

Request for Proposal

for

[Name of the Work]

on

Engineering, Procurement & Construction (EPC) Mode

Ministry of Railways

October, 2019

(Updated for corrections upto 28.05.2020)

NEW DELHI
ENGINEERING DEPARTMENT

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[NAME AND ADDRESS OF THE EXECUTING AGENCY]

Notice Inviting Bid

Bid/ Package No.…….** Dated ……**

RFP for [Name of Work] on EPC mode

The President of India represented by the Ministry of Railways, ********** (the **"Authority"**), having its principal office at ********, [New Delhi,110001, India"] is engaged in the development of railways and related infrastructure, and as part of this endeavour, the Authority has decided to undertake [construction/electrification/-----] of the railway line [Name of the project ***[1]][2] (the **"Project"**) through Engineering, Procurement and Construction (the **"EPC"**) Contract, and has decided to carry out the Bidding process for selection of a Bidder to whom the Project may be awarded. A brief description of the project may be seen in the Information Memorandum of the Project at the Authority's website (www.***.***). Brief particulars of the Project are as follows:

Name of the Project	**Length in km**	**Estimated Project Cost** (In Rs. cr.)[3]
[Name of Work]	[100]	[500]

The complete Bid document can be viewed / downloaded from official portal of the Railway website https:// ireps.gov.in from _____** to ____** (upto 17.00 Hrs. IST). Bidder must submit its Financial Bid and Technical Bid at https:// ireps.gov.in on or before upto _____** hours IST. Bids received online shall be opened on ___** at_____** hours IST.

Bid through any other mode shall not be entertained. However, Power of Attorney and Joint Bidding Agreement etc. shall be submitted physically by the Bidder on or before_____** at_____** hours IST. Please note that the [Ministry/Authority/ Executing Agency] reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever.

[Officer In-charge
Ministry of Railway
…….***
……***
Phone/ Fax……**
e-mail……**]

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1 Wherever asterisk is used, it should be substituted by project-specific details prior to issue of Bid document.

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

3 This amount of estimated project cost should normally include the likely construction cost plus cost of survey, investigation, design, and contingencies.

DISCLAIMER

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

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

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

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

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

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

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

GLOSSARY

Agreement	As defined in Clause 1.1.4
Authority	As defined in Clause 1.1.1
Bank Guarantee	As defined in Clause 2.20.1
Bid(s)	As defined in draft EPC agreement
Bidders	As defined in Clause 1.2.1
Bidding Documents	As defined in Clause 1.1.5
Bid Due Date	As defined in Clause 1.1.5
Bidding Process	As defined in Clause 1.2.1
Bid Security	As defined in Clause 1.2.4
Bid Price or Bid	As defined in Clause 1.2.6
Contractor	As defined in Clause 1.1.2
Construction Period	As defined in Clause 1.2.6
Conflict of Interest	As defined in Clause 2.2.1(c)
Defect Liability Period	As defined in Clause 1.2.6
Eligible Experience	As defined in Clause 2.2.2.4 (i)
Eligible Projects	As defined in Clause 2.2.2.4 (i)
EPC	As defined in Clause 1.1.1
EPC Contract	As defined in Clause 1.1.2
Estimated Project Cost	As defined in Clause 1.1.3
Feasibility Report	As defined in Clause 1.2.3
Financial Capacity	As defined in Clause 2.2.2.2 (i)
Government	Government of *********
Consortium/Joint Venture	As defined in Clause 2.2.1(a)
Jt. Bidding Agreement	As defined in Clause 2.1.11(g)
Lead Member	As defined in Clause 2.1.11 (d)
Lowest Bidder	As defined in Clause 1.2.6
LOA	As defined in Clause 3.3.4
Net Worth	As defined in Clause 2.2.2.8 (ii)
Performance Security	As defined in Clause 2.21.1
Additional Performance Security	As defined in Clause 2.21.1
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in the Disclaimer
Selected Bidder	As defined in Clause 3.3.1
Technical Capacity	As defined in Clause 2.2.2.1 (i)
Tie Bids	As defined in Clause 3.3.2
Threshold Technical Capacity	As defined in Clause 2.2.2.1 (i)

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.

[NAME AND ADDRESS OF THE EXECUTING AGENCY]

SECTION 1

INTRODUCTION

1.1 Background

1.1.1 The President of India represented by the Ministry of Railways, ********** (the **"Authority"**), having its principal office at ********, [New Delhi,110001, India"] is engaged in the development of railways and related infrastructure, and as part of this endeavour, the Authority has decided to undertake [construction/electrification] of the railway line [(Name of the section) of the name of the project ***] (the **"Project"**) through an Engineering, Procurement and Construction (the "**EPC**") Contract, and has decided to carry out an open, competitive. Bidding Process for selection of a Bidder to whom the Project may be awarded. A brief description of the Project may be seen in the Information Memorandum of the Project at the Railway website https:// ireps.gov.in. Brief particulars of the Project are as follows:

Name of the Project	**Length in km**	**Estimated Project Cost** (In Rs. cr.)	**No. of Years for completion of work**
[Name of Work***]	[100]	[2000]	[2.5 years]

1.1.2 The Selected Bidder (the "**Contractor**") shall be responsible for Engineering, Procurement and Construction of the Project under and in accordance with the provisions of an Engineering, Procurement and Construction agreement (the "**EPC Agreement**") to be entered into between the Selected Bidder and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto. The scope of work will broadly include [survey, investigations, design and construction of civil, structures and track works for double line railway involving formation in embankments/ cuttings, ballast on formation, track works, bridges, structures, buildings including testing and commissioning/Electrification of section -----].

