



श्यामा प्रसाद मुखर्जी पोर्ट, कोलकाता  
SYAMA PRASAD MOOKERJEE PORT, KOLKATA  
Formerly Kolkata Port Trust

## **Request for Qualification**

**Re-Construction of berth No. 8 and Mechanization of berth Nos. 7 & 8  
at NSD of KDS, SMPK on DBFOT basis under PPP**

**RFQ/Tender No. SMPK/KDS/CIV/T/2804/76 dated 14.12.2023**

**December 2023**

**(TENDER NO. SMPK/KDS/CIV/T/2804/76 dated 14.12.2023)**

**NATIONAL INVITATION OF REQUEST FOR QUALIFICATION** for Selection of private developer for the project of "Re-Construction of berth No. 8 and Mechanization of berth Nos. 7 & 8 at NSD of KDS, SMPK on DBFOT basis under PPP" for a Concession Period of 30 years.

**Syama Prasad Mookerjee Port, Kolkata (SMPK)** invites application from interested parties (Applicants) in accordance with the Request For Qualification (RFQ) document in order to shortlist competent Applicants, subject to national security clearance, who may be subsequently invited to bid for the project.

RFQ document containing instructions to Applicants and Criteria for Evaluation may be obtained on payment of Rs. 1,06,200/- (Rupees one lakh six thousands and two hundred only) including GST through RTGS / NEFT / Bank Transfer etc. on any working day between 1000 hrs to 1700 hrs from 15.12.2023 to 28.01.2024 from the Office of Chief Engineer, 2<sup>nd</sup> Floor, # 6, Fairley Place, Strand Road, Kolkata-700001.

The details of Bank account to which amount is to be transferred are furnished below:

Bank Name: Indian Overseas Bank

Bank Branch: Strand Road Branch

Branch Account No: 067502000000491

IFSC Code: IOBA0000675

The Applicants shall upload the copy of the transaction details with the details of UTR No. along with the Technical bid documents for having remitted the tender fee, without which the Application shall be summarily rejected. SMPK shall not be liable / responsible for any connectivity / internet problem either with the user side / NIC / Bank. It is in the own interest of the Applicants, Applicants may get it verified from Bank that the requisite money has been received by SMPK for the NIT in which they are participating.

Pre-Application Conference is scheduled on **15.01.2024 at 11.00 hrs.**

The RFQ document can also be downloaded from the <https://kopt.enivida.in> portal such Applicants shall submit the cost of the document in the manner specified in

the document on or before Pre-Application Conference, for those who are attending Pre- Application Conference, or on or before Application Due Date.

The downloading of RFQ is permitted up to Application Due Date. No editing/ addition/ deletion of the downloaded document shall be permitted. If such incident is observed at any stage, such Applications shall be liable for outright rejection.

The completed Application in the required format containing all information requested in RFQ document should be submitted Online before application due date.

**Note:** *In case RFQ document is downloaded from <https://kopt.enivida.in> Portal, the Applicant is responsible to download Addendums / Amendments / Reply to Queries etc. if any issued by the Port.*

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## **Disclaimer**

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

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

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

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

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

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

The issue of this RFQ does not imply that the Authority is bound to select and short-list pre-qualified Applications for Bid Stage or to appoint the selected Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

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



## Glossary

<b>Applicant(s)</b>	As defined in Clause 1.2.1
<b>Application</b>	As defined in the Disclaimer
<b>Application Due Date</b>	As defined in Clause 1.1.5
<b>Associate</b>	As defined in Clause 2.2.9
<b>Authority</b>	As defined in Clause 1.1.1
<b>Bids</b>	As defined in Clause 1.2.3
<b>Bid Due Date</b>	As defined in Clause 1.2.3
<b>Bid Security</b>	As defined in Clause 1.2.4
<b>Bidders</b>	As defined in Clause 1.1.1
<b>Bidding Documents</b>	As defined in Clause 1.2.3
<b>Bidding Process</b>	As defined in Clause 1.2.1
<b>Bid Stage</b>	As defined in Clause 1.2.1
<b>Concessionaire</b>	As defined in Clause 1.1.2
<b>Concession Agreement</b>	As defined in Clause 1.1.2
<b>Conflict of Interest</b>	As defined in Clause 2.2.1(c)
<b>Consortium</b>	As defined in Clause 2.2.1(a)
<b>DBFOT</b>	As defined in Clause 1.1.1
<b>Eligible Experience</b>	As defined in Clause 3.2.1
<b>Eligible Projects</b>	As defined in Clause 3.2.1
<b>Estimated Project Cost</b>	As defined in Clause 1.1.4
<b>Financial Capacity</b>	As defined in Clause 2.2.2 (B)
<b>Government</b>	Government of India
<b>Highest Bidder</b>	As defined in Clause 1.2.8
<b>Jt. Bidding Agreement</b>	As defined in Clause 2.2.6 (g)
<b>Lead Member</b>	As defined in Clause 2.2.6 (c)
<b>LOA</b>	Letter of Award
<b>Member</b>	Member of a Consortium

<b>Net Worth</b>	As defined in Clause 2.2.4 (ii)
<b>O&amp;M</b>	Operation and Maintenance
<b>PPP</b>	Public Private Partnership
<b>Project</b>	As defined in Clause 1.1.1
<b>Qualification</b>	As defined in Clause 1.2.1
<b>Qualification Stage</b>	As defined in Clause 1.2.1
<b>Re. or Rs. or INR</b>	Indian Rupee
<b>RFP or Request for Proposals</b>	As defined in Clause 1.2.1
<b>RFQ</b>	As defined in the Disclaimer
<b>Royalty</b>	As defined in Clause 1.2.8
<b>SPV</b>	As defined in Clause 2.2.6
<b>Technical Capacity</b>	As defined in Clause 2.2.2 (A)
<b>Threshold Technical Capacity</b>	As defined in Clause 2.2.2 (A)

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

## 1. INTRODUCTION

### 1.1 Background

1.1.1 Port of Kolkata, the first Major Port in India, is a riverine port. It serves a vast hinterland comprising the States of West Bengal, Bihar, Uttar Pradesh, Madhya Pradesh, Punjab, Haryana, Rajasthan, Assam, other North Eastern States and the two neighbouring landlocked countries viz. Nepal and Bhutan. The Port has two Docks viz. Kidderpore Dock (KPD) and Netaji Subhas Dock (NSD). Kidderpore Dock (KPD) is the older one with 17 Multi-purpose berths and 1 berth for passenger-cum-cargo vessels, 6 Buoys/Moorings and 3 Dry Docks while Netaji Subhas Dock (NSD) is a relatively new one with 1 heavy lift berth, 10 berths including 4 dedicated Container Berths, 1 Liquid Cargo Berth, 4 multi-purpose berths, 2 Buoys/Moorings and 2 Dry Docks. Both the docks of Syama Prasad Mookerjee Port, Kolkata (formally known as Kolkata Port Trust) (SMPK) (“the Authority”) operate under lock gate system. The Kolkata Dock System (KDS) is situated at Latitude 22° 32’ N, Longitude: 88° 18’ E in the city of Kolkata.

The primary cargo commodity handled by KDS is containers. At KDS, presently NSD berths 3, 4, 5, 7 and 8 handle containers. The traffic demand with respect to container cargo is following an encouraging trend and would require further mechanisation and associated facilities to increase container handling capacity drastically. Considering this, KDS has envisaged to carryout Strengthening and Mechanization of NSD berth 7 and 8 (the “Project”) through PPP mode on Design, Build, Finance, Operate and Transfer basis for a period of 30 years, and has decided to carry out the bidding process for selection of a private / public entity as the bidder to whom the Project may be awarded. Brief particulars of the Project are as follows:

S. No.	Name of the Project	Capacity (Per Annum)	Estimated Project Cost
1.	Re-Construction of berth No. 8 and Mechanization of berth Nos. 7 & 8 at NSD of KDS, SMPK on DBFOT basis under PPP	4,48,140 TEUs	Rs. 809.18 Crores

The indicative details of Project Component wise breakup is given below:

SL No	Particulars Details	Unit	Value
<b>A</b>	<b>Civil</b>		
A1	Construction of New Berth		
A1.1	Existing Berth No.7	m	182.20
A1.2	Construction of new berth no.8 (Dismantling of old berth and construction new berth as straight quay inline with Berth No.7)	m	238
<b>A2</b>	<b>Yard Development Area</b>		
A2.1	Reefer Access Platform with electric Connections	Nos.	137
A.2.2	New Pavement for container stacking area development	Sqm	11,100
A2.3	Improvement of Existing pavement	Sqm	48100
A2.4	Improvement of Existing Internal Roads	Sqm	43,403
A2.5	New Internal Roads	Sqm	15,200
A2.6	Improvement of Existing Parking Area	Sqm	9,700
A2.7	New Parking Area	Sqm	4,860
A2.8	Admin Building	Sqm	200
A2.9	Operational Building	Sqm	200
A2.10	Radio communication tower	Sqm	200
A2.11	RTG washing station	Sqm	200
A2.12	Workshop	Sqm	300
A2.13	Canteen	Sqm	160
A2.14	Public toilet (2 nos of 70 sqm each)	Sqm	140

