

INVITATION FOR EXPRESSION OF INTEREST (EOI)

for

**Fly Ash supply to Micro and Small Enterprises (MSEs) / Local Users
(situated within 100 Kms radial distance from station) engaged in ash
based products manufacturing as per Para D(4) Inserted to The MoEF&CC
Notification on Ash Utilisation from Coal or Lignite Thermal Power Plants
Dated 31.12.2021 Amended on 01.01.2024, on concessional rates, 'as is
where is' basis, from NTPC Nabinagar**

Ref No. EOI No-DFA/NSTPS/2026-27/01

Date: 19.07.2026

This expression of interest (Eoi) consists of following Parts: -

- i **Part 1:** General Information for Eoi.
- ii **Part 2:** Terms & Conditions of Eoi.
- iii **Part 3:** Format for Submission of Response to Eoi.
- iv **Part 4:** Annexures and Formats.

N.B.

All the above Parts (1 to 4) shall be duly filled in wherever required and signed by authorized representative of the applicant, on each page and shall be submitted along with the specified documents on or before the last date indicated elsewhere to deem the request as acceptable.

Part 1: General Information for Eol

1. General Details about NTPC Nabinagar:

NTPC Nabinagar, located at Aurangabad, Bihar having a total installed capacity of 1980 MW, is engaged in the business of generation and sale of bulk power.

To utilize the fly ash in gainful and sustainable manner as per the provisions of extant MOEF&CC Gazette Notification and promote utilization of fly ash as resource material, NTPC Nabinagar has reserved a certain percentage of issuable quantity of fly ash separately for supply to micro and small enterprises (MSEs) and Local Users engaged in ash-based product manufacturing namely, bricks, blocks, tiles, sintered or cold bonded ash aggregates, fibre cement sheets, pipes, boards, panels [as per para D(4) inserted to the MoEF&CC Notification on ash utilisation from coal or lignite thermal power plants dated 31.12.2021 amended on 01.01.2024] at concessional rates. The supply of fly ash shall be made on “as is where is” basis, with transportation cost being borne by the Applicants.

To facilitate this, NTPC Nabinagar invites Expressions of Interest for above, for a period of 01 (One) year, from its 1980 MW Stage-1 units. Further details regarding this Expression of Interest (Eol) are as follows:

2. EXPRESSION OF INTEREST:

NTPC NABINAGAR invites Expression of Interest (EOI) for above, from interested Applicants, for utilization of dry fly ash in avenues as identified in extant MOEF&CC Notification, in the prescribed formats (Part-3 & Part-4).

Total quantity of fly ash in MT from the Station, available for issue tentatively is as per details given hereunder -

Power Stations / Location	Total Quantity offered for Eol	Concessional Rates	Period of Supply
NTPC NABINAGAR THERMAL POWER STATION, Address-AURANGABAD, BIHAR	3.6 LMT	INR 15 / MT	01 Year (August 2026 to July 2027)

3. How to apply

Interested Applicants desirous of receiving dry fly ash from NTPC NABINAGAR as per the terms and conditions of this Eol, may submit their Expression of Interest along with specified documents and duly filled in enclosed “**Part 3: Format for Submission of Response to EOI**” and “**Part 4: Annexures and Formats**” to the E – Mail address audnstps@ntpc.co.in before 17:00 hrs. of 02nd August 2026. Contact Person Kaushal Kumar Thakur AGM (AUD & Civil O&M) and contact no 9450963022. for any clarification..

4. Eligibility for Eol Participation:

All applicants, fulfilling the following criteria, are eligible to participate in the EOI process:

4.1. The applicant must have a valid Udyam Registration Certificate

MSE registered under Trader(s) and / or Service provider(s) shall not be allowed to participate under this EOI.

(As per MSME Notification S.O. 2119 (E) dated 26th June 2020, from 1st June 2022, Udyam registration shall be the ONLY valid MSME Registration Document. Except Udyam Registration Certificate no other registration documents will be considered for MSEs exemption and benefits for participation, until GOI extends the validity of other MSEs registration certificate.)

Or

The applicant must be Local Users situated within the 100 km radius of the plant

- 4.2. The applicant must be a manufacturer, engaged in making ash-based products like bricks, blocks, tiles, sintered or cold bonded ash aggregates, fibre cement sheets, pipes, boards, panels as mentioned in the para D(4) inserted to the MoEF&CC Notification on ash utilisation from coal or lignite thermal power plants dated 31.12.2021 amended on 01.01.2024.

In order to meet the above requirement, applicant is required to submit relevant documents like Consent to Operate Order from CPCB or SPCB / Registration certificate from the concerned state industries / revenue / etc. / License to Work as a Factory / Pollution Clearance Certificate / Documentary evidence for the production capacity of the plant or any other relevant documents for establishing that the applicant is manufacturer of one or more aforesaid ash-based products

- 4.3. The applicant who submits an Undertaking as per prescribed format (Annexure – 01), executed on non-judicial Stamp Paper, duly Notarized by a notary public), duly signed by authorized signatory of the applicant, inter- alia confirming the following:
- i. The applicant is a micro and small enterprise or a local ash user [within 100 km of NTPC NABINAGAR], engaged in manufacturing ash-based products [as mentioned in the para D(4) inserted to the MoEF&CC Notification on ash utilisation from coal or lignite thermal power plants dated 31.12.2021 amended on 01.01.2024].
 - ii. The applicant shall utilize / ensure utilization of ash (bought under the subject EOI) under eco-friendly avenues as per extant MoEF&CC Notification.
- 4.4. In compliance to serial number 4 (a) above, the successful applicants, during execution, shall be required to submit a Notarized Affidavit as per prescribed format (Annexure – 02), on half yearly basis regarding 'actual utilization of already issued ash'.

5. Documents to be submitted with duly filled “Part 3 - Format for Submission of Response to EoI” and “Part 4: Annexures and Formats”:

- Valid Udyam Registration Certificate under manufacturing category.
(As per MSME Notification S.O. 2119 (E) dated 26th June 2020, from 1st June 2022, Udyam registration shall be the ONLY valid MSME Registration Document. Except Udyam Registration Certificate no other registration documents will be considered for MSEs exemption and benefits for applications, unless until GoI extend the validity of other MSEs registration certificate).

or

Self-declaration by Local Users situated within the 100 km radius of the plant, confirming that the ash will be utilized solely for ecofriendly purpose.

- Relevant document(s) for establishing the applicant to be a manufacturer of one or more ash based product namely, bricks, blocks, tiles, sintered or cold bonded ash aggregates, fibre cement sheets, pipes, boards, panels as mentioned in the para D(4) inserted to the MoEF&CC Notification on ash utilisation from coal or lignite thermal power plants dated 31.12.2021 amended on 01.01.2024.
- Relevant Documents for establishing the applicant to be a manufacturer of one or more ash-based product as mentioned in the para D(4) inserted to the MoEF&CC Notification can be like:
 - Consent to Operate Order from CPCB / SPCB, if applicable
 - No Objection Certificate from State Pollution Control Board for establishing manufacturing Unit of ash-based products, as may be applicable.
 - Undertaking submitted to State Pollution Control Board for Establishing Manufacturing Unit of ash-based products, as may be applicable
 - Registration certificate from the concerned state industries / revenue departments / etc., as may be applicable.
 - License to Work as a Factory, as may be applicable.
 - Pollution Clearance Certificate, as may be applicable.
 - Prime Minister Employment Generation Program 'Loan Sanction' Letter for establishing a manufacturing unit of ash-based products, as may be applicable.
 - Bank Loan Sanction Letter mentioning the loan disbursement for establishing a manufacturing unit of ash-based products, as may be applicable.
 - Any other Government / Statutory document establishing the applicant as a manufacturing unit of ash-based products, as may be applicable.
- PAN CARD, as may be applicable
- GST Registration, as may be applicable.
- Company Registration, as may be applicable.
- Business details of the applicant / buyer / participant as per prescribed format (Part – 03) along with documentary proof as applicable.
- Undertaking as per prescribed format (Annexure – 01), executed on non-judicial Stamp Paper, duly Notarized by a notary public.
- Power of Attorney (PoA) in case of Joint Venture/Consortium- One of the partners shall be nominated as being in charge and shall be designated as leader; this authorization shall be evidenced by submitting, a power of attorney signed by legally authorized signatories of all the partners.
- Form of Acceptance of Fraud Prevention Policy (Annexure – 04).
- Declaration on Debarment from Business Dealings Policy (Annexure – 05). Bids are liable to be rejected if documentation is not complete.

All documents submitted shall be duly self-certified by the participant as being true and authentic. Interest / Offer / Bid is liable to be rejected if documentation is not complete. In case of shortfall in the submitted documents, NTPC at its sole discretion, may solicit the shortfall documents from the applicants.

