



ENERGY DEPARTMENT
GOVERNMENT OF THE PUNJAB

ADDENDUM-1
FOR
KHADIM-E-PUNJAB UJAALA PROGRAM

22nd JULY, 2017



ADDENDUM-1 REF#: KPUP-PKG-05

Note: Addendum-1 is applicable for Package 05. The details of the Addendum-1 are provided in the link that was sent via e-mail and also available on Punjab Energy Department website.

Khadim-e-Punjab Ujaala Program Bidding Documents**Addendum No. 1**

1. In Clause 1 (*Scope of Bid and Source of Funds*) of Section-1 (*Instructions to Bidders*) of the Bidding Documents (the “**ITB**”), the following definitions are added in ITB Sub-Clause 1.1 (*Definitions*):

“

“**Manufacturers**” shall have the meaning ascribed to it in ITB Sub-Clause 13.6;

“**Parent Company Guarantee**” means the parent company guarantee to be submitted by the successful Bidder in accordance with ITB Clause 34A (*Parent Company Guarantee*);

“**SOE**” shall have the meaning ascribed to it in ITB Sub-Clause 2.4;

“**Sovereign**” shall have the meaning ascribed to it in ITB Sub-Clause 2.4;

”

2. In Clause 2 (*Eligible Bidders*) of the ITB, the text in ITB Sub-Clause 2.2(c) is replaced with the following:

“The Bidders are required to submit a formal executed copy of the JV / consortium agreement complying with the requirements indicated in Schedule H of the Letter of Technical Bid. The Lead Partner and all other partners shall be required to hold and retain such share in the JV/consortium as specified in the PQD.”

3. In Clause 5 (*Contents of Bidding Documents*) of the ITB,

“Section X Not Used”

is replaced with the following:

“Section-X Baseline Design and Design Requirement”

4. In Clause 6 (*Clarification of Bidding Documents*) of the ITB, the following is inserted at the end of Sub-Clause 6.2:

“The data provided to the Bidder in respect of the Sites in the Bidding Documents is only for the information of the Bidders, and the Employer is not responsible for the accuracy, sufficiency or completeness of such data.”

5. In Clause 11 (*Bid Prices*) of the ITB, the text of Sub-Clause 11.6 is replaced with the following:

“Unless otherwise specified in the Bidding Data Sheet or the Employer’s Requirements, the Bidders shall quote for the entire scope of the Works, on a “single responsibility” basis such that

the total bid price quoted by the Bidder in the Letter of Financial Bid shall be deemed to cover all the Bidder's obligations mentioned in or to be reasonably inferred from the Bidding Documents including the Agreement and Employer's Requirements in respect of the design, manufacture, procurement and subcontracting (if any), delivery, construction, installation of the solar units at the Sites, remedying of any defects and complying with warranty obligations and the operation & maintenance. This includes all responsibilities testing, pre-commissioning and commissioning of the solar units and, where so required by the Bidding Documents, the acquisition of all permits, approvals and licenses etc.; the operation, maintenance and training services and such other items and services as may be specified in the Bidding Documents, all in accordance with the requirements of the Agreement. ITB.12 (*Currencies of Bid and Payment*)."

6. In Clause 11 (*Bid Prices*), the following Sub-Clause is added:

"11.7 Bidders shall give a breakdown of the prices in the manner and detail called for in the bidding forms."
7. In Clause 12 (*Currencies of Bid and Payment*) of the ITB,

"O&M Monthly Price"

is replaced with the following:

"O&M Quarterly Price"
8. In Clause 13 (*Documents Establishing Bidder's Eligibility and Qualifications*) of the ITB, Sub-Clause 13.4(b) is deleted.
9. In Clause 13 (*Documents Establishing Bidder's Eligibility and Qualifications*) of the ITB, the text of Sub-Clause 13.6 is replaced with the following:

"The Bidder shall propose equipment or goods of only "Tier-1" manufacturers (the "**Manufacturers**") The Employer may, at its own discretion, evaluate the equipment or goods of one (1) of such Manufacturers."
10. In Clause 14 (*Documents Establishing Equipment's Eligibility and Conformity to Bidding Documents*) of the ITB, the text of Sub-Clause 14.3(c) is replaced with the following:

"A list giving full particulars, including available sources, of all spare parts and special tools necessary for the proper and continuing functioning of the Units for the O&M Period (as defined in the Form of Contract)"
11. In Clause 24 (*Preliminary Examination and Determination of Responsiveness of Bids*) of the ITB, Sub-Clause 24.10 to Sub-Clause 24.15 (inclusive) are deleted.
12. In Clause 26 (*Detailed Evaluation of Technical Bids*) of the ITB, the text of Sub-Clause 26.4 is replaced with the following

“An affirmative determination shall be a prerequisite for the opening and evaluation of a Bidder’s Financial Bid. A negative determination shall result in the disqualification of the Bidder, in which event the Employer shall retain the unopened Financial Bid until a decision is made on any grievances vis-à-vis the declaration of the successful Bidder.”

13. In Clause 27 (*Evaluation of Financial Bid*) of the ITB, the following sub-clauses is inserted:

“

27.4 During the evaluation of Financial Bids, the Employer shall correct arithmetical errors on the following basis:

- (a) where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Contract Price (as defined in the Agreement), the former shall prevail and the latter will be corrected accordingly;
- (b) where there are errors between the total of the amounts mentioned in the Letter of Financial Bid and the amount given in the Schedule of Prices, the former shall prevail and the latter will be corrected accordingly; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail subject to (a) and (b) above.

27.5 If a Bidder that submitted the lowest evaluated Bid does not accept the correction of errors, its Bid shall be rejected and its Bid Security may be forfeited, and the Employer shall have the right, to be exercised at its sole discretion, to evaluate the Financial Bid of the second-lowest read-out price Bidder for the respective Package.

”

14. After Clause 34 (*Performance Security*) of the ITB, the following clause is inserted:

“

ITB.34A Parent Company Guarantee

34A.1 The successful Bidder, if it has relied on the financial or technical strength of its parent company for the purposes of prequalification, shall furnish the Parent Company Guarantee no later than seven (7) days prior to the date of signing of the Agreement in accordance with the terms of the Agreement, in the Form attached as Schedule 9 to the Agreement.

34A.2 Failure of the successful Bidder to submit the above-mentioned Parent Company Guarantee or sign the Agreement within the time stipulated in the ITB Clause 35 (*Signing of the Agreement*), shall constitute sufficient grounds for the annulment of the award, termination of the Agreement (as applicable) and forfeiture of the Bid Security.

”

15. In Clause 38 (*Sufficiency of Bid*) of the ITB, Sub-Clause 38.1 is replaced with the following:

“Each Bidder shall satisfy himself before bidding as to the correctness and sufficiency of his Bid and of the rates and prices entered in the Letter of Financial Bid (including all accompanying schedules) and Schedule of Prices. Except insofar as it is otherwise expressly provided in the Agreement, the rates and prices entered in the Letter of Financial Bid (including all accompanying schedules) and Schedule of Prices shall cover all his obligations under the Agreement and all matters and things necessary for the proper completion of the Works.”

16. In Clause 42 (*Site Visit and Local Conditions*) of the ITB, the text of Sub-Clause 42.1 is replaced with the following:

“The Bidders must verify and supplement through their own investigations the information about Sites and local conditions. The Bidders shall be deemed to have visited the Sites and to be fully cognizant of conditions at the Sites.”

17. In Section-II (*Bidding Data Sheet*) of the Bidding Documents, the comments to Sub-Clause 14.3(c) of the ITB are deleted.

18. In Schedule H (*Requirements to be inserted into the JV Agreement*) of Section-III (*Letter of Technical Bid (LTB) & Schedules to Bid (STB)*) of the Bidding Documents, the text of the first paragraph is replaced with the following:

“[An executed Joint Venture Agreement is to be attached with the Bid in accordance with the requirements of Sub-Clause 13.5(e) of Section-I (*Instructions to Bidders*) of the Bidding Documents].”