A2.15	Weighbridge (for truck & wagons)	Nos.	2
A2.16	Security/ Guard House (2 nos of 50 sqm each)	Sqm	100
A2.17	Gate complex	Nos	2
A2.18	Storm water drain	RM	7000
A2.19	Landscaping / Greenery	Sqm	2000
A2.20	Civil works for 11 KV Electrical feeder station	Sqm	300
A3	<b>Dredging, Reclamation and Stone Pitching</b>		
A3.1	Dredging	Cum	3000
A3.2	Earth filling and compaction	Cum	2,85,300
A3.3	Stone Pitching	Sqm	7360
A4	<b>Development of Railway Track and Yard</b>		
A4.1	Improvement of existing railway yard	SQM	17650
A4.2	Development of new railway yard	SQM	3100
A4.3	Utilization of existing railway track	M	730
B	<b>Mechanical</b>		
B1	<b>Berth Equipment</b>		
B1.1	Procurement and installation of Rail Mounted Quay Crane with 22.75m gauge and 40m outreach	Nos	3
B2	<b>Yard Equipment</b>		
B2.1	Procurement and installation of Rubber Tyre Gantry Cranes (width -7+1)	Nos.	12
B2.2	Reach Stackers	Nos.	1
B.2.3	Tractor Trailers	Nos.	31
B3	<b>Railway Yard Equipment</b>		

B3.1	Reach Stackers	Nos	3
B3.2	Tractor Trailers	Nos	5
C	<b>Electrical Works</b>		
C1	Power Distribution, Switchgear, Transformers, Cables up to substation near berth, Lighting, Control System, Public Address & Telephone System	LS	1
C2	Illumination with high mast towers and lighting system	LS	As per requirement
C3	Fire fighting & Fire hydrants	LS	As per requirement
C4	IT Infrastructure and Terminal Operation	LS	As per requirement

The project is envisaged to be implemented in single phase (0 to 24 months). However, considering the fact that, the berth operations (operations of berth no.7) cannot be abandoned till the project is fully commissioned, it is envisaged to provide the flexibility for the operator to start with semi mechanization in stage-I which later can be converted to full mechanization. Hence, the project is envisaged to be implemented in two stages. However, the concessionaire, based on his operational model may choose to start the partial operations in stage-I or full-fledged operations after completion of stage-II.

**Construction phase:**

**The concessionaire may operate the existing Berth No. 7 during construction period (24 months) for handling containers and pay the royalty as prescribed.**

- 1.1.2 The selected Bidder, who is either a company incorporated under the Companies Act, 1956/2013 or undertakes to incorporate as such prior to execution of the concession agreement (the “**Concessionaire**”) shall be responsible for [designing,] engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of a long-term concession agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and the

Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

- 1.1.3 The scope of work will broadly include designing, building berth no 8 and equipping Berth 7 and 8 for the operation and maintenance thereof. The Berth no. 7 NSD shall be handed over to the Concessionaire on the date of Award of Concession. The Concessionaire has to develop Berth No. 8 in straight line existing Berth No.7 duly dismantling the existing Berth No. 8 as required. Also the Concessionaire has to develop container stack yard, internal roads, buildings etc. as required and as stipulated in the Techno economic feasibility report.

Facilities to be handed over on the date of Award of Concession:

- 1) Berth no. 7 NSD of length 182.20 Meter and 26.75 Meter width;
  - 2) Container Stockyard of size 182.20m x 61.95 m adjacent / behind Berth No.7;
  - 3) Land area of about 50 Acres on as-is-where-is basis which include (1) and (2) as mentioned above.
- 1.1.4 Indicative capital cost of the Project (the “**Estimated Project Cost**”) will be revised and specified in the Bidding Documents of the Project. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.5 The Authority shall receive Applications pursuant to this RFQ in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the “**Application Due Date**”).

## **1.2 Brief description of bidding Process**

- 1.2.1 The Authority has adopted a two-stage bidding process (collectively referred to as the “**Bidding Process**”) for selection of the Bidder for award of the Project. The first stage (the “**Qualification Stage**”) of the process involves qualification (the “**Qualification**”) of interested parties / consortia who make an Application in accordance with the provisions of this RFQ (the “**Applicant**”, which expression shall, unless repugnant to the context, include the Members of the Consortium). Prior to making an Application, the Applicant shall pay to the Authority a sum of Rs.1,06,200/- (Rupees one lakh six thousands and two hundred only) including GST as the cost of the RFQ process. At

the end of this stage, the Authority expects to announce suitable pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the “**Bid Stage**”) comprising Request for Proposals (the “**Request for Proposals**” or “**RFP**”).

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

- 1.2.2 In the Qualification Stage, Applicants would be required to furnish all the information specified in this RFQ. Only those Applicants that are pre-qualified and short-listed by the Authority shall be invited to submit their Bids for the Project. The Authority is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are, therefore, advised to visit the site and familiarise themselves with the Project.
- 1.2.3 In the Bid Stage, the Bidders will be called upon to submit their financial offers (the “**Bids**”) in accordance with the RFP and other documents to be provided by the Authority (collectively the “**Bidding Documents**”). The Bidding Documents for the Project will be provided to every short-listed Bidder on payment of a process fee for RFP which will be about four times the amount specified in Clause 1.2.1. The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).
- 1.2.4 In terms of the RFP, a Bidder will be required to deposit, along with its Bid, a bid security of 1% (one per cent) of the Estimated Project Cost (the “**Bid Security**”), refundable no later than 60 (sixty) days from the Bid Due Date, except in the case of the selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security through RTGS/NEFT to be transferred on A/C Name : SYAMA PRASAD MOOKERJEE PORT, KOLKATA A/C No.: **06750200000491**, IFSC: IOBA0000675, Bank Name: Indian Overseas Bank, Branch Name: Strand Road Branch in Online mode or a bank guarantee acceptable to the Authority. In case a



bank guarantee (Including e-Bank Guarantee) is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time.

The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 1.2.5 Generally, the Highest Bidder shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be.
- 1.2.6 During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the concession including implementation of the Project.
- 1.2.7 As part of the Bidding Documents, the Authority will provide a draft Concession Agreement and feasibility report prepared by its consultants and other information pertaining/ relevant to the Project available with it.
- 1.2.8 Bids are invited for the Project on the basis of Highest Royalty per TEU of container handled at the Project Facilities (the “**Royalty**”). The rate of Royalty will be indexed to as per the variations in the Wholesale Price Index (WPI) for all commodities announced by the Government of India annually as specified in the draft Concession Agreement.

In this RFQ, the term “**Highest Bidder**” shall mean the Bidder who is offering the highest Royalty per TEU of Container cargo handled at the Project Facilities (the “**Royalty**”)

Applicability of Royalty:

- i) Containers less than and up to 20’ will be reckoned as one TEU.
- ii) Containers more than 20’and up to 40’ will be reckoned as one FEU (Forty Equivalent Unit) and equivalent to 1.5 times TEU.

iii) Containers other than mentioned at point (i) and (ii) above, or requiring special devices / slings will be 2 times of normal TEU. Such containers will also include damaged containers and any other type requiring special devices

iv) In case any discount or incentives mandated by Govt. to be applicable on certain types of nature of cargoes, Royalty Payments shall be subjected to same level of discounts.

1.2.9 The Concessionaire shall, in consideration of its investment and services, be entitled to levy and collect a pre-determined user fee from the users of the Project.

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

1.2.11 Any queries or request for additional information concerning this RFQ shall be submitted through E-mail to The Chief Engineer, Kolkata dock system, Syama Prasad Mookerjee Port, Kolkata on email ID [ce@kolkataporttrust.gov.in](mailto:ce@kolkataporttrust.gov.in)

### 1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

SI.No.	Event description	Date
	<b>Qualification Stage:</b>	
1	Download period of RFQ Document	<b>From 14<sup>th</sup> December 2023 at 1700 hrs</b>
2	Last date for receiving queries	<b>1700 hrs on 8<sup>th</sup> January 2024</b>
3	Date of Pre-Application Conference	<b>1100 hrs on 15<sup>th</sup> January 2024</b>
4	Authority response to queries latest by	<b>1700 hrs on 22<sup>nd</sup> January 2024</b>
5	Application Due Date	<b>upto 1500 hrs on 29<sup>th</sup> January 2024</b>
6	Date and time of opening	<b>After 1530 hrs on 29<sup>th</sup> January 2024</b>

### 1.4 Pre-Application Conference

**The date, time and venue of the Pre-Application Conference shall be:**

**Date: 15<sup>th</sup> January 2024                      Time: 1100 hrs**

**Venue:** Board Room,  
Syama Prasad Mookerjee Port, Kolkata,  
# 15, Strand Road, Kolkata-700001

## 2. INSTRUCTIONS TO APPLICANTS

### A. GENERAL

#### 2.1 Scope of Application

1. The Authority wishes to receive Applications for Qualification in order to short-list experienced and capable Applicants for the Bid Stage.