6. Allocation of Dry Fly Ash Quantity:

Dry fly ash quantity shall be allocated based on the receipt of responses to EoI on a pro rata basis (if response received more than EOI offered Quantity), and on “as is where is,

basis". However, collecting from NTPC's issue of location and transportation, thereafter, will be in the scope of the applicant only.

Daily allocation of fly ash shall be done as given below:

- 6.1. All successful applicants shall submit a monthly requisition containing a list of their day wise requested quantities for each month.
- 6.2. Lifting Sequence and allocation shall be finalized by NTPC depending upon site specific conditions.
- 6.3. All allocated applicants shall be expected to follow the above schedule and mobilize accordingly.
- 6.4. In case of non-mobilization / inadequate mobilization, NTPC may, at its discretion, allocate such quantity to other users. Decision of Engineer in Charge (EIC) NTPC shall be final and binding in this regard.

Dry fly ash shall be issued from the discharge chute of designated ash Silos / Other Suitable Locations as decided by the Engineer in charge (EIC) of the respective NTPC Station, on '**as is where is**' basis.

7. Advance Payment:

Allocated quantity of fly ash for the period shall be divided into monthly quantity and amount payable based on the quantity for one month is to be deposited in advance (along with all taxes and duties as applicable) through NTPC Customer Portal (in NTPC Account) for the quantity of fly ash to be lifted in next month.

8. Refundable Security Deposit (SD):

Successful Applicant shall be required to submit Refundable Security Deposit amount along with submission of LOA / LOI acceptance after Evaluation of submitted requests and Ash Allocation Process, at the rate of INR. 1.5 / MT (an amount equivalent to Ten (10) percent of value of concessional rate or INR 1 /- per MT, whichever is higher), subject to a minimum of INR 10,000 /-). This SD will be kept for ensuring commitment of the Successful Applicant(s) for lifting the allocated Ash. An amount at the rate of INR XX / MT of un-lifted quantity will be forfeited.

This Security Deposit will be refundable after adjustment of amount to be recovered, if any. This adjusted SD amount will be refunded within Ninety (90) days of end of the contract period or of lifting of entire allocated quantity, whichever is earlier.

9. Affidavit for Utilization of Ash:

The buyer shall submit affidavit on non – judicial stamp paper of requisite value, certifying the complete use of issued NTPC fly ash certifying the adherence to provisions identified vide extant MoEF&CC Notification and other applicable statutory regulations. This affidavit, in prescribed format, shall be submitted on Half Yearly basis to the NTPC Engineer-InCharge (format attached as Annexure – 02).

10. Contact Persons:

Name / Designation	Mobile No. / e-Mail Address
Avinash Ku Maurya	8587990070

Part 2: Terms and Conditions of Eol:

DEFINITIONS

11. In this EOI, following terms shall be interpreted as:

- 11.1. "The Contract" shall mean the issuance of an award letter including Eol documents and amendment thereof which will constitute the formation of the Contract.
- 11.2. "The Contract Value" means the consideration payable to NTPC Ltd under the contract for the full and proper performance of its contractual obligations.
- 11.3. "Day" means calendar day.
- 11.4. "Effective Date" means the date on which this contract becomes effective (i.e., issue date of LOA).
- 11.5. "GCC" means General Conditions of contract contained in this document.
- 11.6. "SCC" means Special Conditions of contract contained in this document.
- 11.7. "The Buyer" (i.e., successful applicant or bidder or awardee) which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns.
- 11.8. "Owner / Seller / Supplier" (i.e., NTPC Limited / NTPC NABINAGAR) which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns.
- 11.9. Awarded Quantity / Annual Contract Quantity / Annual Allocated Quantity is the quantity of Fly Ash as finalized by NTPC NABINAGAR STPS for award to a particular successful participant and shall be expressed in Metric Tonne [MT] for the period of sale.
- 11.10. "Arbitration Act" means the Indian Arbitration and Conciliation Act, 1996, as amended and modified from time to time, including any re-enactment thereof.
- 11.11. Metric Tonne (MT) means 1,000 Kilograms.
- 11.12. "Contract Term / Period" means duration of the contract.
- 11.13. "Delivery Point" means the chutes of designated Silos i.e., Fly Ash Silos chutes at NTPC NABINAGAR / Other Suitable Locations as decided by Engineer-In-Charge.
- 11.14. "Engineer-In-Charge [EIC]" means the officer appointed in writing by NTPC NABINAGAR to act as an engineer from time to time.
- 11.15. "First Off take" means the date of first off take of Fly Ash, by the buyer from Delivery Point and in accordance with this Agreement.
- 11.16. "Force Majeure" shall have the meaning ascribed to it under the relevant clause of this EOI document.
- 11.17. "Law(s)" means applicable laws, rules, regulations, judgments, decrees, or other legislative measures having the force of law or issued by any government agency,

instrumentality, body or legislature, National, State or local authority or a court of competent Jurisdiction.

11.18. "Quarter" shall mean a period of 03 months and shall be calculated from the scheduled date of commencement of contract.

11.19. "Party" means the owner or the applicant, as the case may be, and "Parties" means both of them.

11.20. "Awarded Price / Prevailing Price"

11.21. "Awarded Price" is the price mentioned in the Letter of Award.

11.22. "Adjusted quantity" means final allocated quantity to the applicant after adjusting the quantity of Dry Fly Ash which NTPC NABINAGAR could not provide to the applicant for lifting for any reason whatsoever, but not attributable to the applicant.

12. Validity of Expression:

The applicant shall keep the expression valid for a minimum period of one hundred twenty (120) days from the date of opening of the expression. In exceptional circumstances the owner may solicit the applicant's consent for an extension of the expression validity period. When the validity period is extended by the applicant, the same shall be done without any modification to the expression proposal by the applicant.

13. Owner's Right to accept any Expression or to reject any or all Expression's:

Notwithstanding anything mentioned above, the owner (NTPC NABINAGAR) reserves the right to accept or reject any expression, either in full or in part or to annul the EoI process and reject all expressions at any time prior to allocation of quantity without assigning any reason thereof.

No contract shall be awarded to an applicant against whom a Debarment Order has been issued as per owner's Policy for Debarment from Business Dealings.

14. Owner's Right to adjust the quantity during sale Period:

The owner reserves the right to adjust the quantity at any point of time during the period of sale which NTPC NABINAGAR could not provide to the applicant or lifting for any reason whatsoever, but not attributable to the applicant.

15. Contract Performance Guarantee (CPG) / Security Deposit (SD):

- 15.1. Within fifteen (15) days of the issue of award letter for allocation by the owner, successful applicants shall submit the Contract Performance Guarantee / Security Deposit for an amount equivalent to Ten (10) percent of value of allocated quantity or INR 1 /- per MT, whichever is higher, subject to a minimum of INR 10,000 /- in the form of e-Payment at NTPC's Customer Payment Portal or through an unconditional and irrevocable Bank Guarantee. CPG / SD submitted in the form of Bank Guarantee shall be valid for 90 days in addition to the period of the contract.
- 15.2. Failure of the successful applicant to comply with the requirement of Submission of Contract Performance Guarantee / Security Deposit within the prescribed time shall constitute sufficient grounds for the annulment of the allocation order. In that event no damages or compensations shall be payable to the buyer. Further, such applicant / buyer shall also be dealt as per the provisions of policy for Debarment from Business Dealings.
- 15.3. For commencement of supplies, submission of acceptable CPG / SD is a precondition.
- 15.4. Contract Performance Guarantee (CPG) / Security Deposit (SD) shall be released within 90 (Ninety) days after successful completion of contract in all respects.

16. Notice:

Any notice, request, or consent sought pursuant to the EOI shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the owner or applicant to whom the communication is addressed, or when sent by e-Mail, speed post, telex, telegram, or facsimile to such party i.e., the owner or the applicant.

17. Understanding and clarification of EOI Documents

- 17.1. The applicant is expected to carefully examine the Eol documents and fully satisfy himself as to all the conditions and matters, which may in any way affect the work or the cost thereof. If any applicant finds discrepancies or omissions in the Eol documents or is in doubt as to the true intent or meaning of any part thereof, he shall at once request in writing to the owner for an interpretation / clarification of the Eol documents. However, such a request must reach the owner seven days before the end date of submission against this EOI, otherwise, the request for clarification shall not be entertained. After receipt of such interpretation or clarifications, the applicant shall submit his offer but within the time and date as specified in the EOI. All such interpretation and clarification shall form a part of the Eol documents.
- 17.2. Verbal clarifications and information given by the owner, or its employees or representatives, shall not be in any way binding on the owner.

18. Award for Sale of Fly Ash:

- 18.1. The owner will issue an Award letter (Model Award letter at Annexure – 03) of allocation for sale of Fly Ash in writing to the successful applicants. The successful applicant shall return a copy of the Letter of Award, duly signed and stamped, as a token of their acknowledgement.
- 18.2. The applicant would be required to comply with all requirements of the notification of allocation without any extra cost to the owner, failing which his Contract Performance Guarantee (CPG) / Security Deposit (SD) may be forfeited.