1.1.3 The estimated cost of the Project (the **"Estimated Project Cost"**) has been specified in the clause 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.

1.1.4 The draft EPC Agreement sets forth the detailed terms and conditions for award of the Project to the Contractor, including the scope of the Contractor's services and obligations.

1.1.5 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the Bid Due Date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").

1.2 Brief description of Bidding Process

1.2.1 The Authority has adopted a single stage two packet system (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. The 1st part (the "**Technical Bid**") of the process involves qualification (the "**Qualification**") of the interested parties/Consortium/Joint Venture who submits a Bid in accordance

with the provisions of this RFP (the "**Bidder**", which expression shall, unless repugnant to the context, include the members of the Consortium/Joint Venture). The 2nd part of the process involves opening of Financial proposals (the **"Financial Bid"**) of the bidders qualified in Technical Bid. The Technical and Financial Bid shall collectively be referred as Bid (the **"Bid").** The Bidder would be required to furnish all information specified in this RFP. At the Qualification stage, the Technical Bids of Bidders would be evaluated and only those Bidders that are qualified by the Authority shall be eligible for the 2nd part of the Bidding Process comprising opening and evaluation of their Financial Bids. GOI has issued guidelines (see Annexure VI of Appendix-1A of RFP) for qualification of Bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority shall be entitled to disqualify any Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to Bid, and should give an undertaking to this effect in the form at Appendix-IA.

1.2.2 The Bid shall be valid for a period of 180 days from the date specified in Clause 1.3 for submission of Bids (the " **Bid Due Date**").

1.2.3 The Bidding Documents including the draft EPC Agreement for the Project is enclosed for the Bidders. The Feasibility prepared by the Authority/ consultants of the Authority (the "**Feasibility Report**") is also enclosed. The Feasibility Report of the Project is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Feasibility Report shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Feasibility Report. The aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.

1.2.4 A Bidder is required to submit, along with its Bid, a Bid Security of Rs.******[4] (the "**Bid Security**"), refundable not later than 200 (Two hundred) 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 and Additional Performance Security (if any) as per the provision of this RFP and LOA. The Bidder will have to provide Bid Security through [e- payment Gateway of Authority]. The Bid shall be summarily rejected if it is not accompanied by the prescribed amount of Bid Security. The Bid document shall be available free of cost through e-portal (**IREPS.gov.in**).

1.2.5 Bidders are advised to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the contract including implementation of the Project.

1.2.6 Bids will be evaluated for the Project on the basis of the lowest cost required by a Bidder for implementing the Project (the "**Bid Price**"). The total time allowed for completion of construction under the Agreement (the "**Construction Period**") and the period during which the Contractor shall be liable for rectification of any defect or

[4]The Bid Security shall be an amount equivalent to 0.5% of the Estimated Project Cost subjected to maximum Rs.2.0 (two) Cr.

deficiency in the Project after completion of the Construction Period (the "**Defect Liability Period**") shall be pre-determined, and are specified in the draft EPC Agreement forming part of the Bidding Documents.

In this RFP, the term **"Lowest Bidder"** shall mean the Bidder who qualifies the Technical Bid criteria (Qualification Stage) and is quoting the lowest Bid Price, subject to the provisions of Clause 1.2.7, the Project will be awarded to the Lowest Bidder.

1.2.7 Generally, the Lowest Bidder shall be the selected Bidder. In case such Lowest Bidder withdraws or is not selected for whatsoever reason except the reason mentioned in Clause 2.1.12/ e, the Authority shall annul the Bidding Process and invite fresh Bids.

1.2.8 Other details of the process to be followed under this Bidding Process and the terms thereof are spelt out in this RFP.

1.2.9 Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/courier/special messenger or by e-mail, through IREPS.Gov.in, so as to reach the officer designated in Clause 2.11.4 by the specified date. The envelopes/ communication shall clearly bear the following identification/ title:

"Queries / Request for Additional Information: RFP for**** - Project".

1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

Sl. No.	Event Description	Date
1.	Invitation of RFP (NIT)	[.....**]
2.	Last date for receiving queries	[25thday from the date of NIT]
3.	1st Pre-Bid meeting at venue 2.11.4 (i)	[25thday from the date of NIT]
4.	Authority response to queries latest by	[30thday from the date of NIT]
5.	2nd Pre-Bid meeting at venue 2.11.4 (i), if required	[45thday from the date of NIT]
6	Authority response to queries latest by	[60thday from the date of NIT]
7.	Last date of Request for Bid Document	[120thday from date of NIT, up to 11.00 AM]
8.	Bid Due Date	[120thday from date of NIT, up to 11.00 AM]
9.	Physical Submission of all documents listed in clause no 2.11.2	[125th day from date of NIT, up to 11.00 AM]
10.	Opening of Technical Bids at venue 2.11.4 (i)	[127th day from date of NIT after 16:00 hrs]
11.	Declaration of eligible / qualified Bidders	Will be intimated during bidding process
12.	Opening of Financial Bid	Will be intimated during bidding process
13.	Return of signed duplicate copy of LOA	Within 7 days of LOA issue
14.	Validity of Bid	180 days from Bid Due Date
15	Submission of Performance Security and Additional Performance Security , if any	Within 30 days of issue of LOA.
16	Signing of Agreement	Within 60 days of receipt of LOA.

