

Government of Odisha
Works Department

Office Memorandum

File No.07556900052013 - 10455 W, Dated. 25/9/2013

Sub:- Adoption of Request for Proposal (RFP) and Request for Qualification (RFQ) for procurement of contractors for EPC Mode in Civil Construction Works in State Government and State PSUs.

After careful consideration Government has been pleased to adopt Engineering, Procurement and Construction (EPC) Mode of contract in Civil Construction Works above Rupees Twenty Crore in State Government and State PSUs .The procurement of contractors for EPC mode of contract is to be finalized basing on the statements of Request for Proposal (RFP) and Request for Qualification (RFQ) .The draft documents of RFP and RFQ are available in Works Department website www.worksodisha.gov.in.

1. This shall take effect from the date of issue of the order.
2. This has been concurred in by the Finance Department vide their U.O.R. No.120-WF-I Dt.24.5.2013.

23/9/13
EIC - cum- Secretary to Government

Memo No. 10456 W, Dated. 25/9/13

Copy forwarded to P. S. to Hon'ble Chief Minister, Odisha for information and necessary action.

Jahalu
FA - cum- Addl. Secretary to Government

Memo No. 10457 W, Dated. 25/9/13

Copy forwarded to OSD to Chief Secretary, Odisha/ P.S. to Development Commissioner- cum-Additional Chief Secretary, Odisha for information and necessary action.

Jahalu
FA - cum- Addl. Secretary to Government

Memo No. 10458 W, Dated. 25/9/13

Copy forwarded to All Departments/ Managing Director, OB & CC Ltd., Bhubaneswar / Managing Director, OCC Ltd., Bhubaneswar for information and necessary action.

Jahalu
FA - cum- Addl. Secretary to Government

Memo No. 10459 W, Dated. 25/9/13
Copy forwarded to All Chief Engineers, Odisha / All Superintending Engineers / All Executive Engineers (under Works Department) for information and wide circulation among subordinate offices.

Memo No. 10460 FA - cum- Addl. Secretary to Government
W, Dated. 25/9/13
Copy forwarded to the Accountant General (A&E), Odisha, Bhubaneswar/ Accountant General, Odisha, Puri Branch, Puri for information and necessary action.

Memo No. 10461 FA - cum- Addl. Secretary to Government
W, Dated. 25/9/13
Copy with soft copy forwarded to the Head, State Portal Group, IT Centre, Ground Floor, North Annex of Secretariat for information and necessary action.

He is requested to display this EPC mode in the web-site of State Government.

Memo No. 10462 FA - cum- Addl. Secretary to Government
W, Dated. 25/9/13
Copy with soft copy forwarded to the Director, Printing, Stationary & Publication, Orissa, Cuttack for information and necessary action.

He is requested to publish this amendment in the next issue of Orissa Gazette.

Memo No. 10463 FA - cum- Addl. Secretary to Government
W, Dated. 25/9/13
Copy forwarded to A/C-I Section / A/C-II Section / Road Section / Plan Section / Building Section / Budget Section / N.Hs. Section / FC & AA Section / PPP Cell / EAP Cell, Works Department for information and necessary action.

FA - cum- Addl. Secretary to Government
25/9/13

Request For Proposal

For

Widening & Strengthening
of [Name of Section] of SH-**
to Two lane [with/ without] paved shoulder

on

**Engineering, Procurement & Construction
(EPC) Mode**

**Works Department
Government of Odisha**

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REQUEST FOR PROPOSAL (RFP)

[NAME AND ADDRESS OF THE AUTHORITY/ EXECUTING AGENCY]

LETTER OF INVITATION

Dated.....

To,

.....
.....

Sub:- RFP for Widening & Strengthening of [Name of Section] of SH-** to two lane [with/ without] paved shoulder on EPC mode.

Dear Sir,

Pursuant to your application in response to our [Request for Qualification for the aforesaid project (the "RFQ")] of the bidders for State Highway Works on EPC mode, you have been qualified/ short listed as a Bidder and are hereby invited to participate in the submission of financial proposal ("the BID") at this bidding stage for the aforesaid project in accordance with the RFP.

It may be noted that bidding shall be through E-procurement and BIDs should be submitted only through E-tendering. In this regard, please refer to "Instructions to Bidder for e-tendering" attachment.

The complete BID document may be viewed/ downloaded from e-tendering portal of Government of Odisha (www.tendersorissa.gov.in).

Please note that the Authority reserves the right to accept or reject all or any of the BIDs without assigning any reason whatsoever.

Thanking You.

Yours faithfully,

(Signature, name and designation of the signatory)

Instructions to Bidders for e-tendering

1. Accessing/ Purchasing of Bid Document :

- (i) The complete Bid document can be viewed /downloaded from e-tender portal of Government of Odisha ([http:// www.tendersorissa.gov.in](http://www.tendersorissa.gov.in)) by qualified bidders from to (up to hours of IST).
- (ii) To participate in bidding, bidders have to pay Rs. (Rupees.....)¹ towards fee for bid (non-refundable) in the form Demand Draft issued from a Nationalised Bank in India in favour of Executive Engineer (R&B) Division payable at and Bid Security is also to be furnished by the bidder for the amount of Rs..... (Rupees.....) in the form of Bank Guarantee (B.G) as per the format mentioned in Appendix-II, issued from a Nationalised Bank , counter-guaranteed in the Branch at Bhubaneswar.

2. Preparation and Submission of Bids:

- (i) Detailed tender documents for RFP may be downloaded from e-tender portal of Govt.of Odisha [http:// www.tenderorissa.gov.in](http://www.tenderorissa.gov.in) from ____ to ____ (up to Hrs. IST) and tender shall be submitted online.
- (ii) The following documents shall be prepared and scanned in different files and uploaded during the on-line submission of Bid. The hard copy of such uploaded documents shall be submitted to the Authority before the prescribed date & time for submission of Bids.
 - a) Bid in prescribed format (Appendix-I);
 - b) Copy of Power of Attorney for signing the Application as per the format at Appendix-III;
 - c) if applicable, Copy of the Power of Attorney for Lead Member of Joint Venture as per the format at Appendix-IV;
 - e) Certificates in accordance with Clause 2.1.17 (A) and details of Annexure A & B of Appendix-I
 - f) Cost of Bid fee of Rs ____ (_____) ¹ in the form of DD in favour of Executive Engineer(R&B) Division, payable at
 - g) Bid Security of Rs ____ (_____) in the form of Bank Guarantee (BG) in the format at Appendix-II from a Nationalised Bank in favour of Executive Engineer(R&B) Division, counter-guaranteed in the Branch at Bhubaneswar.

¹ To be fixed at the rate of Rs 20,000 (twenty thousand) for every Rs. 100 crore of the Estimated Project Cost with VAT @5% extra.. The Authority may, in its discretion, increase this amount by upto Rs. 50,000 per Rs. 100 crore of the Estimated Project Cost.

- (iii) Physical Submission of the Bid and other documents as mentioned above shall be done as per instructions mentioned in clause 2.11 of the RFP. The original Bid Security & Bid Fee shall be submitted before the Bid Due Date & Time, failing which bid shall be rejected. The offline line copy will only be referred in case the online copy is not legible. However, the contents of online copy shall only be considered for assessment. The offline copy will not be considered & opened, if online submission has not been made in the above tender web site.

3. Modification/ Withdrawal of Bids:-

- (i) In the e-Procurement Portal, it is allowed to modify the Application number of times after necessary modification, before the final date and time of submission. The Applicant shall have to log on to the system and resubmit the documents as asked for by the system. In doing so, the Application already submitted by the Applicant will be removed automatically from the system and the latest Application only will be admitted. But the Applicant should avoid modification of Application at the last moment to avoid system failure or malfunction of internet or traffic jam. If the Applicant fails to submit his modified Application within the designated time of receipt, the Application already in the system shall be taken for evaluation.

In the e-Procurement Portal, withdrawal of bid is allowed. But in such case he has to write a letter written notice of the modification, substitution or withdrawal addressed to the Authority and upload the scanned document to portal in the respective Application before the closure of receipt of the Application. The system shall not allow any withdrawal after expiry of the closure time of the Application.

- (ii) Any alteration/ modification in the Application or additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

4. Opening & Evaluation of bids :

- (i) Opening and evaluation of bids will be done through online process.
- (ii) The bids shall be opened on-line at hours IST on Dated _____, in the presence of the Bidders, who choose to attend. The bids will be subsequently examined and evaluated in accordance with the provisions of Section 3 of RFP.
- (iii) Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive as per clause 2.1.17 & 3.2.1 of these Instructions to Bidders as per e-tendering process and confirmation of authenticity of Bid Security.
- (iv) The bid shall be opened of those bidders only who submitted originals as mentioned in para 2 (ii)(f) & (g) above of e-Tendering procedure. The bid submitted on-line shall not be opened and shall be declared non - responsive, if originals are not submitted as mentioned in para 2 (ii)(f) & (g) above of e-Tendering procedure.

DISCLALMER

The information contained in this Request for Proposal document (the "RFP") or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided

This RFP is not an Agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (BIDs) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, especially the [Feasibility Report], may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the

accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this BID Stage.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder JV or Contractor, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or BIDs without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its BID including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its BID. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the BID, regardless of the conduct or outcome of the Bidding Process.

GLOSSARY

Agreement	As defined in Clause 1.1.5
Authority	As defined in Clause 1.1.1
Bank Guarantee	As defined in Clause 2.20.1
Bid(s)	As defined in Clause 1.2.2
Bidders	As defined in Clause 1.2.2
Bidding Documents	As defined in Clause 1.1.7
Bid Due Date	As defined in Clause 1.1.7
Bidding process	As defined in Clause 1.2.1
Bid Security	As defined in Clause 1.2.4
Bid Stage	As defined in Clause 1.2.1
BID Price or BID	As defined in Clause 1.2.6
Contractor	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.1.13
EPC	As defined in Clause 1.1.1
EPC Contract	As defined in Clause 1.1.2
Estimated Project Cost	As defined in Clause 1.1.4
Feasibility Report	As defined in Clause 1.2.3
Government	Government of Odisha
Joint Venture	As defined in Clause 2.2.1
Lowest Bidder	As defined in Clause 1.2.6
LOA	As defined in Clause 3.3.5
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in the Disclaimer
RFQ or Request for Pre-Qualification	As defined in Clause 2.1.2
Selected Bidder	As defined in Clause 3.3.1

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein. The words and expressions beginning with capital letters and not defined herein, but defined in the RFQ, shall, unless repugnant to the context, have the meaning ascribed thereto therein.

SECTION 1
Instructions to Bidders
 WORKS DEPARTMENT, GOVERNMENT OF ODISHA

1. INTRODUCTION

1.1 Background²

1.1.1 The Chief Engineer(DPI & Roads), Odisha] (the “Authority”) is engaged in the development of State Highways and as part of this endeavour, the Authority has decided to undertake widening & strengthening of the [(Name of the section) of SH-**]³ [2-lane with/ without paved shoulders]⁴ (the “Project”) through an Engineering, Procurement and Construction (the “EPC”) Contract, and has decided to carry out the bidding process for selection of a bidder to whom the Project may be awarded. A brief description of the project may be seen in the Information Memorandum of the Project in the website (www.tendersorissa.gov.in). Brief particulars of the Project are as follows

Name of the State Highway	Length in Km	Estimated Project Cost (In Rs. cr.) ⁵	No of Years for completion of work
[Name of section of SH-**]	[.....]	[.....]	[.....years]

1.1.2 The selected Bidder (the “Contractor”) shall be responsible for designing, engineering, procurement and construction of the Project under and in accordance with the provisions of an engineering, procurement and construction contract (the “EPC Contract”) to be entered into between the Contractor and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto. The Contractor shall also be responsible for the maintenance of the project during the Defect Liability Period, which is expected to be as per clause 1.1.3.

1.1.3 The scope of work will broadly include rehabilitation, up-gradation and augmentation of the existing carriageway to [two-lane with/ without paved shoulders] standards with construction of new pavement, rehabilitation of existing pavement, construction and/or rehabilitation of major and minor bridges, culverts, road intersections, interchanges, drains, etc and maintenance of the Project during the Defect Liability Period, which is expected to be 2 (Two) years. For major bridges and structures the Defects Liability Period shall be 5 (Five) years.

² Serially numbered footnotes are for guidance of the Authority and should be omitted prior to issue of RFP. Footnotes marked in non-numerical characters shall be retained in the RFP.
³ Wherever asterisk is used, it should be substituted by project-specific details prior to issue of RFQ.
⁴ All project-specific provisions in this document have been enclosed in square parenthesis and may be modified, as necessary, before issuing the RFP for the Project. The square parenthesis should be removed after carrying out the required modifications.
⁵ This is the likely construction cost.

- 1.1.4 The estimated cost of the Project (the “Estimated Project Cost”) has been specified in the clause 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.5 The Agreement sets forth the detailed terms and conditions for award of the project to the Contractor, including the scope of the Contractor’s services and obligations.
- 1.1.6 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Contractor set forth in the Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the work to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent , and no claims on that account shall be entertained by the Authority.
- 1.1.7 The Authority shall receive BIDs pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP (collectively the "Bidding Documents"), and all BIDs shall be prepared and submitted in accordance with such terms on or before the BID due date specified in Clause 1.3 for submission of BIDs (the “BID Due Date”).

