11.12 : Proposal Disqualification Criteria:**

The proposal is liable to be disqualified in the following cases:

1. A Bid is likely to be rejected without any further correspondence, as non responsive, if:-
  - i. Bid is not submitted in the manner as prescribed in the Instructions to Bidders section of this tender and is otherwise not in conformity with the terms and provisions of this tender document.
  - ii. Bid is not submitted in the bid-forms annexed in the tender document.
  - iii. Bid is submitted by telex, fax or email.
  - iv. Bid Security does not conform to the provisions set forth in this tender.
2. Failure of any one (or more) of the conditions set forth herein above shall result in rejection of Bid.
3. In addition to the foregoing, in the event a Bidder makes an effort to influence Authority in its decisions on Bid evaluation, Bid comparison or selection of the Successful Bidder, it may result in rejection of such Bidder's Bid.
4. Proposal submitted in incomplete form.

5. Proposal is not accompanied by all requisite supporting documents.
6. Information submitted in technical bid is found to be misrepresented, incorrect or false, accidentally, unwittingly or otherwise, at any time during the processing of the Contract (at any stage) or during the tenure of the Contract including the extension period if any.
7. Bidders may specifically note that while evaluating the proposals, if it comes to Authority's knowledge expressly or implied, that some Bidders may have compounded in any manner whatsoever or otherwise joined to form an alliance resulting in delaying the processing of proposal then the Bidders so involved are liable to be disqualified for this Contract as well as for a further period of two years from participation in any of the bids floated by Authority. It is also clarified that if need arises Authority would go in for appointment of outside party(s) to undertake the work under the captioned bid.

**11.13 : Understanding of terms:**

By submitting a proposal, each Bidder shall be deemed to acknowledge that it has carefully read all parts of this Tender document, including all forms, schedules and annexes hereto, and has fully informed itself as to all existing conditions and limitations.

**11.14 : Conflict of Interest:**

Bidder shall furnish an affirmative statement as to the existence of, or potential for conflict of interest on the part of the Bidder due to prior, current contracts, engagements, or affiliations with Authority. Additionally, such disclosure shall address any and all potential elements (time frame for service delivery, resource, financial or other) that would adversely impact the ability of the Bidder to complete the requirements as given in the Tender document.

**11.15 Authority's right to accept any proposal and to reject any proposal:** Authority reserves the right to accept or reject any proposal, and to annul the bidding process and reject all proposals at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for Authority's action.

**11.16 Survival:**

Termination of this contract (a) shall not relieve the Agency or Authority of any obligations hereunder which expressly or by implication survives termination hereof, and (b) except as otherwise provided in any provision of this tender expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

**11.17 Severability and Waiver:**

If any provision of the Tender and Contract, or any part thereof, shall be found by any court or administrative body of competent jurisdiction to be

illegal, invalid or unenforceable the illegality, invalidity or unenforceability of such provision or part provision shall not affect the other provisions of the Tender and Contract or the remainder of the provisions in question which shall remain in full force and effect. The relevant Parties shall negotiate in good faith in order to agree to substitute

for any illegal, invalid or unenforceable provision a valid and enforceable

provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the illegal, invalid or unenforceable provision or part provision.

No failure to exercise or enforce and no delay in exercising or enforcing on the part of either Party to the Tender and Contract of any right, remedy or provision of the Tender and Contract shall operate as a waiver of such right, remedy or provision in any future application nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further such right, remedy or provision or the exercise or enforcement of any other right, remedy or provision.

## **11.18 Representations and Warranties, Disclaimer, Indemnity:**

### **11.18.1 Representations and Warranties of the Agency:**

The Agency represents and warrants to Authority that:

- a) It is duly organized, validly existing and in good standing under the laws of India;
- b) It has full power and authority to execute, deliver and perform its obligations under this contract and to carry out the transactions contemplated hereby;
- c) It has taken all necessary corporate and other actions under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this contract;
- d) It has the financial standing and capacity to undertake the contract;
- e) This tender document constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f) It is subject to civil and commercial laws of India with respect to this contract and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- g) The execution, delivery and performance of this contract will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Agency's Memorandum and Articles of Association or any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- h) There are no actions, suits, proceedings, or investigations pending or, to the Agency's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Agency under this contract or which individually or in the aggregate may result in any Material Adverse Effect;
- i) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in any material adverse effect or impairment of the Agency's ability to perform its obligations and duties under this contract;
- j) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other Civil or criminal

liabilities which in the aggregate have or may have Material Adverse Effect;

- k) No representation or warranty by the Agency contained herein or in any other document furnished by it to Authority or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- l) No sums, in cash or kind, have been paid or will be paid, by or on behalf of the Agency, to any person by way of fees, commission or otherwise for securing the contract or for influencing or attempting to influence any officer or employee of Authority in connection therewith.

