**Bangladesh-India Friendship Power Company (Pvt.) Limited**

**(A Joint Venture of Bangladesh Power Development Board (BPDB), Bangladesh and NTPC Ltd., India)**

**(International Competitive Bidding)**

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**BID AND CONTRACT FORMS**

**(SECTION-V)**

**PART-B (Contract Forms and Proforma)**

**FOR**

**PROCUREMENT AND DELIVERY OF 8.0MMT OF IMPORTED COAL**

**AT PLANT JETTY (CDP)**

**FOR**

**2x660 MW MAITREE SUPER THERMAL POWER PROJECT**

**Rampal, District- Bagerhat, Bangladesh**

**BIDDING DOCUMENT No.: BIFPCL/MSTPP/COAL/2022/01**

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#### **(Form-1)**

#### **Proforma for Bank Guarantee for Bid Security**

*[Bid Security to be issued on non-judicial stamp paper of appropriate value by a* ***scheduled bank in Bangladesh or a foreign bank of International repute having correspondent bank located in Bangladesh, to make it enforceable,*** *as stated under the relevant IFB Clause]*

|  |  |
| --- | --- |
| Invitation for Bid No: BIFPCL/MSTPP/COAL/8.0MMT/886 | Date:04.07.2022 |
| Bidding Document No.: BIFPCL/MSTPP/COAL/2022/01 | |
| To  Chief Procurement Officer  Bangladesh – India Friendship Power Company (Pvt.) Ltd. (“**BIFPCL**”)  Level 17, Borak Unique Heights, 117 Kazi Nazrul Islam Avenue,  Eskaton Garden, Dhaka – 1217, Bangladesh | |

**BID GUARANTEE No.:**

We have been informed that *[insert name of Bidder1]* (hereinafter called “**the Bidder**”) intends to submit to you its Bid dated *[insert date of Bid]* (hereinafter called “**the Bid**”) for **Procurement and Delivery of 8.0MMT of Imported Coal at Plant Jetty (CDP) for 2x660 MW Maitree Super Thermal Power Project at Rampal, District-Bagerhat, Bangladesh** under the above Invitation for Bid (hereinafter called “**the IFB**”).

Furthermore, we understand that, according to your conditions, Bids must be supported by a Bank Guarantee for Bid Security.

At the request of the Bidder, we *[insert name of bank]* hereby irrevocably and unconditionally undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of US Dollar *[insert amount in figures and in words]*, upon receipt by us of your first written demand accompanied by a written statement that the Bidder is in breach of its obligation(s) under the Bid conditions, because the Bidder:

1. has withdrawn its Bid after opening of Bids but within the validity of the Bid; or
2. has submitted forged document in support of its qualification; or
3. refused to accept unconditionally the Notification of Award (“**NOA**”) within the period as stated under Instructions to Bidder (“**ITB**”); or
4. failed to furnish Performance Security within the period as stipulated in the NOA; or
5. refused to sign the Contract Agreement by the time specified in the NOA; or
6. did not accept the correction of the Bid price following the correction of the arithmetic errors in accordance with the ITB; or
7. has been found to be engaged in corrupt, fraudulent, collusive or coercive practices while competing in the Bidding process.

This guarantee will expire:

1. if the Bidder is the successful Bidder, upon our receipt of copies of the contract signed by the Bidder and the Performance Security issued to you in accordance with the ITB; or
2. if the Bidder is not the successful Bidder, forty-five (45) days after the expiration of the Bidder’s Bid validity period, being [*date of expiration of the Bid validity plus forty-five (45) days].*

Consequently, we must receive at the above-mentioned office any demand for payment under this guarantee on or before that date.

|  |  |
| --- | --- |
| **Signature** | **Seal** |

#### **(Form-2)**

#### **Proforma for Bank Guarantee as Contract Performance Security**

*[Performance Security to be issued on non-judicial stamp paper of appropriate value by* ***a foreign bank of International repute having correspondent bank located in Bangladesh, to make it enforceable,*** *as stated under relevant ITB Clauses]*

|  |  |
| --- | --- |
| Notification of Award No.: | Date: |
|  |  |
| To:  Chief Procurement Officer  Bangladesh – India Friendship Power Company (Pvt.) Ltd. (BIFPCL)  Level 17, Borak Unique Heights, 117 Kazi Nazrul Islam Avenue,  Eskaton Garden, Dhaka – 1217, Bangladesh | |

**PERFORMANCE GUARANTEE No:** *[insert Performance Guarantee number]*

We have been informed that *[name of Contractor]* (hereinafter called “**the Contractor**”) has undertaken, pursuant to Notification of Award (NOA) No. *[reference number of award notification]* dated *[date of NOA]* (hereinafter called “**the Contract**”) for **Procurement and Delivery of 8.0MMT of Imported Coal at Plant Jetty (CDP) for 2x660 MW Maitree Super Thermal Power Project at Rampal, District-Bagerhat, Bangladesh** under the Contract.

Furthermore, we understand that, according to your conditions, Contract must be supported by a performance guarantee.