SECTION-2

INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1. General terms of Bidding

2.1.1 No Bidder shall submit more than one Bid for the Project.

2.1.2 A Bidder bidding individually or as a member of a Consortium/Joint Venture shall not be entitled to submit another Bid either individually or as a member of any Consortium/Joint Venture, as the case may be.

2.1.3 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft EPC Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Agreement. Further, the statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Contractor set forth in the Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the work to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority

2.1.4 The Bid shall be furnished in the format exactly as per Appendix-IA & IB i.e. Technical Bid as per Appendix IA and Financial Bid as per Appendix IB and it shall be signed by the Bidder's authorised signatory. The Bid Price shall be quoted online at the e-procurement platform of the Authority at [https://www.ireps.gov.in (the "**IREPS Website**)]. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

2.1.5 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bid to commit the Bidder.

2.1.6 In case the Bidder is a Consortium/Joint Venture, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix-III and Joint Bidding Agreement in the format at Appendix-IV

2.1.7 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

2.1.8 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.

2.1.9 This RFP is not transferable.

2.1.10 Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents. The Bidding Documents including this RFP and all attached documents,

provided by the Authority are and shall remain or becomes the property of Authority and are transmitted to the Bidders solely for the purpose of preparation and submission of the Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provision of this clause 2.1.10 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, documents or any information provided along therewith.

2.1.11 In case the Bidder is a Consortium/Joint Venture, it shall comply with the following additional requirements:

(a) number of members in a Consortium/Joint Venture shall not exceed 4 (Four);

(b) subject to the provisions of clause (a) above, the Bid should contain the information required for each member of the Consortium/Joint Venture;

(c) members of the Consortium/Joint Venture shall nominate one member as the Lead Member (the "**Lead Member**"). Lead Member shall have minimum 51% share holding in Consortium/Joint Venture. Technical Capacity as per Clause 2.2.2.1(ii) is to be satisfied by any member of Consortium/Joint Venture having minimum 26% share holding in Consortium/Joint Venture. The nomination of Lead Member shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium/Joint Venture. Consortium/Joint Venture as whole shall cumulatively/collectively fulfil the 100% Technical Capacity as per Clause 2.2.2.1(i) and 100% Financial Capacity as per Clause 2.2.2.2.

(d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and defect liability obligations;

(e) the Lead Member shall carry out works directly under its own supervision and through its own personal for at least 30% of the total value of the project in accordance with provision of draft EPC Agreement.

(f) members of the Consortium/Joint Venture shall have entered into a binding Joint Bidding Agreement, substantially in the form specified at Appendix IV (the "**Jt. Bidding Agreement**"), for the purpose of making the Bid. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:

(i) convey the commitment(s) of the Lead Member in accordance with this RFP, in case the contract to undertake the Project is awarded to the Consortium/Joint Venture; and clearly outline the proposed roles & responsibilities, if any, of each member.

(ii) include a statement to the effect that all members of the Consortium/Joint Venture shall be liable jointly and severally for all obligations of the Contractor in relation to the Project until the Defect Liability Period is achieved in accordance with the draft EPC agreement;

(g) **Approval for change of constitution of Consortium/Joint Venture shall be at sole discretion of the Authority. The constitution of the Consortium/Joint**

Venture shall not be allowed to be modified after submission of the Bid by the Consortium/Joint Venture, except when modification becomes inevitable due to Succession laws etc., provided further that there is no change in qualification of minimum eligibility criteria by Consortium/JV. However, the Lead member shall continue to be the Lead Member of the Consortium/Joint Venture. Failure to observe this requirement would render the offer invalid. Similarly, after the contract is awarded, the constitution of Consortium/Joint Venture shall not be allowed to be altered during the currency of contract except when modification becomes inevitable due to Succession laws etc., provided further that it does not change the minimum eligibility criteria. Failure to observe this stipulation shall be deemed to be breach of contract with all consequential penal action as per contract condition.

2.1.12 While Bidding is open to persons from any country, the following provisions shall apply:

(a) Where, on the due date of the Bid, not less than 25% (twenty five percent) of the aggregate issued, subscribed and paid up equity share capital/capital contribution/partnership contribution in the Lowest Bidder or its member is held by persons resident outside India or where a Bidder or its member is controlled by persons resident outside India, then the eligibility and award of the project to such Lowest Bidder shall be subject to approval of the competent authority from national security and public interest perspective as per the instructions of the Government of India applicable at such time. The decision of the authority in this behalf shall be final and conclusive and binding on the Bidder.

(b) Further, where the LOA of a project has been issued to an agency, not covered under the category mentioned above, and it subsequently wishes to transfer its share capital in favour of another entity who is a resident outside India or where a Bidder or its member is controlled by persons resident outside India and thereby the equity capital of the transferee entity exceeds 25% or above, any such transfer of equity capital shall be with the prior approval of the competent authority from national security and public interest perspective as per the instructions of the Government of India applicable at such point in time.

(c) The holding or acquisition of equity control, as above shall include direct or indirect holding, acquisition, including by transfer of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 or any substitute thereof, as in force on the date of such acquisition.

(d) The Bidder shall promptly inform the authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

(e) In case the Lowest Bidder under (a) above is denied the security clearance, for whatsoever reasons, then the Bidders emerging as second Lowest, third lowest eligible Bidders (in that order) may be given a counter-offer (one by one sequentially) to match the Bid of Lowest Bidder. In the event of acceptance of the

counter-offer by another eligible Bidder, the project may be awarded to such Bidder. In case no Bidder matches the Bid of the Lowest Bidder, the Bid Process shall be annulled and fresh Bids invited.