### **11.18.2 Disclaimer**

- (1) Without prejudice to any express provision contained in the Tender and Contract, the Agency acknowledges that prior to the execution of the Contract, the Agency has after a complete and careful examination made an independent evaluation of the Specifications, Project Facility, location and all the information provided by Authority, and has determined to the Agency's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Agency in the course of performance of its obligations hereunder.
- (2) The Agency further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in (a) above and hereby confirms that Authority shall not be liable for the same in any manner whatsoever to the Agency.

### **11.18.3 Representations and Warranties of Authority:**

Authority represents and warrants to the Agency that:

- (1) Authority has full power and authority to award the Contract;
- (2) Authority has taken all necessary action to authorize the execution, delivery and performance of the Contract;
- (3) The Contract constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

### **11.18.4 Governing Law and Jurisdiction:**

The Contract shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at Kolkata shall have jurisdiction over all matters arising out of or relating to the Contract.

### **11.18.5 No Partnership:**

Nothing contained in the Tender document shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

### **11.18.6 : Exclusion of Implied Warranties etc:**

This contract expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by any Party not contained in a binding legal agreement executed by the Parties.



**11.18.7 : Defect Liabilities after Termination**

The Agency shall be responsible for all defects and deficiencies in the Project Facility for a period of 90 (ninety) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all Defects and Deficiencies observed by the Authority in the contract during the aforesaid period. In the event that the Agency fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, then the Authority shall be entitled to get the same repaired or rectified at the Agency's risk and cost. All costs incurred by the Authority hereunder shall be reimbursed by the Agency to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Performance Security.

**11.19 : Miscellaneous:****11.19.1 : Assignment and Charges:-**

Notwithstanding anything contained herein this tender document, the Agency shall not assign, in whole or in part, any right or delegate any duty under the contract to any third party, except with Authority's prior written consent in this:

- a) The Agency shall not assign in favour of any person this contract or the rights, benefits and obligations hereunder save and except with prior written consent of the Authority.
- b) The Agency shall not create nor shall permit to substitute any encumbrance over premises except with prior consent in writing of Authority, which consent Authority is entitled to decline without assigning any reason whatsoever.
- c) Restraint set forth in clauses (a) and (b) above shall not apply to liens/ encumbrances arising by operation of law (or by an Agreement evidencing the same) in the ordinary course of the Business of the Agency.

**11.19.2 : Ownership and Protection of Property:**

- 1) Authority shall retain the title, ownership and control of any site **including Project Facilities** allotted by Authority to Agency for purposes of carrying out Agency's obligations in relation to operations of the Facility. Such title and ownership of Authority of any such site shall not pass to Agency.
- 2) For the purpose of this contract, the Agency shall have rights to the use of the site as sole Agency and protect the asset created by Agency subject to and in accordance with this contract.
- 3) Upon expire or earlier termination of the contract Agency shall transfer the possession of any and all the assets created or implemented by the Authority and the Agency at allotted sites under the provisions of this contract to the Authority.
- 4) Agency shall allow free access to the Project Facility within 48 hours of receipt of written notice in this regard for the authorized representatives of the Authority, and for the persons duly authorized by any government authority to inspect the Project Facility and to

investigate any matter within their authority, and upon reasonable notice, the Agency shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

**11.19.3 : Further Terms:**

The terms and conditions with respect to this Tender document are subject to such further refinement, clarification and modification as may be required to be made by Authority during the tendering process or at the time of signing of Agreement.

Agreement shall be signed between WBSFP&HDCL and Successful Bidder incorporating terms of the tender as directed by WBSFP&HDCL. At the time of signing such agreement, Agency shall acknowledge taking peaceful possession of Facility after signing on the list of assets (listed in Annexure) having complete satisfaction of their being in working condition required for operations, maintenance and management of the Facility as per the provisions of the Agreement. No disputes related to assets or its working shall be entertained after the agreement has been signed and any problem, defects or deficiencies arising earlier or later during the subsistence of the contract shall be made good by Agency at its own expenditure.

Agency shall also hand over the evidence of having insured the Facility as per the provisions of this tender document.

Managing Director

**Formats for documents to be submitted****ANNEXURE 1: INDICATIVE FORMAT OF PRICE BID***(To be separately submitted in the format given online only)*

The Managing Director,  
West Bengal State Food  
Processing & Horticulture  
Development Corporation Ltd.