19. In Schedule H (*Requirements to be inserted into the JV Agreement*) of Section-III (*Letter of Technical Bid (LTB) & Schedules to Bid (STB)*) of the Bidding Documents, the following text is inserted:

[The partners of the joint venture / consortium shall authorize the lead partner to receive payments under the Agreement].

20. In Section-VI (*Form of Contract*) of the Bidding Documents (the “**DSI&COM Agreement**”), the following definitions are amended in Clause 1.1 (*Definitions*) of the DSI&COM Agreement:

“

"Base Date" means twenty-eight (28) days prior to the Bid Submission Date.

"Commissioning Criteria" means the commissioning criteria to be satisfied by the Contractor for issuance of each Certificate of Successful Commissioning, as detailed in Section 4.6 of the Employer's Requirements.

"DSI&C Works" means all the Works identified in Part A (DSI&C Works) of Section 2 of the Employer's Requirements.

"Employer's Requirements" means the document entitled Employer's Requirements, included as Schedule 2 (Employer's Requirements), which specifies, inter alia, the purpose, scope, design and other technical criteria, for execution and performance of the Works.

"Final Tests" means the final tests to be carried out in relation to the O&M Works as set out in the Section 4.6 of the Employer's Requirements.

"O&M Works" means all the Works identified in Section 3 (O&M Works) of the Employer's Requirements.

"Performance Guarantees" means each of the performance guarantees relating to the Units (and each part thereof) set out in Section 3.2.4 and 3.2.5 of the Employer's Requirements.

"Site(s)" means the schools identified in Section 1.2 of the Employer's Requirements where the Units are to be established.

"Technical Acceptance Criteria" means the technical acceptance criteria to be satisfied by the Contractor for issuance of the Certificate of Technical Acceptance, as detailed in Section 4.5 of the Employer's Requirements.

"Units" means the electricity generating solar units to be installed at each Site, including the 'PV Hybrid System', batteries, invertors, LED lights and energy efficient ceiling fans as defined in the Definitions section of the Employer's Requirements.

"Warranty Period" means the period for notifying defects in the Works, calculated for a minimum period of two (2) years from the Operations Start Date (extended for the items listed in the Section 2.10 of the Employer's Requirements as having a longer warranty / guarantee period until such time as stated in Section 2.10 of the Employer's Requirements or otherwise as provided by the manufacturer)."

21. In Clause 1.1 (Definitions) of the DSI&COM Agreement, the following definitions are inserted:

“

“Bid Submission Date” means 31st July 2017.

“Change in Tax” means the adoption, enactment, promulgation, coming into effect, repeal, amendment, reinterpretation, change in application, change in interpretation or modification after the Bid Submission Date hereof of any Laws of Pakistan relating to any taxes or other charges to be paid by the Contractor in terms of Clause 13.14.

“Change of Control” means transfer to a third party of majority ownership or control of the Contractor. For the purposes of this definition ‘majority ownership or control’ shall be considered transferred where the shareholders of the Contractor transfer more than fifty one percent (51%) of their shareholding in the Contractor or relinquish their right to appoint the majority of the directors on the board of the Contractor.

["Parent Company" means [insert name of entity which is the holding company of the Contractor relied upon for the purposes of pre qualification]].

"Parent Company Guarantee" means the Parent Company Guarantee which has been issued in favour of the Employer by the Parent Company pursuant to the Letter of Acceptance in accordance with Clause 4.31 in the form attached as Schedule 9 (Parent Company Guarantee)."

