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# Template for Request for Qualifications (RFQ)

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## Addendum 3

Prepared by  
**Genesis Analytics**

**4 December 2013**

**Note:** This template contains two types of instructions to the compiler. Square parentheses ([ ]) indicate sections that must be completed as indicated therein. The comments within the curly parentheses ({ }) are more general instructions to the compiler, indicating how these sections should be completed. These sections will generally vary from project to project and should be considered in context of the project for which the document is being drafted. The template should be used as a guide only and compilers should feel free to deviate from the suggested template where it may be felt that such deviation is warranted.

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**Request for Qualifications to Tender (RFQ)**

**Tender No: [INSERT]**

**CLOSING DATE FOR ACCEPTANCE OF RESPONSES:**

**To be received no later than:**

**[INSERT TIME]**

**On**

**[INSERT DATE]**

**At**

**[INSERT ADDRESS]**

**ALL ENQUIRIES TO BE MADE IN WRITING BY [INSERT DATE] AT [INSERT TIME] AND  
ADDRESSED TO:**

**[THE BID OFFICE]**

**TEL. #: [INSERT]**

**FAX #: [INSERT]**

**E-MAIL: [INSERT]**

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## DISCLAIMER

The information contained in this Request for Qualifications (“RFQ”) document has been prepared by the [Insert Institution name] of the Government of [Insert Country name] (the “Institution”), in good faith based on information obtained from various sources.

While all reasonable care has been taken in preparing this RFQ, the information contained herein does not purport to be comprehensive or to have been verified by the Institution or any of its officers, employees, servants, agents, advisers or any other person. Accordingly, neither the Institution nor any of its advisers make any representation or warranty or give any undertaking, express or implied, or accept any liability or responsibility for the adequacy, accuracy or completeness of any of the information or opinions stated herein or any other written or oral information made available in connection with this process and nothing contained herein is, or shall be relied upon as, a promise or representation, whether as to the past or the future.

The Institution will make only those particular representations and warranties set forth in the definitive transaction documents when, and if, such definitive transaction documents are ultimately agreed and executed, and subject to such limitations and restrictions as may be contained therein.

The RFQ documents do not contain all the information which may be required by the Bidder to develop a possible RFQ Bid. Every Bidder should conduct its own independent analysis of the requirements and the relevant data supplied or referred to herein or that have been obtained during its investigations. Therefore any party considering responding to this RFQ should seek its own independent financial, legal and other advice.

The Bidder shall not have any claim against the Institution or any other department in the Government of [Insert Country name], its officers, employees, servants, agents or advisers arising out of any matter relating to the Project of any nature whatsoever where such claim is based on any act or omission by the Institution, of any nature whatsoever, under any circumstances whatsoever or such claim is based on the content of or any omission from this RFQ of any nature whatsoever.

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# GLOSSARY OF TERMS

## 1. Definitions

In this RFQ and in any other Project Documents (as defined below) which so provides, the following words and expressions shall have the meaning assigned to them below and cognate expressions shall have a corresponding meaning, unless inconsistent with the context:

<b>“Concession Agreement”</b>	means the proposed Public Private Partnership Agreement for the [Insert description of project];
<b>“Affordability”</b>	means the meaning given in the [Insert relevant regulation reference, if applicable];
<b>“Associate”</b>	means, in relation to the Respondent/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Respondent/ Consortium Member. As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law;
<b>“Bidders”</b>	means individuals, organisations or consortia that have been pre-qualified and are entitled to submit RFP Response in respect of the Project;
<b>“Bid”</b>	means the response to the RFP submitted by Bidders;
<b>“Bid Bond”</b>	means a document in the form of a bank guarantee to be submitted by the pre-qualified Respondents as security for their commitment to continue participating in this procurement process;
<b>“Briefing Note”</b>	means a circular of the kind referred to in 4.8;
<b>“Consortium”</b>	means any group of persons or firms jointly submitting a Response to this RFQ to perform the Project as required by the Institution irrespective of the existence of a formal agreement or arrangement between them or not;
<b>“Designated Member”</b>	means any member of the Respondent, identified by Respondent and in respect of which the Respondent submits credentials to be relied upon for pre-qualification, where such member is neither a Relevant Organisation nor a Key Contractor;
<b>“D &amp; C Sub Contractor”</b>	means the design and construction sub-contractor;

<b>“Eligible Experience”</b>	means Respondent experience which would qualify as eligible technical capacity in terms of Section 5.3.1;
<b>“Eligible Projects”</b>	means those projects undertaken by the Respondent that qualify as eligible in terms of Section 5.3.1;
<b>“Evaluation Criteria”</b>	means the evaluation criteria to be applied by the Institution in the evaluation of the RFQ Responses;
<b>“Evaluation Committee”</b>	means the committee referred to in Section 5;
<b>“Facility”</b>	means the facility to be [financed, designed, constructed, managed and maintained] {amend as required} by the Private Party in accordance with the terms and conditions of the Concession Agreement;
<b>“Financial Close”</b>	means the date of signature of the proposed Public Private Partnership Concession Agreement by the last party thereto to sign same;
<b>“Institution”</b>	means the [Insert name of the Institution];
<b>“Organisation”</b>	refers to each relevant sole proprietor, partnership, incorporated company. Cooperative etc. as appropriate;
<b>“Key Contractor”</b>	means the person, firm, or entity who in the Respondent’s Response undertakes (or is committed) to provide any one or more of the following goods and/or services in regard to the Project, namely design, construction, commissioning of the facilities, or facilities management;
<b>“Law”</b>	shall mean the Law of [Insert country name];
<b>“Lenders”</b>	means any person committing to provide and/or providing funding to the Respondent for purposes of undertaking this Project;
<b>“Member”</b>	means member of a Consortium;
<b>“Net Worth”</b>	means 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;
<b>“Operations”</b>	means the facility management services listed in section 2.3.2 of this RFQ;
<b>“Payment Mechanism”</b>	means the mechanism to form part of the Concession Agreement for the payment of Unitary Payments to the Private Party and the deduction of penalties from the Unitary Payments in accordance therewith;

<b>“PPP”</b>	means the Public Private Partnership as defined in [Insert relevant regulation reference, if applicable];
<b>“Private Party”</b>	means the preferred bidder who is awarded the Project and concludes the proposed Concession Agreement;
<b>“Project”</b>	means the projects, respectively, for [Insert description of project]
<b>“Project Site”</b>	means the sites as fully described in;
<b>“Project Term”</b>	means a period of [Insert number] years from the date of satisfaction of the Conditions Precedent as agreed in the PPP Concession Agreement;
<b>“Relevant Organisation”</b>	means any member of the Respondent or Pre-Qualified Bidder which acquired or is committed to acquire Equity in the Private Party
<b>“Respondent”</b>	means a Consortium that submits an RFQ Response;
<b>“RFP”</b>	means the request for proposals tender to be issued by the Institution to Bidders with regard to the Project;
<b>“RFQ”</b>	means this Request for Qualification tender;
<b>“RFQ Response”</b>	means the response to be submitted by Respondents with regard to the RFQ;
<b>“Services”</b>	means the Operation and Facilities Management Service to be provided by the Private Party;
<b>“Sponsor”</b>	means the lead member of the Respondent;
<b>“Sub-Contractor”</b>	means individuals, organisations or consortia forming part of the Respondent but not necessarily taking up equity in the SPV; and
<b>“Works”</b>	means the design and construction of the Facilities, as required by the Institution to be provided in relation to the Project.

{Insert any other important definitions}

## 2. Acronyms

<b>CBD</b>	Commercial Business District
<b>COD</b>	Commercial Operations Date
<b>CPI</b>	Consumer Price Index
<b>DBFMT</b>	Design Build Finance Maintain and Transfer
<b>EPC</b>	Engineering Procurement and Construction

<b>PPP</b>	Public Private Partnership
<b>RFP</b>	Request for Proposal
<b>RFQ</b>	Request for Qualification
<b>SMME</b>	Small, Medium and Micro Enterprises
<b>SPV</b>	Special Purpose Vehicle
<b>TA</b>	Transaction Advisor
<b>TET</b>	Technical Evaluation Team
<b>VfM</b>	Value-for-money

{Insert any other acronyms used in the document}



# SECTION 1: INTRODUCTION

## 1.1. Purpose of RFQ and Procurement Process

### 1.1.1. Issuance of the RFQ

- (a) The [Insert Institution name] (the “Institution”), issues this Request for Pre-qualification as the first formal step in a procurement process to ultimately procure services of a Private Party for [Financing, Design, Construction and Maintenance] {amend as required} of [Insert description of project infrastructure]
- (b) The Project is being procured and this RFQ is being issued in accordance with [Insert relevant government regulation].
- (c) Approval for the issuance of this RFQ has been provided by the Institution.

### 1.1.2. Objective and Purpose of the RFQ

- (a) The objective of this RFQ is to provide prospective Respondents with sufficient background information in relation to the Project (i) to allow them to take an informed decision as to whether to continue with the procurement process, and (ii) for those who wish to proceed to allow them to submit a full and informative Response which will allow the Institution to gain an understanding of the financial and technical status and previous experience of Respondents.
- (b) The purpose of this RFQ is to allow the Institution to establish a shortlist of Pre-qualified Bidders who are adjudged to be sufficiently experience and committed organisations which meet the technical, financial and other requirements of the Institution.
- (c) The Institution therefore seeks Responses from experienced and committed Consortia and/or organisations who wish to be pre-qualified and in due course given the opportunity to bid to undertake the project.

### 1.1.3. Outline of Procurement Process

The Institution has elected to employ a two stage procurement process namely a pre-qualification stage to be followed by a pre-qualified bidder proposal submission stage. It is accordingly envisaged that:

- (i) Responses to this RFQ (unless rejected in accordance with [insert relevant section] (Respondent Disqualification)) will be evaluated (in accordance with the process described in Section 5 (The Evaluation Process) to produce a shortlist of pre-qualified Respondents (currently expected to be [insert number]) based on technical and financial capability. {insert any other capabilities which may be assessed if necessary}
- (ii) Only Pre-qualified bidders will be invited to submit a Proposal to the RFP that will be issued in due course
- (iii) A Preferred Bidder will then be selected, who will negotiate a PPP Concession Agreement with the Institution (see Section 3 (The Procurement Process) below for more details of the procurement process).

### 1.1.4. Outline of the RFQ

This RFQ provides an overview of the Project, including its background, the facility and service requirements and the proposed commercial arrangements. This RFQ also details the

procurement process applicable and the timelines guiding such process. Further, this RFQ provides information on the pertinent considerations to be considered by the Institution in evaluating the Responses to this RFQ.