At the request of the Contractor, we *[name of bank]* hereby irrevocably and unconditionally undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of USD …… *[USD in figures and words]*, upon receipt by us of your first written demand accompanied by a written statement that the Contractor is in breach of its obligation(s) under the Contract conditions, without you needing to prove or show grounds or reasons for your demand of the sum specified therein.

This guarantee is valid until *[date of validity of guarantee]*, consequently, we must receive at the above-mentioned office any demand for payment under this guarantee on or before that date.

[Signatures of authorized representatives of the bank]

|  |  |
| --- | --- |
| Signature | Seal |

**(Form-3)**

**Bank Guarantee for Initial Payment**

*[Bank Guaranteed for Initial Payment to be issued on non-judicial stamp paper of appropriate value by* ***a foreign bank of International repute having correspondent bank located in Bangladesh, to make it enforceable,***  *as stated under relevant COC Clause]*

|  |  |
| --- | --- |
| Notification of Award No.: | Date: |
| To:  Chief Procurement Officer  Bangladesh – India Friendship Power Company (Pvt.) Ltd. (BIFPCL)  Level 17, Borak Unique Heights, 117 Kazi Nazrul Islam Avenue,  Eskaton Garden, Dhaka – 1217, Bangladesh | |

**INITIAL PAYMENT GUARANTEE No.:**

We have been informed that *[name of* Contractor*]* (hereinafter called “**the Contractor**”) has undertaken, pursuant to Notification of Award (NOA) No. *[reference number of award notification]* dated *[date of NOA]* (hereinafter called “**the Contract**”) for **Procurement and Delivery of 8.0MMT of Imported Coal at Plant Jetty (CDP) for 2x660 MW Maitree Super Thermal Power Project at Rampal, District-Bagerhat, Bangladesh** under the Contract.

Furthermore, we understand that, according to your Conditions of Contract Clause 17.2.1(a)(iv), Initial Payment under the Contract must be supported by a bank guarantee to be furnished by the Contractor.

At the request of the Contractor, we *[name of bank]* hereby irrevocably and unconditionally undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of USD …… *[USD in figures and words]* upon receipt by us of your first written demand accompanied by a written statement that the Contractor is in breach of its obligation(s) under the Contract conditions, without you needing to prove or show grounds or reasons for your demand of the sum specified therein.

We further agree that no change, addition or other modification of the terms of the Contract to be performed, or of any of the Contract documents which may be made between BIFPCL and the Contractor, 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 is valid until *[date of validity of guarantee]*, consequently, we must receive at the above-mentioned office any demand for payment under this guarantee on or before that date.

*[Signatures of authorized representatives of the bank]*

|  |  |
| --- | --- |
| Signature | Seal |

#### **(Form-4)**

***NOT APPLICABLE***

**Form 5**

**(Deed of Joint Undertaking)**

#### **(Form-5)**

**(ON NON-JUDICIAL STAMP PAPER OF APPROPRIATE VALUE)**

**FORM OF DEED OF JOINT UNDERTAKING FOR THE BIDDER AS INDIVIDUAL COMPANY TAKING STRENGTH FROM ITS \*HOLDING / SUBSIDIARY / JOINT VENRURE / SUBSIDIARY OF HOLDING COMPANY TO MEET TECHNICAL CRITERIA AS PER IFB CLAUSE 5.2(i) OR 5.2(ii) OR 5.2(iii) OR AND/OR THE FINANCIAL CRITERIA MENTIONED AT IFB CLUSE 5.3(i)**

**DEED OF JOINT UNDERTAKING TO BE EXECUTED BY THE BIDDER/ CONTRACTOR AND ITS \*HOLDING / SUBSIDIARY / JOINT VENRURE / SUBSIDIARY (DIRECTLY OR INDIRECTLY) OF BIDDER’S HOLDING COMPANY LENDING SUPPORT FOR MEETING THE TECHNICAL CRITERIA AS PER IFB CLAUSE 5.2(i) OR 5.2(ii) OR 5.2(iii) AND /OR FINANCIAL CRITERIA AS PER IFB CLAUSE 5.3(i) FOR SUCCESSFUL PERFORMANCE OF THE CONTRACT.**

The **DEED OF JOINT UNDERTAKING** executed on this ..... day of ...........Two thousand ..... by M/s .............................................. a Company incorporated under ................................... having its registered office at.........................................(hereinafter called the "**Bidder**” / “**Contractor**", which expression shall include its successors, administrators, executors and permitted assigns)

and

M/s .............................................. a Company incorporated under ................................... having its registered office at.........................................(hereinafter called the \*"**Holding Company**” / \* “**Subsidiary Company**" \*“**Joint Venture Company**” / \* “**Subsidiary of Bidder’s Holding Company**”, which expression shall include its successors, administrators, executors and permitted assigns),

in favour of **Bangladesh-India Friendship Power Company (Pvt.) Limited**, a Company incorporated under the Companies Act (Bangladesh), 1994, having its registered office at Borak Unique Heights (Level-17), 117 Kazi Nazrul Islam Avenue, Eskaton Garden, Dhaka-1000 (hereinafter called "**BIFPCL**", which expression shall include its successors, administrators, executors and assigns).