19. Uniform Eol Quantity Over the Allocation Period:

The allocated quantity shall be considered uniform per month after commencement of first off take for the remaining supply period.

20. ADHERENCE TO FRAUD PREVENTION POLICY:

The buyer along with its associate / collaborators / subagencies/ sub-vendors / consultants / service providers shall strictly adhere to the Fraud Prevention Policy of owner displayed on its website <http://www.ntpctender.com> The buyer shall immediately apprise the owner about any fraud or suspected fraud as soon as it comes to their notice.

A certificate to this effect shall be furnished by the applicant along with his application "Acceptance of Fraud Prevention Policy of NTPC" [Annexure – 04].

If in terms of above policy if it is established that the applicant / his representatives have committed any fraud while competing for this contract, then the owner shall be entitled to disqualify the buyer(s) from the Eol process. In addition to the above, if the applicant has committed a fraud such as to put his reliability or credibility into question, the owner shall be entitled to exclude including blacklist and put the applicant on holiday for any future tenders / contracts award process.

Submission of an application against this EOI shall be considered as the acceptance of Fraud Prevention Policy of NTPC.

DECLARATION ON DEBARMENT FROM BUSINESS DEALINGS POLICY

The owner has in place a Policy for Debarment from Business dealings displayed on the website www.ntpc.co.in / www.ntpctender.ntpc.co.in. Business dealings may be withheld or banned with the applicant / buyer on account of any of the grounds and following the procedures as detailed in the said Policy for Debarment from Business Dealings.

A declaration to this effect shall be furnished by the applicant along with his application "Declaration on Debarment from Business Dealings Policy" [Annexure – 05].

The version of Policy for Debarment from Business Dealings presently followed by NTPC is Rev-4.

Submission of an application against this EOI shall be considered as the acceptance of Debarment from Business Dealings Policy of NTPC.

DECLARATION ON NTPC ANTI-BRIBERY AND ANTI-CORRUPTION (ABAC) POLICY

The Owner has in place a policy for 'Anti-Bribery and Anti-Corruption (ABAC)' as displayed on its website <https://ntpc.co.in/sustainability/policies/governance>.

Submission of an application against this EOI deems the acceptance to 'Anti-Bribery and Anti-Corruption (ABAC) Policy of NTPC'.

Any kind of deposit in NTPC account w.r.t. Sale Price / Contract Performance Guarantee (CPG) / Security Deposit (SD) shall be through NTPC Customers Payment Receipt Portal only.

GENERAL CONDITIONS OF CONTRACT

21. Acquaintances of local conditions:

It will be imperative for the applicant to fully inform himself of all local conditions, legal requirements and factors which shall have any effect on the execution of the agreement / sale work covered under these documents and specifications.

22. Confidentiality:

- 22.1. Information relating to the examination, clarification, evaluation, and comparison of applications against the EOI, and recommendations for allocation shall not be disclosed to the applicants or any other person not officially concerned with such process.
- 22.2. Any effort by the applicant to influence the owner in the owner's applications evaluation, application comparison, or allocation decisions may result in the rejection of the applicant's expression.
- 22.3. From the time of EOI opening Date to the time of allocation, if any applicant wishes to contact the supplier on any matter related to its application / expression, it should do so in writing.

23. Examination of Expressions and Determination of Responsiveness:

- 23.1. The owner will examine the applications / expressions against the EOI to determine whether they are complete, whether any computational errors have been made, whether the documents have been properly signed, and whether the application / expression are generally in order.
- 23.2. The owner may waive any minor informality, nonconformity, or irregularity in a application / expression that does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any applicant.

24. Settlement of Disputes:

24.1. Mutual Consultation:

If any dispute of any kind whatsoever shall arise between the Owner and the Buyer in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities, whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference by mutual consultation.

On reference of such a dispute by either party, the Owner shall invite the Buyer for mutual consultation, within seven (07) working days of such reference.

Without admitting the Owner liability, the Owner may obtain, within 30 days of such reference of the dispute, further details from the Buyer and examine it relating to the dispute. Such examination (if any) by the Owner shall not be construed as or imply acceptance of the claim or liability or accuracy or completeness of the details set forth in such request or reference. The Owner may hold discussions with Buyer with an effort to resolve the dispute.

If the parties fail to resolve such a dispute or difference by mutual consultation within a period of forty-five (45) days from the date of receipt of reference of such dispute or within such extended period as the parties shall agree in writing, then the dispute may be settled through Independent Engineer (if applicable) and/ or Mediation through Independent External Monitors (if applicable) and/or through Conciliation and/or Arbitration (if applicable) / other remedies available under the applicable laws.

Notwithstanding anything contained in any other law for the time being in force, the parties shall keep confidential all matters relating to the Mutual consultation proceedings. Confidentiality shall extend also to any agreement reached during Mutual consultation, except where its disclosure is necessary for purposes of implementation and enforcement.

The parties shall not rely on or treat as evidence in Independent Engineer / Mediation/ Conciliation / and in any way Arbitral or Judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the Mutual consultation proceedings:

- a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- b) admissions made by the other party in the course of the mutual consultation proceedings;
- c) the fact that the other party had indicated his willingness to accept a proposal for mutual settlement.

24.2. Resolution of Dispute through Independent Engineer (IE)

Not Applicable

24.3. Mediation through Independent External Monitors (IEMs)

Not Applicable

24.4. Resolution of Dispute through Conciliation

If the parties fail to resolve such a dispute or difference by mutual consultation and through Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period as specified at clause 24.1, 24.2 and 24.3 above, the dispute if the parties agree, may be referred to Conciliation.

- (i) For cases where the disputed amount (Claim / Counter claim, whichever is higher) is upto INR 25 Cr. (excluding interest), the matter for conciliation shall be referred to Expert Settlement Council (ESC), constituted by the Owner
- (ii) For cases where the disputed amount (Claim / Counter claim, whichever is higher) is above INR 25 Cr. (excluding interest), the matter for conciliation shall be referred to Conciliation Committee of Independent Experts (CCIE), constituted by Ministry of Power (MoP)

If the claim / Counterclaim is in foreign currency, the SBI Bills Selling Exchange rate prevailing on the date of claim shall be used for the purpose of converting the claim in Indian Rupee.

The Conciliation process shall be conducted as per Part III of the Arbitration and Conciliation Act, 1996.

- 24.4.1. Resolution of Dispute through Expert Settlement Council (ESC), constituted by the Owner {For cases with Disputed amount (Claim / Counter claim, whichever is higher) upto INR 25 Crore excl. interest}

If the parties fail to resolve such a dispute or difference by mutual consultation and through Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period specified at Clause 24.1, 24.2 and 24.3 above, the dispute, if the parties agree, may be referred to Conciliation through Expert Settlement Council (ESC), in cases where the Disputed amount (Claim / Counter claim, whichever is higher) is upto INR 25 crore (excluding interest).

24.4.1.1. Invitation for Conciliation through ESC:

24.4.1.1.1. A party shall notify the other party in writing about such a dispute it wishes to refer for Conciliation through ESC within a period of 15 days from the date of failure to resolve the dispute through Mutual Consultation and Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period as specified at clause 24.1, 24.2 and 24.3 above. Such Invitation for Conciliation shall contain sufficient information as to the dispute to enable the other party to be fully informed as to the nature of the dispute, amount of the monetary claim, if any, and apparent cause of action.

24.4.1.1.2. Upon acceptance of the invitation to conciliate, the other party shall submit its counter claim, if any, within a period of 15 days from the date of the invitation to conciliate. If the other party rejects the invitation or Disputed amount (Claim / Counter claim, whichever is higher) exceeds INR 25 crore (excluding Interest), there will be no Conciliation proceedings through ESC.

There shall be no Conciliation where disputed amount (Claim/ Counter claim, whichever is higher excl. interest) is only up to INR 5 lakhs

24.4.1.1.3. If the party initiating Conciliation does not receive a reply within fifteen (15) days from the date on which it sends the invitation, or within such other period of time as specified in the invitation, it shall treat this as a rejection of the invitation to conciliate from the other party

24.4.1.2. Conciliation through ESC:

24.4.1.2.1. Where Invitation for Conciliation has been furnished under GCC sub clause 24.4.1.1, the parties shall attempt to settle such dispute through Expert Settlement Council (ESC) which shall be constituted by CMD/Chairman of the Owner.

24.4.1.2.2. ESC will be formed from experts comprising three members from the panel of Conciliators maintained by the Owner. However, there will be single member ESC for disputes involving disputed amount (Claim / Counter claim, whichever is higher excl. interest) is up to INR 1 crore.

CMD / Chairman of the Owner shall have the authority to reconstitute the ESC to fill any vacancy.

