

Tender Document
for
Appointment of Third Party Auditor (TPA)
for
Citizen Facilitation & Contact Centre, Govt. of Madhya Pradesh

Tender No. : MPSEDC/ACGM/2010/582

Madhya Pradesh State Electronics Development Corporation Ltd.

147, Zone 1, M P Nagar, Bhopal – 462 011
Phone 0755-2769818, Fax No. 0755-2769824
www.mpsedc.com

INVITATION FOR BIDS

MPSEDC Ltd., Bhopal invites sealed bids, under two envelopes system, from bidders for Appointment of Third Party Auditor (TPA) for Citizen Facilitation & Contact Centre of Govt. of M.P. Interested bidders may obtain further information from the office of MPSEDC Ltd., Bhopal Bids are invited for the work mentioned hereunder:

Items	Description
A Scope of Work	Appointment of Third Party Auditor (TPA) for Citizen Facilitation & Contact Centre, Govt. of M P
B Cost of bid document	Rs.2500.00 (non-refundable) by Demand Draft/Cash
C Sale of bid documents	01.01.11 to 21.01.11 (Between 10.30 a.m. to 5.30 p.m.)
D Pre-Bid Meeting	07.01.11 at 02:30 p.m.
E Last date of submission of bid	22.01.11 up to 3.00 p.m.
F Date of opening of technical bid	22.01.11 at 4.00 p.m.
G EMD	Rs.15,000/- in the form of Demand Draft payable to MPSEDC Ltd. payable at Bhopal
H Place of opening the Bids:	MPSEDC Ltd., 147, Zone-1, Maharana Pratap Nagar, Bhopal – 462 011 (M.P.)
I Address for communication:	MPSEDC Ltd., 147, Zone-1, Maharana Pratap Nagar, Bhopal – 462 011 (M.P.)

Note - Tender can be downloaded from the website www.mpsedc.com. In case tender form has been downloaded from the website, the tenderer will have to enclose a Demand Draft of Rs.2500/- (Rupees Two Thousand Five Hundred only) of any scheduled bank in favor of MPSEDC Ltd. payable at Bhopal along with the tender.

Sd/-

Addl. Chief General Manager

***Any future Corrigenda/Information shall be posted only on our website www.mpsedc.com**

Letter for Submission of Tender

Addl. Chief General Manager
MPSEDC
147, Zone I
M P Nagar
Bhopal,
Madhya Pradesh

Subject : Appointment of Third Party Auditor (TPA) for Citizen Facilitation & Contact Centre
of Govt. of M.P.

Sir,

Having examined the tender document for Appointment of Third Party Auditor (TPA) for Citizen Facilitation & Contact Centre for Govt. of M.P. as detailed in your tender, Conditions and Scope of Work etc, and having understood the provision & requirement relating to the preparation and all other factors governing the tender , We hereby submit our offer to carry out the work for Third Party Audit for Citizen Facilitation & Contact Centre for Govt. of M.P. in accordance with the terms & conditions and confirm our acceptance to execute the order within the time period specified in the tender document, at the rates quoted by us in the accompanying Technical & Commercial bid.

If after the tender document is accepted, we fail to complete the work as per the order, we agree that, MPSEDC Ltd., Bhopal shall have full authority to forfeit the Earnest Money Deposit (EMD) and cancel our order with no obligation on their part.

We further confirm that,

1. We have successfully executed orders of similar nature and have sufficient experience & financial strength in handling orders of this value.
2. We have sufficient qualified manpower & necessary materials to execute the order efficiently in the specified time schedule. The quoted rates shall be valid till the completion of the order.
3. We further confirm that all chapters of the tender have been read & understood & signed & there is no deviation/discrepancy.

We do hereby undertake, that, until a formal contract is prepared and executed, this bid, together with your written acceptance thereof or placement of letter of intent awarding the contract, shall constitute a binding contract between us and MPSEDC.

We confirm that we have not been blacklisted by any Government/ Government organization in India.

The information given along with the Bid is true and we understand that if the information provided by us is found to be wrong at any point of time during the Bid Process or Contract period our Bid/Contract may be cancelled and the Bid Security/Performance Guarantee may be forfeited.

Signature of the Tenderer
With stamp and date

I CONTEXT

M.P. State Electronics Development Corporation Ltd. is the nodal agency for promotion of Electronics and IT in the State of Madhya Pradesh.

MPSEDC has established a Citizen Facilitation and Contact Centre (Call Centre) for Government of Madhya Pradesh (GoMP) and citizens of the State through PPP on BOOT basis. The main purpose was to create a "Single Contact Number" (Help line) for any public services rendered by the State Government and its entities. Call Center is a vital IT tool, which will help Govt. of Madhya Pradesh to improve Citizen Services. The single Contact Number 155343 has been established with around 25 seat which is likely to increased by 100 seats as per contract awarded .