2.1.2 Short-listed Applicants may be subsequently invited to submit the Bids for the Project.

#### 2.2 Eligibility of Applicants

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

(a) The Applicant for pre-qualification may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no applicant applying individually or as a member of a Consortium, as the case may be, can be member of another Applicant. The term Applicant used herein would apply to both a single entity and a Consortium.

(b) An Applicant may be a private entity or combination of Private entities 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 in Clause 2.2.6 below.

(c) An Applicant shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified. An Applicant shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

(i) the Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Applicant, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its Member or Associate is less

than 5 per cent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

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

(vi) such Applicant, or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

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

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

(e) Other eligibility conditions shall include Prevention of private Sector monopoly in Major Ports and shall be judged as per “Policy for preventing private sector monopoly in Major Ports” issued by Ministry of Shipping, Government of India vide Memo No. PD-24018/8/2009-PD.III dated 2nd August, 2010. A copy of this Memo No PD-24018/8/2009-PD.III dated 2nd August, 2010 is at Appendix VIII.

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

- i) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Applicant shall, over the past 5 (five) financial years preceding the Application Due Date, have:
1. paid for, or received payments for, construction of Eligible Project(s); and/ or
  2. paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1; and/ or
  3. collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1,

such that the sum total of the above is more than **Rs.1618.36 Crore (Rs. One thousand six Hundred eighteen Crore and thirty six Lakhs only)** (the “**Threshold Technical Capacity**”).

Provided that at least one fourth of the Threshold Technical Capacity shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 3.2.1.

- (B) **Financial Capacity:** The Applicant shall have a minimum Net Worth (the “**Financial Capacity**”) of **Rs. 202.30 Crore (Rs. Two Hundred two Crore and thirty lakhs only)** at the close of the preceding financial year.

In case of a Consortium, the combined technical capacity and Net Worth of those Members, who shall have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 1 (one) 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.

- 2.2.3 **O&M Experience:** The Applicant shall, in the case of a Consortium, include a Member who shall subscribe and continue to hold at least 10% (ten per cent) of the subscribed and paid up equity of the SPV for a period of 5 (five) years from the date of commercial operation of the Project, and has either by itself or through its Associate, experience of 5 (five) years or more in operation and maintenance (O&M) of Category 1 projects specified in Clause 3.2.1, which have an aggregate capital cost equal to the Estimated Project Cost. In the event that the Applicant does not have the requisite O&M experience, it shall either enter into an agreement, for a period of 5 (five) years from COD, with an entity having the aforesaid experience relating to the performance of O&M obligations in accordance with the provisions of the Concession Agreement, failing which the Concession Agreement shall be liable to termination.

- 2.2.4 The Applicant shall enclose with its Application, to be submitted as per the format at Appendix-I, complete with its Annexes, the following\$:

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\$ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause

- (i) Certificate(s) from statutory auditors of the Applicant or its Associates or the concerned client(s) stating the payments made / received or works commissioned, as the case may be, during the past 5 (five) years in respect of the projects specified in paragraph 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Applicant (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
- (ii) certificate(s) from statutory auditors of the Applicant or its Associates specifying the Net Worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFQ, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders.

2.2.5 The Applicant should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Application to commit the Applicant. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.

2.2.6 Where the Applicant is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 2013 (the “**SPV**”), to execute the Concession Agreement and implement the Project. In case the Applicant is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

- (a) Number of members in a consortium shall not exceed 6 (six), but information sought in the Application may be restricted to 4 (four) members in the order of their equity contribution;
- (b) subject to the provisions of sub-clause (a) above, the Application should contain the information required for each member of the Consortium;

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2.2.4. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant or its Associate may provide the certificates required under this RFQ.

- (c) members of the Consortium shall nominate one member as the lead member (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-III, signed by all the other members of the Consortium;
- (d) the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) an individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;
- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Jt. Bidding Agreement**”), for the purpose of making the Application and submitting a Bid in the event of being short-listed. The Jt. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:
  - i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFQ, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
  - ii) clearly outline the proposed roles and responsibilities, if any, of each member;
  - iii) commit the minimum equity stake to be held by each member;
  - iv) commit that each of the members, whose experience will be evaluated for the purposes of this RFQ, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 1 (one) 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 share capital of the SPV; and (ii) 5%



(five per cent) of the Total Project Cost specified in the Concession Agreement;

- v) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until expiry of 1 (one) year after the commercial operation date of the Project; and
  - vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and
- (h) except as provided under this RFQ and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.

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

2.2.8 An Applicant including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Applicant, Consortium Member or Associate. Provided, however, that where an Applicant claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.8 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any wilful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to

cause a material adverse impact on the Bidding Process or on the implementation of the Project.

In computing the Technical Capacity and Net Worth of the Applicant/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

For purposes of this RFQ, Associate means, in relation to the Applicant/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Applicant/ Consortium Member (the “**Associate**”). 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.

2.2.10 The following conditions shall be adhered to while submitting an Application:

- (a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification;
- (c) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (d) in case the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.11 While Qualification is open to persons from any country, the following provisions shall apply:

1. Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure-I of Order (Public Procurement No. 1) issued by Ministry of Finance, Department of Expenditure Public Procurement Division vide F. No. 6/18/2019-PPD, dated 23<sup>rd</sup> July 2020, which shall form an integral part of RFP and DCA.
2. **“Bidder”** (including the terms ‘tendered’, ‘consultant’ or ‘service provider’ in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
3. **“Bidder from a country which shares a land border with India”** means:
  1. An entity incorporated, established or registered in such a country, or
  2. A subsidiary of an entity incorporated, established or registered in such a country; or
  3. An entity substantially controlled through entities incorporated, established or registered in such a country; or
  4. An entity whose beneficial owner is situated in such a country; or
  5. An Indian (or other) agent of such an entity; or
  6. A Consortium or joint venture where any member of the consortium or joint venture falls under any of the above.

1. **Beneficial owner for the purpose of (III) above means:**

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more judicial person, has a controlling ownership interest or who exercises control through other means.

**Explanation:**

- i) “Controlling ownership interest” means ownership of or entitlement to more than twenty-five per cent of shares or capital or profits of the company.

ii) "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholding agreements or voting agreements;

1. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or one or more juridical person: has ownership or entitlement to more than fifteen percent of capital or profits of the partnership;
  2. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individual;
  3. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
  4. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
2. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.
  3. The selected Bidder/ Concessionaire shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in Clause III above.

**Certificate regarding Compliance:**

A certificate shall be required to be submitted by the bidders in the format prescribed at Appendix-VII.

It may be noted that in case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.

**Validity of Registration:**

- i) In respect of RFP, registration should be valid at the time of submission of bids and at the time of acceptance of bids. If the Bidder was validly registered at the time of acceptance, registration shall not be a relevant consideration during contract execution.
- ii) the Qualification of such applicant or in case of any subsequent change in its shareholding or the shareholding in the consortium members, shall be subject to approval of the Authority from national security and public interest perspective. The decision of the authority in this behalf shall be final and conclusive and binding on the Applicant. Subsequent change shall include change in the holding or acquisition of equity or control, which shall include direct or indirect holding/acquisition, Including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

The Applicant shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Applicant liable for disqualification from the Bidding Process.

2.2.12 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within 3 (three) months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.

## **2.3 Change in composition of the Consortium**

- 2.3.1 Change in the composition of a Consortium will not be permitted by the Authority during the Qualification Stage.
- 2.3.2 Where the Bidder is a Consortium, change in the composition of a Consortium may be permitted by the Authority during the Bid Stage, only where:
- i) the application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date;
  - ii) the Lead Member continues to be the Lead Member of the Consortium;
  - iii) the substitute is at least equal, in terms of Technical Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Applicants; and
  - iv) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not an Applicant/Member/Associate of any other Consortium bidding for this Project.
- 2.3.3 Approval for change in the composition of a Consortium shall be at the sole discretion of the Authority and must be approved by the Authority in writing.
- 2.3.4 The modified/ reconstituted Consortium shall submit a revised Jt. Bidding Agreement before the Bid Due Date.
- 2.3.5 Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, an Applicant may, within 10 (ten) days after the Application Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

## **2.4 Number of Applications and costs thereof**

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

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

## **2.5 Site visit and verification of information**

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

## **2.6 Acknowledgement by Applicant**

1. It shall be deemed that by submitting the Application, the Applicant has:
  - (a) made a complete and careful examination of the RFQ;
  - (b) received all relevant information requested from the Authority;
  - (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFQ or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5 above; and
  - (d) agreed to be bound by the undertakings provided by it under and in terms hereof.
2. The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFQ or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

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

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

2.7.2 The Authority reserves the right to reject any Application and/ or Bid if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Applicant does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Application.