**WHEREAS**, BIFPCL invited Bids for  **Procurement and Delivery of 8.0MMT of Imported Coal at Plant Jetty (CDP) for 2x660MW Maitree Super Thermal Power Project at Rampal, District-Bagerhat, Khulna Division, Bangladesh** vide its Invitation for Bid (IFB) no. BIFPCL/MSTPP/COAL ..................... for delivery of Coal of quality and quantity as per the criteria stipulated in the Bidding Document(s) from designated Coal mine(s) to be approved by BIFPCL to the Plant Jetty (CDP) of 2x660 MW Maitree Super Thermal Power Project at Rampal, Bagerhat district, Bangladesh (hereinafter referred to as "**the Services**").

**AND WHEREAS** the Bidder is not independently meeting the technical criteria stipulated at IFB clause 5.2 (i) or 5.2 (ii) or 5.2 (iii) and /or Financial criteria stipulated at IFB Clause 5.3(i) of the Qualifying Requirement at clause 5.0 and is therefore relying on and borrowing from the strength from its \*Holding Company / \*Subsidiary Company / \*Joint Venture Company / \*Subsidiary of Bidder’s Holding Company, meeting the Qualifying Requirement at clause 5.4, and further, the Bidder holds a minimum of 26% of voting equity in the Joint Venture Company [*to be retained if applicable*].

**WHEREAS** the Bidder is submitting its bid/ proposal in response to the aforesaid Invitation for Bid (IFB) issued by BIFPCL and the other Bidding Documents.

AND **WHEREAS** in terms of the IFB, the Bidder and its \*Holding Company / \*Subsidiary Company / \*Joint Venture Company / \*Subsidiary of Bidder’s Holding Company are required to jointly execute and furnish along with the bid, an irrevocable Deed of Joint Undertaking, undertaking to and be jointly and severally liable for performance of the Services and be bound in respect of the Contract for the successful performance of **Procurement and Delivery of 8.0MMT of Imported Coal at Plant Jetty (CDP) for the 2x660MW Maitree Super Thermal Power Project at Rampal, District-Bagerhat, Khulna Division, Bangladesh***,* fully meeting the stipulated technical requirements, guaranteed parameters and characteristics, as per the Bidding Documents and as indicated in the bid/ proposal submitted by the Bidder, in the event, the Bid is accepted by BIFPCL, resulting into a Contract.