II INTRODUCTION TO CITIZEN FACILITATION & CONTACT CENTRE FOR GOVT. OF MADHYA PRADESH

The Call Centre has been established and being operated by M/s Spice BPO Services Ltd. (BOOT Operator) through a tendering process. The terms and conditions for establishing and operating the Call Centre are as per the Tender Document No. MPSEDC/Call Centre/2008/1 including the Corrigendum and subsequent Agreement. The Tender Document, Corrigendum and Agreement are attached with this document as Annexure.

The Call Centre is located at the following address:

Citizen Facilitation & Contact Centre
214 Zone I M.P.Nagar,
Bhagwan Complex,
Bhopal

III SERVICES DELIVERED BY THE BOOT OPERATOR

M/s Spice is required to perform the following activities:

1. Providing Physical infrastructure, Software, Hardware and Manpower for the Call Centre.
2. Maintenance and updation of Hardware and Software
3. Operation of the Call Centre as per defined service levels

IV THIRD PARTY AUDITOR (TPA)

TPA is required to provide dedicated manpower for various periodic audit activities, monitoring of SLA parameters as per the Agreement and provide suitable manpower for functional and security audit of the software.

a. TPA - SCOPE OF WORK

Third Party Audit shall include monitoring the performance BOOT operator with a view to ensure desired Quality of Service (QoS) as defined in the SLA, signed between MPSEDC and BOOT Operator. These Guidelines define the broad areas of work, which TPA shall perform for a period of One year from the date of issue of Work Order/LoI. However, the agreement can be extended for a further period of one year on the same terms and conditions.

1. To understand the project, TPA would be required to

- a) Study the contract signed between the MPSEDC and the BOOT Operator.

- b) Study the Software, Hardware architecture & design and the services envisaged.
- c) Review communication process among the stakeholders MPSEDC and M/s Spice BPO (BOOT Operator).
- d) Create frameworks and procedures for audit.
- e) Study the functionality of the IT System installed in the Call Centre and identify the gaps, if any, required for TPA scope of work. The additional module/tool including hardware/software required for the same will be procured by MPSEDC and TPA would assist the state with the procurement process for the same.
- f) Review of the escalation mechanisms being followed to resolve any issues between MPSEDC and BOOT Operator related to the project.

TPA would also conduct audit of the process, plan and results of the System implemented by BOOT Operator. TPA shall verify availability of all the defined services as per the contract signed between MPSEDC and BOOT Operator. The BOOT Operator shall be required to demonstrate all the services/features/functionality as mentioned in the agreement.

b. Inventory

- i. TPA audit would include verification of completeness of bill of material.
- ii. TPA audit would include review that all Hardware and Software items have been installed at the sites as per the contract.
- iii. TPA audit would include maintenance of an inventory register including equipment list, hardware and software. TPA audit would also include updating inventory register in event of any changes in the inventory.

Inventory Audit is to be performed at the beginning of the Contract and at the end of every year and the relevant changes in the year of the audit shall be recorded. Inventory Details shall be provided by the BOOT Operator and TPA shall maintain a record at its end, which shall be updated by TPA based on information provided by the BOOT Operator.

c. SLA Monitoring Audit

SLA monitoring would include audit of the performance of BOOT Operator. TPA would carry out the following tasks:

- i. TPA audit would include preparation of templates for reports to be submitted by BOOT Operator to TPA/MPSEDC and report to be submitted by the TPA to MPSEDC. TPA shall also tabulate measurable parameters as defined in the respective SLA's.
- ii. TPA would proactively convey to the stakeholders any concerns based on the information generated using the reports.
- iii. TPA would provide monthly certification of work carried out by BOOT Operator and perform penalty computation for each bill, as per the SLA and payment conditions mentioned in the agreement between BOOT Operator and MPSEDC.
- iv. TPA would also undertake proactive monitoring of the links provided by the bandwidth service provider.

d. Usage Audit

- i. TPA would appraise MPSEDC about the health of the Software Application, Hardware and Network through reports indicating the utilization, scalability requirements as per the current and envisaged operations.

e. Security Audit

- i. TPA would perform security audit of complete system as per standard Industry Norms and submit recommendations to MPSEDC indicating the risk elements in the system.
- ii. TPA would perform the penetration testing and vulnerability testing on the system.
- iii. TPA would review the rules and policies for network components such as firewall, IDS etc.
- iv. TPA would review the network security policy of the system and suggest recommendations if any.
- v. TPA would review the policy of granting access to the application.
- vi. TPA would conduct the Security Audit yearly.
- vii. TPA would review the mechanism of obtaining data on user satisfaction, feedback on quality of service & post analysis of the same, and would submit a report with recommendations to MPSEDC. This task would be done on a yearly basis.

f. Exit Process Support

This role is envisaged with the objective of ensuring preparedness of MPSEDC at all the time for any eventuality resulting in termination of contract or completion of Contract Period. TPA audit includes support/advice in the event of exit of the BOOT operator. The Agency would:

- a. Define and document the Exit Process.
- b. Advise MPSEDC on documentation, process and procedures necessary for taking over the system from the BOOT operator.
- c. Provide advisory support during the transition period from the current BOOT operator to the new operator.
- d. Conduct audit readiness of the State for such an eventuality on a Yearly basis.

g. Project Timelines and Current Status

The Project is in operation and current BOOT Operator shall perform the work till August, 2011.

h. Eligibility Criteria

- The Bidder must be a professional and reputed management organization, having proven expertise in providing consultancy/advisory services in IT sector to Government for over three years.
- The Bidder should have an annual Turnover from consultancy services averaged over the last 3 years should be a minimum of Rs.10 Crores (Rupees Twenty Five Crores).