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

- i) invite the remaining Bidders to match the Highest Bidder/ submit their Bids in accordance with the RFP; or
- ii) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

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

2.7.4 The Authority reserves the right to verify all statements, information and documents submitted by the Applicant in response to the RFQ. Any such verification or lack of such verification by the Authority shall not relieve the



Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority there under.

## **B. DOCUMENTS**

### **2.8 Contents of the RFQ**

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

#### **Invitation for Qualification**

- Section 1: Introduction
- Section 2: Instructions to Applicants
- Section 3: Criteria for Evaluation
- Section 4: Fraud & Corrupt Practices
- Section 5: Pre Application Conference
- Section 6: Miscellaneous
- Section 7: Policy for preventing Private sector Monopoly in Major Ports.

#### **Appendices**

- I. Letter comprising the Application for Pre-Qualification
- II. Power of Attorney for signing of Application
- III. Power of Attorney for Lead Member of Consortium
- IV. Joint Bidding Agreement for Consortium
- V. Guidelines of the Department of Disinvestment
- VI. Performa for Security Clearance
- VII. Performa of Pre-Integrity Pact
- VIII. Policy for preventing private sector monopoly in Major Ports

- IX. Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs)
- X. Format for pre-bid queries.

## **2.9 Clarifications**

2.9.1 Applicants requiring any clarification on the RFQ may notify the Authority in writing by e-mail in accordance with Clause 1.2.11. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Application Due Date. The responses will be sent by e-mail. The Authority will publish all the queries and its responses thereto, in the website of Syama Prasad Mookerjee Port, Kolkata [www.kolkataporttrust.gov.in](http://www.kolkataporttrust.gov.in) and <https://kopt.enivida.in> portal without identifying the source of queries.

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

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

## **2.10 Amendment of RFQ**

1. At any time prior to the deadline for submission of Application, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ by the issuance of Addenda.
2. Any Addendum thus issued will be published in the website of Syama Prasad Mookerjee Port, Kolkata [www.kolkataporttrust.gov.in](http://www.kolkataporttrust.gov.in) & <http://kopt.enivida.in> portal.

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

## **C. PREPARATION AND SUBMISSION OF APPLICATION**

### **2.11 Language**

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

### **2.12 Format and signing of Application**

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

2.12.2 The Application and its copy shall be typed or written in indelible ink. It shall be signed by the authorised signatory of the Applicant who shall also initial each page of the Application (including each Appendix and Annex) in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Application shall be initialled by the person(s) signing the Application. The Application shall contain page numbers. Then all documents shall be scanned to soft copies which can be uploaded in the Portal.

### **2.13 Sealing and Marking of Applications**

2.13.1 The Applicant shall submit the Application in online mode.

- a) The completed application in the required format containing all information requested shall be submitted through online on <http://kopt.enivida.in> portal mandatorily.

**ONLY online applications will be treated as responsive.**

2.13.2 Each application shall contain:

- i) Application in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- ii) Power of Attorney for signing the Application as per the format at Appendix-II;
- iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
- iv) copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;
- v) copy of Memorandum and Articles of Association, if the Applicant is a body corporate, and if a partnership then a copy of its partnership deed;
- vi) copies of Applicant's duly audited balance sheet and profit and loss account for the preceding five years;
- vii) The Integrity Pact (IP) (Appendix-VII) duly signed by Authorised Signatory shall be submitted by the Bidder with the RFQ Bid & shall be part of the Contract Agreement.
- viii) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs) as per format given in Appendix-IX shall be submitted by the Bidder with the RFP Bid duly signed by Authorised signatory & shall be part of the Concession Agreement;
- ix) Copy of Registration from the Competent Authority as defined in Public Procurement Order No. F. No. 6/18/2019-PPD dated 23rd July 2020, if applicable (to be submitted by the "Bidder from a country which shares a land border with India"); and
- x) any other sector or project-specific requirement that may be specified by the Authority.

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

## **2.14 Application Due Date**

2.14.1 Applications should be submitted before 1500 hours IST on the Application Due Date, through portal <http://kopt.enivida.in>

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

## **2.15 Late Applications**

Bids will not be accepted by the e-tendering system (or the Authority) after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

## **2.16 Modifications / substitution / withdrawal of Applications**

2.16.1 The Applicant may modify, substitute or withdraw its Application after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to the Application Due Date. No Application shall be modified, substituted or withdrawn by the Applicant on or after the Application Due Date.

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

## **D. EVALUATION PROCESS**

### **2.17 Opening and Evaluation of Applications**

2.17.1 The Authority shall open the Applications after 1530 hours IST on the Application Due Date.

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

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

- 2.17.4 Any information contained in the Application shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Project is subsequently awarded to it on the basis of such information.
- 2.17.5 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s) without assigning any reasons.
- 2.17.6 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant project from computation of the prescribed eligibility as specified in Clause 2.2.2 of this RFQ.
- 2.17.7 In the event that an Applicant claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from computation of the prescribed eligibility as specified in Clause 2.2.2, and may also, while computing the prescribed eligibility, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the Application and / or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

## **2.18 Confidentiality**

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

## 2.19 Tests of responsiveness

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

- (a) Submitted online through <https://kopt.enivida.in> portal
- (b) it is received as per format at Appendix-I;
- (c) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.14.2;
- (d) it is signed, submitted online and marked as stipulated in Clauses 2.12 and 2.13;
- (e) it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);
- (f) it contains all the information and documents (complete in all respects) as requested in this RFQ;
- (g) it contains information in formats same as those specified in this RFQ;
- (h) it contains certificates from its statutory auditors<sup>§</sup> in the formats specified at Appendix-I of the RFQ for each Eligible Project;
- (i) it contains an attested copy of the receipt of the Authority towards the cost of the RFQ process as specified in Clause 1.2.1;
- (j) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);
- (k) it does not contain any condition or qualification; and
- (l) it is not non-responsive in terms hereof.

2.19.2 The Authority reserves the right to reject any Application which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Application. Provided, however, that the Authority may, in its discretion, allow the Applicant

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

to rectify any infirmities or omissions if the same do not constitute a material modification of the Application.

## **2.20 Clarifications**

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

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

## **E. QUALIFICATION AND BIDDING**

### **2.21 Short-listing and notification**

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

### **2.22 Submission of Bids**

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

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



### **2.23 Proprietary data**

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

### **2.24 Correspondence with the Applicant**

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

### **2.25 National Security**

The list of pre-qualified and shortlisted bidders shall be subject to clearance from National Security perspective.

### **2.26 Prevention of Private Sector Monopoly in Major Ports**

Ministry of Shipping, Government of India vide its letter No. PD-24018/8/2009-PD.III dated 2nd August, 2010 has issued the policy (see Appendix VIII) to be followed by all Major Ports while awarding projects to private parties through Public Private Partnership (PPP) route so as to avoid private sector monopoly in the Major Ports. The aforesaid policy or any other applicable policy shall apply mutatis mutandis to this Bidding Process and the Authority shall be entitled to disqualify any Bidder in accordance with the aforementioned policy.

### 3. CRITERIA FOR EVALUATION

#### 3.1 Evaluation parameters

- 3.1.1 Only those Applicants who meet the eligibility criteria specified in Clauses 2.2.2 and 2.2.3 shall qualify for evaluation under this Section 3. Applications of firms/ consortia who do not meet these criteria shall be rejected.
- 3.1.2 The Applicant's competence and capability is proposed to be established by the following parameters:
- i) Technical Capacity; and
  - ii) Financial Capacity.

#### 3.2 Technical Capacity for purposes of evaluation

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

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

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

Category 3: Construction and/or operation experience on Eligible Projects in Port sector that qualify under Clause 3.2.4

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

For the purpose of this RFQ:

- i) **Port sector** would be deemed to include Marine structures, On-shore and Off-shore Terminals, Berths, Jetties, Quays, Cargo Handling System, Bulk/Liquid Material Handling System, CFS / ICDs, Storage Tanks/Tank Farms, Conveyors, Pipelines, Warehousing & silos all associated with seaport/river port; and

- ii) Core sector would be deemed to include power, telecom, highways, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation, water supply, sewerage and real estate development.\$

3.2.2 Eligible Experience in respect of each category shall be measured only for Eligible Projects.

3.2.3 For a project to qualify as an Eligible Project under Categories 1 and 2:

- i) It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT, 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 **Rs. 161.84 crore (Rupees One Hundred Sixty One Crore Eighty Four Lakhs only)**; and
- iv) the entity claiming experience shall, during the last 5 (five) financial years preceding the Application Due Date, 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, such as revenues from highways, airports, ports and railway infrastructure, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products, telecommunications or fare/freight revenues and other incomes of the company owning the Project.