2.1.13 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest Financial Year of a Bidder, it shall ignore such Financial Year for the purposes of its Bid 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 a Bid hereunder, mean the Accounting Year followed by the Bidder in the course of its normal business.

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

(b) A Bidder including any 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 or damages by a judicial authority or a judicial pronouncement against the Bidder, 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 Bidder, member or Associate.

(c) if Bidder's any constituent is entity incorporated in a country, where an entity incorporated in India does not have similar rights of bidding for contracts.

The Authority reserves the right to reject an otherwise eligible Bidder on the basis of the information provided under this clause 2.1.14. The decision of the Authority in this case shall be final.

2.2. Eligibility and qualification requirements of Bidder

2.2.1 For determining the eligibility of Bidder the following shall apply:

(a) The Bidder may be a single entity or a group of entities (the **"Consortium"** or the **"Joint Venture"**), coming together to implement the Project. The term Bidder used herein would apply to both a single entity and a Consortium/Joint Venture.

(b) Bidder may be a natural person, private entity, or any combination of them with a formal intent to enter into a Consortium/Joint Venture agreement or under an existing agreement to form a Consortium/Joint Venture. A Consortium/Joint Venture shall be eligible for consideration subject to the conditions set out in Clause 2.1.11 above.

(c) A Bidder shall not have a conflict of interest **("Conflict of Interest")** that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified and liable for forfeiture of the Bid Security or Performance Security as the case may be. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

(i) the Bidder, its Consortium/Joint Venture member (or any constituent thereof) and any other Bidder, its member or any member of its Consortium/Joint

Venture thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, or its Consortium/Joint Venture member thereof (or any shareholder thereof having a shareholding of more than 5% (five percent) of the paid up and subscribed share capital of such Bidder, or its Consortium/Joint Venture member, as the case may be), in the other Bidder, its Consortium/Joint Venture member is less than 5% (five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 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 Bidder is also a constituent of another Bidder; or

(iii) such Bidder, or any of its Consortium/Joint Venture member thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any of its Consortium/Joint Venture member thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its member or any of its Consortium/Joint Venture member thereof; or

(iv) such Bidder has the same legal representative for purposes of this RFP as any other Bidder; or

(v) such Bidder, or any of its Consortium/Joint Venture member thereof has a relationship with another Bidder, or any of its Consortium/Joint Venture member thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Bid of either or each other; or

(vi) such Bidder, or any of its Consortium/Joint Venture members thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

2.2.2 **Qualification requirements of Bidders:** To be eligible for Qualification an individual Bidder or a Consortium/Joint Venture as whole as per clause 2.1.11(c), shall fulfil the following conditions of eligibility:

2.2.2.1 **Technical Capacity**- For demonstrating Technical Capacity and experience (the **"Technical Capacity"**), the Bidder shall, over the past 5 (five) Financial Years preceding the Bid Due Date,

(i) have received payments for construction of Eligible Project(s), or has undertaken construction works by itself in a PPP project, such that the sum total thereof, as further adjusted in accordance with clause 2.2.2.4 (i) & (ii), is more than 2.5 (two and half) times the Estimated Project Cost (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 2.2.2.4 (i) & (ii)

(ii) undertaken at least one Eligible Project of Railway Sector as mentioned in clause 2.2.2.4/iii of value of not less than [35% (thirty-five) per cent] of the Estimated Project Cost and have received payments for not less than 75 (seventy-five) per cent value of such project

[Note :- For composite works of New lines, Gauge Conversion, Doubling, 3rd line, 4th line etc. with Railway electrification and/or Signalling and telecommunication works

1. In case scope involves the electrification work as per item No. 3 of Annexure –I of Schedule -B value as mentioned in Annexure-G, the selected bidders can himself execute above Electrification work, only in case he has experience as mentioned in clause 2.2.2.1/ii above to value of estimated electrification work as mentioned in Schedule-G of draft Concession Agreement after taking approval from Authority. Otherwise selected bidder shall execute electrification work involved in project by engaging sub-contractor as per clause 3.2 of draft Concession Agreement having experience of Railway Sector works. The Railway Sector would be deemed to include overhead equipment system of Railway electrification for a railway system, metro system, suburban transit system, high speed railways, substation and transmission lines,

and/or

2. In case scope involves the Signalling and Telecommunication work as per item No. 2 of Annexure –I of Schedule -B value as mentioned in Annexure-G, the selected bidders can himself execute above Signalling and Telecommunication work, only in case he has experience as mentioned in clause 2.2.2.1/ii above to value of estimated Signalling and Telecommunication work as mentioned in Schedule-G of draft Concession Agreement after taking approval from Authority. Otherwise selected bidder shall execute Signalling and Telecommunication work involved in project by engaging sub-contractor as per clause 3.2 of draft Concession Agreement having experience of Railway Sector works. The Railway Sector would be deemed to include Signalling and Telecommunication of railway system, metro system, suburban transit system, high speed railways.]

2.2.2.2 **Financial Capacity**: The Bidder shall have a minimum Net Worth[5] (the **"Financial Capacity"**) of [Rs. ***crore (Rs.***)][6] at the close of the preceding Financial Year .