24.4.1.2.3. The ESC shall be amongst Civil Servants of Govt. of India retired from the level of Joint Secretary and above, Retired Judges, Officers retired from the level of Executive Director and above of any Maharatna / Navratna company in India, other than NTPC Ltd, Retired Independent Directors who have served on the Board of any Maharatna / Navratna company in India, other than NTPC Ltd

24.4.1.3. Proceedings before ESC:

24.4.1.3.1. The claimant shall submit its Statement of Claims (SOC) along with relevant documents to ESC members, and to the party(s) indicated in the appointment letter within 15 days of appointment of ESC. The respondent shall file its reply/Statement of Defence (SOD) and counter claim (if any) within 15 days of the receipt of the Statement of claims. Each party shall send a copy of such Statement along with relevant documents to the other party.

Parties may file their rejoinder/additional documents, if any in support of their Claim / Counterclaim within next 7 days. No documents shall be allowed thereafter, except with the permission of ESC

24.4.1.3.2. The parties shall file their claim and counterclaim in the following format:

- a. Chronology of the dispute
- b. Brief of the contract
- c. Brief history of the dispute
- d. Issues

Sl. No.	Description of Claims / Counter claims	Amount (in foreign currency / INR)	Relevant Contract Clause

- e. Details of Claim(s) / Counter Claim(s)
- f. Basis / Ground of claim(s) / counter claim(s) (along with relevant clause of contract)

Note: Statement of claims shall be restricted to a maximum limit of 20 pages.

24.4.1.3.3. In case of 3 members ESC, 2 members will constitute a valid quorum and the meeting can take place to proceed in the matter after seeking consent from the member who is not available. However, ESC recommendations will be signed by all the members.

If required, meetings can be conducted through video conferencing/other digital means subject to the agreement between the parties and the ESC.

24.4.1.3.4. The parties shall be represented by their in house employees. No party shall be allowed to bring any advocate or outside consultant / advisor / agent to contest on their behalf. Ex-officers of Owner's Organization who have handled the subject matter in any capacity shall not be allowed to attend and present the case before ESC on behalf of Buyer. However, ex-employees of parties may represent their respective organizations. Parties shall not claim any interest on claims / counter-claims from the date of notice invoking Conciliation till execution of settlement agreement, if so arrived. In case, parties are unable to reach a settlement, no interest shall be claimed by either party for the period from the date of notice invoking Conciliation till the date of ESC recommendations and 30 days thereafter in any further proceeding.

24.4.1.3.5. ESC will conclude its proceedings in maximum 5 meetings and give its recommendations within 90 days from the date of reference to ESC. ESC will give its recommendations to both the parties recommending possible terms of settlement. CMD / Chairman of the Owner may extend the time/number of meetings, in exceptional cases, if ESC requests for the same with sufficient reasons and as agreed by the parties.

24.4.1.3.6. Depending upon the location of ESC members and the parties, the venue of the ESC meeting shall be either Delhi / Mumbai / Kolkata / Chennai or any other city whichever is most economical from the point of view of travel and stay etc. All the expenditure incurred in ESC proceedings shall be shared by the parties in equal proportion

24.4.1.4. Fees and Facilities to the Members of the ESC

Sl.No.	Fees / Facility	Entitlement
1	Fees	Lumpsum fee of INR 2,50,000 per conciliator irrespective of the no. of meetings *

Annexure- A1
(For Dry Fly Ash Circular)

2	Secretarial expenses	INR 10,000 /- lump sum (to 1 member only).
3	Transportation in the city of the meeting	Car as per entitlement or INR 2,000 /- per day
4	Venue for meeting	OWNER'S conference rooms
Facilities to be provided to the out-stationed member		
5	Travel from the city of residence to the city of meeting	As per entitlement of Independent Directors. Executive class air tickets / first class AC train tickets/ Luxury car/ reimbursement of actual fare. However, entitlement of air travel by Business class shall be subject to austerity measures, if any, ordered by Govt of India.
6	Transport to and fro airport / railway station in the city of residence	Car as per entitlement or INR 3,000 /-
7	Stay for out stationed members	As per entitlement of Independent Directors.
8	Transport in the city of meeting	Car as per entitlement or INR 2,000 /- per day

* Due to unavoidable circumstances, if there is requirement of more than 5 meeting to conclude the Conciliation proceedings, the same may be done at the discretion of ESC within the capping of fee of INR 2.5 Lakhs per conciliator. However, logistic arrangements, including travel, etc. may be provided as per the extant Policy for such additional sittings.

Aforesaid fees is subject to revision by Owner from time to time and subject to government guidelines on austerity measures, if any. All the expenditure incurred in the ESC proceedings shall be shared by the parties in equal proportions. The Parties shall maintain the account of expenditure and present to the other for the purpose of sharing on conclusion of the ESC proceedings.

24.4.1.5. If recommendations/ report of ESC is acceptable to both the parties, a Settlement Agreement under Section 73 of the Arbitration and Conciliation Act, 1996 will be signed to the extent agreed by the parties within 15 days of acceptance by the parties and same shall be authenticated by all the ESC members.

Parties are free to terminate Conciliation proceedings at any stage as provided under the Arbitration and Conciliation Act 1996.

24.4.1.6. Notwithstanding anything contained in any other law for the time being in force, the Conciliator and the parties shall keep confidential all matters relating to the Conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

The parties shall not rely on or introduce as evidence in Arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the Conciliation proceedings,

—

- a. views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- b. admissions made by the other party in the course of the Conciliation proceedings;
- c. proposals made by the Conciliator; and
- d. the fact that the other party had indicated his willingness to accept a proposal for settlement made by the Conciliator.

24.4.2. Resolution of Dispute through Conciliation Committee of Independent Experts (CCIE), constituted by Ministry of Power (MoP) {For cases with Disputed amount (Claim/ Counter claim whichever is higher) above INR 25 Crore excl. interest}

If the parties fail to resolve such a dispute or difference by mutual consultation and through Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period specified at Clause 24.1, 24.2, 24.3 above, the dispute, if the parties agree, may be referred to Conciliation Committee of Independent Experts (CCIE), in cases where the Disputed amount (Claim/ Counter claim whichever is higher) is above INR 25 crore excl. interest.

24.4.2.1. Invitation for Conciliation through CCIE:

24.4.2.1.1. A party shall notify the other party in writing about such a dispute it wishes to refer for CCIE within a period of 15 days from the date of failure to resolve the dispute through Mutual Consultation and Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period as specified at Clause 24.1, 24.2 and 24.3 above. Such Invitation for Conciliation shall contain sufficient information as to the dispute to enable the other party to be fully informed as to the nature of the dispute, amount of the monetary claim, if any, and apparent cause of action.

24.4.2.1.2. If the party initiating Conciliation does not receive a reply within fifteen (15) days from the date on which it sends the invitation, or within such other period of time as specified in the invitation, it shall treat this as a rejection of the invitation to conciliate from the other party.

24.4.2.2. Conciliation Committee of Independent Experts:

24.4.2.2.1. Where Invitation for Conciliation has been consented to under GCC sub clause 24.4.2.1, the same shall be referred to the

Conciliation Committee of Independent Experts (CCIE) within 30 days.

Conciliation Committees of Independent Experts (CCIE) have been constituted and notified by MoP for settlement of disputes arising in the Contract. There are three CCIEs, as specified in Special Conditions of Contract .

- 24.4.2.2.2. The Buyer may select three CCIEs, in priority order, from the list of CCIEs enclosed with the Special Conditions of Contract, for finalization by Central Electricity Authority (CEA).

There shall not be any conflict of interest for the members of the CCIE due to their past assignments. Individuals CCIE members shall submit an undertaking in this regard to the Owner, prior to appointment. It shall be ensured that they have not been engaged for providing any services to any of the parties i.e. either Owner or the Buyer in the last five years. An Undertaking in this regard, shall also be furnished by the Buyer for the purpose of avoiding any conflict of interest.

24.4.2.3. Proceedings before CCIE:

- 24.4.2.3.1. The procedure of CCIE shall not be treated as alternate arbitration proceedings where both parties come with Statement of claims/defence, arguments/counter arguments, rejoinders, written submissions etc., aided by their respective lawyers.
- 24.4.2.3.2. The parties shall be brief and to the point before the Committee with regard to their respective stance and view the exercise in the spirit of conciliation/settlement.
- 24.4.2.3.3. The possibility of non-availability of any one of the members of CCIE in any proceedings cannot be ruled out. As such, the Committee comprising the other two members shall be competent to proceed in the matter. The proceedings of the Committee shall not be vitiated if one of the three members of CCIE is not present in the deliberations of the Committee. When the parties sign the settlement agreement, at least two members of CCIE shall authenticate the same. Such conciliation proceedings shall be considered valid and the settlement agreement will be binding on the parties.
- 24.4.2.3.4. The parties shall be represented by their in house employees. No party shall be allowed to bring any advocate or outside consultant/advisor/agent to

contest on their behalf. Ex-officers of Owner's Organization who have handled the subject matter in any capacity shall not be allowed to attend and present the case before CCIE on behalf of the Buyer. However, ex-employees of parties may represent their respective organizations.