3.2.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Applicant should have paid for execution of its construction and/or operation works or received payments from its client(s) for construction and/or operation works executed, fully or

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

partially, during the 5 (five) financial years immediately preceding the Application Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years. For a project to qualify as an Eligible Project under Category 4, the Applicant 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 Application Due 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 prescribed eligibility as specified in Clause 2.2.2. However, payments/receipts of less than **Rs. 161.84 crore (Rs. One Hundred Sixty One Crore Eighty Four Lakhs only)** reckoned as payments/receipts for Eligible Projects.

Note: In case of Projects under Category-3, payments made/received for operation of Eligible Projects may be included.

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.

- 3.2.5 The Applicant shall quote experience in respect of a particular Eligible Project under any one category only, even though the Applicant (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.
- 3.2.6 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.

### **3.3 Details of Experience**

- 3.3.1 The Applicant should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Application Due Date.
- 3.3.2 The Applicants must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.

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

#### **3.4 Financial information for purposes of evaluation**

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

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

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

#### **3.5 Pre-Qualification of Applicants**

3.5.1 The Applicants who fulfill the criteria as mentioned in Clause 2.2.2, 2.2.3 and 2.25 (Security Clearance) shall be pre qualified for the Bid Stage. In case of consortium, the Aggregate Technical capacity 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 Technical capacity of the consortium. However, the pre qualification of bidders shall be subject to clearance from National Security perspective as per Clause 2.25 of this RFQ document.

#### 4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove, if an Applicant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFQ issued by the Authority during a period of 2 (two) years from the date such Applicant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the 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 Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may

be, any person in respect of any matter relating to the Project or the LOA 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 Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## 5. PRE-APPLICATION CONFERENCE

- 5.1 A Pre-Application Conference of the interested parties as specified in clause 1.4 shall be convened at the designated date, time and place. Only those persons who have purchased the RFQ document shall be allowed to participate in the Pre-Application Conference. Applicants who have downloaded the RFQ document from the Authority's website [www.kolkataporttrust.gov.in](http://www.kolkataporttrust.gov.in) and <https://kopt.enivida.in> portal should submit a copy of the transaction details of RTGS / NEFT / Bank Transfer etc. for the amount specified in Clause 1.2.1 towards the cost of the RFQ process, through their representative attending the conference. A maximum of three representatives of each Applicant shall be allowed to participate on production of authority letter from the Applicant.
- 5.2 During the course of Pre-Application Conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.
- 5.3 The interested parties may raise pre-bid queries in the format enclosed at Appendix-X



## 6. MISCELLANEOUS

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

## 7. POLICY FOR PREVENTING PRIVATE SECTOR MONOPOLY IN MAJOR PORTS

7.1 If there is only one private terminal / berth / jetty operator in a port for a specific cargo, the operator of that berth / jetty or his associates shall not be allowed to bid for the next terminal / berth / jetty for handling the same cargo in the same port.

7.2 For the purpose of the policy, the terms

(i) **'Operator'** includes consortium members of the bidder;

(ii) **'Associates'** means, in relation to the Applicant/Consortium Member, a person who controls, is controlled by, or is under common control with such Applicant / Consortium Member (the Associate). As used in the definition, the expression 'control' means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, or more than 50% (fifty percent) 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.

(iii) **'Berth' / 'Jetty'** shall have the same meaning as 'Wharf' given in Section 2 (za) of the MPT Act, 1963/ Section 2 (zg) of Major Port Authorities Act 2021.

(iv) **'Specific Cargo'** means a) containers b) liquid bulk c) dry bulk or d) Multipurpose / other general cargo.

This policy is being included in the Request for Qualification as per directive of the Central Government circulated by Ministry of Shipping vide letter no. PD-24018/8/2009-PD.III dated August 02, 2010.

## **APPENDICES**

## APPENDIX-I

### Letter Comprising the Application for Pre-Qualification

(Refer Clause 2.13.2)

Dated:

To

The Chief Engineer,  
Syama Prasad Mookerjee Port, Kolkata  
# 6, Fairlie Place, BBD Bagh, Strand Road,  
KOLKATA-700001

Sub: Application for pre-qualification for the Re-Construction of berth No. 8 and Mechanization of berth Nos. 7 & 8 at NSD of KDS, SMPK on DBFOT basis under PPP Project

Dear Sir,

With reference to your RFQ document dated ....., I/we, having downloaded the same from website of \_\_\_\_\_ and examined the RFQ document and understood its contents, hereby submit my/our Application for Qualification for the aforesaid project. The Application is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Applicants for the aforesaid project, and we certify that all information provided in the Application and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.

3. This statement is made for the express purpose of qualifying as a Bidder for the planning, designing, procurement, installation, build, construction, operation and maintenance of the aforesaid Project.

4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.

5. I/ We acknowledge the right of the Authority to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:
  - (a) I/ We have examined and have no reservations to the RFQ document, including any Addendum issued by the Authority;
  - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFQ document;
  - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFQ document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
  - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFQ document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the RFQ document.
9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the Net Worth criteria and meet(s) all the requirements as specified in the RFQ document and am/ are qualified to submit a Bid.

10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a court or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a court.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.
14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13<sup>th</sup> July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines form part of the RFQ at Appendix-V thereof.
15. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the [Central Government/ State Government] or any entity controlled by it, from participating in any project (BOT or otherwise), and no bar subsists as on the date of Application.
16. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFQ, we shall intimate the Authority of the same immediately.
17. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFQ document, and duly signed, is enclosed. The power of attorney for signing of Application and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFQ, are also enclosed.

18. I/ We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the Concession Agreement.

19. I/ We hereby confirm that we shall comply with the O&M requirements specified in Clause 2.2.3.

20. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Applicants, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

21. I/ We agree and undertake to abide by all the terms and conditions of the RFQ document.

22. I/ We certify that in terms of the RFQ, my/our Net Worth is Rs. ....  
(Rupees ..... ) and the Aggregate Technical Capacity is  
..... (in figures) ..... (in words).

23. With respect to the details regarding security clearance provided in Appendix VI of my/our RFQ application, I/We accept and confirm to communicate to the Port Authority the changes in (a) Management Control of the Company/Companies and / or (b) Change of more than 10% in shareholding in the Company/Companies by any shareholder, within two weeks of change taking place.

24. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.

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

Yours faithfully,

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

Place: Name and seal of the Applicant/ Lead Member

ANNEX-I

**Particulars of the Applicant**

1. (a) Name:  
(b) Country of incorporation:  
(c) Address of the corporate headquarters and its branch office(s), if any, in India:  
(d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Particulars of individual(s) who will serve as the point of contact/ communication for the Applicant:
  - i) Name:
  - ii) Designation:
  - iii) Company:
  - iv) Address:
  - v) Telephone Number:
  - vi) E-Mail Address:
4. Particulars of the Authorised Signatory of the Applicant:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone 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 Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Application.
- (c) Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role <sup>§</sup>	Percentage of equity in the Consortium <sup>§§</sup>
1.			
2.			
3.			
4.			

<sup>§</sup> The role of each Member, as may be determined by the Applicant, should be indicated in accordance with Clause 2.2.6 (d) and instruction 4 at Annex-IV.

<sup>§§</sup>The percentage of equity should be in accordance with Clause 2.2.6 (a), (c) and (g).

- 6. The following information shall also be provided for the Applicant, including each Member of the Consortium:

**Name of Applicant/ member of Consortium:**

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

7. A statement by the Applicant 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):

## ANNEX-II

Technical Capacity of the Applicant<sup>@</sup>

(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ)

Applicant type <sup>#</sup>	Member Code <sup>¶</sup>	Project Code <sup>¶¶</sup>	Cate- gory <sup>§</sup>	Experience <sup>£</sup>		
				(Equivalent Rs. crore) <sup>\$\$</sup>		
(1)	(2)	(3)	(4)	Payments made/ received for construction of Eligible Projects in Categories 3 and 4  (5)	Payments made for development of Eligible Projects in Categories 1 and 2  (6)	Revenues appropriated from Eligible Projects in Categories 1 and 2  (7)
Single entity Applicant		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 Technical Capacity = Rupees.....Crores</b>						

*@ Provide details of only those projects that have been undertaken by the Applicant under its own name and/ or by an Associate specified in Clause 2.2.9 and/ or by a project company eligible under Clause 3.2.3(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.2.3(c) and for Categories 3 and 4, include only those projects where the payments made/received exceed the amount specified in Clause 3.2.4. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.*

*#An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Applicant may be ignored. In case credit is claimed for an Associate,*

*necessary evidence to establish the relationship of the Applicant with such Associate, in terms of Clause 2.2.9, shall be provided.*

*\*Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. 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 Annex-IV of this Appendix-I. Add more rows if necessary.*

*\$ Refer Clause 3.2.1.*

*£In the case of Eligible Projects in Categories 1 and 2, the figures in columns 6 and 7 may be added for computing the Technical Capacity of the respective projects. In the case of Categories 3 and 4, 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 Technical Capacity of an Eligible Project.*

*\$\$ For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees [80 (eighty)] to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Application Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.*

**ANNEX-III**

**Financial Capacity of the Applicant**

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

**(In Rs. crore<sup>₹</sup>)**

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

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

<sup>§</sup>For conversion of other currencies into rupees, see notes below Annex-II of Appendix-I.