2.2.2.3 Technical Capacity as per Clause 2.2.2.1(ii) is to be satisfied by any member of Consortium/Joint Venture having minimum 26% share holding in Consortium/Joint Venture.

2.2.2.4 Categories and factors for evaluation of Technical Capacity:

Subject to the provisions of Clause 2.2.2, 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 2.2.2.5 (i) and 2.2.2.5 (ii) (the "**Eligible Projects**"):

Category 1: Project experience on Eligible Projects in Railways sector that qualify under Clause 2.2.2.5 (i)
Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 2.2.2.5 (i)
Category 3: Construction experience on Eligible Projects in Railways sector that qualify under Clause 2.2.2.5 (ii)
Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 2.2.2.5 (ii)

(i) In case the Bidder has experience across different categories, the experience for each category would be computed as per weight of following factors to arrive at its aggregated Eligible Experience:

Category	Project / Construction experience on Eligible Projects	Factors
1	Project in Railway sector that qualify under Clause 2.2.2.5 (i)	1
2	Project in core sector that qualify under Clause 2.2.2.5 (i)	0.75
3	Construction in Railway sector that qualify under Clause 2.2.2.5 (ii)	1
4	Construction in core sector that qualify under Clause 2.2.2.5 (ii)	0.75

(ii) The Technical capacity in respect of an Eligible Project situated in a developed country which is a member of OECD shall be further multiplied by a factor of 0.5 (zero point five) and the product thereof shall be the Technical capacity for such Eligible Project.

(iii) For the purpose of this RFP:

[A. **For New lines, Gauge Conversion, Doubling, 3rd line, 4th line including composite works with electrification and/or Signalling and telecommunication works etc. works** -

[5] Net worth has been adopted as the criterion for assessing financial capacity since it is a comprehensive indication of the financial strength of the Applicant.
[6] This amount should be **5%** (Five percent) of the Estimated Project Cost of the Project for which Bids are being invited.

(i) Railways sector would be deemed to include railways, metro rails, LRT, monorail, high speed rail, highways, expressways, bridges (road/railways) and tunnels (road/railways); and

(ii) Core sector would be deemed to include hydroelectric dams, barrage, ports, airports, thermal/steel/cement plants, oil and gas pipelines, irrigation canals, water supply (pipelines/treatment plants), sewerage (pipelines/treatment plants), power transmission lines, civil works in power sector/commercial set ups (SEZs etc)/ industrial parks/logistics parks and real estate development.[$]

or

B. **For Railway Electrification works -**

(i) Railways sector would be deemed to include overhead equipment system of railway electrification for a railway system, metro system, suburban transit system, high speed railways, substation and transmission lines

(ii) Core sector would be deemed to include railways, power (hydro, solar etc), telecom, ports, airports, metro rail, oil/gas pipe line and highways.

or

C. **Stand alone Work like Bridges/ROB/Tunnel etc** –

Railway Sector – To be defined.
Core Sector – To be defined------]

Note :-

(i) In case of projects executed by Bidder under category 1, 2, 3 and 4 as a member of Consortium/Joint Venture, the project cost should be restricted to the share of the applicant in the Consortium/Joint Venture for determining eligibility as per provision under clause 2.2.2.1 (i). For determination of % share in the project bidder have to submit Joint Venture/Consortium agreement for each Project for which he is claiming credential.

(ii) Maintenance works are not considered as eligible project for evaluation.

(iii) In case both the estimated cost of project and revised cost of project are provided, the revised cost of project shall be considered for evaluation.

2.2.2.5 Eligible Experience on Eligible Projects in respect of each category:

(i) For a project to qualify as an Eligible Project under Categories 1 and 2:

(a) It should have been undertaken as a PPP project 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;

[$] 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 Bidder.

(b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed; and

(c) the capital cost of the project should be more than 10% (ten per cent) of the Estimated Project Cost.

(d)The value of self construction during five Financial Years immediately preceding the application due date, in projects which are considered as eligible projects in terms of Clause (a) to (c) above will be considered for the purpose of experience.

[(ii). For a project to qualify as an Eligible Project under Categories 3 and 4 :-

A. **For New lines, Gauge Conversion, Doubling, 3rd line, Bridges, ROB, Tunnels etc**. works: the Bidder should have received cumulative payments from its client(s) for construction works executed, fully or partially, during the 5 (five) Financial Years immediately preceding the Bid Due Date, and only the amounts (gross) actually received, during such 5 (five) Financial Year s shall qualify for purposes of computing the Technical Capacity. However, total receipts of less than [Rs.*** crore (Rupees *** crore)][7] shall not be reckoned as receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder.

or

B. **For Railway Electrification works :** the Bidder should have received cumulative payments from its client(s) for construction works executed, fully or partially, during the 5 (five) Financial Year s immediately preceding the Bid Due Date, and only the amounts (gross) actually received, during such 5 (five) Financial Year s shall qualify for purposes of computing the Technical Capacity. However, receipts of less than [Rs.*** crore (Rupees *** crore)][8] shall not be reckoned as receipts/execution of Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project.]

2.2.2.6 Submission in support of Technical Capacity

(i) The Bidder should furnish the details of Eligible Experience for the last 5 (five) Financial Years immediately preceding the Bid Due Date.

(ii) The Bidder must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-IA.

[7] This amount should not be less than about 10% (ten per cent) of the Estimated Project Cost

[8] This amount should not be less than about 10% (ten per cent) of the Estimated Project Cost

(iii) The Bidder 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-IA.