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a two-stage process (collectively referred to as the "Bidding Process") for selection of the Bidder for award of the Project. The first stage (the "Qualification Stage") of the process involved pre-qualification (the qualifications) of interested parties in accordance with the provisions of the RFQ. (The “Bidder”, which expression shall, unless repugnant to the context, include the members of the Joint Venture) At the end of the Qualification Stage, the short-listed Bidders or the eligible Bidders w.r.t. their eligibility limit and the eligible score at the RFQ stage, are eligible for participation in this second stage of the Bidding Process (the “BID Stage”) comprising Request for Proposals.

[GOI has issued guidelines (see Appendix-V of RFP) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority shall be entitled to disqualify an Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I]

- 1.2.2 In the BID Stage, the aforesaid short-listed Bidders, including their successors, are being called upon to submit their Financial offers (the “BIDs”) in accordance with the terms specified in the Bidding Documents. The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of BIDs (the “Bid Due Date”).

- 1.2.3 The Bidding Documents include the Draft Agreement for the Project which is enclosed/ which will be provided to the Bidders on or near about ***⁶. The Feasibility Report prepared by the Authority/ consultants of the Authority (the "Feasibility Report") [is also enclosed/ will also be provided to the Bidders on or near about ***]⁷. Subject to the provisions of Clause 2.1.3, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- 1.2.4 A Bidder is required to deposit, along with its BID, a BID security of Rs *****⁸ (the "BID Security"), refundable not later than 60 (sixty) days from the BID Due Date, except in the case of the Selected Bidder whose BID Security shall be retained till it has provided a Performance Security under the Agreement. The Bidders will have an option to provide BID Security in the form of bank guarantee acceptable to the Authority, and in such event, the validity period of the bank guarantee, shall not be less than 180 (one hundred and eighty) days from the BID Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The BID shall be summarily rejected if it is not accompanied by the BID Security.
- 1.2.5 During the BID Stage, Bidders are advised to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective BIDs for award of the contract including implementation of the Project.
- 1.2.6 BIDs will be invited for the Project on the basis of the lowest cost required by a Bidder for implementing the Project (the "BID Price"). The total time allowed for completion of construction under the Agreement (the "Construction Period") and the period during which the Contractor shall be liable for maintenance and rectification of any defect or deficiency in the Project after completion of the Construction Period (the "Defect Liability Period") shall be pre-determined, and are specified in the draft Agreement forming part of the Bidding Documents.
In this RFP, the term "Lowest Bidder" shall mean the bidder who is quoting the lowest BID price.
- 1.2.7 Generally, the Lowest Bidder shall be the selected Bidder. In case such Lowest Bidder withdraws or is not selected for whatsoever reason, the Authority shall annul the Bidding Process and invite fresh bids .
- 1.2.8 Further and other details of the process to be followed at the BID Stage and the terms thereof are spelt out in this RFP.
- 1.2.9 Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.11.5 below. The envelopes/ communication shall clearly bear the following identification/ title: "Queries/Request for Additional Information: RFP for *****- Project".

6 The draft Agreement should either be provided along with the RFP or at least 45 days before the Bid Due Date and 21 days before the Pre-Bid Conference.

7. The Feasibility Report should either be provided along with the RFP or at least 45 days prior to the Bid Due Date..

8. The Bid Security shall be an amount equivalent to 1% of the Estimated Project Cost. However, the Authority may, in its discretion, prescribe a higher Bid Security not exceeding 2% of the Estimated Project Cost. In case of a project having an Estimated Project Cost of Rs. 2,000 cr. or above, the Authority may, in its discretion, reduce the Bid Security, but not less than 0.5% of the Indicative Project Cost in any case.

1.3 **Schedule of Bidding Process**

The Authority shall endeavour to adhere to the following schedule:

Sl. No	Event Description	Date
1	Last date for receiving queries	[10 days from the date of RFP]
2	Pre-BID meeting	[15-20 days from the date of RFP]
3	Authority response to queries latest by	[25 days from the date of RFP]
4	Last date of sale of BID Document	[To be specified]
5	BID Due Date	[To be specified]
6	Opening of BIDs	On next working day of Bid Due Date
7	Letter of Award (LOA)	Within 45 days of BID opening Date
8	Validity of BID	120 days of BID Due Date
9	Signing of Agreement	Within 15 days of award of LOA

SECTION-2
2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 General terms of Bidding

- 2.1.1 No Bidder shall submit more than one BID for the Project. A Bidder bidding individually or as a member of a Joint Venture shall not be entitled to submit another BID either individually or as a member of any Joint Venture, as the case may be.
- 2.1.2 Unless the context otherwise requires, the terms not defined in this RFP, but defined in the Request for Qualification document for the Project (the "RFQ") and its amendment with supplementary document shall have the meaning assigned thereto in the RFQ.
- 2.1.3 The Feasibility Report of the Project is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Feasibility Report shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Feasibility Report.
- 2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Agreement.
- 2.1.5 The BID shall be furnished in the format exactly as per Appendix-I, clearly indicating the BID amount in both figures and words, in Indian Rupees, and signed by the Bidder's authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.1.6 The Bidder shall deposit a BID Security of _____ in accordance with the provisions of this RFP. The Bidder has to provide the BID Security in the form of a Bank Guarantee acceptable to the Authority, as per format at Appendix-II.
- 2.1.7 The validity period of the Bank Guarantee, shall not be less than 180 (one hundred and eighty) days from the BID Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder. The BID shall be summarily rejected if it is not accompanied by the BID Security. The BID Security shall be refundable no later than 60 (sixty) days from the BID Due Date except in the case of the elected Bidder whose BID Security shall be retained till it has provided a Performance Security under the Agreement.
- 2.1.8 The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorising the signatory of the BID to commit the Bidder.
- 2.1.9 In case the Bidder is a Joint Venture, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix-IV.

- 2.1.10 Any condition or qualification or any other stipulation contained in the BID shall render the BID liable to rejection as a non-responsive BID.
- 2.1.11 The BID and all communications in relation to or concerning the Bidding Documents and the BID shall be in English language.
- 2.1.12 The documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a BID in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their BID. The provisions of this Clause 2.1.12 shall also apply mutatis mutandis to BIDs and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any BID, document or any information provided along therewith.
- 2.1.13 An Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified and liable for forfeiture of the BID Security or Performance Security as the case may be. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (i) the Bidder, its Joint Venture Member (or any constituent thereof) and any other Bidder, its Member or any Member of its Joint Venture thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, or its Joint Venture Member thereof (or any shareholder thereof having a shareholding of more than 5% (five percent) of the paid up and subscribed share capital of such Bidder, or its Joint Venture Member, as the case may be), in the other Bidder, its Joint Venture Member is less than 5% (five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956. For the purposes of this Clause 2.1.13, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
 - (ii) a constituent of such Bidder is also a constituent of another Bidder; or

- (iii) such Bidder, or any of its Joint Venture Member thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any of its Joint Venture Member thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any of its Joint Venture Member thereof; or
- (iv) such Bidder has the same legal representative for purposes of this Application as any other Bidder; or
- (v) such Bidder, or any of its Joint Venture Member thereof has a relationship with another Bidder, or any of its Joint Venture Member thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Application of either or each other; or
- (vi) such Bidder, or any of its Joint Venture Member thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

2.1.14 A Bidder shall be liable for disqualification and forfeiture of BID Security, if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Agreement. In the event any such adviser is engaged by the selected Bidder or Contractor, as the case may be, after issue of the LOA or execution of the Agreement for matters related or incidental to the project, then notwithstanding anything to the contrary contained herein or in the LOA or the Agreement and without Prejudice to any other right or remedy or the Authority, including the forfeiture and appropriation of the BID Security or Performance Security, as the case may be, which the Authority may have there under or otherwise, the LOA or the Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Contractor for the same. For the avoidance or doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFQ. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

2.1.15 This RFP is not transferable.

2.1.16 Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents and also fulfilling the criterion as mentioned in clause 2.1.17.

2.1.17 Other eligibility conditions:

(A) Updated BID Capacity

- (i) Bidders who meet the minimum qualification criteria will be qualified only if their available BID capacity is more than the total BID value (value as per clause 1.1.1). The available BID capacity will be calculated as per following, based on information mentioned at Annexure-A of Appendix-I:

$$\text{Assessed Available BID capacity} = (A * N^2 - B) \text{ Where}$$

A = Maximum value of civil engineering works executed in any one year during the last five years (updated to the price level of the year indicated in Appendix) taking into account the completed as well as works in progress.

N= Number of years prescribed for completion of the works for which BIDs are invited.

B = Value (updated to the price level of the year indicated in table below under note) of existing commitments and on-going works to be completed during the next years (period of completion of the works for which BIDs are invited).

Note: The statement showing the value of existing commitments and on-going works as well as the stipulated period completion remaining for each of the works listed should be countersigned by the Engineer in the charge, not below the rank of an Executive Engineer or equivalent. The factors for the year for updation to the price level is indicated as under:

Sl.No	Particulars	Updation factor
1	Year-1	1.00
2	Year -2	1.05
3	Year-3	1.10
4	Year-4	1.15
5	Year-5	1.20

- (ii) The minimum Threshold Technical Capacity requirement as specified in 2.2.2 (A) shall be considered after further adjustment of factors as specified in clause 3.2.6 of RFQ .
- (B) In case of a Joint Venture, the Threshold Technical Capacity of all the Members of Joint Venture should be in accordance with clause 2.1.17 (A) above. Further, Lead Member shall meet at least 60% requirement of Technical Capacity required as per Clause 2.1.17 (A) and each of other JV members shall meet at least 30% requirement of Technical capacity as per Clause 2.1.17 (A). For avoidance of doubt it is further clarified that the Joint Venture must collectively and individually satisfy the above qualification criteria.

2.1.18 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the date of Application, would not be eligible to submit the BID, either individually or as member of a Joint Venture.

2.1.19 The Bidder including individual or any of its Joint Venture Member should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder including individual or any of its Joint Venture Member, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder including individual or any of its Joint Venture Member.

2.1.19.1 The Bidder including individual or any of its Joint Venture Member may provide details of all their on-going projects alongwith updated stage of litigation, if so, against the Authority / Governments.

2.1.19.2 The Bidder including individual or any of its Joint Venture Member may also provide details of updated on-going process of blacklisting if so, under any contract with Authority / Government.

2.1.19.3 The Authority reserves the right to reject an otherwise eligible bidder on the basis of the information provided under clause 2.1.19. The decision of the Authority in this case shall be final.

2.2 Change in composition of the Joint Venture

2.2.1 Where the bidder is a Joint Venture, Change in the composition of a Joint Venture may be permitted by the Authority during the BID Stage, only where:

(a) the Lead Member continues to be the Lead Member of the Joint Venture;

(b) the substitute is at least equal, in terms of Technical Capacity, to the Member who is sought to be substituted and the modified Joint Venture shall continue to meet the pre-qualification criteria for Applicants; and

(c) the new Member(s) expressly adopt(s) the Application already made on behalf of the Joint Venture as if it were a party to it originally, and is not an Applicant of any other Joint Venture bidding for this Project.

2.2.2 Approval for change in the composition of a Joint Venture shall be at the sole discretion of the Authority and must be approved by the Authority in writing. The bidder must submit its application for change in composition of the Joint member no later than 15 (fifteen) days prior to the BID Due Date.

2.2.3 The modified/ reconstituted Joint Venture shall submit a revised Joint Bidding Agreement for Joint Venture substantially as per the format in Appendix-IV of RFQ, and a Power of Attorney substantially as per the format in Appendix-III & IV of RFP and Appendix-III of RFP, prior to the BID Due Date.

2.3 Change in ownership

2.3.1 By submitting the BID, the Bidder shall be deemed to have acknowledged and agreed that in the event of a change in control of a Joint Venture Members whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the agreement, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed to be a breach of the Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Contractor. In such an event, notwithstanding anything to the contrary contained in the Agreement, the Authority shall be entitled to forfeit and appropriate the BID Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Agreement or otherwise.

2.4 Cost of Bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their BIDs and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

2.5.1 Bidders are encouraged to submit their respective BIDs after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water & other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.5.2 It shall be deemed that by submitting a BID, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above. No claim shall be admissible at any stage on this account.
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed BID, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under.
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Agreement by the Contractor;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.3 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, RFQ, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

2.6 Verification and Disqualification

2.6.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFQ, the RFP or the Bidding Documents and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority there under.

2.6.2 The Authority reserves the right to reject any BID and appropriate the BID Security if:

(a) at any time, a material misrepresentation is made or uncovered, or

(b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the BID.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Joint Venture, then the entire Joint Venture and each Member of the Joint Venture may be disqualified/ rejected. If such disqualification /rejection occurs after the BIDs have been opened and the lowest Bidder gets disqualified / rejected, then the Authority reserves the right to Annul the Bidding Process and invites fresh BIDs.

2.6.3 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of defect liability subsistence thereof, that one or more of the pre-qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the contractor either by issue of the LOA or entering into of the Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Contractor, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Contractor. In such an event, the Authority shall be entitled to forfeit and appropriate the BID Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise.

B.DOCUMENTS

2.7 Contents of the RFP

2.7.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

Invitation for BIDS

Section 1.	Introduction
Section 2.	Instructions to Bidders
Section 3.	Evaluation of BIDs
Section 4.	Fraud and Corrupt Practices
Section 5.	Pre-BID Conference
Section 6.	Miscellaneous

Appendices

- I. Letter comprising the BID
- II. Bank Guarantee for BID Security
- III. Power of Attorney for signing of BID
- IV. Power of Attorney for Lead Member of Joint Venture
- V. Guidelines of the Department of Disinvestment

2.7.2 The draft Agreement and the Feasibility Report provided by the Authority as part of the BID Documents shall be deemed to be part of this RFP.