**NOW THEREFORE, THIS DEED WITNESSETH AS UNDER:**

1. That in consideration of the award of the Contract by BIFPCL to the Contractor, we the Contractor and the \*Holding Company / \*Subsidiary Company / \*Joint Venture Company /\*Subsidiary of Bidder’s Holding Company, do hereby declare and undertake that we shall be jointly and severally responsible to the BIFPCL and liable for the execution and successful performance of the Services under the contract.
2. We, the \*Holding Company / \*Subsidiary Company / \*Joint Venture Company / \*Subsidiary of Bidder’s Holding Company do further undertake, declare and confirm that we shall be fully responsible for imparting relevant expertise to the Contractor and training the Contractor for successful performance of the Services on sustained basis.
3. In case of any breach of the Contract committed by the Contractor, we the \*Holding Company / \*Subsidiary Company / \*Joint Venture Company / \*Subsidiary of Bidder’s Holding Company do hereby undertake, declare and confirm that we shall be fully responsible for the successful performance of the Services as specified in the Contract in order to discharge the Contractor’s obligations and responsibilities stipulated in the Contract. Further, if BIFPCL sustains any loss or damage on account of any breach of the Contract or shortfall in performance of the Services or any part thereof, or any default in maintaining compliance with the EIA report, the EIA approval conditions and any other statutory orders, we the \*Holding Company / \*Subsidiary Company / \*Joint Venture Company / \*Subsidiary of Bidder’s Holding Company and the Contractor jointly and severally undertake to promptly indemnify and pay such losses/ damages caused to BIFPCL on its written demand without any demur, reservation, contest or protest in any manner whatsoever. Determination of losses/ damages shall be in line with provisions on Limitation of Liability contained in the said Contract.
4. Without prejudice to the generality of the undertaking in paragraphs above, the manner of achieving the objectives set forth above shall be as follows:
   1. We, the \*Holding Company / \*Subsidiary Company / \*Joint Venture Company / \*Subsidiary of Bidder’s Holding Company, shall be jointly responsible to perform successfully, all activities included in the scope including contractual obligation required to perform the Services under the contract. The responsibility and liability for the performance of the Services by the Bidder and the \*Holding Company / \*Subsidiary Company / \*Joint Venture Company / \*Subsidiary of Bidder’s Holding Company, shall be co-extensive;
   2. We, the \*Holding Company / \*Subsidiary Company / \*Joint Venture Company / \*Subsidiary of Bidder’s Holding Company shall be specifically responsible for the following:
      1. Provide expertise and Personnel support, as may be necessary, to the Contractor to perform the Services successfully;
      2. Provide all necessary support and assistance to the Contractor in maintaining compliance with the EIA report and the EIA approval conditions, as may be necessary;
      3. Extend the Health, Safety, and Environment (HSE) Quality Management System to the Contractor for performance of the Services, as may be necessary;
      4. Extend Health, Safety, and Environment (HSE) Quality surveillance to the Contractor during the performance of the Services, as may be necessary;
      5. Ensure that the Coal supplied to BIFPCL is as per the monthly, quarterly and yearly quantity scheduled/ finalized as per the Contract provisions and the Coal supplied to BIFPCL meets the quality parameters as per the Contract;
      6. Provide necessary guidance and assistance to the Contractor in obtaining all the permissions, licences and clearances from any authority concerned for the purposes of the carrying out of the Services;
      7. Ensure that the complete supply chain is smooth and free from disturbances to meet the delivery schedule as finalized as per the Contract provisions; and
      8. Provide all necessary expert support and assistance to the Contractor to operate the Contract and perform the Services successfully.
5. We, the Contractor and the \*Holding Company / \*Subsidiary Company / \*Joint Venture Company / \*Subsidiary of Bidder’s Holding Company do hereby undertake and confirm that our present relationship status as [\_\_\_\_\_\_\_\_\_\_\_\_\_] shall be maintained for a lock-in period of the entire duration of the Contract. In the event that any change in relationship status becomes necessary, the same shall be informed to BIFPCL and prior written consent of BIFPCL shall be obtained before proceeding for any change in the said relationship. Any change, without obtaining BIFPCL’s written consent, in the relationship status, which forms the basis for the Bidder’s/Contractor’s meeting the Qualifying Requirement, shall be treated as breach of Contract.
6. We, the Contractor and the \*Holding Company / \*Subsidiary Company / \*Joint Venture Company / \*Subsidiary of Bidder’s Holding Company do hereby undertake and confirm that this Deed of Joint Undertaking shall be initially valid till ninety (90) days beyond the duration of the Contract awarded to the Contractor. We, the Contractor and the \*Holding Company / \*Subsidiary Company / \*Joint Venture Company / \*Subsidiary of Bidder’s Holding Company do further undertake and confirm that this Deed of Joint Undertaking shall not expire nor be revoked until its validity, 90 days beyond the Term of the Contract. We further agree that this Deed of Joint Undertaking shall be without any prejudice to the various liabilities of the Contractor including Contract Performance Security as well as other obligations of the Contractor in terms of the Contract.
7. Any dispute that may arise between BIFPCL and the Contractor or the \*Holding Company / \*Subsidiary Company / \*Joint Venture Company / \*Subsidiary of Bidder’s Holding Company in connection with this Deed of Joint Undertaking shall be finally settled as per the dispute resolution mechanism set out under the Contract.

This deed of undertaking shall be construed and interpreted in accordance with the Laws of England and Wales.

1. That this Deed of Joint Undertaking shall be operative from the effective date of the Contract.

IN WITNESS WHEREOF, the Contractor and the \*Holding Company / \*Subsidiary Company / \*Joint Venture Company / \*Subsidiary of Bidder’s Holding Company through their authorized representatives, have executed these presents and affixed common seal of their respective companies on the day, month and year first mentioned above.

For M/s ................................

(BIDDER/ CONTRACTOR)

WITNESS:

1. ............................. ................................................

(Signature of the Authorised

Representative)

......................... Name..........................

(Official Address) Designation............................

Common Seal of the Company .............................

For M/s....................

(the \*HOLDING COMPANY / \*SUBSIDIARY COMPANY / \*JOINT VENTURE COMPANY/

\*SUBSIDIARY OF BIDDER’S HOLDING COMPANY)

WITNESS:

1. ..................................... ................................................

(Signature of the Authorised

Representative)

...................................... Name ...................................

(Official Address) Designation............................

Common Seal of the Company................................

**Notes:**

1. **Power of Attorney of the persons signing on behalf of each of the executants is to be furnished by the bidder and attached along with the signed Deed of Joint Undertaking.**
2. **\*Bidder to strike out, whichever is not applicable.**

#### **(Form-6)**

***NOT APPLICABLE***

**(Form-7)**

**(On Non-Judicial Stamp Paper of Appropriate Value)**

**FORM OF CONSORTIUM AGREEMENT**

**BETWEEN**

**M/S............................................**

**AND**

**M/S............................................**

**AND**

**M/S............................................**

**AND**

**M/S............................................**

**FOR SUCCESSFUL PERFORMANCE OF THE CONTRACT FOR**

***PROCUREMENT AND DELIVERY OF 8.0MMT OF IMPORTED COAL AT PLANT JETTY (CDP) FOR***

***2x660MW MAITREE SUPER THERMAL POWER PROJECT AT RAMPAL***

**BIDDING DOCUMENT NO.: BIFPCL/MSTPP/COAL/2022/01**

THIS Consortium Agreement executed on this....................... day of .................. Two thousand ........................... between