24.4.2.3.5. The Conciliation proceedings shall be completed in each case through 5 sittings in a period of not more than three months from the date the reference made to the CCIE. In exceptional cases, if any dispute so merits, the time period may be extended at the discretion of Conciliation Committee (with reasons to be recorded in writing), for a further period of three months.

24.4.2.3.6. The CCIE shall hold day to day sitting at a suitable place (preferably the headquarter of the Owner or New Delhi) and may hold as many sittings every month as it deems appropriate keeping in view the volume of work.

24.4.2.4. Fees and Facilities to the Members of the CCIE

Each member of CCIE would be paid a sum of INR 50,000/- as sitting fee per sitting. In addition, INR 5,000/- per sitting will be paid for local transport charges for each day of proceeding.

In case, a particular dispute requires more than 5 sittings, the same may be held at the discretion of the CCIE but with a cap on payment of fee for 5 sittings only. The local transport charges shall, however, be paid as provided for each day of sitting beyond the 5 sittings.

All expenditure incurred on the conciliation proceedings including payment of fees to the Conciliators, office space, logistic, secretarial assistance and other incidental expenses etc. shall be borne by the Owner initially. Thereafter it shall be shared equally by both parties on completion of the conciliation process.

24.4.2.5. The Parties shall maintain the account of expenditure and present to the other for the purpose of sharing on conclusion of the CCIE proceedings.

The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation Act, 1996.

In case of failure of the conciliation process at the level of the Conciliation Committee, the parties may withdraw from conciliation process and take recourse to remedies as may be available to them under the applicable laws other than Arbitration.

In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996.

After successful conclusion of proceedings, the Parties to the conciliation process, have to undertake and complete all necessary actions for implementation of the terms of settlement within a period of 30 days from execution of settlement agreement, unless a different timeline not exceeding 60 days is agreed upon in settlement agreement. All pending claims of parties, in connection with the dispute, before any other legal forum are to be withdrawn within the said 30 days in pursuance of the settlement agreement.

24.4.2.6. Notwithstanding anything contained in any other law for the time being in force, the Conciliator and the parties shall keep confidential all matters relating to the Conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement

The parties shall not rely on or introduce as evidence in Arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the Conciliation proceedings,

- a. views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- b. admissions made by the other party in the course of the Conciliation proceedings;
- c. proposals made by the Conciliator; and
- d. the fact that the other party had indicated his willingness to accept a proposal for settlement made by the Conciliator.

24.5. # Arbitration

24.5.1. If the process of mutual consultation and IE (if applicable) and/or Mediation (if applicable) and/or ESC fails to arrive at a settlement between the parties, Owner or the Buyer may, within Thirty (30) days of such failure, give notice to the other party, of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. The mechanism of settling the disputes through arbitration shall be applicable only in cases where the disputed amount (i.e. Claim/ Counter claim, whichever is higher, excluding interest) is less than INR 10 crores.

If the claim/ counter claim is in foreign currency, the SBI Bills Selling Exchange rate prevailing on the date of claim shall be used for the purpose of converting the claim in Indian Rupee

In case the disputed amount (Claim/ Counter claim, whichever is higher, excl. interest) is INR 10 Crores or above, the parties shall be within their rights to take recourse to remedies as may be available to them under the applicable laws other than Arbitration after prior intimation to the other party. There shall be no arbitration where the disputed amount (Claim/ counter claim, whichever is higher) is only up to INR 5 lakhs.

The parties at the time of invocation of arbitration shall submit all the details of the claims and the counter-claims including the Heads/Sub-heads of the Claims/Counter-Claims and the documents relied upon by the parties for their respective claims and counter-claims. The parties shall not file any documents/details of the claims and counter-claims thereafter.

The claims and the counter claims raised by the parties at the time of invocation of the arbitration shall be final and binding on the parties and no further change shall be allowed in the same at any stage during arbitration under any circumstances whatsoever.

In case, multiple arbitrations are invoked (whether sub-judice or arbitral award passed) by any party under this contract, then the cumulative disputed amount (i.e. Claim/ Counter claim, whichever is higher, excluding interest) in all such arbitrations shall be taken into account while arriving at the total disputed amount for the subject contract. Disputes having cumulative value less than INR 10 crores shall be resolved through arbitration. In case the disputed amount (Claim/Counter claim, whichever is higher, excluding interest) is INR 10 crores and above, the parties shall be within their rights to take recourse to remedies as may be available to them under the applicable laws other than Arbitration after prior intimation to the other party.

24.5.2. Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with Sub Clause 24.5.1, shall be finally settled by arbitration.

24.5.3. It is agreed between the parties that the Arbitration proceedings shall be conducted as per the provisions of Fast Track Procedure as provided under The Arbitration and Conciliation Act, 1996, as amended from time to time.

Any dispute or difference raised by a party to arbitration shall be adjudicated by an arbitral tribunal consisting of three arbitrators, in the following manner:

- a. A party willing to commence arbitration proceeding shall invoke Arbitration Clause by giving notice to the other party
- b. The Owner and the Buyer shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator within 30 days, who shall act as presiding arbitrator of the arbitral tribunal. If the two arbitrators do not succeed in appointing a third arbitrator within 30 days of the latter of the two arbitrators has been appointed, the third arbitrator shall be appointed by the High Court of Delhi.
- c. If one party fails to appoint its arbitrator within 30 days after the other party has named its arbitrator, the party which has named its arbitrator may approach the High Court of Delhi to appoint the second arbitrator.

- d. If any member of the arbitral tribunal dies, resigns, becomes incapacitated or withdraws for any reason from the proceedings or his mandate is terminated by the Court, a substitute shall be appointed in the same manner as the arbitrator whose mandate has terminated as above. After substitution of new member, the arbitration tribunal shall proceed with reference from the stage where the mandate of the arbitrator has been terminated.
 - e. Arbitrator tribunal shall be paid fees as per the Fee Schedule (presently Fourth Schedule) provided in 'The Arbitration and Conciliation Act, 1996' as amended from time to time. If the claim/ counter claim is in foreign currency, the SBI Bills Selling Exchange rate prevailing on the date of claim shall be used for the purpose of converting the claim in Indian Rupee which may be used for determining the arbitration fee.
 - f. If after commencement of the Arbitration proceedings, the parties agree to settle the dispute mutually or refer the dispute to mediation or Conciliation, the arbitral tribunal shall put the proceedings in abeyance until such period as requested by the parties. Where the proceedings are put in abeyance or terminated on account of mutual settlement of dispute by the parties, the fees payable to the arbitrator shall be determined as under:
 - (i) 40% of the fees if the Pleadings are complete.
 - (ii) 60% of the fees if the Hearing has commenced.
 - (iii) 80% of the fees if the Hearing is concluded but the Award is yet to be passed.
 - g. Each party shall pay its share of arbitrator's fees in stages as under or as per the directions of Arbitrator:
 - (i) 40 % of the fees on Completion of Pleadings.
 - (ii) 40% of the fees on Conclusion of the Final Hearing.
 - (iii) 20% at the time when arbitrator notifies the date of final award.
 - h. The Claimant shall be responsible for making all necessary arrangements for the travel/ stay of the Arbitrator including venue of arbitration, hearings. The parties shall share the expenses for the same equally.
 - i. The Arbitration shall be held at Delhi only.
 - j. The arbitral tribunal shall give reasoned and speaking award in prompt manner and it shall be final and binding on the parties.
 - k. Subject to the aforesaid conditions, provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment thereof as amended from time to time, shall apply to the arbitration proceedings under this clause.
- 24.5.4. In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract (s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and also between CPSEs and Government Departments/ Organizations (excluding disputes relating to Railways, Income Tax, Customs & Excise Departments), such disputes or difference shall be taken up by either party for resolution through Administrative Mechanism for Resolution of CPSEs Disputes

(AMRCD) as mentioned in DPE Office Memorandum No. 05/0003/2019-FTS-10937 dated 14.12.2022 issued by Department of Public Enterprises, Government of India and its further clarifications, modifications and amendments, issued from time to time.

The limit on disputed amount as mentioned at clause 24.5.1 above shall not be applicable and matter may be referred to AMRCD irrespective of the amount involved in dispute, if the dispute could not be resolved through Mutual Consultation and IE (if applicable) as brought out at GCC Sub Clause 24.1 and 24.2 above.

24.6. Notwithstanding any reference to the Independent Engineer or Mediation or Conciliation or Arbitration herein,

- a. the parties shall continue to perform their respective obligations under the contract unless they otherwise agree.
- b. the owner shall pay the buyer any monies due to the buyer.