2.8 Clarifications

2.8.1 Bidders requiring any clarification on the RFP may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.9. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the BID Due Date. The responses will be sent in website and by fax or e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

2.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall

be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.9 Amendment of RFP

2.9.1 At any time prior to the BID Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.

2.9.2 Any Addendum issued hereunder will be in writing and shall be sent to all the Bidders and will be available in website.

2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the BID Due Date^S.

^S While extending the BID Due Date on account of an addendum, the Authority shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the BID Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of BID

2.10.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those BIDs that are received online in the required formats and complete in all respects.

2.10.2 The BID and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink. All the alterations, omissions, additions or any other amendments made to the BID shall be initialled by the person(s) signing the BID.

2.11 Sealing, Marking and e-tendering of BIDs

2.11.1 The Bidder shall submit the BID online along with other supporting scanned documents as mentioned below.

- (a) BID in the format specified at Appendix-I
- (b) Power of Attorney for signing the BID as per the format at Appendix-III;
- (c) if applicable, Power of Attorney for Lead Member of Joint Venture as per the format at Appendix-IV of RFQ;
- (d) Certificates in accordance with Clause 2.1.17(A) & Details of Annexure A & B of Appendix-I.
- (e) Copy of BID Security of Rs ** (**) in the form of Bank Guarantee in the format at Appendix-II from a Nationalized Bank in favour of Executive Engineer(R&B) Division, counter-guaranteed in the Branch at Bhubaneswar.
- (f) Copy of Cost of tender document of Rs ** (**) in the form of DD in favour of [“Executive Engineer,..... (R&B) Division ” payable at (Headquarter of the concerned Division)].

2.11.2 The documents supporting the BID shall be submitted physically in a separate envelope marked as “Enclosures of the BID”. The documents shall include:

- (a) BID in the format specified at Appendix-I
- (b) Following documents be bound together in hard cover and the pages shall be numbered serially. Each page thereof shall be initialled in ink blue by the authorized signatory of the bidder.
 - (i) Certificates in accordance with Clause 2.1.17(A) and Details of Annexure A & B of Appendix-I
 - (ii) Power of Attorney for signing the Application as per the format at Appendix-III;
 - (iii) if applicable, Power of Attorney for Lead Member of Joint Venture as per the format at Appendix-IV of RFQ;
 - (iv) BID Security of Rs ** (**) in the form of Bank Guarantee in the format at Appendix-II from the Nationalized Bank in favour of Executive Engineer(R&B) Division, counter-guaranteed in the Branch at Bhubaneswar.
- (c) Cost of tender document of Rs ** (**) in the form of Demand Draft in favour of [“Executive Engineer,..... (R&B) Division ” payable at (Headquarter of the concerned Division)].

2.11.3 Clause ~~deleted~~.

2.11.4 The envelopes containing the offline copy shall clearly bear the identification “BID for the *** ** Project” and shall clearly indicate the name and address of the Bidder. In addition, the BID Due Date should be indicated on the right hand top corner of the envelope. The hard copy shall be submitted before Bid due date and time. However, the contents of the online copy shall only be considered. The offline copy will be referred, if the online copy is not legible.

2.11.5 The offline copy shall be submitted to :

ATTN.OF:	-----
DESIGNATION	Chief Engineer (DPI & Roads) , Odisha
ADDRESS	OFFICE OF THE E.I.C (CIVIL) ODISHA, NIRMAN SOUDHA, UNIT- V, KESHARI NAGAR, BHUBANESWAR-751001
FAX NO.	0674-2394107
E-MAIL ADDRESS	ceroads.bbsr@gmail.com

2.11.6 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the BID submitted and consequent losses, if any, suffered by the Bidder.

2.11.7 BIDs submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.12 BID Due Date

2.12.1 BID and Enclosures of BID should be submitted **before hours** IST on the BID Due Date at the address provided in Clause 2.11.5 in the manner and form as detailed in this RFP.

2.12.2 The Authority may, in its sole discretion, extend the BID Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

2.13 Clause deleted.

2.14 Contents of the BID

2.14.1 The BID shall be furnished in the format at Appendix-I and shall consist of a [lump-sum fee in Indian Rupees] to be quoted by the Bidder to undertake the Project in accordance with this RFP and the provisions of the Agreement.

2.14.2 Generally, the Project will be awarded to that pre qualified Bidder who fulfils the criteria mentioned in clause 2.1.17 and quoted the lowest BID price.

2.14.3 The opening of BIDs and acceptance thereof shall be substantially in accordance with this RFP.

2.14.4 The proposed Agreement shall be deemed to be part of the BID.

2.15 Modifications/ Substitution/ Withdrawal of BIDs

2.15.1 In the E-Procurement Portal, it is allowed to modify the bid any number of times before the final date and time of submission. The bidder shall have to log on to the system and resubmit the documents as asked for by the system. In doing so, the bids already submitted by the bidder will be removed automatically from the system and the latest bid only will be admitted. But the bidder should avoid modification of bid at the last moment to avoid system failure or malfunction of internet or traffic jam or power failure. If the bidder fails to submit his modified bids within the designated time of receipt, the bid already in the system shall be taken for evaluation.

2.15.2 In the E-Procurement Portal, withdrawal of bid is allowed. But in such case he has to write a letter with appropriate reasons for his withdrawal addressed to the Officer inviting the bid and up load the scanned document to portal in the respective bid before the closure date and time of receipt of the bid. The system shall not allow any withdrawal after expiry of the closure time of the bid.

2.15.3 Any alteration/modification in the BID or additional information supplied subsequent to the BID Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.16 Rejection of BIDS

2.16.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any BID and to annul the Bidding Process and reject all BIDS at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Authority rejects or annuls all the BIDS, it may, in its discretion, invite all eligible Bidders to submit fresh BIDS hereunder.

2.16.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any BID without assigning any reasons.

2.17 Validity of BIDS

The BIDS shall be valid for a period of not less than 120 (one hundred and twenty) days from the BID Due Date. The validity of BIDS may be extended by mutual consent of the respective Bidders and the Authority.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the BID, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and / or the Authority or as may be required by law or in connection with any legal process.

2.19 Correspondence with the Bidder

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any BID.

D BID SECURITY

2.20 BID Security

2.20.1 The Bidder shall furnish as part of its BID, a BID Security referred to in Clauses 2.1.6 and 2.1.7 hereinabove in the form of a bank guarantee issued by a Nationalised Bank in favour of the **Executive Engineer,..... (R&B) Division**, counter-guaranteed in the Branch at Bhubaneswar in the format at Appendix-II (the “**Bank Guarantee**”) and having a validity period of not less than 180 (one hundred eighty) days from the BID Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time.

2.20.2 Deleted

2.20.3 Any BID not accompanied by the BID Security shall be summarily rejected by the Authority as non-responsive.

2.20.4 Deleted

2.20.5 The Selected Bidder's BID Security will be returned, without any interest, upon the bidder signing the Contract Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder's option, adjust the amount of BID Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Agreement.

2.20.6 The Authority shall be entitled to forfeit and appropriate the BID Security as Damages inter alia in any of the events specified in Clause 2.20.7 herein below. The Bidder, by submitting its BID pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its BID or for any other default by the Bidder during the period of BID validity as specified in this RFP. No relaxation of any kind on BID Security shall be given to any Bidder.

2.20.7 The BID Security shall be forfeited and appropriated by the Authority as damages payable to the Authority for, inter-alia, time cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority under the bidding documents and / or under the Agreement, or otherwise, under the following conditions:

- (a) If a Bidder submits a non-responsive BID as defined in 3.2;
- (b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
- (c) If a Bidder withdraws its BID during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective

Bidder(s) and the Authority;

- (d) In the case of Selected Bidder, if it fails within the specified time limit –
 - (i) to sign and return the duplicate copy of LOA;
 - (ii) to sign the Agreement; or
 - (iii) to furnish the Performance Security within the period prescribed therefor in the Agreement; or

- (e) In case the Selected Bidder, having signed the Agreement, commits any breach thereof prior to furnishing the Performance Security.

2.20.8 Performance Security

Within 10 (ten) days of signing of Contract Agreement, the successful bidder shall furnish to the Authority a Performance Security in accordance with the provisions of the Agreement and in the format given in this RFP.

SECTION -3

3. EVALUATION OF BIDS

- 3.1 Opening Evaluation and Comparison of Financial Bids
- 3.1.1 The Authority shall open the BIDs received physically & **online at hours** on the BID Due Date, at the place specified in Clause 2.11.5 and in the presence of the Bidders who choose to attend. The Authority shall prepare minutes of the BID opening, including information disclosed to those present at the time of BID opening.
- 3.1.2 Only those physically received Envelopes shall be considered, whose E-BIDs has been received under e- procurement.
- 3.1.3 To facilitate evaluation of BIDs, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its BID.
- 3.1.4 The Authority will get the BID security verified from the issuing authority and after due verification, the authority will examine and evaluate the BID in accordance with this section 3. The Authority shall evaluate and compare only BIDs found to be responsive in accordance with clause 3.2.
- 3.2 Tests of responsiveness
- 3.2.1 Prior to evaluation of BIDs, the Authority shall determine whether each BID is responsive to the requirements of this RFP. A BID shall be considered responsive only if:
- (a) BID is received online as per the format at Appendix-I;
 - (b) 'Enclosures of the BID' is received physically and online by the BID Due Date including any extension thereof pursuant to Clause 2.12.2;
 - (c) it is signed, sealed and marked as stipulated in clauses 2.10 and 2.11;
 - (d) it is accompanied by the BID Security as specified in Clause 2.1.6;
 - (e) it is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.8 and 2.1.9, as the case may be;
 - (f) it contain all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
 - (g) it does not contain any condition or qualification; and
 - (i) it is qualified w.r.t clause 2.1.18 and 2.1.19 as per details mentioned at Annexure A & B of Appendix - I.
 - (h) it is not non-responsive in terms hereof.
- 3.2.2 The Authority reserves the right to reject any BID which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such BID.

3.3 Selection of Bidder

3.3.1 Subject to the provisions of Clause 2.16.1, the Bidder whose BID is adjudged as responsive in terms of Clause 3.2.1 and who quotes lowest price shall be declared as the selected Bidder (the "Selected Bidder"). In the event that the Authority rejects or annuls all the BIDs, it may, in its discretion, invite all eligible Bidders to submit fresh BIDs hereunder.

3.3.2 In the event that two or more Bidders quote the same BID price (the "Tie BIDs"), and found to be the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.

3.3.3 In the event that the Lowest Bidder is not selected for any reason, the Authority shall annul the Bidding Process and invite fresh bids.

3.3.4 Deleted

3.3.5 After selection, a Letter of Award (the "LOA") shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7(seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the BID Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the NOI-inconformity with 3.3.3.

3.3.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the bidder to execute the Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement.

3.4 Contacts during BID Evaluation

BIDs shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/rejection to the Bidders. While the BIDs are under consideration, Bidders and/or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the BIDs under consideration.

SECTION -4
4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, the Authority may reject a BID, withdraw the LOA, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the BID Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, or otherwise if a Bidder or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Agreement, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder, or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise

ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.1.14 of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Contract Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

- (b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- (c) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- (d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

SECTION -5
5-PRE-BID CONFERENCE

- 5.1 Pre-BID conference of the Bidders shall be convened at the designated date, time and place. Only those persons who have been short listed in the RFQ shall be allowed to participate in the Pre-Bid conference. A maximum of two representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.

- 5.2 During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

SECTION -6
6.MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India/Odisha and the Courts at Bhubaneswar shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 6.4 The Bidding Documents and RFQ are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFP, in the event of any conflict between them the priority shall be in the following order:
- (a) the Bidding Documents;
 - (b) the RFQ.
- i.e. the Bidding Documents at (a) above shall prevail over the RFQ at (b) above.

LETTER COMPRISING THE BID
(Refer Clauses 2.1.5 and 2.14)

Dated:

[The Chief Engineer (DPI & Roads) Odisha ,
O/o the E.I.C (Civil), Odisha ,
Nirman Soudha, Unit-V,
Bhubaneswar-751001]

Sub: BID for ***** Project

Dear Sir,

- With reference to your RFP document dated *** **^s, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our BID for the aforesaid Project. The BID is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the BID and the documents accompanying the BID for selection of the Contractor for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the BID are true copies of their respective originals.
 3. This statement is made for the express purpose of our selection as EPC Contractor for the development, construction, rehabilitation and augmentation of the aforesaid Project and maintenance of the Project during the Defect Liability Period.
 4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the BID.
 5. I/ We acknowledge the right of the Authority to reject our BID without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
 6. I/ We certify that in the last three years, we/ any of the JV partners have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
 7. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and
 - (b) I/We do not have any conflict of interest in accordance with Clauses 2.1.13 and 2.1.14 of the RFP document; and
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any Agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and

All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.

\$ If the Bidder is not a JV, the provisions applicable to JV may be omitted.

- (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
- (e) the undertakings given by us along with the Application in response to the RFQ for the Project and information mentioned for the evaluation of the BID Capacity in Annexure I were true and correct as on the date of making the Application and are also true and correct as on the BID Due Date and I/we shall continue to abide by them.
- 8 I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any BID that you may receive nor to invite the Bidders to BID for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16 of the RFP document.
- 9 I/We believe that we/our Joint Venture satisfy(s) the Threshold Technical Capacity, Net Worth criteria and meet(s) the requirements as specified in the RFQ document.
- 10 I/ We declare that we/ any Member of the Joint Venture or our/Joint Venture member, are not a Member of any other Joint Venture submitting a BID for the Project.
- 11 I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Joint Venture or any of our/their Joint venture member have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
- 12 I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Joint Venture or any of our/their Joint venture member have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
- 13 I/ We further certify that no investigation by a regulatory authority is pending either against us/any member of Joint Venture or against our CEO or any of our directors/ managers/ employees.
- 14 [I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated 13.7.01, a copy of which forms part of the RFP at Appendix-V thereof.]