- The Bidder must have completed at least one Third Party Audit of an e-Governance Project for any State Government/Central Government/Public Sector Undertaking.
- The Bidder should not have any conflict of interest i.e. should not be involved in the business for which TPA is proposed to be appointed.

Documents in support of above should be submitted alongwith the Tender.

i. Details to be submitted

Sealed bids shall be submitted by the bidder under Two Envelope System. All the documents along with signed copy of the Tender document and EMD except Financial Bid shall be sealed in one Envelope called the Technical Bid. The Financial Bid shall be sealed in a separate envelope and submitted along with Technical Bid in a larger sealed Envelope. The bid shall comprise of the following:

- a. Letter of submission in the format as given in the Tender Document.
- b. Proof (Board resolution/ Power of attorney) stating that the person signing the bid is an authorized representative of the bidder.
- c. EMD.
- d. Undertaking stating that the bidder is not involved in implementing similar project in any other State.
- e. Sealed Financial bid in the format as given in this document

j. Envelope Heading

The financial proposal should be clearly marked and should contain a label stating "**Financial Proposal** – Alongwith Tender No. and Due date. The overall bid envelope shall contain a label stating "**Bid for Appointment of TPA for Call Centre**" alongwith the Tender No. and due date. The name and address of the bidder should be written on the envelope along with the address of the Tender issuing authority.

k. Language of Proposal

Proposals shall be submitted in **English**.

The original proposal shall be prepared in indelible ink. It shall contain no inter-lineation or overwriting, except as necessary to correct errors made by the bidder itself. Any such corrections must be initialed by the person (or persons) who sign(s) the proposals. An authorized representative of the bidder shall initial all pages of the proposal. The representative's authorization should be confirmed by a written letter of authorization accompanying the bid.

l. EMD Details

The Bidders shall furnish, Earnest Money Deposit (**EMD**) of **Rs. 15,000/- (Rupees Fifteen Thousand Only)** in the form of demand draft/banker's cheque, from a Scheduled Bank, drawn in favour of **MPSEDC Ltd.**, payable at Bhopal. The demand draft/banker's cheque should be valid for 6 months.

The bidder would be disqualified in the pre-qualification process if the EMD is not submitted along with the Bid.

Unsuccessful Bidder's EMD (bid security) will be returned as promptly as possible but not later than 60 days after the award of the contract to the successful bidder. No interest will be payable by MPSEDC on the amount of the Bid Security. The bid security may be forfeited:

1. If the Bidder modifies or withdraws his Bid or change his quoted price during the period of bid validity or its extended period without the explicit consent of MPSEDC, if any; or
2. In the case of a successful Bidder, if it fails within the specified time limit to:
 - a) Sign the Agreement or,

- b) Furnish the required Performance Bank Guarantee

m. Financial Bid

No changes in the financial bid would be allowed post submission of the bid. The currency for the financial bid should be Indian Rupees.

Bidders shall quote for the entire Project on a single responsibility basis on the following lines:

- i. Bidders intending for commercial bid should necessarily give the commercial details in the format only in accordance to the details and terms and conditions as mentioned in the Tender.
- ii. The bid should be comprehensive and inclusive for all the services to be provided by the bidder as per scope of his work. The payments would be made to selected bidder on the basis of the bid and further negotiations between MPSEDC and the bidder only. No separate payment shall be made for services that are to be delivered by the Bidder as part of his scope of work for this project other than the fixed payment for certain deliverables as detailed in the scope of work and the payment terms of the bidder.
- iii. The prices quoted shall be inclusive of all taxes, duties and statutory payments incident upon the bidder and it shall be a fixed price bid. Once the prices have been tendered, no change/modification will be entertained for any cause whatsoever (including changes in regulation, tax and duty structure etc.) The prices once provided by the bidder will be valid for the entire period of validity of the bid as defined in the bid document. Further negotiations between MPSEDC and bidder may lead to change in the quoted prices.
- iv. Any revision in the rates of taxes, duties, charges and levies at a later date and during the tenure of the bid will be to the account of the bidder.
- v. The Bidder shall be responsible for the costs towards travel/stay, daily allowance or any other allowances with respect to their staff deployed with respect to the execution of this project before or after the award of the contract.**

n. Bid Evaluation process and Award of Contract

The Evaluation Committee constituted by MPSEDC shall evaluate the bids submitted by the bidders for compliance.

The evaluation of the bids shall be carried out as detailed below

o. Preliminary Evaluation

The bid documentation furnished by the bidder shall be examined prima facie, to ensure that the bid has been properly sealed and signed and accompanied by relevant documents criteria (covering letter, EMD, authorization/Power of Attorney in favour of bid signatory etc., to substantiate the compliance with the criteria as explained in this Tender.