Settlement of Dispute clause cannot be invoked by the buyer, if the contract has been mutually closed or 'No Demand Certificate' has been furnished by the buyer or any Settlement Agreement has been signed between the owner and the buyer.

25. Force Majeure:

- 25.1. "Force Majeure" shall mean any event beyond the reasonable control of the owner or of the buyer, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected.
- 25.2. If either party is prevented, hindered or delayed from or in performing any of its obligations under the contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.
- 25.3. The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The Time for Completion shall be extended accordingly.
- 25.4. The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the contract and to fulfill its or their obligations under the contract, but without prejudice to either party's right to terminate the contract.
- 25.5. No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall.
 - a. constitute a default or breach of the Contract.
 - b. give rise to any claim for damages or additional cost or expense occasioned thereby if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.
- 25.6. If the performance of the contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the contract, the parties will attempt to develop a mutually satisfactory solution, failing which the dispute shall be resolved in accordance with relevant clause.

25.7. Notwithstanding Sub Clause 25.5, Force Majeure shall not apply to any obligation of the owner to make payments to the buyer herein.

War Risks:

- (i) "War Risks" shall mean any of the following events occurring or existing in or near the country (or countries) where the Site is located:
 - a. war, hostilities, or warlike operations (whether a state of war is declared or not), invasion, act of foreign enemy and civil war.
 - b. rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts, and
 - c. any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions, or explosive of war.
- (ii) Notwithstanding anything contained in the contract, the buyer shall have no liability whatsoever for or with respect to
 - a. destruction of or damage to Facilities, Plant and Equipment's, or any part thereof
 - b. destruction of or damage to property of the owner or any third party c. injury or loss of life

if such destruction, damage, injury or loss of life is caused by any War Risks, and the owner shall indemnify and hold the buyer harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.
- (iii) If the Facilities or any Plant and Equipment's or buyer's Equipment's or any other property of the buyer used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the owner shall pay the buyer for
 - a. any part of the Facilities or the Plant and Equipment's so destroyed or damaged (to the extent not already paid for by the owner)
 - b. replacing or making good any buyer's Equipment's or other property of the buyer so destroyed or damaged so far as may be required by the owner, and as may be necessary for completion of the Facilities,
 - c. replacing or making good any such destruction or damage to the Facilities or the Plant and Equipment's or any part thereof.

If the owner does not require the buyer to replace or make good any such destruction or damage to the Facilities, the owner shall either request a change (Change in the Facilities), excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the contract.
- (iv) Notwithstanding anything contained in the contract, the owner shall pay the buyer for any increased costs or incidentals to the execution of the contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the buyer shall as soon as practicable notify the owner in writing of any such increased cost.
- (v) If during the performance of the contract any War Risks shall occur that financially or otherwise materially affect the execution of the contract by the buyer, the buyer shall use its reasonable efforts to execute the contract with due and proper

consideration given to the safety of its and its subagencies' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the parties will attempt to develop a mutually satisfactory solution, failing which the dispute will be resolved in accordance with relevant clause.

- (vi) In the event of termination, the rights and obligations of the owner and the buyer shall be specified, except that the buyer shall have no entitlement to profit in respect of any unexecuted facilities as of the date of termination.

26. Insurance and Buyer's Liability:

- 26.1. The buyer shall be fully responsible for maintaining all the insurance as per the law of land at its cost.
- 26.2. The buyer shall at all times indemnify the owner against all losses, claims, damages or compensation arising out of any accident or injury to any person (whether in employment of buyer or not) or property in or about the plant including the Silo area (inside / outside the plant) which may arise out due to the buyers act / negligence while carrying out the contract.

27. Suspension of the supply:

- 27.1. The owner reserves the right to suspend and reinstate execution of the whole or any part of the supply.
- 27.2. The owner shall not be responsible for any liabilities for suspension of issue of Fly Ash or issue of reduced quantity of Fly Ash for any reason whatsoever.

28. Indemnity for defense of Suits:

If any action in court is brought by third party against the owner or an officer or agent of the owner for the failure or neglect on the part of the buyer to perform any acts, matters, covenants or things under the contract, or for damage or injury caused by the alleged omission or negligence on the part of the buyer, his agents, representatives or his Sub-contractors, workmen, suppliers, or representatives employees the buyer shall in such cases indemnify and keep the owner and / or its representative harmless from all losses damages, claims, expenses or decrees arising out of such action.

29. Recovery of Sums Due:

Whenever any claim for the payment of the sum of money arises against the buyer, the Owner shall be entitled to recover such sum by appropriating in whole or in part, from advance deposited against fly ash and / or the Contract Performance Guarantee deposited by the buyer.

30. Safety:

The buyer, including his subagencies, while executing the Works, will strictly comply with the statutory requirements (including amendments thereof), as applicable, in respect of the safety of his employees, equipment and materials. The applicant will also comply with the provisions of NTPC Safety Rules as issued from time to time and displayed on NTPC's tender website.

31. Disorderly Conduct:

The buyer shall at all times take all reasonable precautions to prevent any unlawful, notorious or disorderly conduct by or amongst the buyer's staff and labour and for the preservation of peace and protection of persons and property in the neighborhood of the delivery site against the same.

32. Jurisdiction of Court

Only PATNA High Court shall have exclusive jurisdiction in all the matters concerning the supply of Ash against this his EOI / Contract.

33. No Breach of Contract:

The failure of a party to fulfill any of its obligations under the contract shall not be considered to be a breach of or default under the contract in so far as such inability arises from an event of Force Majeure, provided that the Party affected by such an event:

- a. has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this contract and
- b. has informed the other party as soon as possible about the occurrence of such an event.

SPECIAL CONDITIONS OF CONTRACT

34. Scope of Supply:

- 34.1. Owner would be in a position to make available allocated quantity of Fly Ash from its Ash Silos at NTPC NABINAGAR / Other Suitable Locations as decided by Engineer-InCharge of NTPC NABINAGAR subject to availability, force majeure conditions and unplanned outage of plant, etc.
- 34.2. The owner reserves the right to supply the quantity not lifted by the buyers to any other party at the sole discretion of the owner.
- 34.3. Total Fly Ash quantity available to be issued at concessional price in this EOI: 3.6 LMT.
- 34.4. Period: One [01] Year.

35. Working Hours:

The issue of fly ash is intended to be given on all days (on 24 x 7 basis), including national holidays, or as per directions of Engineer-in-Charge.

36. Delivery Point:

- 36.1. The owner would issue Fly Ash from the discharge chute of designated Ash Silos at NTPC NABINAGAR / Other Suitable Locations as decided by Engineer-In-Charge of NTPC NABINAGAR.
- 36.2. Fly ash shall be considered to have been issued and collected as it passes into the buyer's vehicle at the loading / delivery point.

37. Quality of Fly Ash: The owner would issue Fly Ash from the designated "Delivery Point /s" at NTPC NABINAGAR on "As Available Basis" based on actual weighment.

38. Evaluation Criteria and Quantity for allocation

Fly Ash available is being offered through this EOI on “pro-rata basis” process. The fly ash shall be allocated based on the receipt of responses to EOI on a pro rata basis (if response received more than EOI offered Quantity), and on “as is where is, basis”. However, collecting from NTPC’s issue of location and transportation, thereafter, will be in the scope of the applicant only.

39. Award price:

39.1. Price chargeable to buyer(s) shall be 15 Rupees per MT.

39.2. All statutory duties / taxes / levies including GST shall be charged extra.

40. Period of Supply:

The duration of supply of Fly Ash from NTPC NABINAGAR Station will be for a period of One [01] Year, or till the completion of supply of the allocated quantity, whichever is earlier.

41. Upward Quantity Flexibility:

If requested by the buyer, the owner may consider supplying an additional quantity, up to 20% of the total awarded quantity, within the contracted period. This is subject to availability

and at the sole discretion of the owner, at the price specified in the LOA for which the extension is requested.

42. Payment Terms and Bank Charges:

42.1. Delivery shall be made against advance payment in conformity with NTPC Policy for collecting advance [through NTPC’s Customer Payment Portal]. Advance shall be adjusted against delivery on a daily basis.

42.2. The buyer shall submit an advance amount equivalent to One [01] Month of Annual Award Value for the allocated quantity of Fly Ash in the Award Letter, within Fifteen [15] days of placement of award.

42.3. The buyer to pay any taxes / duties extra on the applicable rates.

42.4. The buyer to deposit the CPG @ 10 % of award value (or INR 1 /- per MT, whichever is higher, subject to a minimum of INR 10,000 /-) in addition to advance mentioned above at clause 42.2 before start of work.

42.5. Permission to start the work will be given for the first month after deposition of CPG and one-month advance payment along with the applicable taxes / duties within 15 Days of placement of award.