## **1.2. Important Notices**

### **1.2.1. Disclaimer**

#### **1.2.1.1. Information Provided**

The Government of [Insert country name], acting through the Institution has issued this Request for Qualification document to the public in terms of [Insert relevant regulation name]. This document (which expression shall include all other written information made available during the Request for Qualification process) is being made available by the Institution to potential Respondents on the condition that it is used solely for the purpose of responding to this RFQ.

#### **1.2.1.2. RFQ does not constitute an investment recommendation**

This document is provided solely for the purpose set out in this notice and is not intended to form any part or basis of any investment decision by Respondents. The recipient should not consider the document as an investment recommendation by the Institution or any of its advisers. Each person to whom this document (and other later documents) is made available must make his/her own independent assessment of the Project after making such investigation and taking such professional advice as he/she or it deems necessary. Neither the receipt of this document or any related document by any person, nor any information contained in the documents or distributed with them or previously or subsequently communicated to any Respondent or its advisers, is to be taken as constituting the giving of an investment advice by the Institution or its advisers.

#### **1.2.1.3. No Institution warranty as to completeness of information**

Whilst reasonable care has been taken in preparing this RFQ and other documents, they do not purport to be comprehensive or true and correct. Neither the Institution nor any of its advisers accept any liability or responsibility for the adequacy, accuracy or completeness of any of the information or opinions stated in any document.

#### **1.2.1.4. No Institution warranty or representation on information**

No representation or warranty, express or implied, is or will be given by the Institution, or any of its officers, employees, servants, agents or advisers with respect to the information or opinions contained in any document or on which any document is based. Any liability in respect of such representations or warranties, howsoever arising is hereby expressly disclaimed.

#### **1.2.1.5. Right to modify, amend or terminate the procurement process**

The Institution reserves the right to amend, modify or withdraw this RFQ, or to amend the (which terminates on announcement of Bidders, if any) process for the Project at any time and from to time to time, without prior notice and without liability to compensate or reimburse any party or person.

The Institution is not obliged to accept any response to this document or to pre-qualify any entity that wishes to be pre-qualified to be appointed to undertake the Project described in this document. The Institution reserves the right to reject a Response at any time.

#### **1.2.1.6. Institution's Obligation in relation to the Process, Liability to Costs**

All costs and expenses incurred by Respondents in submitting Responses for the Project shall be borne by the Respondents and the Institution shall not be liable for any costs or expenses whatsoever or any claim for reimbursement of such costs or expenses.

#### **1.2.1.7. Provisions are for sole benefit of the Institution**

Any requirement set out in this RFQ regarding the content of a response is stipulated for the sole benefit of the Institution, and save as expressly stated to the contrary, may be waived at its discretion at any stage in the procurement process. The Institution reserves the right to adopt any proposal made by any Respondent at any time and to include such proposal in any procurement document which may or may not be made available to other Respondents.

#### **1.2.1.8. No gifts, or corrupt gifts**

If any recipient, Respondent or its employees, advisers or agents make or offers to make any gift to any public official or employee of the Institution or consultant to the Institution on the Project either directly or through an intermediary then such recipient, Respondent will be disqualified forthwith from participating in the Project.

#### **1.2.1.9. Confidentiality of Information**

Each recipient of this document agrees to keep confidential any information of a confidential nature which may be contained in the information provided (the "Confidential Information Provided"). The Confidential Information Provided may be made available to a Respondent's, Relevant Organisation's and/or Key Contractor's members, employees and professional advisers who are directly involved in the appraisal of such information (who must be made aware of the obligation of confidentiality) but shall not, either in the whole or in part, be copied, reproduced, distributed or otherwise made available to any other party in any circumstances without the prior written consent of Institution, nor may it be used for any other purpose than that for which it is intended.

These requirements do not apply to any information which is or becomes publicly available or is shown to have been made so available (otherwise than through a breach of a confidentiality obligation). Respondents, Relevant Organisations, Key Contractors and their constituent members, agents and advisers, may be required to sign confidentiality agreements/undertakings (in such form as the Institution may require from time to time).

All Confidential Information Provided (including all copies thereof) remains the property of the Institution and must be delivered to the Institution on demand. Further, by receiving this RFQ each Respondent and each of its members agrees to maintain its submission in response to this RFQ confidential from third parties other than the Institution and its officials, officers and advisers who are required to review the same for the purpose of procurement of the Project.

#### **1.2.1.10. Applicability of Laws**

This RFQ is issued, and all subsequent procurement documentation, if any, including amendments thereto and Briefing Notes will be issued subject to applicable legislation in [Insert country name]. Any Recipient residing outside [Insert country name] is urged to familiarise itself with and to observe any regulatory requirements relevant to the proposed transaction (whether these derive from a regulatory authority within or outside [Insert country name]).

#### **1.2.2. Interpretation**

In this RFQ, unless inconsistent with or otherwise indicated by the context –

- (i) headings have been inserted for convenience only and should not be taken into account in interpreting the RFQ;

- (ii) any reference to one gender shall include the other gender;
- (iii) words in the singular shall include the plural and vice versa;
- (iv) any reference to natural persons shall include legal persons and *vice versa*;
- (v) words defined in a specific clause have the same meaning in all other clauses of the RFQ, unless the contrary is specifically indicated;
- (vi) any reference to the RFQ, schedule or appendix, shall be construed as including a reference to any RFQ, schedule or appendix amending or substituting that RFQ, schedule or appendix;
- (vii) the schedules, appendices and Briefing Notes issued pursuant to this RFQ, form an indivisible part of the RFQ and together with further clarifying and amending information provided by the Institution, constitute the body of RFQ documentation which must be complied with by Respondents;
- (viii) in the event of any inconsistency between this RFQ or other earlier information published with regard to the Project, the information in this RFQ shall prevail; and
- (ix) this RFQ shall be governed by and applied in accordance with the laws of [Insert country name].

## **SECTION 2: THE PROJECT**

### **2.1. Project background**

2.1.1. The [Insert Institution's name] is seeking to [insert short description of broad Project

objectives]. In view of the importance of these areas, the [Insert Institution's name] has proposed to:

- (i) [Insert specific project objective]
- (ii) {Insert as many specific objectives here as necessary}

2.1.2. {Insert relevant information about project under appropriate headings}

2.1.3. {With each heading a new clause should be started: Possible areas to focus on here are:

the Institutions involved in the Project and how these Institutions are related to the Project; the Project preparation which has taken place up to the issuing of the RFQ. This may include how details on how the Project was identified, whether the Institution has engaged with a Transaction Advisor ("TA") and the type of assessments undertaken and assistance provided by the TA up to this point; and a brief overview of the legal framework within which the Project will be undertaken i.e. an overview of the relevant PPP laws and regulations}

### **2.2. Overview/Description of Project**

#### **2.2.1. Project Defined**

- (a) The Project entails [Insert brief description of Project], requiring a Private Party to [finance, design, construct, manage and provide] {amend as required} [Insert description of required goods and services] for a period of [Insert number] years in accordance with the terms of a PPP Concession Agreement.
- (b) The Institution will provide the Project Site(s) for setting up the Project Facilities:
  - (i) {Insert details of each site – each site under a new point. The required constructions and amendments to existing infrastructure at these sites must be pointed out here (if necessary)}
  - (ii) {Insert as many sites as necessary}
- (c) The construction of the facilities is expected to take [insert period of time].

{Can amend as required}

#### **2.2.2. Project Site(s)**

- (a) Below is a summary of the project sites. A more detailed description of the Project Sites including the maps depicting the Project Sites and a description of the utility services at the Project Sites is provided in Appendix 1.
- (b) The information provided is intended only as a preliminary and general exposition of the Project background. Neither the Institution nor its TA provides any undertakings in respect of the technical information provided herein.
- (c) In this regard, Respondents should conduct their own investigations and obtain the necessary professional advice and counsel at their cost, necessary to formulate their own opinion regarding this technical information relating to the Project. During the RFP stage, Bidders will be provided an opportunity to conduct a due diligence on the

technical investigations undertaken by the Institution and its TA during the Feasibility Assessment of the Project.

**2.2.2.1. [Insert site name or description]**

- (a) The site allotted by the Government to the Institution for the new [Insert infrastructure name] is situated on [Insert site location].
  - (i) [Insert detailed geographic details. Describe the geographical location – co-ordinates, what it is situated near to etc.]
  - (ii) {Each type of detail inserted should be under a different point here}

**2.2.2.2. [Insert site name or description] (if there is a second site)**

- (i) [Do same as above]
- (ii) {Do this for as many sites as there are}

**2.2.3. Technical Studies**

- (a) Based on the recommendations of the TA, the Institution has undertaken Technical Studies as described in the table below at the Project Sites. {Edit table as required}

<b>TECHNICAL STUDY</b>	<b>[Name of site 1]</b>	<b>[Name of site 2]</b>
{Land Survey}	✓	✓
{Geotechnical Survey}	✓	✓
{Town Planning}	✓	x
{Traffic Impact Assessment}	✓	✓
{Environmental Scoping Report }	✓	x
{Heritage Study}	x	x

- (b) The results of these studies find no fatal flaws that would preclude the proposed development of the areas. The results of and the recommendations from the various Technical Studies undertaken are provided in Appendix 1. {Amend as required}

**2.3. Services Required**

**2.3.1. Design and Construction of Facility**

**2.3.1.1. [Insert name of site 1]**

- (a) {The services required specifically at this site should be listed here – each service should fall under a new point}
- (b) ...

**2.3.1.2. [Insert name of site 2]**

- (a) {Do the same as above here}
- (b) {For any additional sites the same should be done as well}

**2.3.1.3. General Output Specifications**

- (a) {All specifications that apply more generally should be listed here – if there is only one site this section should still be included; the site specific specifications will be in 2.3.1. and the general project specifications will be listed here}
- (b) ...

### **2.3.2. Facilities Maintenance**

- (a) The projects will also require the delivery of a range of services to ensure that each of the facilities is secure, and maintained to the agreed standards throughout the contract period. The provision of these services will be maintained at a consistent, pre-determined level of quality to ensure that the core services can be delivered without unplanned interruption. These performance standards will further translate into a Penalty Regime, incorporated in the PPP Contract (see section 2.4.1). The said performance standards, together with the output specifications and Payment Mechanism will be finalized in the PPP Concession Agreement schedules.
- (b) The preferred service option for each of the facilities includes, but may not be limited to, the provision of the following services to be provided as part of the Project:
  - (i) {Insert list of services to be provided}
  - (ii) ...
- (c) Note that a detailed description of the existing and proposed utility services at the Project Sites is provided in Appendix 1.