M/s......................................................................... a firm/ company registered/incorporated under the laws of ...................................... and having its registered office at ......................................... (hereinafter called the "**Partner-1**," which expression shall include its successors, executors and permitted assigns);

and

M/s ..................................................................... a firm/ company registered/incorporated under the laws of .............................................and having its registered office at .............................. ........................................ (hereinafter called the "**Partner-2**", which expression shall include its successors, administrators, executors and permitted assigns);and

M/s ....................................................................., a firm/ company registered/incorporated under the laws of .............................................and having its registered office at .............................. ........................................ (hereinafter called the "**Partner-3**", which expression shall include its successors, administrators, executors and permitted assigns);

and

M/s ....................................................................., a firm/ company registered/incorporated under the laws of .............................................and having its registered iffice at .............................. ........................................ (hereinafter called the "**Partner-4**", which expression shall include its successors, administrators, executors and permitted assigns),

for the purpose of submission of a bid and entering into the Contract (in case of award) against Bidding Document No. **BIFPCL/MSTPP/COAL/2022/01** for **‘PROCUREMENT AND DELIVERY OF 8.0MMT OF IMPORTED COAL AT PLANT JETTY (CDP) FOR 2x660MW MAITREE SUPER THERMAL POWER PROJECT AT RAMPAL’** of Bangladesh-India Friendship Power Company (Pvt.) Limited, a Company incorporated under the Companies Act (Bangladesh), 1994, and having its Registered Office at Borak Unique Heights (Level-17), 117 Kazi Nazrul Islam Avenue, Eskaton Garden, Dhaka-1000 (hereinafter called "**BIFPCL**").

**WHEREAS**, BIFPCL invited Bids for **‘PROCUREMENT AND DELIVERY OF 8.0MMT OF IMPORTED COAL AT PLANT JETTY (CDP) FOR 2x660MW MAITREE SUPER THERMAL POWER PROJECT AT RAMPAL**’ vide its Bidding Document No. **BIFPCL/MSTPP/COAL/2022/01.**

**AND WHEREAS** Clause No 5.1.2 of Section-I (IFB), Qualifying Requirements (QR) stipulated in Invitation for Bid (IFB) (forming part of Bidding Documents) stipulate that the Bidder can be a Consortium of maximum four (04) firms, meeting the qualifying requirements stipulated in Clause no. 5.0 of Section-I (IFB) of Bidding Document, collectively. The Consortium is also required to necessarily identify one of the partners as the Lead Partner.

**WHEREAS** sub-clause (v) of clause 5.4 of Qualifying Requirements Section-I (IFB) further stipulates that in case the Bidder is acting through a Consortium, the Bidder shall provide along with the bid, a Consortium Agreement as per the format applicable, *inter alia* providing that each Consortium partner is jointly and severally liable to BIFPCL for due performance of all contractual obligations towards the Services. The Consortium Agreement shall be submitted along with the bid, failing which the Bidder shall be disqualified and its bid shall be rejected.

**AND WHEREAS** M/S……………(Partner-1/ Lead Partner of Consortium) and M/S…………… (Partner-2 of Consortium) and M/S…………… (Partner-3 of Consortium) and M/S…………… (Partner-4 of Consortium), each on its own independently meets the criteria mentioned at Clause 5.1.2 of Section-I (IFB), and collectively meet the Technical Criteria mentioned at 5.2(i) or 5.2(ii) or 5.2(iii) or at least \*25% of the Financial criteria mentioned at Clause 5.3(i), and the Financial Criteria mentioned at clause 5.3 of Section-I (IFB).

**AND WHEREAS** the bid has been submitted to BIFPCL vide proposal No. …………………………..dated ……………….., including on the basis of the Consortium Agreement being these presents in accordance with the requirement of the Qualifying Requirements under the IFB, and have have been signed by each partner of the Consortium and and thereon submitted to BIFPCL.

**NOW THEREFORE, THIS AGREEMENT WITNESSTH AS UNDER:**

1. That in consideration of the Award of the Contract by BIFPCL to the Consortium, we the partners of the Consortium and as signatories to the Consortium Agreement, do hereby agree that Partner-1 (M/s...........................................................), shall act as the Lead Partner for the Consortium, and further declare, confirm and undertake that that we, being each Consortium Partner, shall, jointly and severally be bound to BIFPCL for the execution of the Contract and performance of the Services, in accordance with the terms of the Contract and such co-extensive liability shall extend to the performance of all technical, legal and contractual obligations set out under the Contract and the Bidding Documents. Further, the Lead Partner shall be responsible for (and be authorized towards) incurring liabilities, binding the Consortium, and receiving payments from BIFPCL on behalf of the Consortium, and receiving instructions for and on behalf of the Consortium and communications regarding the implementation of the Contract, shall be undertaken exclusively / by the Lead Partner, who shall be required to make necessary communications regarding the same to other partners of the Consortium.
   1. We, the partners of the Consortium confirm that in case of award of Contract, we shall execute and perform the Services, for which we have the requisite experience and qualifications, collectively to perform in respect of the Contract.
   2. In case of any breach of the said Contract by any of the Consortium Partners, the other Partners hereby agree and undertake to be fully responsible for the successful performance of the Services in accordance with the terms of the Contract.