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

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

<sup>££</sup>The Applicant should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.9.

**Instructions:**

1. The Applicant/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Application Due Date. The financial statements shall:
  - (a) reflect the financial situation of the Applicant or Consortium Members and its/ their Associates where the Applicant 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 Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFQ document.
6. The Applicant shall provide an Auditor's Certificate specifying the Net Worth of the Applicant and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 2.2.4 (ii) of the RFQ document.

**Details of Eligible Projects**

*(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ)*

**Project Code:****Member Code:**

<b>Item</b>	<b>Refer Instruction</b>	<b>Particulars of the Project</b>
(1)	(2)	(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	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity	10	



was held)		
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	15	

**Instructions:**

- i) Applicants are expected to provide information in respect of each Eligible Project in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.2.3 and 3.2.4 of the RFQ, as the case may be. Information provided in this section is intended to serve as a back up for information provided in the Application. Applicants should also refer to the Instructions below.
- ii) For a single entity Applicant, the Project Codes would be a, b, c, d etc. In case the Applicant 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.
- iii) A separate sheet should be filled for each Eligible Project.
- iv) Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. 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 Applicant or its Member, write "Associate" along with Member Code.
- v) Refer to Clause 3.2.1 of the RFQ for category number.
- vi) The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Application Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.2.12). For Categories 1 and 2, expenditure on 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 3.2.3(c). In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 3.2.4. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.

Note: In case of Projects under Category-3, payments made/received for operation of Eligible Projects may be included.

- vii) In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
- viii) Provide the estimated capital cost of the Eligible Project. Refer to Clauses 3.2.3 and 3.2.4
- ix) For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
- x) For Categories 1 and 2, the equity shareholding of the Applicant, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.2.3).
- xi) 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.
- xii) Certificate from the Applicant's statutory auditor<sup>§</sup> or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that

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<sup>§</sup> In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

do not have statutory auditors, the auditors who audit the annual accounts of the Applicant/ Member/Associate may provide the requisite certification.

13. If the Applicant is claiming experience under Categories 1 & 2<sup>£</sup>, it should provide a certificate from the statutory auditor of the Applicant, or its Associate, in the format below:

<b>Certificate from the Statutory Auditor regarding PPP projects<sup>Φ</sup></b>	
Based on its books of accounts and other published information authenticated by it, this is to certify that ..... ( <i>name of the Applicant/Member/Associate</i> ) is/ was an equity shareholder in ..... ( <i>title of the project company</i> ) and holds/ held Rs. .... cr. (Rupees ..... crore) of equity (which constitutes .....% of the total paid up and subscribed equity capital) of the project company from ..... ( <i>date</i> ) to ..... ( <i>date</i> ) <sup>¥</sup> . The project was/is likely to be commissioned on ..... ( <i>date of commissioning of the project</i> ).	
We further certify that the total estimated capital cost of the project is Rs. .... cr. (Rupees .....crore), of which Rs. .... cr. (Rupees ..... crore) of capital expenditure was incurred during the past five financial years as per year-wise details noted below: ..... .....	
We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 3.2.1 and 3.2.3 (d) of the RFQ during the past five financial years were Rs. .... cr. as per year-wise details noted below: ..... .....	
Name of the audit firm:	
Seal of the audit firm:	(Signature, name and designation
Date:	of the authorised signatory)

<sup>£</sup> Refer Clause 3.2.1 of the RFQ.

<sup>Φ</sup> Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant or its Associate may provide the certificates required under this RFQ.

<sup>€</sup> Refer instruction no. 10 in this Annex-IV.

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

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

<b>Certificate from the Statutory Auditor/ Client regarding construction worksΦ</b>	
Based on its books of accounts and other published information authenticated by it, {this is to certify that ..... <i>(name of the Applicant/Member/Associate)</i> was engaged by ..... <i>(title of the project company)</i> to execute ..... <i>(name of project)</i> for ..... <i>(nature of project)</i> }ψ. The construction of the project commenced on ..... <i>(date)</i> and the project was/ is likely to be commissioned on ..... <i>(date, if any)</i> . It is certified that ..... <i>(name of the Applicant/ Member/ Associate)</i> received/paid Rs. .... cr. (Rupees ..... crore) by way of payment for the aforesaid construction works.	
We further certify that the total estimated capital cost of the project is Rs. .... cr. (Rupees .....crore), of which the Applicant/Member/Associate received/paid Rs. .... cr. (Rupees ..... crore), in terms of Clauses 3.2.1 and 3.2.4 of the RFQ, during the past five financial years as per year-wise details noted below:	
..... .....	
<i>{It is further certified that the payments/ receipts indicated above are restricted to the share of the Applicant who undertook these works as a partner or a member of joint venture/ consortium.}♣</i>	
Name of the audit firm:	
Seal of the audit firm:	(Signature, name and designation of the
Date:	authorised signatory).

♣ Refer Clauses 3.2.1 and 3.2.4 of the RFQ.

Φ Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant or its Associate may provide the certificates required under this RFQ.

ψ In case the Applicant owned the Eligible Project and engaged a contractor for undertaking the construction works, this language may be modified to read: “this is to certify that ..... (name of Applicant/ Member/ Associate) held 26% or more of the paid up and subscribed share capital in the..... (name of Project company) when it undertook construction of the ..... (name of Project) through ..... (name of the contractor).

♣ This certification should only be provided in case of jobs/ contracts, which are executed as part of a partnership/ joint venture/ consortium. The payments indicated in the certificate should be restricted to the share of Applicant in such partnership/ joint venture/ consortium. This portion may be omitted if the contract did not involve a partnership/ joint venture/ consortium. In case where work is not executed by partnership/ joint venture/ consortium, this paragraph may be deleted.

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.9, the Applicant should also provide a certificate in the format below:

**Certificate from the 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 Applicant/ Consortium Member/ Associate*) is held, directly or indirectly<sup>£</sup>, by ..... (*name of Associate/ Applicant/ Consortium Member*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.9 of the RFQ.

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

*{Describe the share-holding of the Applicant/ Consortium Member and the Associate. In the event the Associate is under common control with the Applicant/ Consortium Member, the relationship may be suitably described and similarly certified herein.}*

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 Applicant/ 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.

16. 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 Technical Capacity.

ANNEX-V

**Statement of Legal Capacity**

*(To be forwarded on the letterhead of the Applicant/ 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<sup>§</sup> 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.....

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\$ Please strike out whichever is not applicable.

**APPENDIX-II**

**Power of Attorney for signing of Application and Bid\$**

*(Refer Clause 2.2.5)*

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), ..... son/daughter/wife of ..... and presently residing at ....., who is presently employed with us/ the Lead Member of our 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 application for pre-qualification and submission of our bid for the Re-Construction of berth No. 8 and Mechanization of berth Nos. 7 & 8 at NSD of KDS, SMPK on DBFOT basis under PPP Project proposed or being developed by the Syama Prasad Mookerjee Port, Kolkata (the "Authority") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information / responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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

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

For .....

\_\_\_\_\_ \$ To be submitted in original.

(Signature, name, designation and address)

Witnesses:

1.

(Notarised)

2.

Appendix II

Page 2

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- i) *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.*
- ii) *Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- iii) *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*



**Appendix-III**

**Power of Attorney for Lead Member of Consortium\$**

*(Refer Clause 2.2.5)*

Whereas the Syama Prasad Mookerjee Port, Kolkata (“the Authority”) has invited applications from interested parties for the Re-Construction of berth No. 8 and Mechanization of berth Nos. 7 & 8 at NSD of KDS, SMPK on DBFOT basis under PPP 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

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\$ To be submitted in original.

limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, 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 Authority, 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 Authority.