42.6. Permission for the next subsequent month will be given after depositing the advance payment for that month along with the taxes / duties before start of the that month as stated in clause 42.2 above.

42.7. All bank charges shall be borne by the buyer.

43. Commencement of first off take:

Commencement of first off take for applicants of Fly Ash should not exceed beyond fifteen (15) days from the date of issue of award letter unless specifically agreed to by the owner.

44. Weighment for invoicing:

- 44.1. Fly Ash shall be issued based on actual weighment.
- 44.2. Unit: The lifted fly ash shall be weighed in terms of MT (Metric Tonne).
- 44.3. Weighment: Weighment of lifted fly ash shall be done at the weighment facility of NTPC NABINAGAR or its nearest authorized weighment facility. Weight so recorded shall be considered final.

45. Compensation against shortfall during regular off take:

- 45.1. After commencement of first off take, buyer will be required to lift fly ash on regular basis in accordance with agreed quantity as per contracted schedule. The buyer shall have to lift the 90 % of contracted quantity / adjusted quantity (in case of short supply) on prorata basis. In case buyer fails to lift the minimum quantity (90 % of annual contracted quantity / annual adjusted quantity) on prorata basis, compensation amount @ 10 % of the awarded price (rounded to the nearest whole number on the higher side) will be charged on the shortfall quantity (90 % of annual contracted / annual adjusted quantity on prorata basis minus (-) Actual quantity lifted, for the period under review), provided shortfall is because of the reasons attributable to applicant
- 45.2. Compensation shall be calculated for three consecutive months on a cumulative basis. The compensation will be calculated within 15 days following the three consecutive months under study. Compensation due on a buyer, if not deposited separately will be deducted from the advance available or recovered from the CPG / SD of the buyer. The compensation amount deducted from CPG if any shall be replenished by the buyer in the CPG / SD account within 15 days notwithstanding which the supply of fly ash to the buyer will be stopped. Supplies will be started only after the 'deducted amount from CPG / SD' is replenished. Any decrease in supply of fly ash to the buyer due to non-replenishment of the compensation amount will be in the account of the buyer
- 45.3. Consecutive three-monthly quantity shall be considered from the scheduled date of start till completion of three months and subsequently so on till expiry of contract.

46. Termination of Contract:

- 46.1. In case, fly ash offtake falls below 75 % of (the contracted or adjusted quantity, whichever is lower), during any three consecutive months on cumulative basis, Owner reserves the right to terminate the contract by giving 15 days' notice in writing of their intentions to do so and in such an event the buyer shall not be entitled to any compensation from the Owner. In the event of termination of contract, the liquidated damages will be payable by the buyer at the aforesaid rate mentioned in above Clause i.e. @ 10 % of the awarded price for the short fall quantity below 90 % of the (contracted / adjusted quantity, whichever is lower).
- 46.2. The owner also reserves the right to terminate the contract in the event of breach of contract by the buyer giving 15 days' notice in writing of their intentions to do so and in such an event the buyer shall not be entitled to any compensation from the owner. In the event of termination of contract for any reasons of breach of contract, liquidated damages equivalent to the amount of CPG / SD shall be payable by the buyer.
 - 46.2.1. Following will constitute breach of contract:
 - i. Delay in first offtake by buyer from committed date by more than fifteen

(15) days.

- ii. The buyer is not complying with operational and safety requirements and neglecting instructions of Engineer-In-Charge.
 - iii. The buyer has failed to discharge its obligations according to the terms and conditions of the contract.
- 46.3. The gross amount of liquidated damages / compensation, if any (combined) shall be limited to the CPG / SD amount.
- 46.4. The contract for the sale of fly ash may be terminated at any time depending on the policy of the Government and / or other concerned authorities. The owner reserves the right for withdrawal of the contract in the interest and safety of the station and the Company by giving 15 days' notice in writing to the buyer.
- 46.5. In case, at any point after the award of contract / issuance of LOA under this EOI, if it is found that fly ash issued against the contract / LOA is not utilized in the manufacturing of ash ash-based product namely, bricks, blocks, tiles, sintered or cold bonded ash aggregates, fibre cement sheets, pipes, boards, panels as applicable to the applicant, but have been sold in the market or have been utilized for some other purposes, NTPC / Owner shall have the full right to terminate the contract and take any action as per applicable laws for breach of contract including forfeiture of Bid Security / Performance Bank Guarantee including Debarment from the Business Dealings as per the provisions of the relevant policy.

47. Shortfall in supply by Owner:

- 47.1. Fly Ash is a product of coal combustion, which again is subject to the demand of electricity in the areas allocated by the regulatory authorities. Scheduled and unscheduled shutdowns also affect generation of electricity and thus generation of fly ash. Though all efforts will be made to maintain contracted quantity of Fly ash available, owner does not guarantee availability of fly ash as per contracted quantity regularly and will not be liable for any compensation or damages for non-issue of required quantity of the fly ash.
- 47.2. In case owner is unable to provide the average monthly / three consecutive monthly contracted quantity of fly ash due to any reasons including forced outages of the plant, congestion etc. The owner in respect of each buyer shall accordingly adjust the average monthly / three consecutive monthly contracted quantity downward.
- 47.3. Under such circumstances the determination of CPG / SD and Compensation referred above shall be computed with respect to adjusted yearly / three consecutive monthly contracted quantity.
- 47.4. Determination of monthly quantity i.e., for any three months for termination of contract in case of short supply by the owner shall also be computed w.r.t quantity made available to the buyer on monthly / quarterly (i.e., for any three consecutive months).
- 47.5. The owner may offer an additional quantity of fly ash at a later date subject to availability, if agreed by the buyer. The quantity so offered and agreed by buyer at a later stage, will form a part of the annual contracted / adjusted quantity.

48. Taxes, Duties, Levies etc.:

The applicant shall be liable and responsible for payment of all statutory levies in the form of GST and all other taxes and duties applicable on the Sale of fly ash. Such statutory

liabilities, if any, shall be paid by the applicant extra at actual. ("Goods and Services Tax" or "GST" means taxes levied under the Central Goods and Services Tax Act, Integrated Goods and Services Tax Act, Goods and Services Tax (Compensation to States) Act, and various State / Union Territory Goods and Services Tax Laws and applicable cess, if any under the laws in force (hereinafter referred to as relevant GST Laws)."

49. Issue of Fly Ash:

- 49.1. The buyer should depute his authorized representative to the power station for coordination and taking fly ash from designated point, as informed by Engineer-In Charge.
- 49.2. Fly Ash will be issued from Silo Chutes / Other suitable locations as decided by Engineer-In-Charge to bulkers / closed trucks. Open trucks will not be allowed.
- 49.3. The owner has the right to suspend the issuance of fly ash if the advance amount is not available with the owner by the required date and such suspension of offtake shall be to the account of buyer.

50. Responsibility during Transportation:

The buyer will be responsible for any kind of injuries or accidents caused to their employees or labourers or any other person and the owner will not be liable in the matter. If any action is brought against the owner for payment of damages or compensation, the buyer shall indemnify the owner from all such action or claim from damages / compensation. If the owner is held liable for any compensation, the buyer shall forthwith compensate the owner, if any, such claim arose during or after the expiry of the contract period.

The buyer's transporter(s) shall have a valid license and meet the statutory compliance requirement of the State Government / Central Government / Concerned Authorities for transportation of the specified goods.

Buyers eligible for collecting ash shall apply for permission for the bulkers / covered trucks that they propose to deploy and submit the same to Engineer-In-Charge along with specified documents like registration, license, insurance etc., who shall arrange to verify the same and issue permission as per prevailing procedure adopted at the NTPC Station.

Road permits, operator / driver licenses, insurance etc. for the deployed vehicles shall be submitted at the time of start of work (and also when new and / or additional vehicles are deployed) and thereafter as and when demanded by the Engineer-In-Charge for verification. The vehicles shall be in fit condition for safe operation.

51. Billing:

Owner will issue Exit gate pass on daily basis and invoices on daily / weekly / fortnightly / monthly basis and shall deliver to the buyer(s) an invoice showing the value of the Fly Ash delivered / issued for each day, along with applicable GST and all other duty / taxes / cess etc. as applicable and shall be adjusted against the advance payment made by the buyer(s).

52. Transportation including Bagging / Packing of fly ash and any other related activity is in the scope of the applicant. No claim whatsoever, by the applicant for transportation of fly ash will be payable.

53. Indemnities for Environmental Conditions:

All Regulatory and Statutory compliances to be ensured by the applicant while lifting / transportation / Disposal / Usage / Sale etc.

The buyer will submit an indemnity bond as per the prescribed format to keep NTPC indemnified against legal proceedings / paying damages arising out of non-compliances by the applicant, if any (Format attached as Annexure – 06).