Only the bids qualifying the Preliminary Evaluation would be considered for further evaluation.

p. Technical Evaluation

The evaluation committee shall evaluate the bids further (subsequent to qualification in preliminary evaluation), based on the documents submitted including the proposed approach and methodology. Each bidder may be required to make a presentation for the same to the evaluation committee. Bids would be evaluated on the following parameters;

S.No.	Parameter	Score
1	Size of the Organization, Experience in undertaking large ICT related Consultancy/ Program Management.	30
2	Approach and Work Plan for execution of Scope of work	25
3	Experience in handling similar Projects	20
4	Quality Certifications / affiliations / recognition etc	10
5	Presence in MP	15
	Total (Max) Score	100

The objective of the Technical Bid evaluation is to shortlist bidders who have the technical experience, skills, reach that are essential to undertake the scope of work.

To technically qualify, bidders would require to attain a total score of **at least 60**.

Bidders should submit related information with support details, as per the evaluation criteria specified above. The qualifying criteria may be modified by the Bid evaluation committee, in the interest of the project.

q. Financial evaluation

The financial evaluation shall be done based on the details submitted by the bidder in the Financial Bid. The calculation for financial evaluation shall be for the entire duration of the project.

r. Award of Contract

After evaluation of all accepted proposals by the evaluation committee, the contract may be awarded to the lowest bidder meeting all the requirements as per Tender.

s. Notification of Award

The acceptance of a tender, subject to contract, will be communicated in writing at the address supplied by the bidder in the bid document. Any change of address of the Bidder, should therefore be promptly notified to the State.

t. Signing of Contract

The Most Responsive Bidder shall be required to enter into a contract, including any agreements reached during the negotiation process, if any with MPSEDC, within 15 days of the award of the contract or within such extended period, as may be specified by MPSEDC. This contract shall be on the basis of this document, the Bid of the Bidder, the letter of intent and such other terms and conditions as may be determined by MPSEDC to be necessary for the due performance of the work, as envisaged herein and in accordance with the Bid and the acceptance thereof.

Note:

- a. MPSEDC reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids 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 department's action.

- b. Failure to agree with the Terms & Conditions of the Tender/Contract: Failure of the successful Bidder to agree with the Terms & Conditions of the Tender/Contract shall constitute sufficient grounds for the annulment of the award, in which event MPSEDC may make the award to the next Best Value Bidder or call for new Bids.

V GENERAL TERMS AND CONDITIONS

1. One Proposal per Bidder

Each bidder shall submit only one Proposal. The bidder who submits or participates in more than one Proposal will be disqualified.

2. Cost of Proposal

The bidder shall bear all costs associated with the preparation and submission of its Proposal, including site visits, and MPSEDC will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the proposal process.

3. Amendment of Tender Documents

At any time prior to the deadline for submission of Proposal, MPSEDC may amend the Tender document by issuing suitable Addenda.

Any addenda/corrigenda thus issued shall be part of the Tender document, and shall be uploaded only on MPSEDC website www.mpsedc.com. No claim will be entertained or accepted regarding non-receipt of addendum/corrigendum.

To give bidders reasonable time in which to take an Addendum into account in preparing their Proposals, MPSEDC shall extend if necessary, the deadline for submission of Proposals.

4. Limits on Promotion

The bidder will not make any reference to MPSEDC or this procurement or resulting contract in any literature, promotional material, brochures, sales presentation or the like without the express prior written consent of the authorized representative of MPSEDC. The bidder shall not perform any kind of promotion, publicity or advertising etc. at MPSEDC field offices through any kinds of hoardings, banners or the like without the express prior written consent of the same.

5. Use & Release of Bidder Submissions

MPSEDC is not liable for any cost incurred by the bidder in the preparation and production of the Proposal, the preparation or execution of any benchmark demonstrations, simulation or training service or for any work performed prior to the execution of a formal contract. All materials submitted become the property of MPSEDC and may be returned at its sole discretion. The content of each bidder's Proposal will be held in strict confidence during the evaluation process, and details of the Proposals will not be discussed outside the evaluation process.

6. Late proposals

Any Proposal received by the Tender issuing authority after the deadline for submission of Proposals prescribed in Tender will be summarily rejected and returned unopened to the bidder.

7. Modification and withdrawal of bids

- a. The bidder may modify or withdraw its Bid after the Bid's submission, provided that written notice of the modification or withdrawal is received by MPSEDC prior to the deadline prescribed for submission of Bids.

- b. The bidder's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions of this Section. A withdrawal notice may also be sent by fax or email but should be followed by a duly signed confirmation copy not later than the deadline for submission of Bids.
- c. No Bid may be modified subsequent to the deadline for submission of Bids. No Bid may be withdrawn in the interval between the deadline for submission of Bids and the expiry of the period of Bid validity specified by the Bidder on the Bid Form.

8. Process to be Confidential

Information relating to the examination, clarification, evaluation and comparison of Proposals, and recommendations for the award of the project shall not be disclosed to Bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced.