- 15 I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
- 16 I/ We acknowledge and agree that in the event of a change in control of any member of Joint Venture whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Joint Venture or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Agreement upto its validity. It would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
- 17 I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
- 18 In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Agreement in accordance with the draft that has been provided to me/us prior to the BID Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
- 19 I/ We have studied all the Bidding Documents carefully and also surveyed the [project highway and the traffic]. We understand that except to the extent as expressly setforth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Agreement.
- 20 I/ We offer a BID Security of Rs.*******(Rupees **** only)** to the Authority in accordance with the RFP Document.
- 21 The BID Security in the form of a Bank Guarantee is attached.
- 22 The documents accompanying the BID, as specified in Clause 2.11.2 of the RFP, have been submitted in a separate envelope and marked as “Enclosures of the BID”.

- 23 I/ We agree and understand that the BID is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Contract is not awarded to me/us or our BID is not opened or rejected.
- 24 The BID Price has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.
- 25 I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
- 26 {We, the Joint Venture agree and undertake to be jointly and severally liable for all the obligations of the EPC Contractor under the Contract Agreement }.
- 27 I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the BID Due Date specified in the RFP.
- 28 I/ We hereby submit our BID and offer a BID Price of **Rs._____** (Rupees _____only) for undertaking the aforesaid Project in accordance with the Bidding Documents and the Agreement.

In witness thereof, I/we submit this BID under and in accordance with the terms of the RFP document.

Yours faithfully,

Date: (Signature, name and designation of the Authorised signatory)

Place:-

Name and seal of Bidder/Lead Member

Note:- Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, or modified as necessary to reflect Bidder-specific particulars.

Information required to evaluate the BID Capacity under clause 2.1.17 (A):

To calculate the value of “A”

- 1 A table containing value of Civil Engineering Works undertaken by the Bidder during the last 5 years is as follows:

Sl.No	Year	Value of Civil Engg.Works undertaken (Rs. In Crores)
1	2012-13	
2	2011-12	
3	2010-11	
4	2009-10	
5	2008-09	

- 2 Maximum value of projects that have been undertaken during the F.Y. _____ out of the last 5 years and value thereof is Rs. _____ Crores (Rupees _____). Further, value updated to the price level of the year indicated in Appendix is as follows.

Rs. _____ Crores x _____ (Updation Factor as per Appendix)=
Rs. ----- Crores (Rupees _____)

..... Signature, name and designation of Authorised Signatory For and on behalf of (Name of the Applicant) Name of the Statutory Auditor's firm: Seal of the audit firm: (Signature, name and designation and Membership No. of authorised signatory)
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To calculate the value of “B”

A table containing value of all the existing commitments and on-going works to be completed during the next ___ years is as follows:

Sl. No	Name of Project/Work	Percentage of Participation of Bidder in the project	Stipulated period of completion as per Agreement /LOA	Value contract as per Agreement /LOA (Rs.in Crore)	Value of work completed (Rs.in Crore)	Balance value of work to be completed (Rs.in Crore)	Anticipated date of completion	Balance value of work at 2012-13 price level . (Rs. In Crore)
1	2	3	4	5	6	7	8	9

Updation Factor as given below:-

For year	Financial Year	Updation Factor
1	2012-13	1.00
2	2011-12	1.05
3	2010-11	1.10
4	2009-10	1.15
5	2008-09	1.20

The Statement showing the value of all existing commitments and ongoing works as well as the stipulated period of completion remaining for each of the works mentioned above is verified from the certificate issued that has been countersigned by the Client or its Engineer-in-charge not below the rank of Executive Engineer or equivalent in respect of said Projects or Concessionaire / Authorised Signatory of SPV in respect of BOT Projects.

<p>..... Signature, name and designation of Authorised Signatory</p> <p>For and on behalf of (Name of the Applicant)</p>	<p>..... Name of the Statutory Auditor’s firm: Seal of the audit firm: (Signature, name and designation and Membership No. of authorised signatory)</p>
--	---

Date:
Place:

- (A) The updated following information w.r.t para 2.1.18 for the Bidder and each Member of the Joint Venture:

Name of Applicant/ member of Joint Venture:

No.	Criteria	Yes	No
1	Has the Bidder/ constituent of the Joint Venture been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project (BOT, EPC or otherwise).		
2	If the answer to 1 is yes, does the bar subsist as on BID due date.		
3	Has the Bidder/ constituent of the Joint Venture paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

- (B) The updated following information w.r.t para 2.1.19 for the Bidder and each Member of the Joint Venture:

No.	Criteria	1 st last year	2 nd last year	3 rd last year
1	If bidder have either failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or any of its Joint Venture Member, as the case may be, or has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder or any of its Joint Venture Member.			
2	Updated details of stage of litigation, if so, against the Authority / Governments on all the on-going projects of the bidder or any of its Joint Venture Member.			
3	Updated details of on-going process of blacklisting if so, under any contract with Authority / Government on the Bidder including any of its Joint Venture member.			

APPENDIX-II
Bank Guarantee for Bid Security
(Refer Clauses 2.1.7 and 2.20.1)

B.G.NO. Dated:

- 1 In consideration of you, ***** ****, **having its office at *** ****, (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the BID of and having its registered office at (and acting on behalf of its JV) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for **the *** **** Project on [EPC] basis (hereinafter referred to as “the Project”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft contract Agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.1.6 read with Clause 2.1.7 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. ***** **** (Rupees ***** **** only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
- 2 Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
- 3 We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its BID open during the BID validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. ***** **** (Rupees ***** **** only)

- 4 This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the BID Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
- 5 We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its BID open during the BID validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
- 6 The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
- 7 In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the BIDs or the BID validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

- 8 Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
- 9 We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorized to receive the said notice of claim.
- 10 It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
- 11 We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
- 12 The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
- 13 For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. *** crore (Rupees *** ** crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days after the BID Due Date)].

Signed and Delivered by Bank

By the hand of Mr./Ms, its and authorised official.

(Signature of the Authorised Signatory)

(Official-Seal)

APPENDIX-III

Format for Power of Attorney for signing of BID

(Refer Clause 2.1.8)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Joint Venture and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our BID for the ***** Project proposed or being developed by the ***** (the "Authority") including but not limited to signing and submission of all applications, BIDs and other documents and writings, participate in Pre-BID and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the agreement and undertakings consequent to acceptance of our BID, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our BID for the said Project and/ or upon award thereof to us and/or until the entering into of the EPC Contract with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THISDAY OF 2.....

For

(Signature, name, designation and address)
of person authorized by Board Resolution
(in case of Firm/ Company)/ partner in
case of Partnership firm

Witnesses :

- 1.
- 2.

Accepted

.....

(Signature)
(Name, Title and Address of the Attorney)

(Notarised)

Person identified by me/ personally
appeared before me/
Attested/ Authenticated*
(*Notary to specify as applicable)
(Signature Name and Address of the Notary)
Seal of the Notary
Registration No. of the Notary
Date:.....

Appendix –III contd.

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Notes:-

**The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

**Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

***Clause deleted .**

APPENDIX-IV
Format for Power of Attorney for Lead Member of Joint Venture
(Refer Clause 2.1.9)

Whereas the ***** (“the Authority”) has invited BIDs from prequalified applicants for the ***** Project (the “Project”).

Whereas,.....and (collectively the “Joint Venture”) being Members of the Joint Venture are interested in bidding for the Project in accordance with the terms and conditions of the Request for Qualification (RFQ), Request for Proposal (RFP) and other BID documents including agreement in respect of the Project, and

Whereas, it is necessary for the Members of the Joint Venture to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Joint Venture, all acts, deeds and things as may be necessary in connection with the Joint Venture’s BID for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at,
M/s..... having our registered office at
.....,M/s..... having our registered office at
.....,and having our registered office at
....., hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/S having its registered office at, being one of the Members of the Joint Venture, as the Lead Member and true and lawful attorney of the Joint Venture (hereinafter referred to as the “Attorney”). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Joint Venture and any one of us during the bidding process and, in the event the Joint Venture is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Joint Venture, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Joint Venture and submission of its BID for the Project, including but not limited to signing and submission of all applications, BIDs and other documents and writings, participate in pre BID and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the BID of the Joint Venture and generally to represent the Joint Venture in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Joint Venture’s BID for the in all respect Project and/ or upon award thereof till the EPC Contract is entered into with the Authority & Compelled.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall

always be deemed to have been done by us/ Joint Venture.

Appendix-IV contd..

Page 2

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF2.....

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

(Executants)

(To be executed by all the Members of the Joint Venture)

Witnesses:

- 1.
- 2.

Notes:

*The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

*Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

*Clause deleted.

Guidelines of the Department of Disinvestment

(Refer Clause 1.2.1)

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment

Block 14, CGO Complex
New Delhi.

Dated 13th July, 2001.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment.

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- (c) In both (a) and (b), disqualification shall continue for a period that

Government deems appropriate.

⁹These guidelines may be modified or substituted by the Government from time to time.

Appendix-V

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- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

Sd/-

(A.K.Tewari)

Under Secretary to the Government of India

Appendix-VI

LIST OF BID-SPECIFIC CLAUSES^S

- A. Clauses and appendices with non-numerical footnotes
 - 1. Clause 2.9.3: Amendment of RFP
 - 2. Appendix-I: Letter comprising the Bid (Para 1)
 - 3. Appendix VI: List of Bid-specific clauses
- B. Clauses and appendices with blank spaces
 - 1 Letter of invitation
 - 2 Appendix-I: Letter comprising the Bid (Para 28 & signatures)
 - 3 Appendix-I: Annexure – A (table in para 1 for value of ‘A’ and table for value of ‘B’, para 2 & signatures)
 - 4 Appendix-I: Annexure – B (table in para A & B)
 - 5 Appendix-II: Bank Guarantee for Bid Security (Para 1 and signatures)
 - 6 Appendix-III: Power of Attorney for signing of Bid (Para 1 and signatures)
 - 7 Appendix-IV: Power of Attorney for Lead Member of Consortium (Paras 2 and 4 and signatures)

^S This Appendix-VI contains a list of clauses and appendices that would need to be suitably modified for reflecting applicant-specific provisions. This Appendix-VI may, therefore, be included in the RFP document to be issued to prospective Applicants. The blank spaces in Appendices may be filled up by the Applicant and the footnotes may be deleted when it submits its proposal.

Appendix-VII

LIST OF PROJECT-SPECIFIC CLAUSES¹⁰

A	Cluses and appendices with serially numbered footnotes
1	Letter of Invitation
2	INSTRUCTION TO BIDDER FOR e-TENDERING: (Footnote No. 1)
3	Clause 1.1: Background (Footnote No. 2)
4	Clause 1.1.1: Background (Footnote No. 3 and 4)
5	Table below Clause 1.1.1: Background (Footnote No. 5)
6	Clause 1.2.3: Brief description of Bidding Process (Footnote No. 6 & 7)
7	Clause 1.2.4: Brief description of Bidding Process (Footnote No. 8)
8	Appendix-V: Guidelines of the Department of Disinvestment (Footnote No. 9)
9	Appendix VII: List of Project-specific clauses (Footnote No. 10)
B.	Cluses and appendices with square parenthesis
1	Letter of invitation
2	INSTRUCTION TO BIDDER FOR e-TENDERING
3	Disclaimer
4	Section 1: Name of the Authority
5	Clause 1.1.1: Background
6	Clause 1.1.3: Background
7	Clause 1.2.1: Brief description of Bidding Process
8	Clause 1.2.3: Brief description of Bidding Process
9	Clause 1.3: Brief description of Bidding Process
10	Clause 2.11.1(e) & (g): Sealing, Marking & e-tendering of Bids
11	Clause 2.11.2(c): Sealing, Marking & e-tendering of Bids
12	Clause 6.1: Miscellaneous
13	Appendix-I: Letter comprising the Bid (Addressee, Para 14)
14	Appendix-II: Bank Guarantee for Bid Security
C	Cluses and appendices with asterisk
1	Letter of invitation: Subject line
2	INSTRUCTION TO BIDDER FOR e-TENDERING (Para-1 (ii), (iii), (iv); 2(i), 2(ii) f & g; 4(ii); 5)
3	Clause 1.1.1: Background
4	Clause 1.2.4: Brief description of Bidding Process
5	Clause 1.2.9: Brief description of Bidding Process
6	Clause 2.1.6: General terms of Bidding
7	Clause 2.11.1: Sealing and Marking of Bids
8	Clause 2.11.2: Sealing and Marking of Bids
9	Clause 2.11.4: Sealing and Marking of Bids
10	Clause 2.11.5: Sealing and Marking of Bids
11	Appendix-I: Letter comprising the Bid (subject, Para 1 and 20)
12	Appendix-II: Bank Guarantee for Bid Security (Para 1, 3 and 13)
13	Appendix-III: Power of Attorney for signing of Bid
14	Appendix-IV: Power of Attorney for Lead Member of Consortium

¹⁰ This Appendix-VII contains a list of clauses and appendices that would need to be suitably modified, prior to issue of the RFP document, for reflecting project-specific provisions. This Appendix-VII should be omitted before issuing the RFP document to prospective Applicants.