2. Notwithstanding anything contained herein, Partner-2 and \*Partner-3 and \*Partner-4 do hereby undertake, declare and confirm that it shall be fully responsible for the successful performance of the contract and undertakes to carry out all the obligations and responsibilities under this Consortium Agreement in order to discharge the obligations and responsibilities stipulated in the contract. Further, in the event BIFPCL sustains any loss or damage on account of any breach of the Contract at the behest of the Consortium, we, the Consortium Partners, undertake to jointly and severally, and promptly indemnify, and pay such loss/damages, caused to BIFPCL on its written demand, without any demur, reservation, contest or protest in any manner whatsoever. This is without prejudice to any rights of BIFPCL against the Lead Partner under the Contract and / or guarantees issued in its favour. We agree that BIFPCL shall be free to proceed against any or all the Consortium Partners in the event of a breach or failure to perform in respect of the Contract and it shall not be necessary or obligatory for BIFPCL to proceed against the Lead Partner/ Partner-1 to these presents before proceeding against Partner-2 and/or \*Partner-3 and/or \*Partner-4.

We also confirm that any extension of time or relaxation given by BIFPCL to the Consortium or any Consortium Partner shall not prejudice any rights of BIFPCL under this Consortium Agreement to proceed against us.

3. The financial liability of each of the partners of the Consortium, to BIFPCL with respect to any and all claims arising out of the non-performance of the terms of Contract shall, , not be limited in any way so as to restrict or limit the individual liabilities of each of the partners.

4. In case of an award of Contract, we the partners to the Consortium do hereby agree and undertake to furnish the Contract Performance Security from a qualified Bank in favour of BIFPCL for the value as stipulated under the Contract, in the name of all the Consortium Partners.

5. It is expressly understood and agreed between the partners to this Agreement that the performance-linked responsibilities and obligations of each of the Partners shall be delineated, only for the purposes of understading of specific performance, in **Appendix-1** to this Agreement. It is therfore expressly agreed that the delineation and splitting of responsibilities and obligations, shall not in any way act as a limit to the joint and several responsibilities of the Partners under the Contract.

1. We, the Consortium Partners agree that this Agreement shall be irrevocable and shall form an integral part of the Contract. We further agree that this Agreement shall continue to be enforceable until the successful completion of Contract, and. or until the Consortium stands discharged by BIFPCL in this regard. We further agree and acknowledge that notwithstanding the expiry or termination of this Agreement, the various obligations and liabilities of each of the Consortium Partners, as envisaged in terms of the Contract and this Agreement, shall survive the expiry/ termination of this Agreement.
2. This Agreement shall be construed and interpreted in accordance with the Laws of England and Wales.
3. This Agreement shall be effective from the date hereof.

**IN WITNESS WHEREOF**, each of the Consortium partners through their authorised representatives have executed these presents and affixed common seal company on the day, month and year first mentioned above.

For M/s.........................................................

Witness:**(Consortium Partner-1)/ Lead Partner**

1. Common Seal of

M/s.................... .................................................................

has been affixed in my / our (Signature of the authorised

Presence pursuant to Board of representative)

Directors’ Resolution dated… Name.......................................................

Signature............................... Designation.............................................

Name............................... Common Seal of the Company.......................

Designation...........................

For M/s.........................................................

Witness: **(Consortium Partner-2)**

1. Common Seal of

M/s.................... ...............................................................

has been affixed in my / our (Signature of the authorised

Presence pursuant to Board of representative)

Directors’ Resolution dated….. Name......................................................

Signature............................... Designation.............................................

Name............................... Common Seal of the Company.......................

Designation...........................

For M/s.........................................................

Witness: **(Consortium Partner-3)**

1. Common Seal of

M/s.................... ...............................................................

has been affixed in my / our (Signature of the authorised

Presence pursuant to Board of representative)

Directors’ Resolution dated….. Name......................................................

Signature............................... Designation.............................................

Name............................... Common Seal of the Company.......................

Designation...........................

For M/s.........................................................

Witness: **(Consortium Partner-4)**

1. Common Seal of

M/s.................... ...............................................................

has been affixed in my / our (Signature of the authorised

Presence pursuant to Board of representative)

Directors’ Resolution dated….. Name......................................................

Signature............................... Designation.............................................

Name............................... Common Seal of the Company.......................

Designation...........................

[Appendix – 1 to be separately provided and annexed by the Bidder]

**(Form-8)**

**DRAFT FORM OF NOTIFICATION OF AWARD**

Ref. No.: Date:

..........(Contractor's Name & Address)............  
.............................................................................  
.............................................................................  
.............................................................................