22. In Clause 1.13 (*Compliance with Laws*) of the DSI&COM Agreement, the text in Sub-Clause 1.13(a) is replaced as follows:

"the Contractor shall have obtained (or shall obtain) all permissions, approvals, authorizations or licenses required for the Works (including the Contractor Consents), and any other permissions described in Section 3.6 of the Employer's Requirements as having been (or being) obtained by the Contractor; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so; and"

23. In Clause 2.1 (*Right to Access*) of the DSI&COM Agreement, the text before sub clause 2.1 (a) is replaced as follows:

"The Employer has given the Contractor right of access to the Sites on the Commencement Date up to the Contract Completion Date. The right of access to the Sites shall not be exclusive to the Contractor. If, under this Agreement, the Employer is required to give (to the Contractor) possession of any foundation, structure or means of access, the Employer shall do so in the time and manner stated in Section 2.4 of the Employer's Requirements. However, the Employer may withhold/withdraw any such right or possession until the Performance Security has been received. If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the Employer and shall be entitled subject to Clause 19.1 (Contractor's Claims) to:"

24. The following has been inserted as Clause 4.1A (Representations and Warranties of the Contractor) in the DSI&COM Agreement:

"The Contractor hereby makes the following representations and warranties.

- (a) The Contractor exists as a company under the Applicable Laws and is duly qualified to carry out its obligations under this Agreement.
- (b) The Contractor have the full legal right to perform their obligations under this Agreement, and execution and delivery of this Agreement has been duly authorized by all necessary action, corporate or otherwise. This Agreement has been duly executed and delivered by the Contractor and constitutes a valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms, subject to bankruptcy and other laws of general application and equitable principles.
- (c) The Contractor has the skill, ability and experience to perform their obligations pursuant to this Agreement.

- (d) Neither the execution or delivery by the Contractor of this Agreement, nor the performance by the Contractor of the obligations hereunder conflicts with, violates or results in a breach of any Applicable Law, or conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court/administrative agency or other governmental authority, or any contract or instrument to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound or constitutes a default thereunder, and no action by the Employer related to the negotiation, execution or delivery of this Contract has in any way induced any such breach or default by the Contractor under any such contract or instrument.
 - (e) There is no action, suit, proceeding or, to the best of the knowledge of the Contractor, investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of the knowledge of the Contractor, threatened, against the Contractor, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Contractor of their obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Contractor in connection with the performance of the Works under this Agreement.
 - (f) The Contractor has obtained all approvals authorizations, licenses, permits, declarations, registrations or filings with government or administrative authority, commission, board, agency or instrumentality required for the valid execution, delivery and performance of this Agreement.
 - (g) There has been no Change of Control.”
25. In Clause 4.6 (Co-operation) of the DSI&COM Agreement, the third (3rd) paragraph is replaced as follows:
- “The Contractor shall be responsible for its construction, operations and maintenance activities at the Sites, and shall co-ordinate its own activities with those of other contractors to the extent (if any) specified in Section 3.1.1 and 3.1.4 of the Employer's Requirements.
- If, under this Agreement the Employer is required to give to the Contractor possession of any foundation, structure, equipment or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Employer in the manner specified in clause 5.2 (Contractor’s Documents).”
26. In Clause 4.23 (O&M Obligations) of the DSI&COM Agreement, sub clause (a) is replaced as follows:
- “The Contractor shall comply with the operations and maintenance requirements provided for in Section 3 of the Employer’s Requirement and any revisions thereof which are agreed during the O&M Period.”

27. In Clause 4.27 (*Completion of O&M Works*) of the DSI&COM Agreement, sub clause (b) is replaced as follows:

“Testing in accordance with Section 4.6 of the Employer’s Requirements.”

28. The following has been inserted as Clause 4.29 (*Joint & Several Liability*) in the DSI&COM Agreement:

“If the Contractor constitutes a joint venture, consortium or other unincorporated grouping of two (2) or more persons:

- (a) these persons shall be deemed to be jointly and severally liable to the Employer for the performance of this Agreement and shall execute such documents as required by the Employer to give effect to the provisions of this Clause 4.29;
- (b) these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and
- (c) the Contractor shall not directly or indirectly alter its composition or legal status without the prior consent of the Employer.”