**REQUEST FOR QUALIFICATION
FOR
ENGINEERING, PROCUREMENT &
CONSTRUCTION
FOR
WIDENING & STRENGTHENING
OF
(NAME OF SECTION) OF SH-****

**WORKS DEPARTMENT
GOVERNMENT OF ODISHA**

GLOSSARY

Applicant(s)	As defined in Clause 1.2.1
Application	As defined in the Disclaimer
Application Due Date	As defined in Clause 1.1.5
Authority	As defined in Clause 1.1.1
Bids	As defined in Clause 1.2.3
Bid Price	As defined in Clause 1.2.8
Bid Due Date	As defined in Clause 1.2.3
Bid Security	As defined in Clause 1.2.4
Bidders	As defined in Clause 1.1.1
Bidding Documents	As defined in Clause 1.2.3
Bidding process	As defined in Clause 1.2.1
Bid Stage	As defined in Clause 1.2.1
Construction period	As defined in Clause 1.2.8
Contractor	As defined in Clause 1.2.1
Conflict of Interest	As defined in Clause 2.2.1(c)
Defect Liability period	As defined in Clause 1.2.8
Eligible Experience	As defined in Clause 3.2.1
Eligible Projects	As defined in Clause 3.2.1
EPC	Engineering, Procurement and Construction
EPC Contract	As defined in Clause 1.1.2
Estimated Project Cost	As defined in Clause 1.1.4
Experience Score	As defined in Clause 3.2.6
Financial Capacity	As defined in Clause 2.2.2(B)
Government	Government of Odisha
Jt. Bidding Agreement	As defined in Clause 2.2.6(g)
Joint Venture	As defined in Clause 2.2.1(a)
Lead Member	As defined in Clause 2.2.6(c)
LOA	Letter of Award
Lowest Bidder	As defined in Clause 1.2.8
Member	Member of Joint Venture
Net Worth	As defined in Clause 2.2.4(ii)
Project	As defined in Clause 1.1.1
Qualification	As defined in Clause 1.2.1
Qualification Stage	As defined in Clause 1.2.1
Re.or Rs.or INR	Indian Rupee
REP or Request for Proposals	As defined in Clause 1.2.1
RFQ	As defined in the Disclaimer
Technical Capacity	As defined in Clause 2.2.2(A)
Threshold Technical Capacity.	As defined in Clause 2.2.2(A)

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

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DISCLAIMER

The information contained in this Request for Qualification document (the “**RFQ**”) or subsequently provided to Applicant(s), whether verbally or in documentary or any other form, by or on behalf of the Authority or any of its employees or advisors, is provided to Applicant(s) on the terms and conditions set out in this RFQ and such other terms and conditions subject to which such information is provided.

This RFQ is not an agreement and is neither an offer nor invitation by the Authority to the prospective Applicants or any other person. The purpose of this RFQ is to provide interested parties with information that may be useful to them in the formulation of their application for qualification pursuant to this RFQ (the “**Application**”). This RFQ includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFQ may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the objectives, financial situation and particular needs of each party who reads or uses this RFQ. The assumptions, assessments, statements and information contained in this RFQ may not be complete, accurate, adequate or correct. Each Applicant should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFQ and obtain independent advice from appropriate sources.

Information provided in this RFQ to the Applicant(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFQ or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFQ and any assessment, assumption, statement or information contained therein or deemed to form part of this RFQ or arising in any way with pre-qualification of Applicants for participation in the Bidding Process.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Applicant upon the statements contained in this RFQ.

The Authority may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFQ.

The issue of this RFQ does not imply that the Authority is bound to select and short-list pre-qualified

Applications for Bid Stage or to appoint the selected Bidder or Contractor, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Application including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Application. All such costs and expenses will remain with the Applicant and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Application, regardless of the conduct or outcome of the Bidding Process.

Procedure to participate in online bidding

e-procurement

1. PARTICIPATING IN THE BID IN THE E-PROCUREMENT PORTAL: The Contractor/Bidder intending to participate in the bid is required to register in the Portal with some information about the firm/Contractor (in the name of the person who will sign the bid). This is a one time activity for registering in Portal. During registration, the contractor has to attach a Digital Signature Certificate (DSC) to his / her unique user ID. The DSC used must be of appropriate class (Class II or Class III) issued from a registered Certifying Authority such as n-Code, Sify, TCS, and MTNL etc. DSC should be in the name of the authorized signatory as authorized in Appendix-II of the RFQ Application.

- a. To log on to the portal the Contractor/Bidder is required to type his/her *username* and password. *The system will again ask to select the DSC and confirm it with the password of DSC.* For each login, a user's DSC will be validated against its date of validity and also against the Certificate Revocation List (CRL) of respective CAs stored in system database. The system checks the unique ID, password and DSC combination and authenticates the login process for use of portal.
- b. The tender documents uploaded by the Tender Inviting Officer in the website www.tendersorissa.gov.in will appear in the section of "Upcoming Tender" before the due date of tender sale. Once the due date has arrived, the tender will move to "Active Tender" Section of the *homepage*. Only a small notification will be published in the newspaper specifying the work details along with *mention* of the specific website for details. The publication of the tender will be for specific period of time till the last date of submission of bids as mentioned in the 'Invitation for Bid' after which the same will be removed from the list of Active tenders. Any bidder can view or down load the bid documents from the web site.

WORKS DEPARTMENT
GOVERNMENT OF ODISHA

1.INTRODUCTION

1.1 Background

1.1.1 [The Chief Engineer(DPI & Roads), Odisha] (the “**Authority**”) is engaged in the development of State Highways and as part of this endeavour, the Authority has decided to undertake widening & strengthening of the [(Name of the section) of SH-**]² to [2-lane with/ without paved shoulders]³ (the “**Project**”) through an Engineering, Procurement and Construction (the “**EPC**”) Contract, and has decided to carry out the bidding process for selection of a bidder to whom the Project may be awarded. A brief description of the project may be seen in the Information Memorandum of the Project in the website (www.tendersorissa.gov.in). Brief particulars of the Project are as follows:

Name of the State Highway	Length in Km	Estimated Project Cost (In Rs. cr.) ⁴
[Name of section of SH-**]	[.....]	[.....]

The Authority intends to pre-qualify suitable Applicants (the “**Bidders**”) who will be eligible for participation in the Bid Stage, for award of the Project through competitive bidding, in accordance with the procedure set out herein.⁵

1.1.2 The selected Bidder (the “**Contractor**”) shall be responsible for designing, engineering, procurement and construction of the Project under and in accordance with the provisions of an engineering, procurement and construction contract (the “**EPC Contract**”) to be entered into between the Contractor and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto. The Contractor shall also be responsible for the maintenance of the project during the Defect Liability Period, which is expected to be as per clause 1.1.3

¹ Serially numbered footnotes are for guidance of the Authority and should be omitted prior to issue of RFQ.

Footnotes marked in non-numerical characters shall be retained in the RFQ.

² Wherever asterisk is used, it should be substituted by project-specific details prior to issue of RFQ.

³ All project-specific provisions in this document have been enclosed in square parenthesis and may be modified, as necessary, before issuing the RFQ for the Project. The square parenthesis should be removed after carrying out the required modifications.

⁴ This is the likely construction cost.

⁵ The curly parenthesis including the provisions contained therein and all the blank spaces may be retained in the RFQ document issued to prospective Applicants. They should be suitably modified/ filled up subsequently by the respective Applicants or the Authority, as the case may be, to reflect the particulars relating to the Project or the Applicants.

- 1.1.3 The scope of work will broadly include rehabilitation, upgradation and augmentation of the existing carriageway to [two-lane] standards with construction of new pavement/ rehabilitation of existing pavement/ construction and/or rehabilitation of major and minor bridges, culverts, road intersections, interchanges, drains, etc and maintenance of the Project during the Defect Liability Period, which is expected to be 2 (Two) years. For major bridges and structures the Defects Liability Period shall be 5 (Five) years.
- 1.1.4 Indicative capital cost of the Project (the “**Estimated Project Cost**”) will be revised and specified in the Bidding Documents of the Project. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.5 The Authority shall receive Applications pursuant to this RFQ in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the “**Application Due Date**”).

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a two-stage process (collectively referred to as the “**Bidding Process**”) for selection of the bidder for award of the Project. The first stage (the “**Qualification Stage**”) of the process involves qualification (the “**Qualification**”) of interested parties who make an Application in accordance with the provisions of this RFQ (the “**Applicant**”, which expression shall, unless repugnant to the context, include the Members of the Joint Venture). Prior to making an Application, the Applicant shall pay to the Authority a sum of **Rs. 10,500.00 (Rupees Ten thousand five hundred)**⁵ in shape of Demand Draft as the cost of the RFQ process in favour of Executive Engineer----- (R&B)Division payable at ----- . At the end of this stage, the Authority expects to announce a list of all pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the “**Bid Stage**”) comprising Request for Proposals (the “**Request for Proposals**” or “**RFP**”).

Government of India has issued guidelines (see Appendix-V) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Authority shall be entitled to disqualify an Applicant in accordance with the aforesaid guidelines at any stage of the Bidding Process. Applicants must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.

- 1.2.2 In the Qualification Stage, Applicants would be required to furnish all the information specified in this RFQ. Only those Applicants that are pre-qualified by the Authority shall be invited to submit their Bids for the Project. The Authority is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are, therefore, advised to visit the site and familiarise themselves with the Project.

⁵ The cost of RFQ may be determined @ Rs. 10,000/- for every Rs. 100.00 crore and part thereof . VAT @ 5% will be charged extra.

- 1.2.3 In the Bid Stage, the Bidders will be called upon to submit their financial offers (the "**Bids**") in accordance with the RFP and other documents to be provided by the Authority (collectively the "**Bidding Documents**"). **The Bidding Documents for the Project will be provided to every Bidder on payment of Rs. 21,000.00 (Rupees Twenty One thousand only)⁵ in shape of Demand Draft in favour of Executive Engineer----- (R&B) Division payable at -----.** **The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of bids (the "**Bid Due Date**").**
- 1.2.4 In terms of the RFP, a Bidder will be required to deposit, along with its Bid, a bid security equivalent to **1% (one per cent) of the Estimated Project Cost (the "**Bid Security**")**, refundable no later than 60 (sixty) days from the Bid Due Date, except in the case of the selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the EPC Contract. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority⁶ and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5 Generally, the Lowest Bidder shall be the selected Bidder. In case such Lowest Bidder withdraws or is not selected for whatsoever reason, the Authority shall annul the Bidding Process and invite fresh bids.
- 1.2.6 During the Bid Stage, Bidders are invited to examine the Project in detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the EPC Contract including implementation of the Project.
- 1.2.7 As part of the Bidding Documents, the Authority will provide a draft EPC Contract and feasibility report prepared by the Authority/ its consultants and other information pertaining/ relevant to the Project available with it.
- 1.2.8 Bids will be invited for the Project on the basis of the lowest cost required by a Bidder for implementing the Project (the "**Bid Price**"). The total time allowed for completion of construction under the EPC Contract (the "**Construction Period**") and the period during which the Contractor shall be liable for rectification of any defect or deficiency in the Project after completion of the Construction Period (the "**Defect Liability Period**") shall be pre-determined, and will be indicated in the draft EPC Contract forming part of the Bidding Documents. The Bid Price shall constitute the sole criteria for evaluation of Bids. The Project shall be awarded to the Bidder quoting the lowest Bid Price.
- In this RFQ, the term "**Lowest Bidder**" shall mean the Bidder who is offering the lowest Bid Price.
- ⁵= The actual amount will be indicated in the RFP
- ⁶ The format for the bank guarantee has been published as part of the Model RFP document.
- 1.2.9 Upon the completion of construction, the Authority may levy and charged user fee from users of the Project, in accordance with the National Highways Fee

(Determination of Rates and Collection) Rules, 2008.

Clause Deleted.

1.2.10 Further and other details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.

1.2.11 Any queries or request for additional information concerning this RFQ shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.13.3 below. The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information: **RFQ for ***** Project**".

1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

	Event Description	Date
1.	Last date for receiving queries	[14 days from date of RFQ]
2.	Pre-Application Conference	[21 days from date of RFQ]
3.	Authority response to queries latest by	[28 days from date of RFQ]
4.	Application Due Date	[35 days from date of RFQ]
5.	Announcement of short-list	Within 30 days of Application Due Date
	Bid Stage	Estimated Date
1.	Sale of Bid Documents	[To be specified]
2.	Last date for receiving queries	[To be specified]
3.	Pre-Bid meeting – 1	[To be specified]
4.	Authority response to queries latest by	[To be specified]
5.	Bid Due Date	[To be specified]
6.	Opening of Bids	On next working day of Bid Due Date
7.	Letter of Award (LOA)	Within 45 days of Bid Opening Date
8.	Validity of Bids	120 days of Bid Due Date
9.	Signing of EPC Contract	Within 15 days of LOA

2. INSTRUCTIONS TO APPLICANTS

A GENERAL

2.1 Scope of Application

2.1.1 The Authority wishes to receive Applications for Qualification in order to pre-qualify experienced and capable Applicants for the Bid Stage.