Date:

**Subject:** *Price Bid with respect to Operate, Maintain and Manage Integrated Pack House for Fruits and Vegetables at Barasat, North 24 Parganas, West Bengal, as per Terms and Conditions of this Tender*

Madam,

With respect to above mentioned subject, my Price Bid is as per the following table, to be paid by in consideration of WBSFP&HDCL granting me O&MM Rights as per terms and conditions specified in tender for the contract Period:

BIDDER	YEAR	MONTHLY BID	TOTAL/YEAR
A	1		
	2		
	3		
	4		
	5		
	6		
	7		

**Instructions for submitting the Price Bid:**

- 1)** Bidders shall start bidding at Rs 50,001/month, (Rs 50,000 is the floor rate) for the first two years, with an annual escalation of 10% payable from the 3<sup>rd</sup> year. The full financial offer thus arrived for 7 years will be calculated as per Net Present Value (NPV), with a discount rate of 6%. **Price shall have to be quoted exclusive of GST.**

*(Example: For a bidder quoting Rs 60,000/month, the calculation will be as follows :)*

BIDDER	YEAR	MONTHLY BID	TOTAL/YEAR	NPV
A	1	Rs 60,000/-	Rs 7,20,000/-	Rs <b>49,05,515</b> [all amounts shall also have to be mentioned in words]
	2	Rs 60,000/-	Rs 7,20,000/-	
	3	Rs 66,000/-	Rs 7,92,000/-	
	4	Rs 72,600/-	Rs 8,71,200/-	
	5	Rs 79,860/-	Rs 9,58,320/-	
	6	Rs 87,846/-	Rs 10,54,152/-	
	7	Rs 96,630/-	Rs 11,59,560/-	

**The bidder with the highest NPV will be awarded the contract.**

- 2) In case of any discrepancy between rates in figures and rates in words, the latter shall be considered final.
- 3) GST has to be paid separately at applicable rates on the invoice raised by WBSFPHDCL at prevailing rates.
- 4) WBSFP&HDCL has right to accept or reject any/ all tenders without assigning any reasons thereof for the same.
- 5) Agency is required to make payment within 10 days from the date of receipt of the monthly invoice.
- 6) Interest @ 18% per annum will be charged from the date of billing, if the payment is not received in 10days.

**ANNEXURE 2: FORWARDING LETTER**

To,

The Managing Director,  
West Bengal State Food  
Processing & Horticulture  
Development Corporation.,

Date:

**Subject:** Submission of Proposal for <name of the tender>

**Dear Madam/Sir,**

With respect to above mentioned subject, we are pleased to submit our proposal for captioned facility for which I have quoted the contract Fees in online format for the contract Period. This offer is subject to all terms and conditions contained in the Tender document. I have not made any changes either directly or indirectly in terms and conditions of the Tender. In additions to terms and conditions of this Tender, I am not given any written or oral promise from the Authority.

We confirm that our bid is valid for a period of 90 days from the date of opening of bids. We also hereby undertake and confirm that, notwithstanding any qualifications and conditions whether implied or otherwise contained in our bid, our bid is unqualified and unconditional in all respects and has been made with the full understanding of the project.

We are pleased to submit the following documents as a part of our submission.

1. Qualification Documents
2. Online Price Bid

I am fully aware that the Authority has right to accept any bid or reject any/all bids/tenders without giving any reason and upon rejection of Tender/Tenders I shall not be entitled to any right with related to the Authority.

I have thoroughly read and understand all the terms and conditions of this Tender and I promise to observe all the terms and conditions of this Tender. I have signed and stamped each and every page of this Tender document and all documents submitted herein.

**(Stamp of Bidder along with signature of authorized signatory with date)**

**ANNEXURE 3: BIDDER INFORMATION**

1. (a) Name of Bidder:  
(b).Type of bidder : Proprietorship / Partnership/  
company (c).Address of the Registered Office:  
(d).Address of Corporate Office:  
(e) .Date of Incorporation/ Commencement of Business:
2. Brief description of main lines of Business of Bidder:
3. Details of Authorized Representative of Bidder:
  - (a).Name:
  - (b).Designation:
  - (c).Company/firm:
  - (d).Address:
  - (e) .Telephone No.:
  - (f) .E-mail:
  - (g) .Fax No.:
  - (h)

*Following documents should be submitted with Technical Qualification submission:*

- A. Bidder's registration details and certificate of Incorporation /MoA/ AoA / Partnership Deed / Service Tax Registration / Sales Tax Registration, etc.
- B. Copy of Audited Financial statements for last three financial years
- C. Self-attested certificate (as per Annexure 4) mentioning that bidder has not been Black Listed by any Government body in India during last five years.
- D. Authorization given to the bidder's representative who has signed the bid by the Board of Directors/ Partners / authorized body. In case the person who has been authorized by the Board of Directors/ Partners / Authorized body has delegated this power to the person who has signed the bid, a valid notarized Power of Attorney on Stamp Paper authorizing this act must be provided for support.