{This section can be amended as required}

## **2.4. Project Structure**

### **2.4.1. The PPP Contract**

- (a) Respondents are advised that the financing of the development and operation of the Project will be undertaken on a project finance basis, in that the Private Party will not be entitled to encumber the Land or any of the Institution's properties to finance the Project.
- (b) The Private Party will enter into a PPP Concession Agreement with the Institution {and [Insert other party's name if required]}. The Private Party will be a single legal entity, resident in [Insert country name] for tax purposes and competent to transact with the Institution as such.
- (c) The primary revenue, which will accrue to the Private Party, will be the Unitary Payment, which will be subject to penalty deductions in circumstances where the Private Party delivers services at a level lower than that contracted for in the PPP Concession Agreement. The Institution will be entitled to levy penalties for a specified level/frequency of unavailability or performance failure and, if not satisfactorily remedied, terminate the PPP Concession Agreement.
- (d) The unitary payments shall escalate annually at CPIX, and will be payable for the Project Term to the Private Party. The final structure and schedule of the Unitary Payments will be determined during the RFP phase. The institution shall commence payment of the Unitary Payments from the COD (and not before).

{This section can be amended as required}

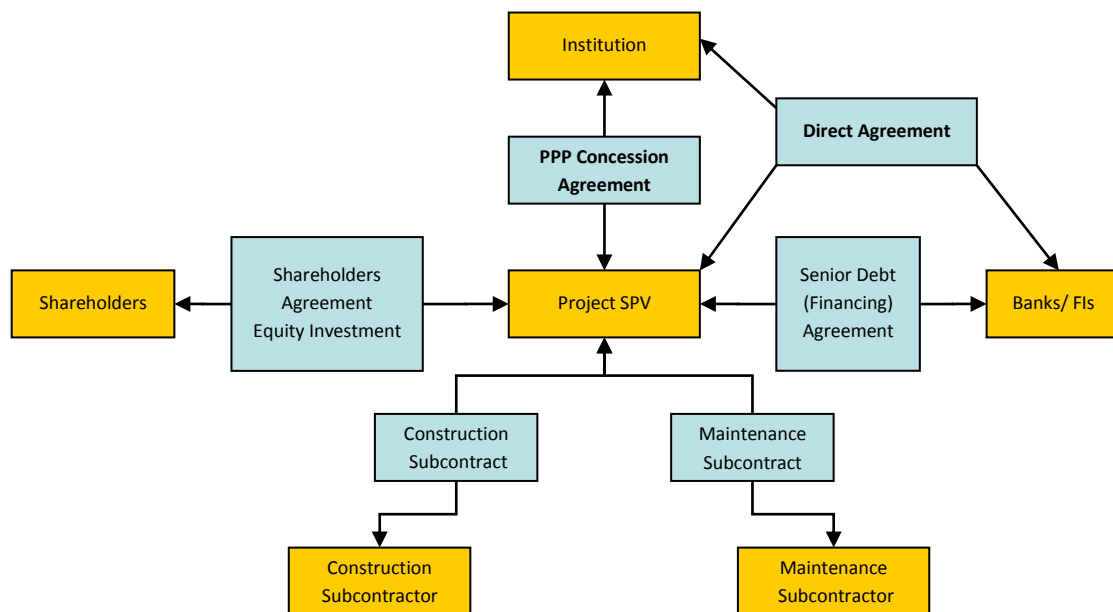
### **2.4.2. Risk Transfer**

- (a) Transfer of risk forms an important consideration for both the Private Party and the Institution, with both parties seeking to ensure that risk is allocated to the party best placed to manage or mitigate against that risk.
- (b) The Private Party will be required to assume a substantial portion of all forms of project life-cycle risk (including [demolition of existing structures, design, construction, financing,

operation and maintenance risks of both new and existing structures] {amend as required}).

### 2.4.3. Funding Mechanism

- (a) The Project is proposed to be financed through the Project Finance model. Under this model, the Private Party selected will incorporate a Special Purpose Vehicle (SPV) for the sole purpose of executing the requirements of the Project. It is anticipated that substantial funding for the Project will be provided by limited-recourse debt made available by Lenders (banks and financial institutions in [Insert country name] and/ or international banks and financial institutions) who will look primarily to the cash flows generated from the Project to service the debt.
- (b) The Private Party selected shall contribute the equity in the SPV to part finance the capital costs estimated to be incurred for the Project.
- (c) The financial commitments in the PPP Concession Agreement shall be denominated in [Insert currency]. The Private Party will be responsible for and take the risk of currency, interest rate, and other fluctuations and will to that extent make provision within its costs to the Institution for any hedging arrangements which the Private Party may require in relation to its obligations under the PPP Concession Agreement.
- (d) The Institution envisages the following structure for the implementation of the proposed Project. Respondents are encouraged to come up with a Project structures that will provide maximum value to the Institution.



### 2.4.4. Subcontracts and Advisors

#### 2.4.4.1. Construction and Maintenance Subcontracts

- (a) The Project SPV may enter into a subcontract with an Engineering, Procurement and Construction (EPC) contractor during the Construction Period to undertake the design and the construction of the Project Facilities to the time, cost and output specifications as agreed in the PPP Concession Agreement.
- (b) The Project SPV may enter into a subcontract with a Maintenance contractor post the COD to undertake the regular and periodic maintenance of the Project Facilities during the Operations Period.
- (c) The Project SPV may enter into any other subcontract with suppliers or service providers supplying to the Project. These subcontractors need not necessarily hold



equity in the Project SPV and may generate revenue through their ability to supply or provide services to the Project.

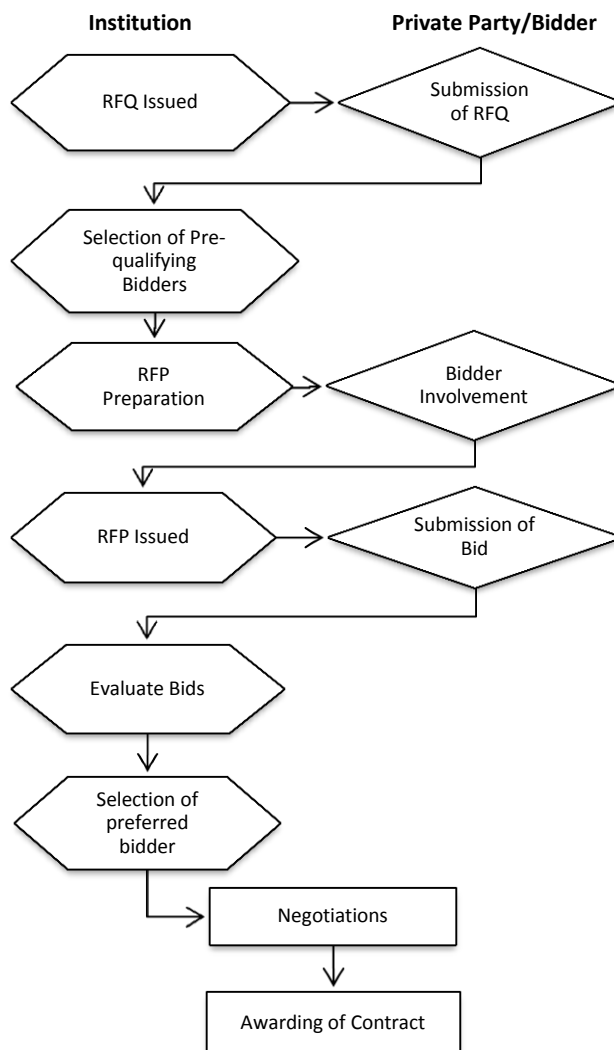
**2.4.4.2. Assistance from Advisors**

- (a) The Respondents must ensure that they have access to the necessary financial, legal, technical and other skills necessary for the successful conclusion and implementation of a PPP project. Where these resources are not available within the Respondent, the use of the services of experienced external Legal and Financial Advisors that can assist it throughout the procurement of the Project is highly recommended.

## SECTION 3: THE PROCUREMENT PROCESS

### 3.1. Process Overview

- (a) The purpose of the RFQ is to determine whether a Respondent is capable of delivering the Project in terms of its business, financial standing and technical capacity and experience.
- (b) In conducting the procurement process the Institution will follow the procedures established by [Insert relevant regulation reference] and seek competition between Respondents without stifling innovation through the open exchange of information and allowance of ideas by Respondents.
- (c) The diagram below represents the procurement process for the Project:



- (d) The PPP procurement process is an independent one, procured under the authority of the [Accounting Officer]\* {amend as required} and subject to the approval of the Institution at various stages. Any reference to any previous procurement process shall be purely informative, unless the contrary is specifically stated in this RFQ.

### 3.2. RFQ Requirements\*

#### 3.2.1. RFQ Timetable

(a) The following table represents the various milestones in the RFQ Process:

RFQ PROCESS	MILESTONE DATES
Issue Request for Qualification (RFQ)	[Insert date]
Site Visit {If required}	[Insert date]
Briefing session {If required}	[Insert date]
Closing date for clarification questions	[Insert date]
Submission of RFQ Responses	[Insert date]
Short listing of successful bidders	[Insert date]

(b) The Institution retains the right in its sole discretion to amend any of the milestone dates indicated in the above timeline. Respondents shall timeously be informed of any amendments to the timeline through the issue of Briefing Notes.

(c) The date for the site visit indicated in the above table shall be the only date allocated for the site visits. [Though it is not compulsory for Respondents to attend the site visit, Respondents are encouraged to attend as be officials from the Institution will be available to answer questions related to the site on that specific date.] {This part is only required should the site visit not be compulsory – if it is make it clear here}

#### 3.2.2. [Compulsory] RFQ Briefing Session and [Optional] Site Visit {can amend as required}

(a) The Institution will conduct a [COMPULSORY] Briefing Session and an [optional] site visit with Respondents after the issue of the RFQ, both of which shall be held on [Insert date] {Could be on different days – indicate if this is the case}.

(b) The Briefing Session shall take place at [Insert address] and will commence at [Insert time] CAT. The programme for the session is indicated below:

**Table: Briefing Session Programme** {Example – can alter as required}

ITEM	TIME
Introduction and Welcome	[Insert time]
Brief Project Overview	[Insert time]
Technical Requirements	[Insert time]
Financial Requirement	[Insert time]
Socio Economic Development Requirements*	[Insert time]
Questions	[Insert time]

(c) **Note:** Respondents shall be responsible for their own transport arrangements to and from the briefing session.