2.1.2 Pre-qualified Applicants may be subsequently invited to submit the Bids for the Project.

2.2 Eligibility of Applicants

2.2.1 For determining the eligibility of Applicants for their pre-qualification hereunder, the following shall apply:

- (a) The Applicant for pre-qualification may be a single entity or a group of entities (the “**Joint Venture**”), coming together to implement the Project. However, no applicant applying individually or as a member of a Joint Venture, as the case may be, can be member of another Applicant. The term Applicant used herein would apply to both a single entity and a Joint Venture.
- (b) An Applicant may be a company incorporated under the Indian Companies Act, 1956 or a combination of companies with a formal intent to enter into a Joint Venture agreement or under an existing agreement to form a Joint Venture. A Joint Venture shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.
- (c) An Applicant shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified. An Applicant shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - (i) the Applicant, its Member or any constituent thereof and any other Applicant, its Member or any constituent thereof have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Applicant, its Member thereof (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member, as the case may be), in the other Applicant, its Member is less than 5 per cent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of

indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Applicant is also a constituent of another Applicant; or
- (iii) such Applicant receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant, its Member thereof; or
- (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
- (v) such Applicant has a relationship with another Applicant, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Application of either or each other; or
- (vi) such Applicant has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

- (d) An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Applicant, or any of its Members, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Applicant, its Member in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFQ. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Explanation: In case an Applicant is a Joint Venture, then the term Applicant as used in this Clause 2.2.1, shall include each Member of such Joint Venture.

- (e) Other eligibility conditions shall include:
Bidders who meet the minimum qualification criteria will be qualified only if their available bid capacity is more than the total bid value. The available bid capacity will be calculated as under:

$$\text{Assessed Available Bid capacity} = (A * N * 2 - B)$$

where

- A= Maximum value of civil engineering works executed in any one year during the last five years (updated to the price level of the year indicated in Appendix) taking into account the completed as well as works in progress.

N= Number of years prescribed for completion of the works for which bids are invited.

B= Value (updated to the price level of the year indicated in Appendix) of existing commitments and on-going works to be completed during the next years (period of completion of the works for which bids are invited).

Note: *The statement showing the value of existing commitments and on-going works as well as the stipulated period completion remaining for each of the works listed should be countersigned by the Engineer-in-Charge, not below the rank of an Executive Engineer or equivalent.*

2.2.2 To be eligible for pre-qualification, an Applicant, shall fulfil the following conditions of eligibility:

(A) Technical Capacity: For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Applicant shall, over the past 5 (five) financial years preceding the Application Due Date, have received payments for construction of Eligible Project(s), or has undertaken construction works by itself in a PPP project, such that the sum total thereof is more than [Rs. crore (Rupees crore)]⁷ (the “**Threshold Technical Capacity**”).

Provided that at least one similar work of 50% of Estimated Project Cost shall have been completed from the Eligible Projects in Category 1 and/or Category 3 specified in Clause 3.2.1.

(B) Financial Capacity: The Applicant shall have a minimum Net Worth⁸ (the “**Financial Capacity**”) of [Rs..... crore (Rupees..... crore)]⁹ at the close of the preceding financial year

2.2.3 In case of a Joint Venture, the Threshold Technical Capacity and Financial Capacity of all the Members of Joint Venture would be taken into account for satisfying the above conditions of eligibility. Further, Lead Member shall meet at least 60% requirement of Technical and Financial Capacity required as per Clause 2.2.2 (A) & (B) and each of other JV members shall meet at least 30% requirement of Technical and Financial capacity as per Clause 2.2.2 (A) & (B). For avoidance of doubt it is further clarified that the Joint Venture must collectively and individually satisfy the above qualification criteria.

⁷ This amount should be equivalent to two and half times of the estimated cost of the project for which bids are being invited.

⁸ Net worth has been adopted as the criterion for assessing financial capacity since it is a comprehensive indication of the financial strength of the Applicant.

⁹ This amount should be 10% (Ten percent) of the Estimated Cost of the Project for which bids are being invited.

- 2.2.4** The Applicant shall enclose with its application, to be submitted as per the format at Appendix-I, complete with its Annexes, the following:
- (i) Certificate(s) from its statutory auditors^s or the concerned client(s) stating the payments received or in case of a PPP project, the construction carried out by itself, during the past 5 years, in respect of the Eligible Projects. In case a particular job/ contract has been jointly executed by the Applicant (as part of a Joint Venture), it should further support its claim for the payments received or construction carried out by itself in PPP Projects as applicable the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
 - (ii) certificate(s) from its statutory auditors specifying the net worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFQ, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders.
- 2.2.5** The Applicant should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Application to commit the Applicant. In the case of a Joint Venture, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.
- 2.2.6** In case the Applicant is a Joint Venture, it shall comply with the following additional requirements:
- (a) Number of members in a Joint Venture shall not exceed 3 (three);
 - (b) subject to the provisions of clause (a) above, the Application should contain the information required for each Member of the Joint Venture;
 - (c) Members of the Joint Venture shall nominate one member as the lead member (the “**Lead Member**”). Lead Member shall meet at least 60% requirement of Technical and Financial Capacity required as per Clause 2.2.2 (A) & (B). The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other Members of the Joint Venture;
 - (d) the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and defect liability obligations;

^s In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ.

- (e) an individual Applicant cannot at the same time be member of a Joint Venture applying for pre-qualification. Further, a member of a particular Applicant Joint Venture cannot be member of any other Applicant Joint Venture applying for pre-qualification;
- (f) the Lead Member shall itself undertake and perform at least 50 (fifty) percent of the total length of the Project Highway.
- (g) members of the Joint Venture shall have entered into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Jt. Bidding Agreement**”), for the purpose of making the Application and submitting a Bid in the event of being pre-qualified. The Jt. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:
 - (i) convey the commitment(s) of the Lead Member in accordance with this RFQ, in case the contract to undertake the Project is awarded to the Joint Venture;
 - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (iii) commit the approximate share of work to be undertaken by each member;
 - (iv) include a statement to the effect that all members of the Joint Venture shall be liable jointly and severally for all obligations of the Contractor in relation to the Project until the completion of the Project (the “Defects Liability Period”) is achieved in accordance with the EPC Contract; and
- (h) except as provided under this RFQ and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement.

2.2.7 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the date of Application, would not be eligible to submit an Application, either individually or as member of a Joint Venture.

2.2.8 An Applicant including any Member should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant or Member, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Applicant or Member.

- 2.2.8.1** The Applicant including any Member may provide details of all their on-going projects along with stage of litigation, if so, against the Authority / Governments.
- 2.2.8.2** The Applicant including any member may also provide details of on-going process of blacklisting if so, under any contract with Authority / Government.
- 2.2.8.3** The Authority reserves the right to reject an otherwise eligible bidder on the basis of the information provided under clause 2.2.8. The decision of the Authority in this case shall be final.
- 2.2.9** The Technical Capacity and Net Worth of the Applicant/ Members in case of Joint Venture shall be computed under Clauses 2.2.2, 2.2.4 and 3.2.
- 2.2.10** The following conditions shall be adhered to while submitting an Application:
- (a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
 - (b) information supplied by an Applicant (or other constituent Member if the Applicant is a Joint Venture) must apply to the Applicant, Member named in the Application. Invitation to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification;
 - (c) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and
 - (d) in case the Applicant is a Joint Venture, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.
- 2.2.11** While Qualification is open to persons from any country, the following provisions shall apply:
- (a) Where, on the date of the Application, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in an Applicant or its Member is held by persons resident outside India or where an Applicant or its Member is controlled by persons resident outside India; or
 - (b) if at any subsequent stage after the date of the Application, there is an acquisition of not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Applicant or its Member;

then the Qualification of such Applicant or in the event described in sub clause (b) above, the continued Qualification of the Applicant shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Applicant. The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

The Applicant shall promptly inform the Authority of any change in the shareholding, as

above, and failure to do so shall render the Applicant liable for disqualification from the Bidding Process.

Clause Deleted as National Competitive Bidding.

2.2.12 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within three months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.

2.3 Change in composition of the Joint Venture

2.3.1 Change in the composition of a Joint Venture will not be permitted by the Authority during the Qualification Stage.

2.3.2 Where the Bidder is a Joint Venture, change in the composition of a Joint Venture may be permitted by the Authority during the Bid Stage, only where:

- (a) the application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date;
- (b) the Lead Member continues to be the Lead Member of the Joint Venture;
- (c) the substitute is at least equal, in terms of Technical Capacity, to the Member who is sought to be substituted and the modified Joint Venture shall continue to meet the pre-qualification criteria for Applicants; and
- (d) the new Member(s) expressly adopt(s) the Application already made on behalf of the Joint Venture as if it were a party to it originally, and is not an Applicant of any other Joint Venture bidding for this Project.

2.3.3 Approval for change in the composition of a Joint Venture shall be at the sole discretion of the Authority and must be approved by the Authority in writing.

2.3.4 The modified/ reconstituted Joint Venture shall submit a revised Jt. Bidding Agreement before the Bid Due Date.

2.3.5 Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, an Applicant may, within 10 (ten) days after the Application Due Date, remove from its Joint Venture any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

2.3.6 The modified / reconstituted joint venture shall submit a Power of Attorney, substantially in the form at Appendix-IV, prior to the Bid Due Date.

2.4 Number of Applications and costs thereof

2.4.1 No Applicant shall submit more than one Application for the Project. An applicant applying individually or as a member of a Joint Venture shall not be entitled to submit another application either individually or as a member of any Joint Venture, as the case may be.

2.4.2 The Applicants shall be responsible for all of the costs associated with the preparation of their Applications and their participation in the Bid Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

Applicants are encouraged to submit their respective Applications after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.6 Acknowledgement by Applicant

2.6.1 It shall be deemed that by submitting the Application, the Applicant has:

- (a) made a complete and careful examination of the RFQ;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFQ or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5 above; and
- (d) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.6.2 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFQ or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

2.7 Right to accept or reject any or all Applications/ Bids

2.7.1 Notwithstanding anything contained in this RFQ, the Authority reserves the right to accept or reject any Application and to annul the Bidding Process and reject all Applications/ Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

- 2.7.2** The Authority reserves the right to reject any Application and/ or Bid if:
- (a) at any time, a material misrepresentation is made or uncovered, or
 - (b) the Applicant does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Application.

If the Applicant/Bidder is a Joint Venture, then the entire Joint Venture may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Lowest Bidder gets disqualified/ rejected, then the Authority reserves the right to:

- (I) Annul the Bidding Process and invite fresh bids.

- 2.7.3** In case it is found during the evaluation or at any time before signing of the EPC Contract or after its execution and during the period of subsistence thereof, including the Defect Liability Period, that one or more of the pre-qualification conditions have not been met by the Applicant, or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Contractor either by issue of the LOA or entering into the EPC Contract, and if the Applicant has already been issued the LOA or has entered into the EPC Contract, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ, be liable to be terminated, by a communication in writing by the Authority to the Applicant, without the Authority being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Authority may have under this RFQ, the Bidding Documents, the EPC Contract or under applicable law.

- 2.7.4** The Authority reserves the right to verify all statements, information and documents submitted by the Applicant in response to the RFQ. Any such verification or lack of such verification by the Authority shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority there under.

B DOCUMENTS

2.8 Contents of the RFQ

This RFQ comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10

Invitation for Qualification

Section 1.	Introduction
Section 2.	Instructions to Applicants
Section 3.	Criteria for Evaluation
Section 4.	Fraud & Corrupt Practices
Section 5.	Pre Application Conference
Section 6.	Miscellaneous

Appendices

I.	Letter comprising the Application
II.	Power of Attorney for signing of Application
III.	Power of Attorney for Lead Member of Joint Venture
IV.	Joint Bidding Agreement for Joint Venture
V.	Guidelines of the Department of Disinvestment

2.9 Clarifications

2.9.1 Applicants requiring any clarification on the RFQ may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.11. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 7 (seven) days prior to the Application Due Date. The Authority will notify in the website all the queries and its responses thereto, without identifying the source of queries.

2.9.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Applicants. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification

2.9.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicants. All clarifications and interpretations issued by the Authority shall be deemed to be part of the RFQ. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.10 Amendment of RFQ

2.10.1 At any time prior to the deadline for submission of Application, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ by the issuance of Addenda/ Corrigendum.

2.10.2 Any Addendum/ Corrigendum thus issued will be sent in writing to all those who have purchased the RFQ.

2.10.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Application Due Date.[§]

C PREPARATION AND SUBMISSION OF APPLICATION

2.11 Language

The Application and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Applicant with the Application may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Applicant. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Application, the English language translation shall prevail.

2.12 Format and signing of Application

2.12.1 The Applicant shall provide all the information sought under this RFQ. The Authority will evaluate only those Applications that are received in the required formats and complete in all respects. Incomplete and /or conditional Applications shall be liable to rejection.

2.12.2 Clause deleted.

§ While extending the Application Due Date on account of an addendum, the Authority shall have due regard for the time required by bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Application Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

2.12.3 Clause Deleted .

2.13 Sealing and Marking of Applications

2.13.1 The Applicant shall submit the Application in the format specified at Appendix-I, together with the documents (**scanned Copies**) specified in Clause 2.13.2 in on line only. One set of hard copy of such uploaded Application together with the documents shall be submitted to the Chief Engineer (DPI & Roads) Odisha in the address mentioned in clause 2.13.3 before due date and time of submission of RFQ. The envelope containing such hard copy of application shall be marked as“ Application for Qualification: ****** Project**” and shall clearly indicate the name and address of the Applicant. In addition, the Application Due Date should be indicated on the right hand corner of each of the envelopes.