2.2.2.7 Submission in support of Financial Capacity

(i) The Technical Bid must be accompanied by the Audited Annual Reports of the Bidder (of each member in case of a Consortium/Joint Venture and also of associates if any) for the last 5 (five) Financial Year s, preceding the year in which the Bid is submitted.

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

(iii) The Bidder must establish the minimum Net Worth specified in Clause 2.2.2.2, and provide details as per format at Annex-III of Appendix-IA.

2.2.2.8 The Bidder shall enclose with its Technical Bid, to be submitted as per the format at Appendix-IA, complete with its Annexes, the following:

(i) Certificate(s) from its statutory auditors[$] or the concerned client(s) stating the payments received or in case of a PPP project, the construction carried out by itself, during the past 5 years, in respect of the Eligible Projects. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium/Joint Venture), it should further support its claim for the payments received or construction carried out by itself in PPP Projects as applicable the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and

(ii) Certificate(s) from its statutory auditors specifying the net worth of the Bidder (including associates, if any), 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 2.2.2.8 (ii). For the purposes of this RFP, net worth (the **"Net Worth"**) shall mean the capital/aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

2.2.2.9 In computing the Technical Capacity and Net Worth of the Bidder/ Member of Consortium/Joint Venture under Clauses 2.2.2.1, 2.2.2.2, 2.2.2.3 and 2.2.2.4, the Technical Capacity and Net Worth of their respective Associates would also be

[$] In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.2.8 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder provide the certificates required under this RFP.

eligible hereunder. For purposes of this RFP, Associate means, in relation to the Bidder/ Member of Consortium/Joint Venture, a person who controls, is controlled by, or is under the common control with such Bidder/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.

2.3 Proprietary data

All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.3 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.

2.4 Cost of Bidding

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

2.5 Site visit and verification of information

2.5.1 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water & other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them. Bidders are advised to visit the site and familiarise themselves with the Project within the stipulated time of submission of the Bid. No extension of time is likely to be considered for submission of Bids.

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

(a) made a complete and careful examination of the Bidding Documents, Schedules annexed to draft EPC agreement;

(b) received all relevant information requested from the Authority;

(c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above. No claim shall be admissible at any stage on this account.

(d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for

submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;

(e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Agreement by the Contractor;

(f) acknowledged that it does not have a Conflict of Interest; and

(g) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

2.6 Verification and Disqualification

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

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

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

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

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

2.6.3 In case it is found during the evaluation or at any time before signing of the EPC Agreement or after its execution and during the period of defect liability subsistence thereof, that one or more of the eligibility and /or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the contractor either by issue of the LOA or entering into of the Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, as the case may be,

the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Contractor, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Contractor. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and / or the draft EPC Agreement, or otherwise.

2.6.4. A Bidder shall be liable for disqualification and forfeiture of Bid Security, if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the EPC Agreement. In the event any such adviser is engaged by the selected Bidder or Contractor, as the case may be, after issue of the LOA or execution of the Agreement for matters related or incidental to the project, then notwithstanding anything to the contrary contained herein or in the LOA or the Agreement and without Prejudice to any other right or remedy or the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have there under or otherwise, the LOA or the Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Contractor for the same. For the avoidance or doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. 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.

B. DOCUMENTS

2.7 Contents of the RFP

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

Part –I

Invitation for BIDs

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

Appendices

IA. Letter comprising the Technical Bid including Annexure I to VI
IB. Letter comprising the Financial Bid
II . Power of Attorney for signing of Bid

III. Power of Attorney for Lead Member of Consortium/Joint Venture
IV. Joint Bidding Agreement for Joint Venture/Consortium

Part –II
Draft EPC Agreement Document with schedules

Part – III
Feasibility Report

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

2.8 Clarifications

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

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

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

2.9 Amendment of RFP

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

2.9.2 Any addendum issued hereunder will be hosted on the [Railway e-Tendering Portal (https: ireps.gov.in).

2.9.3 In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date[9].

[9]While extending the Bid Due Date on account of an addendum, the Authority shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Bid Due Date .

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

2.10.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received online in the required formats and complete in all respects and Original Copy of Power of Attorney and Joint Bidding Agreement etc. are received in hard copies within time mentioned in clause 1.3 of this RFP.

2.10.2 The Bid shall be typed and signed by the authorised signatory of the Bidder. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.

2.11 Documents comprising Technical and Financial Bid

2.11.1 The Bidder shall first upload all the project details including Technical Capacity, Financial Capacity, Net Worth details, turnover details, and all other details required in this RFP for technical qualification. The Bidder shall ensure that all the details are updated as on the due date of submission of this Bid.

The Bidder shall then apply for the RFP on the website https:// ireps.gov.in by submitting the documents mentioned below along with the supporting documents which shall comprise of the Technical Bid on the e-portal:

Technical Bid

(a) Appendix-IA (Letter comprising the Technical Bid) including Annexure I-VI and supporting certificates / documents.
(b) Power of Attorney for signing the Bid as per the format at Appendix-II;
(c) if applicable, Power of Attorney for Lead Member of Consortium/Joint Venture as per the format at Appendix-III;
(d) if applicable, Joint Bidding Agreement for Consortium/Joint Venture as per the format at Appendix-IV;
(e) An undertaking from the person having Power of Attorney referred to in Sub. Clause-(b) above that they agree and abide by the Bid Documents uploaded by Authority and amendments uploaded, if any; and
(f) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed.
(g) Copies of duly audited complete annual accounts of the Bidder or of each member (in case of Joint Venture/Consortium) for preceding 5 years.