(d) Respondents who fail to attend or fail to obtain an Attendance Certificate together with a receipt of proof of purchase of the RFQ documents, shall be disqualified from the RFQ process and Responses submitted shall not be considered for evaluation by the Institution. {Include this only if compulsory}

- (e) The briefing session shall be conducted in a presentation format by the Institution. Any questions posed by Respondents shall be taken down by the Institution and responded to in writing by the Institution. Any answers which may be provided at the session shall be superseded by the written answers provided by the Institution. Responses by the Institution shall be issued to all Respondents in the form of an RFQ Briefing Note.
- (f) The optional site visit shall take place at [Insert address] and will commence at [Insert time] CAT.

**Table: Optional Site Visit Programme** {Example – can alter as required}

ITEM	TIME
Meeting Point:	
[Insert name of site 1] visit	[Insert time]
[Insert name of site 2] visit	[Insert time]
...	....

**3.3. Information on Subsequent Stages of the Procurement Process**

Details of the procurement process from issuance of the RFQ are set out in Appendix 2 (Procurement Process and Timetable to Commercial Close) which, in turn references Appendix 3 (Information and Commitment Required from Bidders at Subsequent Stages of the Procurement Process) which sets forth the specific commitments and levels of information required from Bidders at the RFP stage.

**3.4. Bid Bond**

- (a) The Institution shall pre-qualify three Bidders to proceed to the RFP phase. To mitigate the risk of Pre-qualified Bidders dropping out of the process, the Institution will require that such Bidders provide a Bid Bond in the amount of [Insert amount - 1% of the estimated Project Cost]\* in a format substantially similar to the Bid Bond contained in Appendix 6 within 14 days of notification that such Respondent has been appointed as a Bidder. On submission of the RFQ Response, Respondents shall submit letters from their Lenders indicating that they shall issue a Bid Bond 14 days after the announcement of the Bidders.
- (b) Failure to provide such Bid Bond within the required timeframe may result in the termination of the Respondent’s status as Bidder. Only Bidders who have submitted the Bid Bond shall be entitled to submit Bids.

**3.5. Bid Costs**

- (a) The All costs and expenses associated with or incurred by Respondents in relation to preparation and submission of its Response, shall be borne by the relevant party. The Institution shall not be liable for any such costs or expenses or any claim for reimbursement of such costs or expenses.
- (b) To avoid doubt, the Institution shall not be liable for any samples submitted by Respondents in support of their Responses and reserves the right not to return to them such samples and to dispose of them at its discretion.

### **3.6. General/ Legal Requirements**

#### **3.6.1. Consortium changes**

If exceptional circumstances should arise in response to which a Respondent, after the submission of its Response, requires that a new Sponsor or Subcontractor be introduced or a key Sponsor or Subcontractor substituted, the following process shall be applied by the Institution:

- (a) The Respondent must notify the Institution in writing of the proposed changes supported by complete details of the material reasons for the changes, the parties impacted by the changes and the impact on the Respondent.
- (b) The Institution shall evaluate the reasons advanced by the Respondent for the requested changes to the Consortium structure and where the Institution is not satisfied that the reasons advanced are reasonable or material, refuse to accept the change and disqualify the Respondent, or notify the Respondent in writing of its non-acceptance of the changes and require the Respondent to propose a suitable alternative to the Institution within 10 (TEN) {can alter number} days of its receipt of the decision of the Institution, upon receipt of which the Institution shall -
  - (i) evaluate the alternative proposed for suitability to the Institution, and where the alternative is accepted by the Institution, inform the Respondent in writing of such acceptance and the Institution shall reassess the Respondent against the RFQ requirements and criteria; or
  - (ii) where the alternative is not accepted by the Institution, inform the Respondent in writing of such non-acceptance as well as its disqualification from the RFQ Process.
- (c) Where the Institution is satisfied that the changes requested under (i) above are reasonable and material, the Respondent, shall be allowed to effect the required changes and the Institution shall reassess the Respondent against the RFQ requirements and criteria.
- (d) Where the Respondent has been pre-qualified as a Bidder and requests changes to its Consortium structure which changes are accepted by the Institution, and the Bidder after re-evaluation by the Institution, scores less than its initial RFQ evaluation scoring, the Institution shall -
  - (i) determine whether the Bidder is still eligible for pre-qualification, failing which the Bidder shall be disqualified; and
  - (ii) determine whether the reduced score by the Bidder has any impact on the order of Bidders, and where the order is affected to the degree that a Respondent who was not previously pre-qualified now becomes eligible for pre-qualification, the Institution shall pre-qualify such Respondent and disqualify the Bidder who affected the changes to its structure.

#### **3.6.2. Conflict of Interest**

- (a) No Sponsor, Subcontractor or advisor of the Respondent may be a member of or in any other way participate or be involved, either directly or indirectly in more than one Response or Respondent during any stage of the Project procurement process, but excluding specialist suppliers of systems and equipment, non-core service providers or financial or commercial institutions whose role is limited purely to lending money or advancing credit to the Respondent. Respondents are to sign the declaration of interest form which is contained in the Tender Forms of Appendix 5.
- (b) In order to prevent the conflict or potential conflict of interest between Lenders and Respondent, no advisors or consultant to any Respondent, Sponsor or Subcontractor

may fulfil the role of arranger, underwriter and/or lead bank to the Respondent. The Institution may disqualify the Respondent from further participation in the event of a failure to comply with this provision. The Institution views the potential conflict of interest so great as to warrant the reduction of competition for advisory services.

## SECTION 4: INSTRUCTIONS TO RESPONDENTS

### 4.1. Respondent Eligibility

The following shall be used to determine the eligibility of Respondents in terms of their structure for their pre-qualification.

- (a) The Respondent for pre-qualification may be a single entity or a group of entities, coming together to implement the Project. However, no Respondent applying individually or as a member of a Consortium, as the case may be, can be member of another Respondent.
- (b) A Respondent may be a natural person, private entity, or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out below.
- (c) Where the Respondent is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the [Insert name of relevant legislation], to execute the Concession Agreement and implement the Project. In case the Respondent is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:
  - (i) Number of members in a consortium shall not exceed 6 (six), but information sought in the Response may be restricted to 4 (four) members in the order of their equity contribution;
  - (ii) members of the Consortium shall nominate one member as the lead member, who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix 5, signed by all the other members of the Consortium;
  - (iii) an individual Respondent cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Respondent Consortium cannot be member of any other Respondent Consortium applying for pre-qualification;
  - (iv) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
  - (v) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix 5, for the purpose of making the Response and submitting a Bid in the event of being short-listed. The Joint Bidding Agreement is to be submitted along with the Response.
- (d) The Respondent shall engage an experienced O&M contractor or hire qualified and trained personnel for operation and maintenance of the project in conformity with the provisions of the Concession Agreement.

### 4.2. Requirements with Respect to Response Form Completion

#### 4.2.1. Requirements in Relation to Response Forms

- (a) The purpose of the Pre-qualification Response Form (see Appendix 4) is to enable the Respondents, who are interested in the opportunity described in the RFQ, to provide the Institution with sufficient information to assess their capability and suitability to be selected as Pre-qualified Bidders, who will be invited to submit Proposals in response to the RFP to be issued in respect of the Project.
- (b) Respondents must provide the required level of detail (if one is required) by completing the Appendix 4 Response Forms.

- (c) Respondents are required to include the tender forms set forth in Appendix 5.

#### **4.2.2. Respondent Details**

- (a) The Respondent should provide all information required for each member of the Consortium as per the format of Appendix 4 Annexure I.
- (b) The Respondent should provide a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations as per format at Annexure I of Appendix 4.

#### **4.2.3. Technical Information**

- (a) The Respondent should furnish the details of Eligible Experience (as defined in section 5.3.1.1) for the last 5 (five) financial years immediately preceding the Response submission deadline.
- (b) The Respondents must provide the necessary information relating to Technical Capacity as per the format at Annexure II of Appendix 4. In computing the Technical Capacity the Respondent/ Consortium Members, the Technical Capacity of their respective Associates would also be eligible hereunder.
- (c) The Respondent should furnish the required Project specific information and evidence in support of its claim of Technical Capacity, as per format at Annexure IV of Appendix 4.

#### **4.2.4. Financial Information**

- (a) The Respondent must provide establish the minimum Net Worth as specified in Section 5.3.2 and provide details as per format at Annexure III of Appendix 4.
- (b) The Respondent shall enclose with its Response certificate(s) from its statutory auditors specifying the net worth of the Respondent, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the definition given. For the purposes of this RFQ, 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. In computing the Net Worth of the Respondent/ Consortium Members the Net Worth of their respective Associates would also be eligible hereunder.
- (c) The Response must be accompanied by the Audited Annual Reports of the Respondent (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Response is made. In case the annual accounts for the latest financial year are not audited and therefore the Respondent cannot make it available, the Respondent shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Respondent shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.

### **4.3. Requirements with Respect to Tender Form Completion**

Respondents must ensure that all Tender Forms attached to this RFQ in Appendix 5 are completed or complied with as the case may be.

#### **4.3.1. Declaration of Interest**

To ensure the transparency and fairness of the RFQ Process, each Sponsor, Subcontractor or advisor of the Respondent must complete and sign the Declaration of Interest form attached hereto in the Tender Forms in Appendix 5 and submit such signed forms with its Response. Failure to do so may result in the invalidation of the Response. Briefing notes will only be circulated (at the time when they are issued) to persons who submitted a Declaration of Interest.



#### **4.3.2. Power of Attorney**

The Respondent should submit a Power of Attorney as per the format at Appendix 5, authorising the signatory of the Response to commit the Respondent. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix 5.

#### **4.3.3. Tax Clearance**

- (a) Each Respondent, Relevant Organisation, Key Contractor and Designated Member (if any) which is registered (or incorporated) in [Insert country name] is liable for payment of tax in [Insert country name] and is required to furnish a tax clearance certificate. Original Tax Clearance Certificate(s) must be submitted together with the bid and certified copies of Tax Clearance Certificate(s) will not be accepted. Failure to submit the original and valid Tax Clearance Certificate may result disqualification of the bid. A Response form for such tax clearance certificate is provided in Appendix 5.
- (b) Where the Respondent, Relevant organisation, Key Contractor or Designated Member is not yet operating in [Insert country name], it must submit proof of “good standing” with the relevant taxation authority in its country of origin.

#### **4.3.4. Indemnity to Government**

Respondents and any of their respective Members who wish to furnish Government with an indemnity for non-disclosure by the Institution of Respondent confidential information, trade secrets or other proprietary information, as contemplated in section 4.10 of the RFQ, are requested to provide an appropriate binding indemnity headed “Indemnity to Government” to be included with the Tender Forms contained in Appendix 5.