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2024

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)

Appendix III

Page 3

Notes:

- iv) *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.*
- v) *Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- vi) *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

**APPENDIX-IV**

**Joint Bidding Agreement**

*(Refer Clause 2.13.2)*

*(To be executed on Stamp paper of appropriate value)*

THIS JOINT BIDDING AGREEMENT is entered into on this the ..... day of .....  
2024

**AMONGST**

1. .... Limited, a company incorporated under the Companies Act, 1956/2013<sup>¥</sup> and having its registered office at ..... (hereinafter referred to as the **"First Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

2. .... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at ..... (hereinafter referred to as the **"Second Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

3. {..... Limited, a company incorporated under the Companies Act, 1956/2013 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, 1956/2013 and having its registered office at ..... (hereinafter referred to as the **"Fourth Part"**

---

<sup>¥</sup> A Bidder who is registered abroad may substitute the words, viz "a company registered under the Companies Act, 1956/2013" by the words, viz "a company duly organised and validly existing under the laws of the jurisdiction of its incorporation". A similar modification may be made in Recital 2, as necessary.

which expression shall, unless repugnant to the context include its successors and permitted assigns)}\$

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) Syama Prasad Mookerjee Port, Kolkata (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the “**Applications**”) by its Request for Qualification No. .... dated ..... (the “**RFQ**”) for pre-qualification of bidders for development, operation and maintenance of the Re-Construction of berth No. 8 and Mechanization of berth Nos. 7 & 8 at NSD of KDS, SMPK on DBFOT basis under PPP 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
- (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 Application.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

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

**2. 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.

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\$ The number of Parties will be shown here, as applicable, subject however to a maximum of 6 (six).

- 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 Indian Companies Act, 2013 for entering into a Concession Agreement with the Authority 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 Net Worth have been reckoned for the purposes of qualification and short-listing of Applicants 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.

## **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:
- (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 Associates 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 Applicant is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

## 9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of India.

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

## Appendix IV

### Page 6

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SECOND PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

THIRD PART

For and on behalf of

FOURTH PART

(Signature)

(Signature)

(Name)  
(Designation)  
(Address)

(Name)  
(Designation)  
(Address)

In the presence of:

1. 2.

**Notes:**

- i) 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.
- ii) 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.
- iii) 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.

## **APPENDIX-V**

Guidelines of the Department of Disinvestment

*(Refer Clause 1.2.1)*

No. 6/4/2001-DD-II

Government of India

Department of Disinvestment

Block 14, CGO Complex

New Delhi.

Dated 13<sup>th</sup> July, 2001

### **OFFICE MEMORANDUM**

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

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

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

examining whether the two concerns are substantially controlled by the same person/ persons.

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

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

## **APPENDIX-VI**

### **Performa for Security Clearance**

*(Refer 2.13.2)*

Revised formats for seeking Security Clearance for Bidders to be provided in line with Ministry of Shipping letter vide F.No. PD-24018/2/2018-SCC dated 24/08/2018. Considering the same, all the interested Bidders for the above proposal have to register themselves in “e-SAHAJ” portal. Bidders then need to fill up the form, upload documents as instructed and download the self-generated Acknowledgement from ‘e-SAHAJ’, to be sealed and signed by the Authorized Signatory. The same shall be made part of RFQ Application in here as APPENDIX VI.

In case e-SAHAJ Portal is not operational/ functional, non-submission of acknowledgement from e-SAHAJ shall not be considered as non-responsive. In such case, the bidders shall provide information as per the format given below and submit hard copies (12 nos. of sets) of security clearance documents duly filled, sealed and signed which shall be a part of RFQ application.

### **Information for Security Clearance**

**(Applicants to provide information in the revised formats provided below)**

Revised formats for seeking Security Clearance for Bidders to be provided in line with Ministry of Shipping letter vide F.No.PD-24018/12/2014-SCC dated 12/02/2016.

Revised Performa for Security Clearance:

#### **i) Details in respect of Company/ Firm (Indian/Foreign):**

Sl. No.	Full Name of Firms/Bidders	Date of registration of the Company	Address of Head Office, Regional Office and Registered Office	Previous name of the company, if any	Details of earlier approvals, if any (ref. No. & date)
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#### **ii) Details in respect of Directors.**

Sl. No.	Full Name of Board of Directors	Present position held with date (since when)	Date of Birth	Parentage	Present and Permanent Address	Nationality	Passport No. and issue date, if any	Contact Address & telephone number
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#### **iii) Details of Shareholders (All firms/companies/entities/individual having shareholding more than 10%).**

Sl. No.	Full Name	Parentage Father/Mother	Date of Birth	Permanent Address	Present Address	Present position held in the Company	Nationality (if Holding dual Nationality)	% of shares held in the Company
---------	-----------	-------------------------	---------------	-------------------	-----------------	--------------------------------------	---	---------------------------------

		r				y,if any	y,both must be Clearly mentioned )	y
--	--	---	--	--	--	----------	--	---

iv) Details of Criminal cases, if any against the company/Director(s) as per Annexure

Annexure

**Self-declaration for company of Director(s) for whom security clearance is sought**

i) Name, address and registration number of the company:

ii) Name and address of owners, promoters and directors of the company:

1. ....

2. ....

3. ....

4. ....

iii) Is the company owners, promoters of directors listed above the subject of any

1. Preventive detention proceedings (PSA/NSA etc.) : Yes/No

2. Criminal proceedings : Yes/No

iv) If yes, please provide following details

1. Detention / Case /FIR/warrant number :

2. Police station /District / Agency :

3. Section of Law :

4. Name and place of the court :

**v) The above-mentioned details are in respect of both India and any other foreign country.**

**Note:** The above self-declaration is required to be filled and signed by the authorized signatory of the company.



**APPENDIX VII**  
**Performa of Pre-Integrity Pact**

*(Refer Clause 2.2.11& 2.13.2)*

**a) General**

This pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made on day of the month of \_\_\_\_\_ 2024 , between, on one hand, the Board of Authorities of SMPK acting through Mr. \_\_\_\_\_, \_\_\_\_\_ (hereinafter called the '**CONCESSIONING AUTHORITY**', which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and

M/s. \_\_\_\_\_ represented by Shri. \_\_\_\_\_, \_\_\_\_\_ (designation) \_\_\_\_\_ (hereinafter called the "**BIDDER/CONCESSIONAIRE**" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the CONCESSIONING AUTHORITY has invited bids for the project of "Re-Construction of berth No. 8 and Mechanization of berth Nos. 7 & 8 at NSD of KDS, SMPK on DBFOT basis under PPP Project" (hereinafter referred to as the "**PROJECT**") and the "BIDDER/ CONCESSIONAIRE" is submitting its Bid for the Project, and

WHEREAS the BIDDER is a Private Limited Company/ Public Limited Company/ Government undertaking / registered partnership firm/ Joint Venture/ Consortium, constituted in accordance with the relevant law in the matter.

CONCESSIONING AUTHORITY NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to: Enabling BIDDERS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the CONCESSIONING AUTHORITY will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

#### **b) Commitments of the CONCESSIONING AUTHORITY**

1. The CONCESSIONING AUTHORITY undertakes that no official of the CONCESSIONING AUTHORITY, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.
2. The CONCESSIONING AUTHORITY will, during the pre- contract stage, treat all BIDDERS alike and will provide to all BIDDERS the same information and will not provide any such information to any particular BIDDER which could afford an advantage to that particular BIDDER in comparison to other BIDDERS.
3. All the officials of the CONCESSIONING AUTHORITY will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
4. In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER to the CONCESSIONING AUTHORITY with full and verifiable facts and the same is prima facie found to be correct by the CONCESSIONING AUTHORITY necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the CONCESSIONING AUTHORITY and such a person shall be debarred from further dealings related to the contract process. In such a case, while an enquiry is being conducted by the CONCESSIONING AUTHORITY the proceedings under the contract would not be stalled.

#### **c) Commitments of BIDDERS**

The BIDDER commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:-

1. The BIDDER will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the

CONCESSIONING AUTHORITY connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.

2. The BIDDER further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the CONCESSIONING AUTHORITY or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Government.
3. \* BIDDERS shall disclose the name and address of agents and representatives and Indian BIDDERS shall disclose their foreign principals or associates.
4. \* BIDDERS shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with this bid/contract.
5. \* The BIDDER further confirms and declares to the CONCESSIONING AUTHORITY that the BIDDER has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the CONCESSIONING AUTHORITY or any of its functionaries, whether officially or unofficially to the award of the contract to the BIDDER, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
6. The BIDDER, either while presenting the bid or during pre- contract negotiations or before signing the contract / Concession Agreement, shall disclose any payments he has made, is committed to or intends to make to officials of the CONCESSIONING AUTHORITY or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
7. The BIDDER will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.

8. The BIDDER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
9. The BIDDER shall not use impropriety for purposes of competition or personal gain, or pass on to others, any information provided by the CONCESSIONING AUTHORITY as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The BIDDER also undertakes to exercise due and adequate care lest any such information is divulged.
10. The BIDDER commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
11. The BIDDER shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
12. If the BIDDER or any employee of the BIDDER or any person acting on behalf of the BIDDER, either directly or indirectly, is a relative of any of the officers of the CONCESSIONING AUTHORITY, or alternatively, if any relative of an officer of the CONCESSIONING AUTHORITY has financial interest/stake in the bidder's firm, the same shall be disclosed by the BIDDER at the time of filing of tender.  
  