2.13.2 The documents shall contain:

- (i) Application in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- (ii) Power of Attorney for signing the Application as per the format at Appendix-II;
- (iii) if applicable, the Power of Attorney for Lead Member of Joint Venture as per the format at Appendix-III;
- (iv) copy of the Jt. Bidding Agreement, in case of a Joint Venture, substantially in the format at Appendix-IV;
- (v) copy of Memorandum and Articles of Association; and
- (vi) copies of Applicant’s duly audited balance sheet and profit and loss account for the preceding five years.
- (vii) **Cost of RFQ Document.**

2.13.3 The envelope containing hard copy shall be addressed to:

ATTN. OF:

DESIGNATION: **Chief Engineer
(DPI & Roads) , Odisha**

ADDRESS: **OFFICE OF THE E.I.C
(CIVIL) ODISHA, NIRMAN
SOUDHA, UNIT-V,
KESHARI NAGAR,
BHUBANESWAR-751001**

FAX NO **0674-2394107**

E-MAIL ADDRESS: [**ceroads.bbsr@gmail.com**](mailto:ceroads.bbsr@gmail.com)

2.13.4 The hard copy of application submitted in the above address will only be opened and referred in case the application is received in on-line and on-line copy is not legible. However, the contents of on-line copy shall be only be considered for evaluation. If the envelope containing the hard copy of application are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Application and consequent losses, if any, suffered by the Applicant.

2.13.5 Applications submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.14 Application Due Date

2.14.1 Applications shall be received only on “on-line” on or before hours IST on the application due date. The hard copy of such uploaded applications should be submitted on or before hours IST on the Application Due Date, at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFQ.

2.14.2 The Authority may, in its sole discretion, extend the Application Due Date by issuing an Addendum/ corrigendum in accordance with Clause 2.10 uniformly for all Applicants.

2.15 Clause deleted .

2.16 Modifications/ substitution/ withdrawal of Applications

2.16.1 In the e-Procurement Portal, it is allowed to modify the Application number of times after necessary modification, before the final date and time of submission. The Applicant shall have to log on to the system and resubmit the documents as asked for by the system. In doing so, the Application already submitted by the Applicant will be removed automatically from the system and the latest Application only will be admitted. But the Applicant should avoid modification of Application at the last moment to avoid system failure or malfunction of internet or traffic jam. If the Applicant fails to submit his modified Application within the designated time of receipt, the Application already in the system shall be taken for evaluation.

In the e-Procurement Portal, withdrawal of bid is allowed. But in such case he has to write a letter written notice of the modification, substitution or withdrawal addressed to the Authority and upload the scanned document to portal in the respective Application before the closure of receipt of the Application. The system shall not allow any withdrawal after expiry of the closure time of the Application.

2.16.2 Clause Deleted .

2.16.3 Any alteration/ modification in the Application or additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

D. EVALUATION PROCESS

2.17 Opening and Evaluation of Applications

2.17.1 The Authority shall open the Applications in on-line at hours IST on the next working day at hours IST at the place specified in Clause 2.13.3 and in the presence of the Applicants who choose to attend.

2.17.2 **Clause Deleted .**

2.17.3 The Authority will subsequently examine and evaluate Applications in accordance with the provisions set out in Section 3.

2.17.4 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the Authority. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

2.17.5 Any information contained in the Application shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Project is subsequently awarded to it on the basis of such information.

2.17.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s) without assigning any reasons.

2.17.7 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant project from computation of the Eligible Score of the Applicant.

2.17.8 In the event that an Applicant claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from computation of the Eligible Score, and may also, while computing the aggregate Experience Score of the Applicant, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material representation, the Authority reserves the right to reject the Application and/or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the pre-qualified Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of Application, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

2.19 Tests of responsiveness

2.19.1 Prior to evaluation of Applications, the Authority shall determine whether each Application is responsive to the requirements of the RFQ. An Application shall be considered responsive only if:

- (a) it is received as per format at Appendix-I
- (b) **Clause Deleted .**
- (c) **Clause Deleted .**
- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Joint Venture, the Power of Attorney as specified in Clause 2.2.6 (c);
- (e) it contains all the information and documents (complete in all respects) as requested in this RFQ;
- (f) it contains information in formats same as those specified in this RFQ;
- (g) it contains certificates from its statutory auditors^s in the formats specified at Appendix-I of the RFQ for each Eligible Project;
- (h) it contains an attested copy of the receipt for payment of [Rs. 10,500 (Rupees ten thousand five hundred only)] to Authority towards the cost of the RFQ document;
- (i) it is accompanied by the Jt. Bidding Agreement (for Joint Venture), specific to the Project, as stipulated in Clause 2.2.6(g);
- (j) it does not contain any condition or qualification; and
- (k) it is not non-responsive in terms hereof.

^s In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.19.1 (g). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ.

2.19.2 The Authority reserves the right to reject any Application which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Application

2.20 **Clarifications**

2.20.1 To facilitate evaluation of Applications, the Authority may, at its sole discretion, seek clarifications from any Applicant regarding its Application. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

2.20.2 If an Applicant does not provide clarifications sought under Clause 2.20.1 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Authority may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Authority.

E. **QUALIFICATION AND BIDDING**

2.21 **Pre-qualification and notification**

After the evaluation of Applications, the Authority would announce a list of pre-qualified Applicants (Bidders) who will be eligible for participation in the Bid Stage. At the same time, the Authority would notify the other Applicants that they have not been pre-qualified. The Authority will not entertain any query or clarification from Applicants who fail to qualify.

2.22 **Submission of Bids**

The Bidders will be requested to submit a Bid in the form and manner to be set out in the Bidding Documents.

Only pre-qualified Applicants shall be invited by the Authority to submit their Bids for the Project. The Authority is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are therefore advised to visit the site and familiarize themselves with the Project by the time of submission of the Application. No extension of time is likely to be considered for submission of Bids pursuant to invitation that may be issued by the Authority

2.23 **Proprietary data**

All documents and other information supplied by the Authority or submitted by an Applicant to the Authority shall remain or become the property of the Authority. Applicants are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Application. The Authority will not return any Application or any information provided along therewith.

2.24 **Correspondence with the Applicant**

Save and except as provided in this RFQ, the Authority shall not entertain any correspondence with any Applicant in relation to the acceptance or rejection of any Application.

2. CRITERIA FOR EVALUATION

3.1 Evaluation parameters

3.1.1 Only those Applicants who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Section 3. Applications of firms/ Joint Venture who do not meet these criteria shall be rejected.

3.1.2 The Applicant's competence and capability is proposed to be established by the following parameters

- (a) Technical Capacity and
- (b) Financial Capacity

3.2 Technical Capacity for purposes of evaluation

3.2.1 Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects as stipulated in Clauses 3.2.3 and 3.2.4 (the "**Eligible Projects**"):

Category 1: Project experience on Eligible Projects in highways sector that qualify under Clause 3.2.3

Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 3.2.3

Category 3: Construction experience on Eligible Projects in highways sector that qualify under Clause 3.2.4

Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 3.2.4

For the purpose of this RFQ

- (i) highways sector would be deemed to include highways, expressways, bridges, tunnels and airfields; and
- (ii) core sector would be deemed to include ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation, water supply, sewerage and real estate development.^s

^s Real estate development shall not include residential flats unless they form part of a real estate complex or township which has been built by the Applicant.

- 3.2.2 Eligible Experience in respect of each category shall be measured only for Eligible Projects
- 3.2.3 For a project to qualify as an Eligible Project under Categories 1 and 2:
- (a) It should have undertaken as a **PPP project** on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;
 - (b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed;
 - (c) the capital cost of the project should be more than 10% of the amount specified as the Estimated Project Cost; and
 - (d) the entity claiming experience shall, during the last 5 (five) financial years preceding the Application Due Date, have itself undertaken the construction of the project for an amount equal to at least one half of the Project Cost of eligible projects, excluding any part of the project for which any contractor, sub-contractor or other agent was appointed for the purposes of construction.
- 3.2.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Applicant should have received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Application Due Date, and only the amounts (gross) actually received, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, receipts of less than [Rs. 10 crore (Rs. Ten crore)]¹⁰ shall not be reckoned as receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract / EPC contract/ Civil Engineering Construction Contract executed under Government or Government undertakings for the project. Further, the cost of land shall not be included hereunder.
- 3.2.5 The Applicant shall quote experience in respect of a particular Eligible Project under any one category only, even though the Applicant (either individually or along with a member of the Joint Venture) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.
- 3.2.6 For the purpose of assigning scores to the Applicant, its experience shall be measured and stated in terms of a score (the "**Experience Score**"). The Experience Score for an Eligible Project in a given category would be the eligible receipts specified in Clause 2.2.2 (A), divided by one crore and then multiplied by the applicable factor in Table 3.2.6 below. In case the Applicant has experience across different categories, the score or each

category would be computed as above and then aggregated to arrive at its Experience Score.

Table 3.2.6: Factors for Experience across categories.

	Factor
Category 1	1
Category 2	0.50
Category 3	1
Category 4	0.50

10 This amount should not be less than 10% of the Estimated Project Cost.

3.27 **Clause deleted.**

3.2.8 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Joint Venture. In other words, no double counting by a Joint Venture in respect of the same experience shall be permitted in any manner whatsoever.

3.3 Details of Experience

3.3.1 The Applicant should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Application Due Date.

3.3.2 The Applicants must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.

3.3.3 The Applicant should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.

3.4 Financial information for purposes of evaluation

3.4.1 The Application must be accompanied by the Audited Annual Reports of the Applicant (of each Member in case of a Joint Venture) for the last 5 (five) financial years, preceding the year in which the Application is made.

3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.

3.4.3 The Applicant must establish the minimum Net Worth specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of Appendix-I.

3.5 Pre-qualification of Applicants

3.5.1 The credentials of eligible Applicants shall be measured in terms of their Experience Score. The sum total of the Experience Scores for all Eligible Projects shall be the 'Aggregate Experience Score' of a particular Applicant. In case of a Joint Venture, the aggregate Experience Score of the Lead Member including other members shall be the Aggregate Experience Score of the Joint Venture. All Applicants who fulfill the conditions of eligibility specified in Clause 2.2.2 and meet the other conditions specified in this RFQ shall be pre-qualified.

3.5.2 The Applicants meeting the pre-qualification criteria shall be eligible for participation in the Bid Stage.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove, if an Applicant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFQ issued by the Authority during a period of 2 (two) years from the date such Applicant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them
- (a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the EPC Contract or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the EPC Contract, as the case may be, any person in respect of any matter relating to the Project or the LOA or the EPC Contract, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;
- (b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;

- (c) **“coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice ”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-APPLICATION CONFERENCE

- 5.1 A Pre-Application conference of the interested parties shall be convened at the designated date, time and place. Only those persons who have downloaded the RFQ documents shall be allowed to participate in the pre-application conference. Applicants who have downloaded the RFQ document from the Authority's website [www.tendersorissa.gov.in] should submit a Demand Draft of [Rs. 10,500.00 (Rupees ten thousand five hundred only)] towards the cost of document, through their representative attending the conference. A maximum of two representatives of each applicant shall be allowed to participate on production of authority letter from the Applicant.
- 5.2 During the course of Pre-Application conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India/ State of Odisha and the Courts at [Bhubaneswar] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) Consult with any applicant in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Applicant; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant
- 6.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDIX I

Letter Comprising the Application for Pre-Qualification

(Refer Clause 2.13.2)

Dated:

To.

The Chief Engineer (DPI & Roads) Odisha ,
O/o the E.I.C (Civil), Odisha ,
Nirman Soudha, Unit-V,
Bhubaneswar-751001

Sub: Application for pre-qualification for ***** Project

Dear Sir,

With reference to your RFQ document dated^s, we, having examined the RFQ document and understood its contents, hereby submit our Application for Qualification for the aforesaid project. The Application is unconditional and unqualified.

2. We acknowledge that the Authority will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Applicants for the aforesaid project, and we certify that all information provided in the Application and in Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the widening and strengthening of the aforesaid Project and maintenance of the Project during the Defect Liability Period.
4. We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
5. We acknowledge the right of the Authority to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. We certify that in the last three years, we/ any of the Joint Venture Members have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. We declare that:
 - (a) We have examined and have no reservations to the RFQ document, including any Addendum issued by the Authority,
 - (b) We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFQ document; and

^s All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant.

- (c) We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFQ document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - (d) We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFQ document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the RFQ document.
 9. We believe that we/ our Joint Venture/ proposed Joint Venture satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFQ document and are qualified to submit a Bid.
 10. We declare that we/ any Member of the Joint Venture are not a Member of a/ any other Joint Venture applying for pre-qualification.
 11. We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Joint Venture have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
 12. We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Joint Venture have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
 13. We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Joint Venture or against our CEO or any of our directors/ managers/ employees.
 14. We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines form part of the RFQ at Appendix-V thereof.

15. We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFQ, we shall intimate the Authority of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFQ document, and duly signed, is enclosed. The power of attorney for signing of application and the power of attorney for Lead Member of Joint Venture, as per format provided at Appendix II and III respectively of the RFQ, are also enclosed.
17. We certify that the {Applicant/ Lead Member} is an existing Company incorporated under the Indian Companies Act, 1956.
18. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Applicants, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
19. We agree and undertake to abide by all the terms and conditions of the RFQ document.
20. We certify that in terms of the RFQ, our Networth is Rs. (Rs. in words) and Experience Score is (number in words).
- {21. We agree and undertake to be jointly and severally liable for all the obligations of the Contractor under the EPC Contract.} ^s

In witness thereof, we submit this application under and in accordance with the terms of the RFQ document.

Yours faithfully

Date: (Signature, name and designation of the Authorized Signatory)

Place: Name and seal of the Applicant/ Lead Member

Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.

^s Omit if the Applicant is not a Joint Venture.

ANNEX- I
Details of Applicant

1.
 - (a) Name:
 - (b) Country of incorporation
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number :
 - (f) E-Mail Address:
 - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Applicant:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:
5. In case of a Joint Venture:
 - (a) The information above (1-4) should be provided for all the Members of the Joint Venture.
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Application.
 - (c) Information regarding the role of each Member should be provided as per table below:

Sl No	Name of Member	Role* {Refer Clause 2.2.6(d)} ^s	Share of work in the Project {Refer Clauses 2.2.6(a), & (f) & (h)}
1.			
2.			
3.			
*The role of each Member, as may be determined by the Applicant, should be indicated in accordance with instruction 4 at Annex-IV.			