#### **4.4. Submission of RFQ Responses**

- (a) Responses must be delivered to:

[Insert person to whom response must be addressed]  
[Insert address]  
Between [Insert times] [Insert days]  
Before or on [Insert date] at [Insert time] CAT

- (b) Responses forwarded by telegraphic, facsimile or electronic mail will not be considered as Responses to this RFQ.
- (c) The Institution may, at its sole discretion extend the closing date and time for the submission of Responses. Any extension granted will be notified by a Briefing Note and granted to all Respondents.

#### **4.5. Format and Composition of Responses**

- (a) All responses to the information requested in the Response Form (see Appendix 4) of this RFQ must be submitted in the manner requested and provided for in these forms. The Appendix 4 Response Forms will be issued in machine-readable form as a Microsoft Office file as part of this RFQ). The respondents must meet the requirements, as specified in Section 4.1-4.3 above, by completing the Appendix 4 Response Forms in full and providing the required level of detail (where specified). The tender forms contained in Appendix 5 (Tender Forms) must be completed, or complied with, as the case may be. All bids should be submitted on the official forms provided. The forms should not be retyped.
- (b) All Responses must be submitted in a sealed envelope/package clearly and visibly containing the following demarcation on each envelope/package:

<b>For the attention of:</b>	[Insert name] / [Insert capacity of this person]
<b>Reference number:</b>	[RFQ reference number]
<b>Description:</b>	<i>Submission of Response in answer of the Request for Qualifications for the “[Insert Project Name]”</i>
<b>Respondent/Consortium name:</b>	<i>[please indicate name]</i>
<b>No. of envelope/package:</b>	<i>[please number each envelope/package chronologically]</i>
<b>Authorised Representative:</b>	<i>[please indicate name]</i>
<b>Contact details:</b>	<i>[please provide complete contact details and postal address of Authorised Representative]</i>

- (c) Responses must be delivered no later than the time and date referred to in Section 4.1. No electronic submissions are permitted without accompanying physical documents, and the Institution will not accept any Response(s) sought to be submitted in electronic format only.
- (d) All Responses must be submitted in the format as prescribed below:

- (i) 1 (one) original master Response, clearly marked as such, and 6 (six) complete hard copies thereof printed and bound in volumes as required (clearly marked as Hard Copy 1 through 6 as required). All original documents in colour must be reproduced in colour for the copies. Any documents forming part of the original response but which are not original in nature must be certified as a true copy by a Commissioner of Oaths or Notary Public;
- (ii) 2 (two) complete electronic copies on compact disk (in complete correspondence with the printed hard copies). These should be clearly marked as Electronic Copy 1 and 2, and should be in electronic machine readable format as a Microsoft Office File(s) (MS Word or Excel).

- (e) Submissions must be in English, typed in A4 format, vertically bound or filed in loose leaf and set out as follows:

- (i) Volume 1 – Completed covering letter and response forms as per Appendix 4 ;
- (ii) Volume 2 – Other Documentation as listed below:
  - I. Declaration of Interest as per the format at Appendix 5
  - II. Power of Attorney for signing the Response as per the format at Appendix 5;
  - III. If applicable, the Power of Attorney for the lead member of the Consortium as per the format at Appendix 5;
  - IV. Copy of the Joint Bidding Agreement, in case of a Consortium, substantially in the format at Appendix 5;
  - V. Copy of Memorandum and Articles of Association, if the Respondent is a body corporate, and if a partnership then a copy of its partnership deed;
  - VI. Copies of Respondent’s duly audited balance sheet and profit and loss account for the preceding five years; and
  - VII. Tax clearance certificate

- (f) All Responses must be signed on behalf of the Respondent and each Relevant Organisation by a duly authorised person (see Power of Attorney as per Appendix 5). By signing the Response the signatory warrants that all information supplied by it in its Response is true and correct and that the Respondent and each party whom the Respondent signatory represents, considers themselves subject to and bound by the terms and conditions of this RFQ.

#### **4.6. Validity Period/ Respondent Warranty**

Respondents must provide a warranty as part of their Responses that their Responses are true and correct in all respects, that it does not contain a misrepresentation of any kind and that the taxes of all members of the Consortium are in order and none of the members are undergoing corruption or any criminal-related investigations or have any past convictions for fraud or corruption.

#### **4.7. Late Submission**

A Response shall be late if it is received by the Institution at any time after the closing date and time indicated in Section 4.4 above.

A late submission shall be clearly marked as late and shall not be admitted for consideration by the Institution, unless the Institution is satisfied (in its sole discretion) that substantial exculpatory reasons exist which permit the allowance of a late Response. Where applicable, late submissions shall be returned unopened to the submitting party.

#### **4.8. Briefing Notes**

The Institution may issue Briefing Notes from time to time during the RFQ Process to disseminate further instructions, clarifications, programme changes and information updates to Respondents. Briefing Notes will be sequentially numbered to facilitate easy referencing and will form part of the RFQ body of documentation. Any future reference to 'RFQ' shall be a reference to all RFQ documentation as amended, varied or updated by any Briefing Notes, and Respondents must ensure that their Responses are prepared taking into account all such Briefing Notes.

Briefing Notes will be issued to all Respondents utilizing the contact details provided at receipt of the RFQ documentation, and after submission, to the Authorised Representative. Respondents are requested to promptly confirm receipt of Briefing Notes within 48 hours receipt thereof.

#### **4.9. Communication Structure and No Contact Policy**

##### **4.9.1. Communication Structure**

During the RFQ Process Respondents must strictly adhere to the Communication Structure laid out below.

##### **4.9.1.1. Respondent Questions**

- (a) Respondents are encouraged to communicate with the Institution regarding the Project and the preparation of their Responses but all communication should be structured and transparent.
- (b) Any request for clarifications, queries, questions or comments as well as all requests for communication or interaction with the Institution must be directed in WRITING to:

[Insert name]

**E-mail:** [Insert e-mail address]

- (c) Respondents may direct written general queries and questions to the Institution at any time during the RFQ Process, until [Insert time] CAT on **[Insert date]**. This is the cut-off date for clarification questions, after which the Institution will not accept, consider or respond to any queries or questions from Respondents.
- (d) The Institution will endeavour to answer all general requests for clarifying information as quickly as possible, but cannot guarantee a response within a fixed time period. The Institution also reserves the right not to respond to any particular query or question.
- (e) All clarifications will be issued as Briefing Notes and circulated to all Respondents.

#### **4.9.1.2. Questions from the Institution**

- (a) The Institution reserves the right after the closing date for submissions of Responses to seek such further information or clarification from Respondents, Relevant Organisations, Key Contractors or Members as it determines is required in its absolute and sole discretion.
- (b) Questions will be directed to the Authorised Representative of the Respondent and must be answered in writing within 48 working hours from receipt by the Authorised Representative of the written query from the Institution, unless the Institution approves a request from the Respondent for an extension of time.

#### **4.9.2. No Contact Policy**

Apart from the conditions outlined in the Communication Structure established above by this RFQ, Respondents may not contact the Institution or any of its officials, except in the case of pre-existing commercial relationships, in which case contact may be maintained only with respect thereto and, in making such contact, no party may make reference to the Project or this RFQ.

#### **4.10. Respondent Confidentiality**

- (a) Respondents must clearly indicate whether any information conveyed to or requested by the Institution is confidential or should be treated confidentially by the Institution. In the absence of any such clear indication in writing from a Respondent, the Institution shall deem the Respondent to have waived any right to confidentiality and treat such information as public in nature.
- (b) Where a Respondent at any stage during the RFQ Process indicates to the Institution that information or any response requested from the Institution is or should be treated confidentially, the Institution shall treat such information or response confidentially, unless the Institution believes that to ensure the transparency and competitiveness of the RFQ Process the content of the information or response should be conveyed to all Respondents.
- (c) The above procedures regarding confidentiality shall not apply to any information which is already public knowledge or available in the public domain or in the hands of the Institution or is required to be disclosed by any legal or regulatory requirements or order of any competent court, tribunal or forum.

#### **4.11. Respondent Disqualification**

- (a) Responses which do not comply with the obligatory Response formalities and Respondent conduct which fails to adhere to the requirements and terms and conditions prescribed by this RFQ may be disqualified by the Institution from further participation in the RFQ Process.
- (b) In particular (but without prejudice to the generality of the foregoing) the Institution may disqualify, at its sole discretion and without prejudice to any other remedy it may have, a

Respondent where the Respondent, or any of its Sponsors, Subcontractors or advisors have committed any act of misrepresentation, bad faith or dishonest conduct in any of its dealings with or information provided to the Institution.

#### **4.12. Independent Submission**

Any Respondent shall, without prejudice to any other remedy available to the Institution, be disqualified, where the Respondent –

- (a) communicates to a person other than persons nominated by the Institution a material part of its Response; or
- (b) enters into any agreement or arrangement with any other person or entity that it shall refrain from submitting a Response to this RFQ or as to any material part of its Response to this RFQ; or
- (c) offers or agrees to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done, or causing, or having caused to be done any act or omission in relation to the RFQ Process or any proposed Response (provided nothing contained in this paragraph shall prevent a Bidder from paying any market-related commission or bonus to its employees or contractors within the agreed terms of their employment or contract)

# SECTION 5: THE EVALUATION PROCESS

## 5.1. The Opening of Responses

- (a) All submitted Responses shall be kept in safe custody by the Institution until the closing time for submission and all Responses shall be treated as commercially sensitive. The original copy of a Response shall be archived for record purposes.
- (b) Responses shall be opened as soon as possible after the closing time. Upon request to the Institution, the Institution may arrange for Respondents who submitted Responses to attend only the opening of the Responses, at which opening only the names of Respondents who submitted Responses shall be read aloud upon being opened. No further information regarding submitted Responses shall be provided to attending Respondents at the opening of the Responses.
- (c) After opening, Responses shall be distributed to the Evaluation Committee for evaluation.

## 5.2. Evaluation Parameters

- (a) The evaluation of Responses will be based on the information contained in the Responses to the RFQ received, which may be further supplemented by presentations and clarification information provided.
- (b) Only those Respondents who meet the Respondent structure eligibility criteria laid out in Section 4.1 shall qualify for evaluation under this Section 5. Responses of firms/ consortia who do not meet these criteria shall be rejected. The Respondent's competence and capability regarding is proposed to be established by the following parameters:
  - (i) technical capacity ; and
  - (ii) financial capacity
  - (iii) {any other relevant parameters such as "socio-economic considerations" can be included here as well}

## 5.3. Evaluation Process and Scoring Methodology

### 5.3.1. Technical Capacity Evaluation

#### 5.3.1.1. Eligible Projects and Eligible Project Experience

- (a) The following categories of experience would qualify as Technical Capacity and Eligible Experience in relation to Eligible Projects as stipulated:

**Category 1:** Project experience on Eligible Projects in [insert applicable type of facilities e.g. accommodation facilities].