The term 'relative' for this purpose would be as defined in Section 2 (77 )of the Companies Act 2013.
13. The BIDDER shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the CONCESSIONING AUTHORITY.

**d) Previous Transgression**

- i) The BIDDER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify bidder's exclusion from the tender process.

- ii) The BIDDER agrees that if it makes incorrect statement on this subject, BIDDER can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

**e) Bid Security / Performance Security Deposit**

- a. While submitting the bid, the BIDDER shall submit a bid security, with the CONCESSIONING AUTHORITY
- b. In the case of Successful Bidder, a Performance Security in the form of a Bank Guarantee (including e-Bank Guarantee) shall be provided in accordance with the terms of the Concession Agreement and having validity as specified therein.
- c. In case of the successful BIDDER, a clause would also be incorporated in the Article pertaining to Performance Security in the Project Concession Agreement that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Security in case of a decision by the CONCESSIONING AUTHORITY to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.
- d. No interest shall be payable by the CONCESSIONING AUTHORITY to the BIDDER on Performance Security for the period of its currency.

**f) Sanctions for Violations**

Any breach of the aforesaid provisions by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) shall entitle the CONCESSIONING AUTHORITY to take all or any one of the following actions, wherever required:

- i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the BIDDER. However, the proceedings with the other BIDDER(s) would continue.
- ii) The Performance Security (after the contract is signed) shall stand forfeited either fully or partially, as decided by the CONCESSIONING AUTHORITY and the CONCESSIONING AUTHORITY shall not be required to assign any reason therefore.

- iii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER.
- iv) To cancel all or any other Contracts with the BIDDER. The BIDDER shall, be liable to pay compensation for any loss or damage to the CONCESSIONING AUTHORITY resulting from such cancellation/rescission and the CONCESSIONING AUTHORITY shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER.
- v) To debar the BIDDER from participating in future bidding processes of the Government of India for a minimum period of five years, which may be further extended at the discretion of the CONCESSIONING AUTHORITY.
- vi) To recover all sums paid in violation of this Pact by BIDDER(s) to any middleman or agent or broker with a view to securing the contract.
- vii) Forfeiture of Performance Security in case of a decision by the CONCESSIONING AUTHORITY to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.
- viii) The CONCESSIONING AUTHORITY will be entitled to take all or any of the actions mentioned at para 6.1(a) to (g) of this Pact also on the Commission by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- ix) The decision of the CONCESSIONING AUTHORITY to the effect that a breach of the provisions of this Pact has been committed by the BIDDER shall be final and conclusive on the BIDDER. However, the BIDDER can approach the Independent Monitor(s) appointed for the purposes of this Pact.

**g) Fall Clause**

The BIDDER undertakes that it has not performed / is not performing similar project at a price lower than that offered in the present bid in respect of any other Ministry / Department of the Government of India or PSU and if it is found at any stage that similar project was performed by the BIDDER to any other Ministry / Department of the Government of India or a PSU at a lower price, then that

very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER to the CONCESSIONING AUTHORITY, if the contract has already been concluded.

**h) Independent Monitors**

- a. The CONCESSIONING AUTHORITY has appointed the following Independent Monitors (hereinafter referred to as Monitor) for this Pact in consultation with the Central Vigilance Commission.
- b. The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- c. The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- d. Both the parties accept that the Monitors have the right to access all the documents relating to the project/bidding, including minutes of meetings.
- e. As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the CONCESSIONING AUTHORITY,
- f. The BIDDER(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the CONCESSIONING AUTHORITY including that provided by the BIDDER. The BIDDER will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the BIDDER/ Subcontractor(s) with confidentiality.
- g. The CONCESSIONING AUTHORITY will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the Monitor the option to participate in such meetings.
- h. The Monitor will submit a written report to the designated Authority of CONCESSIONING AUTHORITY within 8 to 10 weeks from the date of reference

or intimation to him by the CONCESSIONING AUTHORITY / BIDDER and, should the occasion arise, submit proposals for correcting problematic situations.

**j) Facilitation of Investigation**

In case of any allegation of violation of any provisions of this pact or payment of commission, the CONCESSIONING AUTHORITY or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER and the BIDDER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

**j) Law and Place of Jurisdiction**

This Pact is subject to Indian Law.' The place of performance and jurisdiction is the seat of the CONCESSIONING AUTHORITY.

**k) Other Legal Actions**

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

**l) Validity**

- a. The validity of this Integrity Pact shall be from date of its signing and extend upto 5 years or the complete execution of the contract to the satisfaction of both the CONCESSIONING AUTHORITY and the BIDDER/ CONCESSIONAIRE, including warranty period, whichever is later. In case BIDDER is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the contract.
- b. Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

**m)** The parties hereby sign this Integrity Pact at \_\_\_\_\_ on

BIDDER

CONCESSIONING AUTHORITY

Name of the Officer



Designation

Dept./MINISTRY/PSU

Witness

Witness

1. \_\_\_\_\_

1.

2. \_\_\_\_\_

2. \_\_\_\_\_,

\* Provisions of these clauses would need to be amended / deleted in line with the policy of the CONCESSIONING AUTHORITY in regard to involvement of Indian agents of foreign bidders.

**APPENDIX VIII**  
**Policy for Preventing Private Sector Monopoly in Major Ports**

Government of India  
Ministry of Shipping  
(Ports Wing)

No.PD-24018/8/2009 - PD.III      New Delhi-1, dated the 2<sup>nd</sup> August, 2010

To  
The Chairman, All Port Trusts

**Sub:- Policy for preventing private sector monopoly in Major Ports.**

Sir,

In pursuance of private sector participation guidelines, 1996 for the Port Sector and with a view to ensure healthy competition and smooth award of the projects for capacity augmentation at the Major Ports, the Central Government hereby directs all Major Ports under Section 111 of the Major Port Trusts Act, 1963, to follow the following Policy while awarding projects to private parties through Public Private Partnership (PPP) route so as to avoid private sector monopoly in the Major Ports. This policy is in supersession of this Ministry's letters No.PD-25021/13/2002-Pvt dated 11<sup>th</sup> November, 2002, No.PD-12013/2/2005-JNPT dated 26<sup>th</sup> September, 2007 and No.PD-11015/2/2006-VPT dated 1<sup>st</sup> October, 2008.

**2. Policy**

If there is only one private terminal/berth operator in a port for a specific cargo, the operator of that berth or his associates shall not be allowed to bid for the next terminal/berth for handling the same cargo in the same port.

For the purpose of this policy, the terms

- (i) 'Operator' includes consortium members of the bidder;
- (ii) 'Associates' means, in relation to the Applicant/Consortium member, a person who controls, is controlled by, or is under common control with such Applicant/Consortium Member (the Associate). As used in the definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, or 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.
- (iii) 'Berth' shall have the same meaning as "Wharf" given in Section 2 (2a) of the MPT Act, 1963.

- (iv) 'Specific Cargo' means (i) containers (ii) liquid bulk, (iii) dry bulk or (iv) multipurpose/other general cargo.
3. The policy shall be applicable with immediate effect and shall apply to Request for Qualification (RFQs) issued on or after this date.
4. It is also directed that the above provisions may be incorporated by the Major Ports in the Request for Qualification & Request for Proposal to give effect to the policy in relevant cases.
5. This issues with the concurrence of the Ministry of Law and Justice, Department of Legal Affairs and approval of Hon'ble Minister of Shipping.

Yours faithfully,

(Geetu Joshi)  
Director  
Tel No, 23321672

## APPENDIX IX

### Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs)

**To**

Chief Engineer,  
2<sup>nd</sup> Floor,  
# 6, Fairley Place, Strand Road,  
Kolkata-700001

**Sub:** Re-Construction of berth No. 8 and Mechanization of berth Nos. 7 & 8 at NSD of KDS, SMPK on DBFOT basis under PPP Project

Dear Sir,

With reference to your RFQ document dated \*\*\* \*\*\$, I/we, having examined the Bidding Documents and understood their contents, hereby undertake and confirm as follows:

*I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub- contracting to contractors from such countries;*

*I certify that this Bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub- contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority.*

*I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered.*

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory)  
Name and seal of Bidder/Lead Member

**Notes:**

{Where applicable, evidence of valid registration by the Competent Authority shall be attached}

In case the above certification is found to be false, this would be a ground for immediate rejection of Bid / termination and further legal action.

## APPENDIX-X

### Format for Pre-Bid Queries

SL No	RFQ Clause Reference	Query
1		
2		
3		