9. Correction of Errors

Bidders are advised to exercise greatest care in entering the pricing figures. No excuse that mistakes have been made or requests for prices to be corrected will be entertained after the quotations are opened. All corrections, if any, should be initialed by the person signing the bid form before submission, failing which the figures for such items may not be considered.

Arithmetic errors in bids will be corrected as follows:

- a. Where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern.
- b. Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate will govern unless, in the opinion of MPSEDC, there is obviously a gross error such as a misplacement of a decimal point, in which case the line item total will govern.
- c. The amount stated in the tender form, adjusted in accordance with the above procedure, shall be considered as binding, unless it causes the overall tender price to rise, in which case the bid price shall govern.

10. Contacting Department

Any effort by bidders to influence the officials in the examination, evaluation, ranking of Proposals, and recommendation for award of Contract may result in the rejection of the Bidder's Proposal. Queries, requests if any regarding the bid should be forwarded to the Tender issuing authority at the address specified in this Tender Document.

11. Disqualification

The bid is liable to be disqualified if:

- a. Not submitted in accordance with this Tender.
- b. During validity of the bid or its extended period, if any, the bidder increases his quoted prices without the consent of MPSEDC to change the bid quote.
- c. The bidder puts his own conditions with the bid.
- d. Bid received in incomplete form or not accompanied by EMD.
- e. Bid received after due date and time.
- f. Bid not accompanied by all requisite documents.
- g. Awardee of the contract qualifies the letter of acceptance of the contract with his conditions.
- h. Bidder fails to enter into a contract within 15 working days of the date of notice of the award of tender or within such extended period, as may be specified by an authorized representative.

12. Performance Bank Guarantee

- a. The successful bidder shall at his own expense submit, within 15 working days of the date of notice of award of the contract or prior to signing of the contract whichever is earlier, an unconditional and irrevocable Performance Bank Guarantee (PBG) from a Scheduled Bank payable on demand, for the due performance and fulfillment of the contract by the bidder.
- b. The Performance Guarantee shall be denominated in the currency of the Contract and shall be by Bank Guarantee.
- c. This Performance Bank Guarantee will be for an amount equivalent to 10% of the total Bid Price. All charges whatsoever such as premium; commission etc. with respect to the Performance Bank Guarantee shall be borne by the bidder.
- d. The Performance Bank Guarantee shall be valid till the end of six months after the period of end of contract. Subject to the terms and conditions in the Performance Bank Guarantee, at the end of six months after the date of end of Contract, the Performance Bank Guarantee will lapse automatically.
- e. The Performance Bank Guarantee may be discharged/returned by MPSEDC upon being satisfied that there has been due performance of the obligations of the Bidder under the contract. However, no interest shall be payable on the Performance Bank Guarantee.
- f. In the event of the bidder being unable to service the contract for whatever reason, MPSEDC would invoke the Performance Bank Guarantee.
- g. MPSEDC shall also be entitled to make recoveries from the Bidder bills, Performance Bank Guarantee or any other payment due, in case of any error/ omission on bidder's part. The format of the Performance Bank Guarantee has been attached.

13. Liquidated Damages

- a. In the event Bidder fails to provide the Services in accordance with the Service Standard, Bidder shall be liable for penalty as per the terms and conditions of Service Level Agreements (SLAs) to be agreed between the Bidder and MPSEDC.
- b. MPSEDC is entitled to withhold (deduct) from the payment due or the Performance Bank Guarantee the liquidated damages that have become due.

14. Termination of Contract**a. Termination for default**

MPSEDC, without prejudice to any other remedy for breach of Contract or non compliance with service levels, by written notice of default sent to the Bidder, may terminate the Contract fully or in part:

- If the selected Bidder/ fails to deliver any or all Contracted services as per service standards specified in the Contract, or
- If the selected Bidder/fails to perform any other obligation(s) under the Contract as per the contract timeline and for the period of contract, or
- If the Bidder/selected Bidder has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

In the event MPSEDC terminates the Contract in whole or in part, MPSEDC may procure, upon such terms and in such manner as it deems appropriate, services similar to those undelivered, and the selected Bidder shall be liable to MPSEDC for any excess costs for such similar services. However, the Bidder may continue performance of the Contract to the extent not terminated. MPSEDC would not be liable to pay any damages to the selected Bidder in cases comprising Termination for default.

b. Termination for Insolvency

MPSEDC may at any time terminate the Contract by giving written notice to the selected Bidder/if the selected Bidder/ becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the selected Bidder, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue there after to MPSEDC.

c. Termination for Convenience

MPSEDC, by written notice sent to the Bidder, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for its convenience. In case of termination for convenience, MPSEDC would pay to the bidder cost of services provided till the date of the termination. The Performance Bank Guarantee in such a case would be refunded to the bidder.