54. Lifting Sequence and allocation after EOI Process:

To be finalized by Engineer-In-Charge depending upon site specific conditions.

54.1. All allocated applicants (or transportation vendors) shall be expected to follow the above finalized schedule and mobilize accordingly.

54.2. In case of non-mobilization / inadequate mobilization, NTPC may, at its discretion, allocate such quantity to other applicant(s) / avenue(s). Decision of Engineer-InCharge (EIC – NTPC shall be final and binding in this regard.

55. Compliance by Applicants:

Applicants to comply with all reasonable controls imposed by NTPC NABINAGAR and to cooperate with the station and other operating applicants / contractors and to abide by the decision of Engineer-In-Charge. In case of any dispute the decision of the Engineer-InCharge shall be final and binding.

56. NTPC NABINAGAR reserves the right to take appropriate action as deemed fit, in case information / details provided are found false even at a later date.

Part 3: Format for Submission of Response to EOI

(On official letter head of the Applicant)

(To be submitted by the Applicant along with specified documents)

EOI for Issue of dry fly ash from _____ (Name of Thermal Power Station (TPP) from where dry fly ash is to issued)

Sl. No.	Description	Details
1	Name of the Applicant	
2.	Status (Company / MSEs / Local Users)	
2.1	Consent To Operated issued by CPCB /SPCB	
2.2	GST No, (as may be applicable)	
2.3	PAN No. (as may be applicable)	
2.4	Nature of Business:	
	Name of the Product / Service	
	Production / Service Capacity per Annum	
	Actual Production / Service previous Financial Year	
	Location and Address of Production / Service Facility	
	Whether capable of handling dry fly ash in an environmentally friendly way as per extant regulation / law (Yes / No)	
3	Registered Address	
	Telephone No.	
	Mobile No.	
4	Communication Address	
	Telephone No.	
	Mobile No.	

Annexure- A1
(For Dry Fly Ash Circular)

5	GSTIN No. / UIN No.			
6	Dry fly ash quantity sought against EoI (both in Figures and Words):	Figures:		
		Words:		
7	Address of the location where Applicant proposes to transport fly ash if issued.			
8	Avenue(s) as listed in extant MoEF&CC's Gazette Notification in which the applicant proposes to utilize the dry fly ash, if issued.	SN	Avenue Name	Quantity Required
		1.		
		2.		
		3.		
		4.		
		Total		
10	Details of the Person authorized to sign all documents including correspondence, etc.			
	Name of the Authorized Person			
	Designation			
	Telephone No.			
	Mobile No.			
	Email Id			
11	Any other relevant information			

For M/s _____
(User Agency)

Date: _____

Signature _____

Place: _____

Printed Name _____
(Authorized person having Power of Attorney)

Designation _____



Part 4: Annexures and Formats.

Annexure – 01

UNDERTAKING

(To be executed on a non-judicial stamp paper of appropriate value)
(To be notarized before a notary public)

NTPC EOI Reference: _____

Applicant's Offer Reference Number: _____

Date: _____

I _____ son / daughter / wife of
_____ permanent resident of ___do hereby solemnly affirm and
state on oath as under:

1. That I am / We are the owner / proprietor / partner / authorized representative of M/s
_____ having their registered office at

2. That I am / We are micro and small enterprise / local ash users [with in 100 km radius of
NTPC NABINAGAR], engaged in Ash Based product manufacturing of _____
(bricks, blocks, tiles, sintered or cold bonded ash aggregates,
fibre cement sheets, pipes, boards, panels) as per para D(4) inserted to the MoEF&CC
Notification on ash utilisation from coal or lignite thermal power plants Dated 31.12.2021
amended on 01.01.2024.

We understand that, in case, above document submitted by us are not found to be in order
by NTPC / the owner at any stage of the expression evaluation, then our application /
expression shall not be considered for evaluation and be rejected.

3. I / We hereby certify that I / we have fully read and thoroughly understood the Eoi
requirements and accept all terms and conditions of the Eoi including those contained
in all corrigendum/addendum issued, if any. My / Our offer is in conformity with all the
terms and conditions of the Eoi including all corrigendum/addendum, if any. In the event
of allocation of ash to me / us, the complete Eoi document shall be considered as part
and parcel of the LOA / LOI for constitution of Contract Agreement and also as and
wherever applicable and required by TPP.

It is hereby confirmed that, I am / we are neither blacklisted / barred by Government /
Semi – Government / Quasi- Government organization / PSU or Govt. Corporation, nor
have been convicted of violating applicable law.

4. I / We, hereby undertake, utilization / ensure utilization of the fly ash, issued by NTPC NABINAGAR, for following Ash Utilization Avenues only, as identified in extant MoEF&CC Notification.
 - i. Manufacturing of Fly Ash based products viz. bricks, blocks, tiles, sintered or cold bonded ash aggregates, fibre cement sheets, pipes, boards, panels as per para D(4) inserted to the MOEF&CC Notification on ash utilisation from coal or lignite thermal power plants Dated 31.12.2021 amended on 01.01.2024
5. That I / We hereby affirm that Quantity Allotment / LOA shall be rejected at any pre or post EOI stage, if it is found that I have applied for more fly ash quantity than required for the production capacity of ashbased product(s) per annum (12 Month Period) mentioned as above.
6. That I / We hereby affirm that the dry fly ash issued under this EOI shall be utilized only in the manufacturing of ash-based product as mentioned above, and that if at any point after the award of contract / issuance of LOA, if it is found that I have not utilized the dry fly ash issued against the contract / LOA in the manufacturing of the items mentioned above but have sold the fly ash in the market or have utilized for some other purposes, NTPC / Owner shall have the full right to terminate the contract and take any action as per applicable laws for breach of contract including forfeiture of Bid Security / Performance Bank Guarantee including Debarment from the Business Dealings as per the provisions of the relevant policy.
7. I / We also agree to submit on Half Yearly basis, an affidavit, on “Actual Utilization” of the issued ash for the purposes / Avenues as identified above in extant MoEF&CC Notification, if successful in subject EOI.
8. I / We agree to submit indemnity bond indemnifying NTPC Ltd from any liability, whatsoever, which may arise due to violation / Non – compliance of any applicable norms / rules / regulations/ Guidelines / laws during the course of execution and for future obligations (if any) by way of omission or commission by me / us or my / our representatives / agents, if successful in subject EOI.
9. I / We declare that the documents submitted by me / us against the “Eligibility for Eoi Participation” mentioned at clause number 04 of the subject EOI document, or in any subsequent clarification /s, is / are genuine and authentic. If any of the submitted document is found to be false / forged / tampered at any pre or post EOI stage or at any point after the award of the contract, I / We shall personally remain responsible for any action as per penal provisions of Indian law and NTPC / Owner shall have the full right to terminate the contract and take any action as per applicable laws for breach of contract including forfeiture of Bid Security / Performance Bank Guarantee including Debarment from the Business Dealings as per the provisions of the relevant policy.
10. (Applicable for those applicants whom fly ash has already been allocated ash through an earlier auction process /es from NTPC NABINAGAR)

I / We have been allocated ash through earlier auction process /es also from NTPC NABINAGAR. I / We understand that if further quantity of Ash is allocated to me / us through this EoI, it shall be mandatory on my / our part to collect all the monthly ash quantity allocated through this EoI, only after the monthly quantity /ies allocated against previous e-Auction /s is / are exhausted for that month.

Date: _____
Place: _____

For M/s _____
(User Agency)
Signature _____
Printed Name _____
(Authorized person having Power of Attorney)
Designation _____



DEPONENT

VERIFICATION

Verified on _____ this day of _____ that the contents of our affidavit are true and correct to the best of my knowledge and nothing material has been concealed thereof.

DEPONENT

AFFIDAVIT

(To be submitted by the Ash Recipient on Half Yearly basis)
(To be executed on a non-judicial stamp paper of appropriate value)
(To be notarized before a notary public)

I _____ son / daughter / wife of
_____ permanent resident of

____ do hereby solemnly affirm and state on oath as under:

1. That I am the owner / proprietor / partner / authorized representative of M/s _____ having their registered office at _____ and engaged in the business of _____
2. That I / we have participated in auction / EoI for allotment of Ash from NTPC _____ (Thermal Power Plant), against EoI / Bid Specification / Auction Document number _____ and that I / we have been allocated _____ MT quantity of Ash from NTPC _____ (Thermal Power Station).
3. That I hereby affirm that Ash Recipient, M/s _____ has used the received Ash quantity in adherence to the relevant provisions identified vide extant Notifications and other applicable statutory regulations, in the following activities: -
 - a. _____
 - b. _____
 - c. _____

DEPONENT

VERIFICATION

Verified on _____ this day of _____ that the contents of our affidavit are true and correct to the best of my knowledge and nothing material has been concealed thereof.

DEPONENT

Note: To be submitted on Half Yearly basis.