**Category 2:** Construction experience on Eligible Projects in [insert applicable type of facilities e.g. accommodation facilities].

**{More categories can be defined if deemed appropriate. If other categories are included, the clauses below should be edited accordingly so as to take cognizance of all categories mentioned here.}**

- (b) For the purpose of this RFQ:

[The type of facilities mentioned above e.g. Accommodation facilities] would be deemed to include [Insert the relevant descriptions of types of facilities which qualify].

- (c) Eligible Experience in respect of each category shall be measured only for Eligible Projects.

- (d) For a project to qualify as an **Eligible Project under Category 1**:
- (i) It should have been undertaken as a PPP project on DBFMT, DBFO, DBFOT 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;
  - (ii) 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;
  - (iii) the capital cost of the project should be more than **[Insert 20% of Project Cost]**; and
  - (iv) the entity claiming experience shall, during the last 5 (five) financial years preceding the Response submission deadline, have (i) paid for development of the project (excluding the cost of land), and/ or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products or telecommunications revenues and other incomes of the company owning the Project.
- (e) For a project to qualify as an **Eligible Project under Category 2**,
- (i) the Respondent should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Response submission date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the experience score. However, payments/receipts of less than **[Insert 20% of Project Cost]** shall not be reckoned as payments/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 for the project. Further, the cost of land shall not be included hereunder.
  - (f) The Respondent shall quote experience in respect of a particular Eligible Project under any one category only, even though the Respondent (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.

### **5.3.1.2. Experience Score**

- (a) In order to demonstrate technical capacity and experience, the Respondent shall, over the past 5 (five) financial years preceding the Response submission date, have:
- (i) paid for, or received payments for, construction of Eligible Project(s); and/ or
  - (ii) paid for development of Eligible Project(s) in Category 1; and/ or
  - (iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2, such that the sum total of the above is more than **[Insert 1.5 times the project cost]** (the threshold technical capability).
- (g) [Provided that at least one fourth of the threshold technical capability shall be from the Eligible Projects in Category 1.]\* check this
- (h) In case of a Consortium, the combined technical capability of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in

the SPV, should satisfy the above conditions; provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the total project cost specified in the Concession Agreement.

- (i) Only those Respondents who meet the minimum technical criteria above shall qualify to have their experience score calculated. Responses of firms/ consortia who do not meet these criteria shall be rejected.
- (j) Respondent's experience shall be measured and stated in terms of a score. The experience score for an Eligible Project in a given category would be the eligible payments and/or receipts specified above, (divided by 10 million [relevant currency])\* and then multiplied by the applicable factor in the Table below. In case the Respondent has experience across different categories, the score for each category would be computed as above and then aggregated to arrive at its experience score.

**Table: Factors for Experience across Categories**

Factor	
Category 1	[Insert factor]
Category 2	[Insert factor]

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

**5.3.2. Financial Capacity Requirements**

- (a) The Respondent must establish the minimum Net Worth of [Insert amount – can specify in terms of project cost] at the close of the preceding financial year, and provide details as per format at Annexure III of Appendix 4.
- (b) In case of a Consortium, the combined Net Worth capability of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above minimum requirement; provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the total project cost specified in the Concession Agreement.

**5.3.3. Pre-qualification of Respondents**

The credentials of eligible Respondents 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 Respondent. In case of a Consortium, the Aggregate Experience Score of each of its Members, who have an equity share of at least 26% in such Consortium, shall be summed up for arriving at the combined Aggregate Experience Score of the Consortium. The Respondents who satisfy the minimum net worth requirement, fulfil the conditions of eligibility specified in this RFQ (see Section 4.1) and obtain the 4 highest experience scores shall be pre-qualified. Respondents will be notified if they have been pre-qualified on the date specified for short-listing in Clause 3.2.1. The Institution will not entertain any query or clarification from Respondents who fail to qualify.



#### **5.3.4. Bid Evaluation Committee**

- (a) The Bid Evaluation Committee will be comprised of representatives of [Insert applicable Government Ministries or Departments if needed] and the Institution, assisted by the TA to the Project and any other consultants it may procure from time to time.
- (b) The Bid Evaluation Committee, assisted by the Transaction Adviser to the Project will assess the Responses and provide professional advice and input regarding the technical, financial, legal and socio-economic\* aspects of the Responses. The Bid Evaluation Committee will score the RFQ Response, compile their evaluation report and pass on their recommendations to the Bid adjudication Committee.

#### **5.3.5. Bid Adjudication Committee**

The Bid Adjudication Committee will review the work of the bid Evaluation Committee, evaluate the Responses and determine which Respondents, if any, will be selected as Pre-qualified Bidders, taking into account the professional advice, inputs and conclusion(s) of the Bid Evaluation Committee.

#### **5.4. Fairness and Transparency**

- (a) The Institution views fairness and transparency during the RFQ Process as an absolute on which the Institution will not compromise. The Institution will ensure that all members of evaluation committees declare any conflicting or undue interest in the process and provide confidentiality undertakings to the Institution.
- (b) The evaluation process will be tightly monitored and controlled by the Institution and its advisors (including Transaction Advisors) to assure integrity and transparency throughout, with all processes and decisions taken being approved and auditable.

## SECTION 6: FRAUD AND CORRUPT PRACTICES

- 6.1. The Respondents 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 Institution may reject an Application without being liable in any manner whatsoever to the Respondent if it determines that the Respondent 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.
- 6.2. Without prejudice to the rights of the Institution under Clause 6.1. hereinabove, if a Respondent is found by the Institution 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 Respondent 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 Respondent is found by the Institution 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.
- 6.3. For the purposes of this Section 6, 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 has dealt with matters concerning the Concession 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 Institution, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the Letter of Award or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the Letter of Award or the Concession 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 Institution 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 Respondents with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## SECTION 7: MISCELLANEOUS

- 7.1. The Bidding Process shall be governed by, and construed in accordance with, the laws of [Insert country name] and the Courts at [Insert city/district of jurisdiction's name] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 7.2. The Institution, 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 Respondent in order to receive clarification or further information;
  - (c) pre-qualify or not to pre-qualify any Respondent and/ or to consult with any Respondent 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 Respondent; 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 Respondent.
- 7.3. It shall be deemed that by submitting the Application, the Respondent agrees and releases the Institution, 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 1: Site Details

## Appendix 2: Procurement Process and Timetable to Commercial Close

Table 1: Indicative Dates from the Procurement Plan {Example – amend as required}

<b>Activity</b>	<b>Estimated Completion Date</b>
Feasibility Study completion	[Insert date]
Approval from the Ministry of Finance	[Insert date]
RFQ Issuance	[Insert date]
RFQ Procurement Submission Date	[Insert date]
RFQ Evaluation	[Insert date]
RFP Draft Issued & Bidders Conference	[Insert date]
Final RFP Issued	[Insert date]
RFP Submission	[Insert date]
RFP Evaluation	[Insert date]
Negotiation & Signing of PPP Agreement/ Commercial Close	[Insert date]
Financial Close	[Insert date]
Construction begins	[Insert date]

## Appendix 3: Information and Commitment Required from Bidders at Subsequent Stages of the Procurement Process

{Example – can amend as required}

Stage in Procurement Process	Number of Bidders at Stage End	Requirements in Relation to: Bidder Membership and Commitment; internal risk allocation and subcontractors	Information/ Position Required in Relation to Technical Solution; Pricing; Financial Model	Info/ Position Required in Relation to Risk Allocation and Other PPP Agreement Issues	Info/ Position Required in Relation to Financing
Submission of Proposals	Not expected to exceed 4 in number	<ol style="list-style-type: none"> <li>1) All consortium Members and key contractors must be specified.</li> <li>2) Consortium Members and key contractors must confirm acceptance of allocation of risk amongst themselves.</li> <li>3) Agreed terms of the main subcontractors must be provided.</li> </ol>	<ol style="list-style-type: none"> <li>1) Design approach, construction approach and services approach must be set out.</li> <li>2) Demonstrate an understanding of the relevant Environmental &amp; Spatial Structure.</li> <li>3) Demonstration of commitment to heritage conversation.</li> <li>4) 1:1000 plans, sketch plans, selected blow-ups, functional relationships, outline schedule of areas.</li> <li>5) Full financial model setting out costs, financing, ratios etc.</li> </ol>	Bidders will be required to indicate acceptance of key positions in draft PPP Agreement/ risk matrix (includes those affecting pricing and risk allocation).	
Selection of	1 plus		1) Agreement on all	Clarity on all key	Fully or partially

Preferred Bidder	reserve		points of principle on specifications. 2) 1:500 plans, cross sections, site plan, area schedule, performance specifications.	contractual issues (including those affecting price and risk allocation required.	underwritten (final position to be advised at RFP stage) Proposals with draft term sheet and acceptance of key positions in draft PPP Agreement (includes those affecting pricing and risk allocation), financial model and allocation of risks within consortium.
Submission of Revised Feasibility Study	1 plus reserve	Draft major sub contracts required	1:200 plans. Also 1:50 plans for key areas.	Fully developed agreed draft PPP Agreement.	Due diligence to have commenced by this point
Commercial Close	1	All contracts and major sub-contracts in place.	Further design detail as required.	PPP Agreement signed.	1) Due diligence complete. 2) Financing agreements finalized. 3) Payment Mechanism finalised
Financial Close	1	All contracts & major subcontracts signed & executed.	Planning permission in place.		

# Appendix 4: Response Forms

## Covering Letter

[The Bid Office],  
[Insert address]

Sir/Madam,

**TENDER NUMBER:[INSERT NUMBER]**

**REQUEST FOR PRE-QUALIFICATION FOR PROPOSED PPP FOR [INSERT PROJECT DESCRIPTION]**

Having examined the content of this Response, I/We, the undersigned confirm and warrant that all statements made and information supplied in this Response are true and correct.

I/We acknowledge that this letter and all part of the Response and other documents constitute my/our Response, and that I/we are duly authorized to bind the Members of the Respondent in respect of all of the representations and/or undertakings made as part of this Response.