Attn.: Mr. ..........................................

**Sub: Notification of Award of Procurement and Delivery of 8.0MMT of Imported Coal at Plant Jetty (CDP) for 2x660 MW Maitree Super Thermal Power Plant Project at Rampal, District- Bagerhat, Khulna division, Bangladesh as per Bidding Document No.BIFPCL/MSTPP/COAL/2022/01.**

Dear Sir,

1.0 This has reference to the following:

(i) Our Invitation for Bid (IFB) No. .............................................dated.................

(ii) Bidding Documents for the subject package issued to you vide our letter no. .................................. dated ............................. comprising the following:

***.......................(List out all the Sections/Volumes of the Bidding Document along with Tender Drawings etc. as issued to the Bidder)..........***

Errata/Amendment No........................ to.................... ***(Name of Section/Volume of the Bidding Document to which errata/amendment pertains) .................***issued to you vide our letter no. ................ dated .............................

***(Applicable only if any errata/amendment to the Bidding Document have been issued subsequently)***

(iii) Clarifications furnished to you on the Bidding Document vide our letter no.................... dated ............................... based on the query raised by prospective bidders. ***(Use as applicable)***

***(Applicable only if any clarification to the Bidding Document has been issued subsequently)***

***(INCLUDE AS FURTHER SUB-PARA ANY OTHER CORRESPONDENCE MADE TO THE BIDDER AFTER ISSUANCE OF BIDDING DOCUMENT UP TO THE DATE OF TECHNICAL PROPOSAL OPENING)***

(iv) Your Bid for the subject package submitted vide your letter no. ..................... dated...................... **and its modification vide letter no. ...................................... dated .......................... *(delete if not applicable).***

(v) Our fax message/letter No. ............................................. dated........................... regarding extension of validity of bid and that of the bank guarantee towards Bid Security.

***(Applicable only if any extension has been sought subsequently)***

***(INCLUDE AS FURTHER SUB-PARA ANY OTHER CORRESPONDENCE MADE TO OR BY THE BIDDER AFTER TECHNICAL PROPOSAL OPENING)***

(vi) Our fax message/letter no. .................................. dated...................................... inviting you for post bid discussions.

(vii) Post bid discussions and meetings we had with you from .................................... to ....................................... resulting into the following minutes of meeting enclosed herein with this Notification of Award:

(a) Minutes of meeting regarding Commercial issues (APPENDIX - ….......)

(b) Minutes of meeting on Technical issues (APPENDIX - ...................)

(c) Minutes of meeting regarding Work Schedule (APPENDIX - ................)

(d) Minutes of meeting regarding Quality Assurance aspects (APPENDIX-………)

2.0 This is to inform you and confirm that having accepted your Bid submitted vide letter no. ........................ dated .......................................... **and its modification vide letter no................................ dated *(delete if not applicable)*** read in conjunction with all the specifications, terms & conditions of the Bidding Document, your subsequent letters *(use if relevant)* and agreed minutes of meeting referred to in para 1.0 above, BIFPCL hereby award the Contract for the work of ............................***(Indicate brief Scope of Services) ......................................*** of***......................................... (Name of Contract)*** .....................................for ***(Name of Project)***......................................... as per Bidding Document no.: ......................................, in your favour.

3.0 The Contract Price for the entire Scope of Services under the Contract shall be ***.............(Specify the amount and currency)................***

4.0 You shall prepare and finalize the Contract Document for signing of the formal Contract Agreement and shall enter into the Contract Agreement with us, as per the proforma enclosed with the Bidding Document, on non-judicial stamp paper of appropriate value within ……… days from the date of this Notification of Award.

5.0 The provisions and stipulations, including the obligations and liabilities of the Contractor, as set out in the Bidding Documents, especially under Section-III (Conditions of Contract) of the Bidding Documents, shall *mutatis mutandis* apply to and in respect of this Notification of Award.

6.0 Until the formal Contract Agreement is signed, this Notification of Award shall constitute a legally binding and enforceable Contract.

7.0 We request you to submit acceptance of this Notification of Award by furnishing a copy thereof duly countersigned and stamped on each page, including all the enclosed appendices, by the authorized signatory of the Contractor, as a proof of your acknowledgement and confirmation.

You are required to take the necessary action to prepare for commencement of the Services and confirm action taken in this regard to BIFPCL.

Yours faithfully,

for and on behalf of

**Bangladesh-India Friendship Power Company (Pvt.) Ltd.**

***(Authorised Signatory)***

Encl.: As above.