15. Force Majeure

- The successful Bidder shall not be liable for forfeiture of its Performance bank guarantee, Liquidated Damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- For purposes of this clause, "Force Majeure" means an event beyond the control of the Bidder and not involving the Bidder's fault or negligence, and not foreseeable. Such events may include, but are not restricted to, acts of Government in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- If a Force Majeure situation arises, the Bidder shall promptly notify the authorized representative of MPSEDC in writing of such condition and the cause thereof. Unless otherwise directed by the authorized representative of MPSEDC in writing, the Bidder shall continue to perform its obligations under the Contract as far as it is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

16. Exit Management

a. Purpose

- i. This clause sets out the provisions which will apply on expiry or termination of the contract.
- ii. In the case of termination of contract due to illegality, MPSEDC will decide at that time whether, and if so during what period, the provisions of this clause shall apply.
- iii. The Parties shall ensure that their respective associated entities, authorized representative of or its nominated agencies and the Bidder, carry out their respective obligations set out in this Exit Management Clause.

b. Cooperation and Provision of Information

During the exit management period:

- i. The Bidder will allow MPSEDC or its nominated agencies access to information reasonably required to define the then current mode of operation associated with the provision of the services to enable it to assess the existing services being delivered.
- ii. Promptly on reasonable request by MPSEDC or its nominated agencies, the Bidder shall provide access to and copies of all information held or controlled by it which have prepared or maintained in accordance with the contract. MPSEDC or its nominated agencies shall be entitled to copy all such information. Such information shall include details pertaining to the services rendered and other performance data. The Bidder shall permit MPSEDC or its nominated agencies and/or any Replacement Bidder to have reasonable access to its employees and facilities as reasonably required to understand the methods of delivery of the services employed by the Bidder and to assist appropriate knowledge transfer.

c. Confidential Information, Security and Data

- a. The Bidder will promptly on the commencement of the exit management period supply to MPSEDC or its nominated agencies the following:
 - 1) Information relating to the current services rendered and customer satisfaction surveys and performance data relating to the performance in relation to the services; and
 - 2) Documentation relating to Intellectual Property Rights; and
 - 3) Govt. of Madhya Pradesh/MPSEDC data and confidential information; and
 - 4) All current and updated departmental data as is reasonably required for purposes of MPSEDC or its nominated agencies transitioning the services to its Replacement Bidder in a readily available format; and
 - 5) All other information (including but not limited to documents, records and agreements) relating to the services reasonably necessary to enable MPSEDC or its nominated agencies, or its Replacement vendor to carry out due diligence in order to transition the provision of the Services to the Govt. of Madhya Pradesh/MPSEDC or its nominated agencies, or its Replacement Operator (as the case may be).
- b. Before the expiry of the exit management period, the Bidder shall deliver to MPSEDC or its nominated agencies all new or up-dated materials from the categories set out in points above, and shall not retain any copies thereof, except that the Bidder shall be permitted to retain one copy of such materials for archival purposes only.
- c. Before the expiry of the exit management period, unless otherwise provided under the contract, MPSEDC or its nominated agencies shall deliver to the Bidder all forms of Bidder confidential information which is in the possession or control of MPSEDC or its nominated agencies or its users

17. Employees

- a. Promptly on reasonable request at any time during the exit management period, the Bidder shall, subject to applicable laws, restraints and regulations (including in particular those relating to privacy) provide to MPSEDC or its nominated agencies a list of all employees (with job titles) of the Bidder dedicated to providing the services at the commencement of the exit management period;
- b. Where any national, regional law or regulation relating to the mandatory or automatic transfer of the contracts of employment from the Bidder to MPSEDC or its nominees, or a Replacement Vendor ("Transfer Regulation") applies to any or all of the employees of the Bidder, then the Parties shall comply with their respective obligations under such Transfer Regulations.
- c. To the extent that any Transfer Regulation does not apply to any employee of the Bidder, MPSEDC or its nominated agencies, or its Replacement Vendor may make an offer of

employment or contract for services to such employee of the Bidder and the Bidder shall not enforce or impose any contractual provision that would prevent any such employee from being hired by MPSEDC or its nominated agencies or any Replacement Vendor

18. Transfer of certain agreements

- a. On request by MPSEDC or its nominated agencies, the Bidder shall effect such assignments, transfers, innovations, licenses and sub-licenses as MPSEDC may require in favor of Govt. of Madhya Pradesh/MPSEDC or its nominated agencies, or its Replacement Vendor in relation to any equipment lease, maintenance or service provision agreement between Bidder and third party lessors, vendors, or Vendor, and which are related to the services and reasonably necessary for the carrying out of replacement services.

19. Right of Access to Premises

- a. At any time during the exit management period, where Assets are located at the Bidder's premises in relations to this project, the Bidder will be obliged to give reasonable rights of access to (or, in the case of Assets located on a third party's premises, procure reasonable rights of access to) Govt. of Madhya Pradesh/MPSEDC or its nominated agencies, and/or any Replacement Vendor in order to inventory the assets or Assets.
- b. The Bidder shall also give MPSEDC or its nominated agencies, or any Replacement Vendor right of reasonable access to the Bidder's premises and shall procure MPSEDC or its nominated agencies and any Replacement Vendor rights of access to relevant third party premises during the exit management period and for such period of time following termination or expiry of the contract as is reasonably necessary to migrate the services to MPSEDC or its nominated agencies, or a Replacement Vendor.