Financial Bid

(l) Appendix-IB (Letter comprising the Financial Bid) shall be submitted online through e-procurement portal on or before ..... hrs IST on.....

2.11.2 The Bidder shall submit the following documents physically within time as mentioned in clause 1.3 :

(a) Original Power of Attorney for signing the Bid as per format at Appendix-II;
(b) if applicable, Original Power of Attorney for Lead Member of Consortium/Joint Venture as per the format at Appendix-III;

(c) if applicable, Original Joint Bidding Agreement for Consortium/Joint Venture as per the format at Appendix-IV;

2.11.3 The documents listed at clause 2.11.2 shall be placed in an envelope, which shall be sealed. The envelope shall clearly bear the identification "**Bid for the ***** Project**" and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of the envelope.

2.11.4 The envelope shall be addressed to the following officer [officers] and shall be submitted at the respective address:

(i)	ATTN. OF:	Mr.**
	DESIGNATION	**
	ADDRESS:	**
	PHONE NO:	**
	FAX NO:	**
	E-MAIL ADDRESS	**
[(ii)	ATTN. OF:	Mr. **
	DESIGNATION	**
	ADDRESS:	**
	PHONENO:	**
	E-MAIL ADDRESS	**
(iii)	ATTN. OF:	Mr. **
	DESIGNATION	****
	ADDRESS:	**
	PHONENO:	**
	E-MAIL ADDRESS	**]

2.11.5 If the envelope is not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

2.11.6 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be summarily rejected.

2.12 Bid Due Date

Bid comprising of the documents listed at clause 2.11.1 of the RFP shall be submitted online through e-procurement website https:// ireps.gov.in on or before ..... hrs IST on..... Documents listed at clause 2.11.2 of the RFP shall be physically submitted on or before ..... hours IST on ..... at the address provided in Clause 2.11.4 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.4..

2.13 Late Bids

E-procurement portal website https:// ireps.gov.in shall not allow submission of any Bid after the prescribed date and time at clause 2.12. Physical receipt of documents listed at clause 2.11.2 of the RFP after the prescribed date as mentioned in clause

1.3 and time at clause 2.12 shall not be considered and the Bid shall be summarily rejected.

2.14 Procedure for e-tendering

2.14.1 Accessing/ Purchasing of Bid Documents

2.14.1.1 It is mandatory for all the Bidders to have class-III Digital Signature Certificate (DSC)(in the name of Authorized Signatory / Firm or Organization / Owner of the Firm or Organization) from any of the licensed Certifying Agency (Bidders can see the list of licensed CAs from the link www.cca.gov.in) to participate in e-tendering.

DSC should be in the name of the authorized signatory as authorized in Appendix II of this RFP or person executing/delegating such Appendix III in favour of Authorized Signatory. It should be in corporate capacity (that is in Bidder capacity / in case of Consortium/JV in the Lead Member capacity, as applicable). The Bidder shall submit document in support of the class III DSC. In other cases, the Bid shall be considered Non-responsive.

2.14.1.2 To participate in the Bidding, it is mandatory for the Bidders to get registered their firm / Consortium/Joint Venture with e-procurement portal https:// ireps.gov.in to have user ID & password which has to be obtained free of cost. Following may kindly be noted:

(a) registration with e-procurement portal should be valid at least up to the date of submission of Bid.

(b) Bids can be submitted only during the validity of registration.

It is also mandatory for the Bidders to get their firms registered with e-tendering portal. The Bidders shall update their project and other details on the portal on a regular basis and apply to the tenders via the portal.

2.14.1.3 If the firm / Consortium/Joint Venture is already registered with e-tendering service provider, and validity of registration is not expired, then the firm / Consortium/Joint Venture is not required a fresh registration.

2.14.1.4 The complete Bid Document can be viewed / downloaded by the Bidder from e-procurement portal https:// ireps.gov.in from _____** to ____** (upto ……Hrs. IST).

2.14.2 Preparation & Submission of Bids:

2.14.2.1 The Bidder may submit his Bid online following the instructions appearing on the screen. The detailed guidelines for e-procurement are also available on e-procurement portal.

2.14.2.2 [The documents listed at clause 2.11.1 shall be prepared and scanned in different files/sub files (in PDF such that file size is not more than 3.75MB) and uploaded during the on-line submission of Bid]

2.14.2.3 Bid must be submitted online only through e-procurement portal https:// ireps.gov.in using the digital signature of authorized representative of the Bidder on or before ..... (upto ……. hours IST).

2.14.3 **Modifications/ Substitution/ withdrawal of Bids**

2.14.3.1 The Bidder may modify, substitute or withdraw its e- Bid after submission prior to the Bid Due Date. No Bid can be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date & Time.

2.14.3.2 For modification of e-Bid, Bidder has to detach its old Bid from e-procurement portal and upload / resubmit digitally signed modified Bid. For withdrawal of Bid, Bidder has to click on withdrawal icon at e-procurement portal and can withdraw its e-Bid. Before withdrawal of a Bid, it may specifically be noted that after withdrawal of a Bid for any reason, Bidder cannot re-submit e-Bid again.