I/We acknowledge and accept your authority to carry out directly or through your advisers any investigation you deem necessary to verify the truthfulness of the statements and documents submitted and to obtain clarification of my/our legal and/or technical and/or financial ability to provide the services contemplated in the scope of the Request for documentation, which we are responding to. To this end, we authorize by our signature hereto, to obtain information from any person, or institution pertaining to our consortium and/ or our Response, including that which relates to the Members of the Respondent, to the extent relevant and require for the conduct of due diligence and/or evaluation of our Response, from whomsoever may be in possession of thereof.

I/We agree that the terms contained in the Request for Qualifications will be binding upon us and the Members of our Entity.

I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFQ document and are/ is qualified to submit a Bid.

The Statement of Legal Capacity as per format provided at Annexure V in Appendix 4 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 consortium, as per format provided at Appendix 5 of the RFQ, are also enclosed.

I/ We understand that the selected Bidder shall either be an existing Company incorporated under the [Insert relevant legislation reference] or shall incorporate as such prior to execution of the Concession Agreement.



I/ We hereby confirm that we are in compliance of/ shall comply with the O&M requirements specified in Section 4.1

I/ We certify that in terms of the RFQ, my/our Network is ..... (in words) and Experience Score is ..... (number in words).

We advise that we are comprised as follows:-

Lead Member

*[Insert]*

Technical Member

*[Insert]*

Financial Member

*[Insert]*

Operation & Maintenance Member

*[Insert]*

We further agree and/or undertake and/or represent that by signing this letter:-

- a) each member is fully acquainted with all the legal provisions prevailing in [Insert country's name] in respect of the realization of the Project and that it will comply therewith;
- b) our Response has been submitted independently, without consultation, communication or agreement for restricting competition, with any other Respondent or to any other competitor, potential competitor;
- c) we warrant that copy 1 to 7, as well as the electronic copies are identical to the submitted original, and accept that any inconsistency between the original submission and any copy(ies) will be at our sole risk;
- d) unless otherwise required by law, our Response has not been knowingly disclosed by it and will not knowingly be disclosed by it prior to opening, directly or indirectly to any other Respondent, member of another Respondent or to any competitor/potential competitor;
- e) no attempt has been made or will be made by it to induce any other person or firm to submit a Response for the purpose of restricting competition;
- f) no interaction has been made with the lenders at this stage of the project;
- g) save as discussed in writing to the Institution, the response to the RFQ is true;
- h) our consortium members have considered and agree to be bound by the confidentiality undertaking contained in our Response;
- i) save for any disclosures in writing to the Institution, each member has:

- (i) not passed a resolution nor is the subject of an order by the court for its winding-up and;
- (ii) not been convicted of a criminal offence relating to the conduct of its business or profession;
- (iii) fulfilled obligations relating to the payment of taxes under the laws of the Republic of [Insert country's name]; and
- (iv) not made any misrepresentation in providing any of the information required in relation to the above.

I/We understand and accept that this Response shall constitute a binding and irrevocable offer by our consortium to the Institution until acceptance or rejection thereof by the Institution within 120 days of date of submission hereof.

I/we understand that you are not bound to accept any Response which you may receive and that you will not defray any expenses incurred by me/us in the preparation of this Response.

I/We choose domicilium citandi et executandi at

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.....  
.....

# ANNEXURE I

## Respondent Details

1.
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the corporate headquarters and its branch office(s), if any, in [Insert country name]:
  - (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 Institution:
  - (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 Respondent:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
  - (e) Fax Number:
5. In case of a Consortium:
  - (a) The information above (1-4) should be provided for all the Members of the Consortium.
  - (b) A copy of the Joint. Bidding Agreement, as envisaged in Section 4.1 (e) should be attached to the Response.
  - (c) Information regarding the role of each Member should be provided as per table below:

SI. No.	Name of Member	Role*	Percentage of equity in the Consortium {Refer to Clauses 4.1(c) (i),(ii) & (v)}
1.			
2.			
3.			
4.			

\* The role of each Member, as may be determined by the Respondent, should be indicated in accordance with instruction 4 at Annexure IV of this Appendix.

1.

2. (d) The following information shall also be provided for each Member of the Consortium:

**Name of Respondent/ member of Consortium:**

No.	Criteria	Yes	No
1.	Has the Respondent/ constituent of the Consortium been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project (DBFMT) or otherwise.		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Response.		
3.	Has the Respondent/ constituent of the Consortium 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?		

6. A statement by the Respondent and each of the Members of its Consortium (where applicable) or any of their Associates 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):

## ANNEXURE II

### Technical Capacity of the Respondent @

(Refer to Clauses 4.2.3, 5.3.12 (a) and 5.3.1 of the RFQ)

Respondent type #	Member Code*	Project Code**	Category <sup>§</sup>	Experience <sup>¶</sup>			Experience Score <sup>£</sup>	
				(Equivalent [Insert currency] Million) <sup>\$\$</sup>				
(1)	(2)	(3)	(4)	Payments made/received for construction of Eligible Projects in Categories 2	Payments made for development of Eligible Projects in Category 1	Revenues appropriated from Eligible Projects in Category 1	(8)	
				(5)	(6)	(7)		
Single entity Respondent		a						
		b						
		c						
		d						
Consortium Member 1		1a						
		1b						
		1c						
		1d						
Consortium Member 2		2a						
		2b						
		2c						
		2d						
Consortium Member 3		3a						
		3b						
		3c						
		3d						
Consortium Member 4		4a						
		4b						
		4c						
		4d						
<b>Aggregate Experience Score =</b>								

@ Provide details of only those projects that have been undertaken by the Respondent under its own name and/ or by an Associate and/ or by a project company eligible under Clause 5.3.1.1 (d)(ii). In case

of Category 1, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 5.3.1.1 (d)(iii) and for Category 2, include only those projects where the payments made/received exceed the amount specified in Clause 5.3.1.1(e)(i). In case the Response submission date falls within 3 (three) months of the close of the latest financial year, refer to Clause 4.2.5.

# A Respondent consisting of a single entity should fill in details as per the row titled Single entity Respondent and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Respondent may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Respondent with such Associate, as defined in the Glossary shall be provided.

\* Member Code shall indicate NA for Not Applicable in case of a single entity Respondent. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.

\*\*Refer Annexure IV of this Appendix 4. Add more rows if necessary.

\$ Refer Clause 5.3.1.1

¥ In the case of Eligible Projects in Category 1, the figures in columns 6 and 7 may be added for computing the Experience Score of the respective projects. In the case of Category 2, 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 land be included while computing the Experience Score of an Eligible Project.

\$\$ For conversion of US Dollars to [Insert currency], the rate of conversion shall be [Insert currency] **[Insert rate]** 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 Response Due Date, and the amount so derived in US Dollars shall be converted into [Insert currency] 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 1 Million [Insert currency] and then multiply the result thereof by the applicable factor set out in Section 5.3.1.2 to arrive at the Experience Score for each Eligible Project. Above all, the sum total of columns 5, 6 and 7, as the case may be, in respect of each Eligible Project shall be restricted to a ceiling equivalent to twice the estimated project cost, as specified in Clause 5.3.1.2 (k).

## ANNEXURE III

### Financial Capacity of the Respondent

(Refer to Clauses 4.2.4 and 5.3.2 of the RFQ)

(In [Insert currency] Million<sup>\$\$</sup>)

Respondent type <sup>\$</sup>	Member Code <sup>£</sup>	Net Cash Accruals					Net Worth <sup>€</sup>
		Year 1 (3)	Year 2 (4)	Year 3 (5)	Year 4 (6)	Year 5 (7)	Year 1 (8)
(1)	(2)						
Single entity Respondent							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
Consortium Member 4							
TOTAL							

**Name & address of Respondent's Bankers:**

<sup>\$</sup> A Respondent consisting of a single entity should fill in details as per the row titled Single entity Respondent and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Respondent may be ignored.

<sup>£</sup>For Member Code, see instruction 4 at Annexure IV of this Appendix 4.

<sup>€</sup>The Respondent should provide details of its own Financial Capability or of an Associate (as defined in the Glossary) specified in Clause 4.2.4(b).

<sup>\$\$</sup> For conversion of other currencies into [Insert currency], see note below Annexure II of Appendix 4.

**Instructions:**

1. The Respondent/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Response submission date. The financial statements shall:
  - (a) reflect the financial situation of the Respondent or Consortium Members and its/ their Associates where the Respondent is relying on its Associate's financials;
  - (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 Response Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 4.2.5.
5. In the case of a Consortium, a copy of the Joint Bidding Agreement shall be submitted in accordance with Clause 4.1(c)(v) of the RFQ document.
6. The Respondent shall also provide the name and address of the Bankers to the Respondent.
7. The Respondent shall provide an Auditor's Certificate specifying the net worth of the Respondent and also specifying the methodology adopted for calculating such net worth in accordance with Clause 4.2.4(b) of the RFQ document.



## ANNEXURE IV

### Details of Eligible Projects

(Refer to Clauses 4.2.3 and 5.3.1 of the RFQ)

**Project Code:**

**Member Code:**

<b>Item</b>  (1)	<b>Refer to Instruction</b>  (2)	<b>Particulars of the Project</b>  (3)
Title & nature of the project		
Category	5	
Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or (c) revenues appropriated	6	
Entity for which the project was constructed/ developed	7	
Entity Project Manager Details	8	
Location		
Project cost	9	
Date of commencement of project/ contract		
Date of completion/ commissioning	10	
Equity shareholding (with period during which equity was held)	11	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	13	

## Instructions:

1. Respondents are expected to provide information in respect of each Eligible Projects in this Annexure. The projects cited must comply with the eligibility criteria specified in Clause 5.3.1.1(d)-(e) of the RFQ, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Response. Respondents should also refer to the Instructions below.
2. For a single entity Respondent, the Project Codes would be a, b, c, d etc. In case the Respondent is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each Eligible Project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Respondent. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Respondent or its Member, write "Associate" along with Member Code.
5. Refer to Clause 5.3.1.1(a)-(b) of the RFQ for category number.
6. The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Annexure II of this Appendix 4. 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 Response 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 Category 1, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 5.3.1.1(d)(iii). In case of Category 2, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 5.3.1.1(e)(i). Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
7. Particulars such as name, address and contact details of employer/owner/ Institution/ Agency (i.e. concession grantor, counter party to PPA, etc.) must be provided. All reference details are provided must be valid and up to date.
8. Particulars of the entity's own project manager including name, telephone number and email address must be provided. All reference details must be valid and up to date.
9. Provide the estimated capital cost of Eligible Project. Refer to Clauses 5.3.1.1(d)-(e).
10. For Category 1, the date of commissioning of the project, upon completion, should be indicated. In case of Category 2, 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.
11. For Category 1, the equity shareholding of the Respondent, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 5.3.1.1(d)).
12. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
13. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in the Glossary, the Respondent should also provide a certificate in the format below:

**Certificate from Statutory Auditor/ Company Secretary regarding Associate<sup>§</sup>**

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of ..... (name of the Associate) is held, directly or indirectly<sup>£</sup>, by ..... (name of Respondent/ Consortium Member). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate as defined in the Glossary of the RFQ.