20. General Obligations of the Bidder

- a. The Bidder shall provide all such information as may reasonably be necessary to effect as seamless handover as practicable in the circumstances to MPSEDC or its nominated agencies or its replacement Vendor and which the Bidder has in its possession or control at any time during the exit management period.
- b. For the purposes of this Clause, anything in the possession or control of any Bidder or associated entity is deemed to be in the possession or control of the Bidder.
- c. The Bidder shall commit adequate resources to comply with its obligations under this Exit Management Clause.

21. Exit Management Plan

- a) The Bidder shall provide to MPSEDC or its nominated agencies with a recommended exit management plan ("Exit Management Plan") which shall deal with at least the following aspects of exit management in relation to the contract as a whole and in relation to the Project Implementation, the Operation and Management SLA and scope of work.
 - 1) A detailed programme of the transfer process that could be used in conjunction with a Replacement Vendor including details of the means to be used to ensure continuing provision of the services throughout the transfer process or until the cessation of the services and of the management structure to be used during the transfer; and Plans for communication with such of the Bidder's staff, suppliers, customers and any related third party as are necessary to avoid any material detrimental impact on department's operations as a result of undertaking the transfer; and

- 2) Plans for provision of contingent support to MPSEDC or its nominated agencies, and Replacement Vendor for a reasonable period after transfer for the purposes of providing service for replacing the Services.
- b) The Bidder shall re-draft the Exit Management Plan annually thereafter to ensure that it is kept relevant and up to date.
- c) Each Exit Management Plan shall be presented by the Bidder to and approved by MPSEDC or its nominated agencies.
- d) In the event of termination or expiry of the contract each Party shall comply with the Exit Management Plan.
- e) During the exit management period, the Bidder shall use its best efforts to deliver the services.
- f) Payments during the Exit Management period shall be made in accordance with the Terms of Payment Clause.
- g) This Exit Management plan shall be furnished in writing to MPSEDC or its nominated agencies within 90 days from the Effective Date of the start of work.

22. Confidentiality

The Bidder shall not use or disclose to any third party, except for the purpose of the observance of these terms and Conditions any confidential information of MPSEDC.

23. Responsibility for safe custody and integrity of data

- a. The Bidder shall not, without prior written consent from MPSEDC, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of MPSEDC in connection therewith, to any person other than a person employed by the Bidder in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far, as may be necessary for purposes of such performance.
- b. The Bidder shall not, without prior written consent of MPSEDC, make use of any document or information made available for the project, except for purposes of performing the Contract.
- c. All project related documents issued by MPSEDC, other than the Contract itself, shall remain the property of MPSEDC and shall be returned (in all copies) to MPSEDC on completion of the Bidder's performance under the Contract if so required by MPSEDC.

24. Contract Amendment

No variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

25. Resolution of disputes

- a. MPSEDC and the selected Bidder shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- b. If, after thirty (30) days from the commencement of such informal negotiations, MPSEDC and the selected Bidder have been unable to amicably resolve dispute, either party may require that the dispute be referred for resolution to the formal mechanisms, which may include, but

are not restricted to, conciliation mediated by a third party acceptable to both, or in accordance with the Arbitration and Conciliation Act, 1996. In case of non agreement on the third party arbitrator, Principal Secretary/Secretary, Department of Information Technology, GoMP would be the sole arbitrator. All Arbitration proceedings shall be held at Bhopal and the language of the arbitration proceedings and that of all documents and communications between the parties shall be in English

- c. In case the issues are not resolved in the arbitration proceedings then any further legal action by the parties shall be restricted to the jurisdiction of the Court in Bhopal.

26. Insurance Requirement

Bidder shall maintain standard forms of comprehensive insurance including liability insurance, system and facility insurance and any other insurance for the personnel, assets, data, software, etc. and submit the list of all the insured items to MPSEDC prior to the start of operations. Bidder shall take and keep effective all the insurances during the period of the Contract.

27. Notices

Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing or facsimile or email and confirmed in writing to the party's address. A notice shall be effective from the date when delivered, tendered or affixed on notice board whichever is earlier.

28. Interpretation of Clauses

In case of any ambiguity in the interpretation of any of the clauses in the bid document, Managing Director, MPSEDC's interpretation of the clauses shall be final and binding on all parties.

29. Third Party Claims

The Bidder shall indemnify MPSEDC against all third-party claims of infringement of patent, trademark or industrial design rights arising from use of the Goods or any part thereof in reference to this project in India.

30. Payment Terms

The payment to the selected TPA shall be made on quarterly basis for Item No. 1 of the Financial Bid. The payment for Item No. 2 shall be released after completion of each Security Audit. The payment for Exit Process Support shall be released after completion of the Exit Process.

31. Penalty

The time schedule for the entire project and for the major activities will be agreed upon for the project between the state and the TPA. In case of any delay solely on account of TPA's fault, a penalty of 10% will be imposed for delay of every twelve (12) weeks' or part thereof from the scheduled target date. Beyond a delay of thirty six (36) weeks, State reserve the right to either terminate the Contract or ask the TPA to complete audit and performance monitoring of the Project without any extra fee.