29. The following has been inserted as Clause 4.30 (*Change of Control*) in the DSI&COM Agreement:

“From the Effective Date until issuance of the Contract Completion Certificate, the Contractor undertakes that it will not take any action that results in a Change of Control, without the prior written consent of the Employer.”

30. The following has been inserted as Clause 4.31 (*Parent Company Guarantee*) in the DSI&COM Agreement:

“The Contractor hereby represents and warrants that:

- (a) the Contractor has procured the Parent Company Guarantee from its Parent Company, in favour of the Employer, in respect of its obligations towards the Employer under this Agreement;
- (b) the Parent Company has taken all necessary corporate actions and has all necessary authorizations to execute and deliver the Parent Company Guarantee to the Employer;
- (c) the Parent Company is empowered under applicable laws of [*insert company of incorporation*], its constitutive documents (including the memorandum and articles of association or charter) to execute and deliver the Parent Company Guarantee and to perform its obligations hereunder;
- (d) the Parent Company Guarantee has been executed by a duly authorized persons on behalf of the Parent Company and is and shall continue to remain binding and enforceable against the Parent Company;

- (e) the Parent Company Guarantee shall remain valid until the issuance of the Contract Completion Certificate. If the terms of the Parent Company Guarantee specify an expiry date and the Contract Completion Certificate has not been issued, the Contractor shall, thirty (30) days prior to the expiry of the Parent Company Guarantee, procure the extension of the Parent Company Guarantee from the Parent Company until such date as notified by the Employer; and
 - (f) the Employer may at any time and from time to time, make a claim under the Parent Company Guarantee in the event of failure by the Contractor in relation to the due performance and discharge by the Contractor of all its obligations and liabilities under this Agreement, including but not limited to:
 - (i) performance and implementation of all terms and conditions of this Agreement by the Contractor; and
 - (ii) payment by the Contractor of all amounts due to the Employer under this Agreement.]”
31. The following has been inserted as Clause 4.32 (Removal and Disposal of Retrofitting) to the DSI&COM Agreement:
- “The Contractor shall be responsible for the removal of retrofitting, as specified in detail under the Employer’s Requirement. The Contractor shall handover all such removed retrofitting to the School Education Department, Government of Punjab.”
32. In Clause 5.6 (*As Built Documents*) of the DS&COM Agreement, the text of the third (3rd) paragraph is amended as follows:
- “Prior to the issue of the DSI&C Certificate, the Contractor shall supply to the Employer the specified numbers and types of copies of the relevant as-built drawings, in accordance with Section 2.8 of the Employer’s Requirements. The DSI&C Works shall not be considered to be completed for the purposes of completion under Clause 8.3 (Completion) until the Employer has received these documents.”
33. In Clause 7.3 (*Inspection*) of the DSI&COM Agreement, the text of last paragraph of sub-clause (c) is amended as follows:
- “The Employer may perform independent inspection and quality assurance in terms Section 4 of the Employer’s Requirements (and otherwise if the Employer deems it necessary) however the Contractor shall remain responsible for the Works irrespective of such independent inspection and quality assurance. The Contractor shall assist and provide logistic support in the performance of the Employer’s inspection and quality assurance activities and where stated in the Employer’s Requirements bear the costs of such inspection and quality assurance activities.”
34. In Clause 10.2 (*Joint Inspection prior to Completion*) of the DSI&COM Agreement, the text of fourth (4th) paragraph is replaced as follows:

“Upon satisfactory completion of the items identified in this Clause the Employer shall instruct the Contractor to commence the Final Tests in accordance with Section 4.6 of the Employer’s Requirements.”

35. In Clause 11.1 (*Completion of Outstanding Work and Remedying of Defects*) of the DSI&COM Agreement sub clause (b) is replaced as follows:

“the design life of the Units shall be as per Section 2.10 of the Employer’s Requirements.”