**(Form-9)**

**DRAFT FORM OF CONTRACT AGREEMENT**

*(To be executed on a Stamp Paper of appropriate value as per the applicable law in Bangladesh)*

This Contract is made at Dhaka on \_\_\_\_\_\_\_\_ *[day]* \_\_\_\_\_\_ *[month]* \_\_\_\_\_*[year]* by and between

**Bangladesh-India Friendship Power Company (Pvt.) Limited** (a Company incorporated under the Companies Act 1994 of Bangladesh) having its registered office at \_\_\_\_\_\_\_\_ (hereinafter referred to as **“BIFPCL”,** which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors and permitted assigns) of the **FIRST PART**

AND

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[Contractor’s name]* (a Company incorporated under the \_\_\_\_\_\_\_\_\_\_\_/ Consortium constituted in terms of the Consortium Agreement dated \_\_\_\_\_\_\_\_\_\_\_) having its registered office at \_\_\_\_\_\_\_\_\_\_*[Address]* (hereinafter referred to as **“Contractor”***,* which expression shall, unless excluded by or repugnant to the context, be deemed to include its successors and permitted assigns) of the **SECOND PART.**

(Both BIFPCL and the Contractor shall be individually referred to as a **“Party”** and collectively referred to as the **“Parties”**)

**WHEREAS**

1. BIFPCL invited bids vide Invitation of Bid (IFB) no. \_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_ for Procurement of 8.0MMT of Imported Coal to be delivered at Plant Jetty (CDP) for 2x660 MW Maitree Super Thermal Power Plant Project at Rampal (hereinafter referred to as the “**Tender**”), wherein BIFPCL had prescribed the technical and financial terms and conditions in the Bidding Document(s) as issued by it for the subject Tender.
2. \_\_\_\_\_\_\_\_\_ *(the Contractor, as the successful Bidder)* submitted its Bid in the form of its Technical Proposal and Financial Proposal, for undertaking the Services as prescribed in respect of the subject Tender in the Bidding Documents. Upon consideration and evaluation of the successful Bidder’s proposal, BIFPCL accepted the proposal of the Contractor and in furtherance thereof, issued the Notification of Award (hereinafter referred to as the “**NOA**”) in favour of the Contractor requiring, *inter alia*, the signing of this Contract Agreement within …….days of the date of issuance of the NOA, for the purpose of performance of the Services, including the transportation, transhipment and delivery of the Coal at the CDP.
3. The Contractor’s proposal (both Technical and Financial) submitted in *vide* the Bid forms/ attachments, including the technical and financial warranties and representations, and commitments and undertakings, made therein and in terms thereof, constitute the basis for selection of successful Bidder as the Contractor for the subject Tender.
4. The Contractor having been awarded this Contract by BIFPCL shall remain solely liable, responsible and accountable to BIFPCL for successful performance of the entire Contract and provisioning of the Services as required in terms thereof.

The provisions and stipulations, including the obligations and liabilities of the Contractor, as set out in the Bidding Documents, especially under Section-III (Conditions of Contract) of the Bidding Documents, shall *mutatis mutandis* apply to and in respect of this Contract Agreement.

**DOCUMENTS CONSTITUTING THE CONTRACT**

**T**he documents forming the Contract (as set forth hereinafter) are to be taken as complimentary to one another and therefore read harmoniously. In case of any ambiguity, or discrepancy or inconsistency between the provisions of the various sections of the documents listed herein below, the order of precedence (in decreasing order of precedence) to be observed and maintained while constructing and interpreting the terms of Services shall be as follows:

1. This Contract Agreement duly executed on non-judicial stamp paper;
2. NOA duly accepted by the Contractor;
3. Addenda, errata, amendments, and clarifications issued by BIFPCL with respect to the Bidding Documents;
4. The Conditions of Contract (Section-III) of the Bidding Document;
5. Technical Specification (Section-IV) of the Bidding Document;
6. Other Sections comprising the Bidding Document;
7. Financial Proposal of the Contractor; and
8. Technical Proposal of the Contractor.

Without prejudice to the foregoing, any ambiguity or discrepancy or inconsistency between the provisions of all or any of the aforesaid documents constituting the Contract may be clarified/resolved by BIFPCL, who shall then instruct the Contractor in accordance thereof, failing which the stipulation contained in the stricter condition amongst the inconsistent provisions shall apply.

The Contract, once signed, shall supersede all prior correspondence between the Parties, to the extent of inconsistency or repugnancy to the terms and conditions contained in the Contract. Any modification of this Contract shall be effected only by a written instrument signed by the authorized representative of the Parties.

NOW, THEREFORE, in consideration of the Agreement and covenants hereinafter set out, and intending to be legally bound hereby, the Parties hereto covenant and agree with each other

Signed this day as above mentioned by both the Parties:

|  |  |
| --- | --- |
| **For BIFPCL** | **For ………………**  **(Name of Contractor)** |
| Signature  Name:  (block letters)  Designation:  Address:  Telephone:  Fax:  Email: | Signature  Name:  (block letters)  Designation:  Address:  Telephone:  Fax:  Email: |
| **Witness 1** | **Witness 1** |
| a) Signature  b) Name  (block letters)  c) Address & Occupation | a) Signature  b) Name  (block letters)  c) Address & Occupation |
| **Witness 2** | **Witness 2** |
| a) Signature  b) Name  (block letters)  c) Address & Occupation | a) Signature  b) Name  (block letters)  c) Address & Occupation |