- a. In the event of MPSEDC deciding to continue the Project, the penalty so computed based on the number of weeks' of actual delay will be deducted from the balance fee payable to the TPA.
- b. In case of delays in the project not attributable to the TPA, State may take final decision on the additional costs for the time overrun on a monthly basis (computation will be as per the quarterly payment). In case of inordinate delays beyond 12 months from the date of issue of the work order, not attributable to the TPA, the TPA would be permitted to hand over the due project deliverables at that point of time to MPSEDC and withdraw from the project after receiving the fees based on completed milestones. Further, in case of inordinate delay beyond 9 months of the

allotted time schedule of the Independent Audit, if State feels that the TPA may not be able to complete the project, then State may terminate the TPA from the respective independent audit and performance monitoring project.

- c. State shall have a right to prematurely close this Project without assigning any reason. In case of premature closure of the project by MPSEDC, it shall reimburse to the TPA the fee based on the milestone percentages as per the Work Order and or milestone for which only part of the work has been completed by the TPA at the time of foreclosure, fee based on the proportion of the effort completed by the TPA, shall be paid.

Financial Bid

Sl. No.	Description	Unit	Rate	Quantity	Amount
1	Charges for carrying out Inventory Audit, SLA Monitoring Audit and Usage Audit and preparation of exit management plan as per specifications and periodicity given in this Tender Document	Per Month		12 months	
2	Charges for Security Audit as per specifications and periodicity given in this Tender Documents	Per year		1 audit	
3	Exit process support during transition period from the current BOOT Operator to new BOOT Operator	One job		One time	
	TOTAL				

Note: The total amount shall be considered for the evaluation of Bids. However, the payment shall be released as per actual work executed. Item No. 3 is optional; however, the rate quoted against the item shall be used for evaluation of Bids.

The amount quoted should be inclusive of costs towards travel/stay, daily allowance or any other allowances with respect to their staff deployed with respect to the execution of this project before or after the award of the contract.

The rates quoted should be inclusive of all Taxes and Duties. However, at the time of billing, applicable taxes shall be indicated separately in the Bill.

Signature of the Tenderer
With stamp and date

Performance Bank Guarantee Format

(On Stamp Paper as per legal requirements)

This Deed of Guarantee is made on this ____day of _____, 2010 at._____ by _____ (Name of the Bank), constituted under _____ and having its Head Office/Registered Office at _____ and inter-alia a Branch Office at _____ (hereinafter referred to as the Bank. or .the Guarantor, which expression shall unless it be repugnant to the subject or context hereof be deemed to include its successors and assigns) in favor of MPSEDC Ltd, hereinafter referred to as MPSEDC

WHEREAS

A. [.....], a company within the meaning of the Companies Act, 1956 and having its Registered Office at [_____] (herein after referred to as the said Third Party Auditor (TPA). Which expression unless repugnant to the subject or context includes its successors, legal representatives and permitted assigns) has been awarded the Work Order on the terms and conditions stated in the Tender No. MPSEDC/MKT/2010/188. As per the terms of the Tender, the said TPA has to provide a Performance Guarantee. Accordingly, the said TPA requested the Bank to issue a Performance Guarantee in accordance with the terms and conditions of the Tender.

1. We, [] (name of the, Bank) do hereby guarantee and undertake to indemnify and pay and keep indemnified MPSEDC in terms of the Tender and subsequent Agreement to the extent of this Bank Guarantee value of Rs. _____ (_____ rupees only).

2. We, [] (name of the Bank) further agree that if a demand is made by MPSEDC for honoring the Performance Bank Guarantee we, [] (name of the Bank) having no right of decline to encash the same for any reason whatsoever. The fact that there is a dispute between MPSEDC and the TPA shall be no ground for us (name of the Bank) to decline to honour the Performance Bank Guarantee.

3. We, [] (name of the Bank) further agree that a mere demand by MPSEDC shall be sufficient for us [] (name of the Bank) to pay the amount covered by the Performance Bank Guarantee without reference to the TPA and any protest by the TPA cannot be valid for us [] (name of the Bank) to decline payment to MPSEDC.

4. We, [] (name of the Bank) further agree that MPSEDC shall have the fullest liberty, without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the Contract Agreement or to extend time of performance by the TPA from time to time or to postpone for any time or from time to time, any of the powers exercisable by MPSEDC against the TPA and to forbear or enforce any of the terms and conditions relating to the Contract Agreement and we shall not be relieved from our liability by reasons of any such variation or extension being granted to the TPA or for any forbearance, act or omission on the part of MPSEDC or any indulgence by MPSEDC to the TPA or any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us [] (name of the Bank).

5. The Performance Bank Guarantee shall be valid upto -----

6. We [] (name of the Bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the MPSEDC in writing.

DATED THE [] DAY OF []
Signatures _____
Name _____
Designation _____
For [Name of the Bank]
(Seal of the Bank)