36. The following has been inserted as Clause 13.15 (Appointment of Lead Member) to the DSI&COM Agreement:

“In the event the Contractor consists of more than one legal entity, one entity shall be nominated amongst the entities constituting the Contractor as the “Lead Member”. Only the Lead Member will be entitled to receive all payments due from the Employer including payments under Clause 13.1(DSI&C Payments) and 13.6 (O&M Payments) on behalf of all entities constituting the Contractor. No later than seven (7) days of the Effective Date, the Contractor shall appoint and notify the Employer regarding appointment of the Lead Member. The Offshore LC and the Onshore LC shall be established in favour of the Lead Member.

The Employer shall be discharged of its obligations towards the Contractor for any payment due under this Agreement to the Contractor once such payment is made to the Lead Member.”

37. Clause 14.2 (Termination of by the Employer) of the DSI&COM Agreement is replaced as follows:

“The Employer shall be entitled to terminate this Agreement:

- (a) if the Contractor fails to comply with Clause 4.2 (*Performance Security*);
- (b) if the Contractor demonstrates the intention not to continue performance of his obligations under this Agreement or cannot demonstrate that sufficient capability is employed in the performance of the DSI&C Works to achieve completion of the Works or otherwise cannot achieve completion by the Guaranteed DSI&C Completion Date;
- (c) if the Contractor fails:
 - (i) to commence the Works following the Commencement Date and proceed with the Works in accordance with Clause 8 (*Commencement, Delays and Suspension*);
 - (ii) to comply with a notice issued under Clause 7.5(*Rejection*) or Clause 7.6 (*Remedial Work*);
 - (iii) complete the DSI&C Works by the Guaranteed DSI&C Completion Date and the Delay LDs Cap has been reached (by way of calculation);
- (d) if the Contractor subcontracts whole or any portion of the Works without the prior approval of the Employer;

- (e) if the Contractor becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under Applicable Laws) has a similar effect to any of these acts or events;
- (f) if the Contractor gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to this Agreement; or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to this Agreement,or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). Except that lawful inducements and rewards to Contractor's Personnel shall not entitle termination;
- (g) if the Contractor commits a material breach of this Agreement;
- (h) if any statement, representation or warranty by the Contractor in this Agreement proves to be incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a material adverse effect on the Employer's ability to perform its obligations under this Agreement or having a material adverse effect on the rights or obligations of the Employer under this Agreement;
- (i) if the Contractor fails to furnish, keep valid and maintain in full effect the Performance Security and/or the Advance Payment Security in accordance with this Agreement;
- (j) if the Works performed by the Contractor hereunder and/or the Units, in each case, fail to meet the Applicable Standards in any material respect;
- (k) pursuant to Clause 9.3(b);
- (l) if the Contractor's maximum liability towards the Employer in respect of Delay LDs or Performance LDs has been reached;
- (m) if the Contractor fails to perform the O&M Works;
- (n) if the Contractor fails to achieve the Performance Guarantees;
- (o) tampering by the Contractor or its employees with the metering system or the back-up metering system;
- (p) if the Parent Company Guarantee is not maintained in accordance with Clause 4.31 (*Parent Company Guarantee*);
- (q) due to Change of Control, without the prior written approval of the Employer in accordance with Clause 4.30 (*Change of Control*).

In any of these events or circumstances, the Employer may, upon giving fourteen (14) days' notice to the Contractor, terminate the Agreement and expel the Contractor from the Site. Except that, in the case of sub-clauses (a), (c) (iii), (d), (e), (f), (i), (k), (l) and (q), the Employer may by notice terminate this Agreement immediately.”

38. In Clause 18.1 (*Force Majeure*) of the DSI&COM Agreement, sub clause (b) is replaced as follows:
“any Change in Tax”
40. Schedule 9 (Format of Parent Company Guarantee) has been inserted in the DSI&COM Agreement.
41. Employer’s Requirement changes are highlighted along with clean document.
42. Annexures of Employer’s Requirement have been updated and attached.
43. Letter of Financial Bid and Schedules (C-4) to bid have been updated.
44. Schedule of Prices with Preamble (C-5) have been updated.
45. Complete Feasibility and Updated kmz. File.