(d) The following information shall also be provided for each Member of the Joint Venture.

Name of Applicant/ member of Joint Venture:

Sl No	Criteria	Yes	No.
1.	Has the Applicant/ constituent of the Joint Venture been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project (BOT, EPC or otherwise).		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Application		
3.	Has the Applicant/ constituent of the Joint Venture paid liquidated damages of more than 5% of the ontract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

6. A statement by the Applicant and each of the Members of its Joint Venture (where applicable) disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

^s All provisions contained in curly parenthesis shall be suitably modified by the Applicant to reflect the particulars relating to such Applicant.

ANNEX-II

Technical Capacity of the Applicant[@]*(Refer to Clauses 2.2.2(A), 2.3, 3.2 and 3.3 of the RFQ)*

Applicant type	Project Code*	Category [§]	Experience** (Equivalent Rs. crore) ^{\$\$}		Experience Score [£]
			Payment received for construction of Eligible Projects in Categories 3 and 4	Value of self construction in Eligible Projects in Categories 1 and 2	
1	2	3	4	5	6
Single entity Applicant or Lead Member including other members of the Joint Venture	a				
	b				
	c				
	d				
	e				
	f				
Aggregate Experience Score=					

@ Provide details of only those projects that have been undertaken by the Applicant, or its Lead member including members in case of joint venture, under its own name separately and/ or by a project company eligible under Clause 3.2.3(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.2.3(c) and for Categories 3 and 4, include only those projects where the payments received exceed the amount specified in Clause 3.2.4. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

Appendix I

Annex- II

* *Refer Annex-IV of this Appendix-I. Add more rows if necessary.*

\$ *Refer Clause 3.2.1.*

** *Construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of maintenance and repair, operation of Highways and land be included while computing the Experience Score of an Eligible Project.*

\$\$ *For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 50 (fifty) to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Application Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.*

£ *Divide the amount in the Experience column by one crore and then multiply the result thereof by the applicable factor set out in Table 3.2.6 to arrive at the Experience Score for each Eligible Project. In the case of an Eligible Project situated in an OECD country, the Experience Score so arrived at shall be further multiplied by 0.5, in accordance with the provisions of Clause 3.2.7, and the product thereof shall be the Experience Score for such Eligible Projects.*

NOTE:

In case of a Joint Venture, information in Annex-II and Annex-IV of Appendix-I shall be provided separately for other Members so as to establish that each such Member has 30 percent or more of the Threshold Technical Capacity. Such information may be provided as Annex-IIA, Annex-IIB, Annex-IVA and Annex-IVB respectively. (Refer Clause 2.2.3).

ANNEX-III

Financial Capacity of the Applicant

(Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.4 of the RFQ)

(In Rs. crore[§])

Applicant type	Net Cash Accruals						Net Worth [£]
		Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
1	2	3	4	5	6	7	8
Single entity Applicant or Lead Member including other members of the Joint Venture							
Total							

Name & address of Applicant's Bankers:

§ For conversion of other currencies into rupees, see note below Annex-II of Appendix-I.

£The Applicant should provide details of its own Financial Capacity.

Appendix- I

Annex- III

Instructions:

- 1** The Applicant shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Application Due Date. The financial statements shall:

 - (a)** reflect the financial situation of the Applicant;
 - (b)** be audited by a statutory auditor;
 - (c)** be complete, including all notes to the financial statements; and
 - (d)** correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
- 2** Net Cash Accruals shall mean Profit After Tax + Depreciation.
- 3** Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
- 4** Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.
- 5** In the case of a Joint Venture, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFQ document.
- 6** The applicant shall also provide the name and address of the Bankers to the Applicant.
- 7** The Applicant shall provide an Auditor's Certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.4 (ii) of the RFQ document.

ANNEX-IV

Details of Eligible Projects

*(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ)***Project Code:****Entity: Self/Members:**

Item	Refer Instruction	Particulars of the Project
1	2	3
Title & nature of the project		
Category		
Year-wise (a) payments received for construction, and/or (b) revenues appropriated for self construction under PPP projects		
Entity for which the project was constructed		
Location		
Project cost		
Date of commencement of project/ contract		
Date of completion/ commissioning		
Equity shareholding (with period during which equity was held)		

Instructions:-

1. Applicants are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.2.3 and 3.2.4 of the RFQ, as the case may be. Information provided in this section is intended to serve as a back up for information provided in the Application. Applicants should also refer to the Instructions below.

2. The Project Codes would be a, b, c, d etc.
3. A separate sheet should be filled for each Eligible Project.
4. In case the Eligible Project relates to other Members, write “Member”.
5. Refer to Clause 3.2.1 of the RFQ for category number.
6. The total payments received and/or revenues appropriated for self construction for each Eligible Project are to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Application Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.2.12). For Categories 1 and 2, expenditure on construction of the project by the Applicant itself should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.2.3(c). In case of Categories 3 and 4, payments received only in respect of construction should be provided, but only if the amount received exceeds the minimum specified in Clause 3.2.4. Receipts for construction works should only include capital expenditure, and should not include expenditure on maintenance & repair and operation of Highways.
7. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to concession, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
8. Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.2.3 and 3.2.4
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
10. For Categories 1 and 2, the equity shareholding of the Applicant, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.2.3).
11. Experience for any activity relating to an Eligible Project shall not be claimed twice. In other words, no double counting in respect of the same experience shall be permitted in any manner whatsoever.

- 12. Certificate from the Applicant's statutory auditor^s or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Applicant may provide the requisite certification.
- 13. If the Applicant is claiming experience under Categories 1 & 2^e, it should provide a certificate from its statutory auditor in the format below:

Certificate from the Statutory Auditor regarding PPP projects[√]

Based on its books of accounts and other published information authenticated by it, this is to certify that (*name of the Applicant*) is/ was an equity shareholder in (*title of the project company*) and holds/ held Rs. cr. (Rupees crore) of equity (which constitutes%^e of the total paid up and subscribed equity capital) of the project company from (*date*) to (*date*)[¥]The project was/is likely to be commissioned on (*date of commissioning of the project*). We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which the applicant has itself undertaken the construction of project of Rs.(Rupees Crores) excluding any part of the project for which any contractor, sub-contractor or other agent was appointed for the purpose of construction as per Clause 3.2.3(d) by the aforesaid Applicant itself, during the past five financial years as per year-wise details noted below:

.....
.....

Name of the audit firm:
Seal of the audit firm: (Signature, name and designation of the authorised signatory)
Date:

^s In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

[£] Refer Clause 3.2.1 of the RFQ.

[√] Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

^e Refer instruction no. 10 in this Annex-IV.

[¥] In case the project is owned by the Applicant company, this language may be suitably modified to read: "It is certified that (name of Applicant) constructed and/ or owned the (name of project) from (date) to (date)."

14. If the Applicant is claiming experience under Category 3 & 4♣, it should provide a certificate from its statutory auditors or the client in the format below:

Certificate from the Statutory Auditor/ Client regarding construction works^v

Based on its books of accounts and other published information authenticated by it, {this is to certify that (*name of the Applicant*) was engaged by (*title of the project company*) to execute (*name of project*) for (*nature of project*)}. The construction of the project commenced on (*date*) and the project was/ is likely to be commissioned on (*date, if any*). It is certified that Applicant received payments from its Clients for Construction Works executed by them, in the aforesaid construction works. We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which the Applicant received Rs. cr. (Rupees crore), in terms of Clauses 3.2.1 and 3.2.4 of the RFQ, during the past five financial years as per year-wise details noted below:

.....
.....

It is further certified that the receipts indicated above are restricted to the share of the Applicant who undertook these works as a partner or a member of joint venture/consortium. -
We further certify that applicant has a share of ____% in the Joint Venture/Consortium.

Name of the audit firm:
Seal of the audit firm: (Signature, name and designation of the authorised signatory).
Date:

♣ Refer Clauses 3.2.1 and 3.2.4 of the RFQ.
Φ Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company
This certification should be strike out in case of jobs/ contracts, which are executed a sole firm. The payments indicated in the certificate should be restricted to the share of Applicant in such partnership/ joint venture. This portion may be omitted if the contract did not involve a partnership/ joint venture. In case where work is not executed by partnership/ joint venture, this paragraph may be deleted.

- 15.** It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score☺.

☺Refer Clause 3.2.6 of the RFQ.

ANNEX-V

Statement of Legal Capacity

(To be forwarded on the letterhead of the Applicant/ Lead Member of Joint Venture)

Ref. Date:

To

Dear Sir,

We hereby confirm that we/ our members in the Joint Venture (constitution of which has been described in the application) satisfy the terms and conditions laid out in the RFQ document.

We have agreed that (insert member's name) will act as the Lead Member of our Joint Venture.*

We have agreed that (insert individual's name) will act as our representative/ will act as the representative of the Joint Venture on its behalf* and has been duly authorized to submit the RFQ. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of

*Please strike out whichever is not applicable.

APPENDIX II
Format for Power of Attorney for signing of Application
(Refer Clause 2.2.5)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Joint Venture and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the ***** Project proposed or being developed by the ***** (the "Authority") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the EPC Contract and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the EPC Contract with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2.....

For

.....
(Signature, name and designation and address)

Witnesses

1.

2.

(Notarised)

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- * *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- * *Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*

- * *Clause Deleted.*

APPENDIX III
Format for Power of Attorney for Lead Member of Joint Venture
(Refer Clause 2.2.5)

Whereas the ***** (“the Authority”) has invited applications from interested parties for the ***** Project (the “Project”).

Whereas,,, and (collectively the “Joint Venture”) being Members of the Joint Venture are interested in bidding for the Project in accordance with the terms and conditions of the Request for Qualification document (RFQ), Request for Proposal (RFP) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Joint Venture to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Joint Venture, all acts, deeds and things as may be necessary in connection with the Joint Venture’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s. having our registered office at, M/s. having our registered office at, and having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S having its registered office at, being one of the Members of the Joint Venture, as the Lead Member and true and lawful attorney of the Joint Venture (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Joint Venture and any one of us during the bidding process and, in the event the Joint Venture is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Joint Venture, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Joint Venture and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Joint Venture and generally to represent the Joint Venture in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Joint Venture’s bid for the Project and/ or upon award thereof till the EPC Contract is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers

conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Joint Venture.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2.....

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

Witnesses:

- 1.
- 2.

.....
(Executants)

(To be executed by all the Members of the Joint Venture)

Notes:

- * *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- * *Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- * **Clause Deleted.**

APPENDIX IV
Format for Joint Bidding Agreement for Joint Venture
(Refer Clause 2.13.2)
(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of 20...

AMONGEST

1. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {..... Limited, a company incorporated under the Companies Act, 1956 and having its registered office at (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

The above mentioned parties of the FIRST, {SECOND and THIRD} PART are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

WHEREAS

- (A) [WORKS DEPARTMENT, GOVERNMENT OF ODISHA represented by its Chief Engineer (DPI & Roads), Odisha and having its office in the Office of the E.I.C (Civil), Odisha, Nirman Soudha, Unit-V, Bhubaneswar-751001] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the “**Applications**”) by its Request for Qualification No. dated(the “**RFQ**”) for pre-qualification of bidders for widening and strengthening of ***** Project (the “**Project**”) through an EPC Contract.
- (B) The Parties are interested in jointly bidding for the Project as members of a Joint Venture and in accordance with the terms and conditions of the RFQ document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFQ document that the members of the Joint Venture shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFQ.

2. Joint Venture

2.1 The Parties do hereby irrevocably constitute a Joint Venture (the “**Joint Venture**”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Joint Venture and not individually and/ or through any other Joint Venture constituted for this Project, either directly or indirectly.

3. Covenants

The Parties hereby undertake that in the event the Joint Venture is declared the selected Bidder and awarded the Project, it shall enter into an EPC Contract with the Authority for performing all its obligations as the Contractor in terms of the EPC Contract for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Joint Venture and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Joint Venture during the Bidding Process and until the Appointed Date under the EPC Contract;
- (b) Party of the Second Part shall be {the Member of the Joint Venture; and}
- (c) {Party of the Third Part shall be the Member of the Joint Venture.}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFQ, RFP and the EPC Contract, till such time as the completion of the Project is achieved under and in accordance with the EPC Contract.

6. Share of work in the Project

The Parties agree that the proportion of construction in the EPC Contract to be allocated among the members shall be as follows:

First Party:

Second Party:

{Third Party:}

Further, the Lead Member shall itself undertake and perform at least 50 (fifty) per cent of the total length of the project highway if the Contract is allocated to the Joint Venture.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Joint Venture Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8 Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until Project completion (the "Defects Liability Period") is achieved under and in accordance with the EPC Contract, in case the Project is awarded to the Joint Venture. However, in case the Joint Venture is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of {India/ Odisha}.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of
LEAD MEMBER by:

SECOND PART

(Signature)
(Name)
(Designation)
(Address)

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of
THIRD PART

(Signature)
(Name)
(Designation)
(Address)

In the Presence of:-

1.

2.

Notes:-

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Joint Venture Member.
3. Clause Deleted.

APPENDIX V¹⁰

Guidelines of the Department of Disinvestment

(Refer Clause 1.2.1)
No. 6/4/2001-DD-II
Government of India
Department of Disinvestment

Block 14, CGO Complex
New Delhi.
Dated 13th July, 2001.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

Sd/-

(A.K.Tewari)

Under Secretary to the Government of India