**ANNEXURE 4: NON- BLACKLISTING  
INFORMATION**

Format for Affidavit certifying that Bidder is not  
blacklisted (On a Stamp Paper of relevant value)

(In case of bidder bidding as a Joint Venture/ Consortium, such  
certificate to be provided by both bidders)

I M/s. ...., (name and address of the registered office) hereby  
certify and confirm that I or any of our promoter/s / director/s are not  
barred by Government of West Bengal (GoWB) / any other entity of GoWB  
or blacklisted by any state government or central government /  
department / agency in India or from abroad from participating in  
Project/s, either individually or as member of a Consortium as on the\_-  
(Bid Submission Date). We further confirm that we are aware that our bid  
for the captioned tender would be liable for rejection in case any material  
misrepresentation is made or discovered with regard to the requirements  
of this tender at any stage of the bidding process or thereafter during the  
agreement period. Dated this ..... day of ,2014.

Name of the Bidder

Signature of the Authorized person

Name of the Authorized Person

**ANNEXURE 5: FORMAT FOR POWER OF ATTORNEY OF  
 BIDDER APPOINTING DESIGNATED  
 REPRESENTATIVE**

*(Applicable in case of bid not being signed by the person directly  
 authorized by the firm)*

To

Dated:

,

The Managing Director,  
 WEST BENGAL STATE FOOD  
 PROCESSING & HORTICULTURE  
 DEVELOPMENT CORPORATION

Madam,

REF: Your TENDER Ref.:

**<Bidder's name>** hereby authorizes **<Designated Representative's name>** to act as a representative of **<Bidder's name>** for the following activities vide its Board Resolution/ Power of Attorney attached herewith.

To attend all meetings conducted by West Bengal State Food Processing & Horticulture Development Corporation Ltd. or other entities associated with **<Name of the Tender>** ("Tender") West Bengal State Food Processing & Horticulture Development Corporation Ltd. and to discuss, negotiate, finalize and sign any bid or agreement and contract related to **<Name of the Tender>**.

Yours faithfully,

Signature of appropriate authority of the  
 Bidder Name of appropriate authority of  
 the Bidder:

**<Signature and name of the Designated Representative of  
 the Bidder for acceptance of this Power of Attorney>**

For

**<Name of Bidder >**

**Encl: Board Authorization**

Notarised



**ANNEXURE 6: OF FORMAT FOR PERFORMANCE SECURITY IN THE FORM BANK GUARANTEE**

To: \_\_\_\_\_ [name of Employer]  
\_\_\_\_\_ [Address of Employer]

WHEREAS \_\_\_\_\_ [name and address of Agency ] (Hereinafter called "the Agency ") has undertaken, in pursuance of Agreement No. \_\_\_\_\_ dated \_\_\_\_\_ to execute \_\_\_\_\_

[Name of Contract and brief description of Works] (Hereinafter called "the Contract");

AND WHEREAS it has been stipulated by you in the said Contract that the Service Provider shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Agreement/Contract; AND WHEREAS we have agreed to give Service Provider such a Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Agency, up to a total of \_\_\_\_\_ [amount of Guarantee] \_\_\_\_\_ [in words] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of \_\_\_\_\_ [amount of Guarantee] as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from Agency before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed there under or of any of the Contract documents which may be made between you and the Service Provider shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid until the date.....

Signature and of the guarantor:

Name of Bank

I/334971/2022

Address: \_\_\_\_\_ Date: \_\_\_\_\_

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*An amount is to be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract, and denominated either in the currency of the Contract or in a freely convertible currency acceptable to the Employer.*

**ANNEXURE 7: SAFETY STANDARDS.**

The Agency shall follow the below mentioned safety standard throughout the contract period. These are the minimum requirement for safety of workers and other people in the cold storage and scope of the Agency shall not be restricted to followings only regarding safety issue. In addition to these, the Agency shall take other steps as may be prudent and follow the relevant & ISO standards,

- (a) The workers in the plant shall be adequately dressed to maintain body temperature to prevent cold stress.
- (b) Workers' hands, fingers, feet, toes shall be covered with insulated moisture proof gloves and boots to protect from frostbite.
- (c) Workers' gloves shall have adequate gripping surface for firm grip over the objects and boots shall be provided with no-slip sole to prevent slip and trip hazards.
- (d) Ensure that chemicals in cold storage are stocked properly and with compatible materials. Take caution with dry ice and liquid nitrogen which can pose an asphyxiation hazard by displacing oxygen.
- (e) Forklifts and combustion equipment can cause fumes to build up in enclosed spaces - use only with proper ventilation.
- (f) Lighting must be supplied through a constantly burning bulb or a light with an illuminated switch located inside the cold room.
- (g) Floors in the cold storage shall be covered with Non-slip flooring mats to protect workers in wet areas.
- (h) Ensure that the door of the cold storage can be locked from the outside only if the inside releases mechanism of the door is provided and functioning.
- (i) Provide warning signage on the door and audible and visible signal systems inside the room that are tested daily.