A brief description of the said equity held, directly or indirectly, is given below:

*{Describe the share-holding of the Respondent/ Consortium Member in the Associate}*

Name of the audit firm:

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

<sup>§</sup> In the event that the Respondent/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

<sup>£</sup> In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of "control" is not broken.

14. 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<sup>©</sup>.

<sup>©</sup> Refer Clause 5.3.1.2(j) of the RFQ.

~~<sup>§</sup> The number of Parties will be shown here, as applicable, subject however to a maximum of 6 (six).~~

**ANNEXURE V**  
**Statement of Legal Capacity**

*(To be forwarded on the letterhead of the Respondent/ Lead Member of Consortium)*

Ref. Date:

To,

\*\*\*\*\*

\*\*\*\*\*

Dear Sir,

We hereby confirm that we/ our members in the Consortium (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 consortium.\*

We have agreed that ..... (insert individual's name) will act as our representative/ will act as the representative of the consortium 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 5: Tender Forms

### Power of Attorney for Signing of the Response

*(Refer to Clause 4.3.2)*

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 Consortium 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 response for pre-qualification and submission of our bid for the [Insert Project Name] Project proposed or being developed by the Ministry of Finance of Government of [Insert country's name] (the "Institution") including but not limited to signing and submission of all response forms, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Institution, representing us in all matters before the Institution, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Institution 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 Concession Agreement with the Institution.

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, 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 Respondent 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 Respondent.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the [Insert country] Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Respondents from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the [Insert country] Embassy if it carries a conforming Apostille certificate.*

## Power of Attorney for Lead Member of Consortium

*(Refer Clause 4.3.2)*

Whereas the [Insert Name of Institution] of the Government of [Insert Country Name] (“the Institution”) has invited applications from interested parties for the [Insert Project Name] Project (the “Project”).

Whereas, ....., ....., ..... and ..... (collectively the “Consortium”) being Members of the Consortium 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 Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’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 Consortium, as the Lead Member and true and lawful attorney of the Consortium (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 Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium 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 Consortium and generally to represent the Consortium in all its dealings with the Institution and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Institution.

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/ Consortium.

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 Consortium)

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 Respondent 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 Respondent.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the [Insert country] Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Respondents from countries that have signed*



*the Hague Legislation Convention 1961 are not required to be legalised by the [Insert country] Embassy if it carries a conforming Appostille certificate.*

# Joint Bidding Agreement

(Refer Clause 4.1(c)(V) and 4.5 (e)(ii))

(To be executed on Stamp paper of appropriate value)

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

## AMONGST

1. {..... Limited, a company incorporated under the Companies Act, 1967} 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, 1967} 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, 1967 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)}

## AND

4. {..... Limited, a company incorporated under the Companies Act, 1967 and having its registered office at ..... (hereinafter referred to as the "**Fourth Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)}<sup>§</sup>

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

## WHEREAS,

(A) The Ministry of Finance of the Government of [Insert country's name] (hereinafter referred to as the "**Institution**") which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited responses (the "**RFQ Responses**") by its Request for Qualification No. .... dated .....(the "**RFQ**") for pre-qualification and short-listing of bidders for development and maintenance of LIPAM and Department of Broadcasting Complexes Project (the "**Project**") through public private partnership.

(B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFQ document and other bid documents in respect of the Project, and

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<sup>§</sup> The number of Parties will be shown here, as applicable, subject however to a maximum of 6 (six).

(C) It is a necessary condition under the RFQ document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Response.

**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. Consortium**

2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) 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 Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the [Insert country’s name] Companies Act 1967 for entering into a Concession Agreement with the Institution and for performing all its obligations as the Concessionaire in terms of the Concession Agreement 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 Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;

(b) Party of the Second Part shall be {the Technical Member of the Consortium;}

{(c) Party of the Third Part shall be the Financial Member of the Consortium; and}

{(d) Party of the Fourth Part shall be the Operation and Maintenance Member/ Other Member of the Consortium.}

**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 Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

## **6. Shareholding in the SPV**

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

{Third Party:}

{Fourth Party:}

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and network have been reckoned for the purposes of qualification and short-listing of Respondents for the Project in terms of the RFQ.

6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.

6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operation date of the Project.

6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

6.6 The Parties undertake that the O&M Member shall subscribe and hold at least 10% (ten per cent) of the subscribed and paid up equity shares in the SPV<sup>1</sup> in terms of the Concession Agreement.}

## **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 organised, 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 Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

---

<sup>1</sup> Add further conditions relating to the O&M Member, if any.

- (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, judgement, 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 the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium 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 Respondent is not pre-qualified or upon return of the Bid Security by the Institution to the Bidder, as the case may be.

## **9. Miscellaneous**

9.1 This Joint Bidding Agreement shall be governed by laws of [Insert country name].

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of  
LEAD MEMBER by:

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

SIGNED, SEALED AND DELIVERED

SECOND PART

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

SIGNED, SEALED AND DELIVERED

For and on behalf of  
THIRD PART

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

SIGNED, SEALED AND DELIVERED

For and on behalf of  
FOURTH PART

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

SIGNED, SEALED AND DELIVERED

For and on behalf of  
FIFTH PART

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

SIGNED, SEALED AND DELIVERED

For and on behalf of  
SIX 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 Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

# Declaration of Interest

1. Any legal person, including persons employed by the principal, or persons having a kinship with persons employed by the principal, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the principal, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest, where-

- (i) the bidder is employed by the principal; and/or
- (ii) the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

2.1 Full Name of bidder or his or her representative:.....

2.2 Identity Number:.....  
.....

2.3 Position occupied in the Company (director, shareholder etc.):.....

2.4 Company Registration Number:.....

2.5 Tax Reference Number:.....  
.....

2.6 VAT Registration Number:.....  
.....

2.7 Are you or any person connected with the bidder, employed by the principal? YES/NO

2.7.1 If so, state particulars.

.....  
.....  
.....





## Appendix 6: Form of Bid Bond

**BID BOND:**  
**[INSERT NAME OF PRE-QUALIFIED RESPONDENT]**  
**AND**  
**THE GOVERNMENT OF [INSERT COUNTRY NAME] ACTING**  
**THROUGH ITS [INSERT INSTITUTION NAME]**

Bid Security to be provided in favour of:

**[Insert Institution name],** Government of **[Insert country name]**

**WHEREAS [name of Bidder]** (henceforth “**the Bidder**”) has been invited by the **[name of Institution]** (henceforth “**the Institution**”) to submit a response (henceforth “**the Bid**”) in response to the Request for Proposal (henceforth “**the RFP**”) issued by the Institution for the design, financing, construction and maintenance of the Project Facilities, through a Public Private Partnership in terms of the [Insert relevant regulation reference] (henceforth “**the Project**”);

**AND WHEREAS** the Bidder proposes to submit to the Institution a Bid in response to the RFP of the Institution;

**AND WHEREAS** the Institution requires the Pre-qualified Bidder to provide security in the form of an on demand bank guarantee in the amount of **[Insert amount]** (henceforth “**the Bid Bond**”) to the Institution to secure admission to the RFP process and the ability to submit the Bid;

**AND WHEREAS** we, **[name of Bank]** (henceforth “**the Bank**”) have agreed to provide the Institution with such Bid Bond;

**NOW THEREFORE:**

1. The Bank, duly represented by [name of duly authorized representative] being duly authorized sign this Bid Bond and incur obligations in the name of the Bank under and in terms of a Resolution of the Board of Directors of the Bank, a certified copy of which is annexed hereto, hereby irrevocably and unconditionally guarantee and undertake on behalf of the Bank to pay the Institution and without objection or argument, amounts up to [Insert amount] in aggregate, upon the first written demand by the Institution to the Bank, situated at [address of bank] and addressed for the attention of [insert name of bank official] declaring that any or all of the following events have occurred –

- 1.1. the Bidder failing to submit the Bid; and/or
- 1.2. the Bidder making any material misrepresentations in the Bid; and/or
- 1.3. the Bidder or any of its advisors, officers, employees or agents engaging in any collusive action with respect to the RFQ or RFP processes; and/or
- 1.4. the Bidder or any of its advisors, officers, employees or agents engaging in illegal or fraudulent activities in relation to the RFP process; and/or
- 1.5. failure by the Bidder, if selected as the preferred bidder to the Institution, to conclude an agreement with the Institution on substantially the same terms and conditions as contained in the Bid; and/or
- 1.6. the Bidder withdrawing the Bid prior to the expiry of 180 days from [insert RFQ closing date],

and requiring an amount not exceeding the maximum amount of this Bid Security to be due and payable by the Bank to the Institution.

2. The Bid Security shall expire –
  - 2.1. at 12:00 pm on [insert date 180 days from RFQ closing date] or such extended period as may be agreed in writing between the Pre-qualified Bidder and the Bank; or
  - 2.2. upon the selection by the Institution of the Bidder as the Successful or reserve bidder and the Bidder being so selected, submitting an on demand bank guarantee to the Institution in respect of its negotiations with the Institution to conclude an agreement for the Project; or
  - 2.3. upon acceptance by the Institution of the maximum amount of this Bid Bond, whichever is the earlier, and shall remain valid notwithstanding the insolvency, winding-up, liquidation, judicial management, dissolution or deregistration whether provisionally or finally of the Bidder.
3. The demand for payment together with this Bid Security shall constitute prima facie proof of the Bank's indebtedness hereunder for the purposes of any proceedings including but not limited to provisional sentence proceedings instituted against the Bank in any court of law having jurisdiction.
4. The Bid Bond shall –
  - 4.1. exist independently of any contract (or any amendment, variation or novation thereof) between the Bidder and the Institution;
  - 4.2. be returned to the Bank on its expiry as contemplated in paragraph 2 above.
  - 4.3. not be ceded or assigned by the Institution, or otherwise dealt with in any manner whatsoever which has or may have the effect of transferring or encumbering or alienating the Institution's rights hereunder; and
  - 4.4. be governed by the Laws of [Insert country name].

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2013

\_\_\_\_\_  
**Name of Bank Representative**

\_\_\_\_\_  
**Signature of Bank Representative duly authorized thereto**

\_\_\_\_\_  
**Name of Bank**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**Date**