2.15 Online Opening of Bids.

2.15.1 Opening of Bids will be done through online process.

2.16 Rejection of Bids

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

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

2.17 Validity of Bids

The Bids shall be valid for a period of not less than 180 (one hundred and Eighty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

2.18 Confidentiality

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

2.19 Correspondence with the Bidder

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid. However, the Authority would display the result of technical evaluation on the web portal for 7 days including reasons for non- responsiveness, if any**,** and the financial Bid will be opened thereafter.

D. BID SECURITY

2.20 Bid Security

2.20.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clause 1.2.4 hereinabove through [e- payment Gateway of Authority]. A scanned copy of the e-payment receipt shall be uploaded on e-procurement portal while applying to the tender.

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

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

2.20.4 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.20.5 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.

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

(a) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;

(b)) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;

(c) In the case of Selected Bidder, if it fails within the specified/extended time limit by Authority -
  (i) to sign and return the duplicate copy of LOA;
  (ii) to furnish the Performance Security /Additional Performance Security (if any) as per Article 7 of draft EPC Agreement; or
  (iii) to sign the EPC Agreement within 60 Days of LAO issue;

2.21 **Performance Security**

2.21.1 Within 30 (thirty) days of issue of LOA, the selected Bidder shall furnish to the Authority an irrevocable and unconditional guarantee from a Bank in the form set forth in draft EPC agreement (the "Performance Security") for an amount equal to 5% (five percent) of its Bid Price. In case of accepted Bid value is less than 90% of Estimated Project Cost, the Selected Bidder, along with the Performance Security, shall also furnish to the Authority an irrevocable and unconditional guarantee from a Bank in the same form given in draft EPC agreement towards an Additional Performance Security (the "Additional Performance Security") for an amount calculated as under:

(i) If the Bid Price value offered by the Selected Bidder is less than 90% but upto 80% of the estimated Project Cost, then the Additional Performance Security shall be calculated @ 20% of the difference between 90% of Estimated Project Cost and the Bid Price offered by the selected Bidder.

(ii) If the Bid Price value offered by the Selected Bidder is less than 80% of the Estimated Project Cost, then the Additional Performance Security shall be calculated @ 30% of the difference between 90% of Estimated Project Cost and the Bid Price offered by the selected Bidder.

(iii) This Additional Performance Security shall be treated as part of the Performance Security.

2.21.2 For detailed provisions of Performance Security and Additional Performance Security refer Article 7 of draft EPC agreement.

SECTION-3

EVALUATION OF TECHNICAL BIDS AND OPENING & EVALUATION OF FINANCIAL BIDS

3.1 Evaluation of Technical Bids

3.1.1 The Authority shall open the Bids received online at .....**hours IST on ……..**, at the place specified in Clause 2.11.4 (i); and in the presence of the Bidders who choose to attend. The Authority shall prepare minutes of the Bid opening, including information disclosed to those present at the time of Bid opening.

3.1.2 Technical Bids of those Bidders, who have not submitted their Bid online, shall not be considered for opening and evaluation.

3.1.3 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant information for consideration of eligibility and Qualification of the Bidder.

3.1.4 To facilitate evaluation of Technical Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Technical Bid. 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. The Bids will be examined and evaluated in accordance with the provisions set out in this Section 3. The Authority will subsequently flag issues, if any with the data updated by the Bidders.

3.1.5 If a Bidder does not provide clarifications sought under Clause 3.1.4 above within the prescribed time, its Bid may be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

3.1.6 Tests of responsiveness

3.1.6.1 As a first step towards evaluation of Technical Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFP. A Technical Bid shall be considered responsive only if:

(a) Technical Bid is received online as per the format at Appendix-IA including Annexure I, II, III, IV, V and VI;
(b) All Documents listed at clause 2.11.2 are received physically within time as mentioned in clause 1.3;
(c) Technical Bid is accompanied by the Bid Security as specified in Clause 1.2.4 and 2.20;
(d) The Power of Attorney is uploaded on e-procurement portal as specified in Clauses 2.1.5;
(e) Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium/Joint Venture and the Joint Bidding Agreement as specified in Clause 2.1.6, if so required;
(f) Technical Bid contains all the information (complete in all respects);

(g) Technical Bid does not contain any condition or qualification; and

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

3.1.7 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority may reject / correct such claim for the purpose of qualification requirements.

3.1.8 The Authority will evaluate the Technical Bids for their compliance to the eligibility and qualification requirements pursuant to clause 2.2.1 & 2.2.2 of this RFP.

3.1.9 After evaluation of Technical Bids, the Authority will publish a list of technically responsive Bidders whose Financial Bids shall be opened. The Authority shall notify other Bidders that they have not been technically responsive. The Authority will not entertain any query or clarification from Bidders who fail to qualify.

3.2 Opening and Evaluation of Financial Bids

The Authority shall inform the venue and time of online opening of the Financial Bids to the technically responsive Bidders through e-procurement portal and e-mail. The Authority shall open the online Financial Bids of the technically responsive Bidders only on scheduled date and time in the presence of the authorised representatives of the Bidders who may choose to attend. The Authority shall publicly announce the Bid Prices quoted by the technically responsive Bidder. Thereafter, the Authority shall prepare a record of opening of Financial Bids.

3.3 Selection of Bidder

3.3.1 Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.1.6 and who quotes lowest price shall be declared as the selected Bidder (the "**Selected Bidder**").

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

3.3.3 In the event that the Lowest Bidder is not selected for any reason except the reason mentioned in Clause 2.1.12 (e), the Authority shall annul the Bidding Process and invite fresh Bids.

3.3.4 After selection, a Letter of Acceptance(the "**LOA**") shall be issued in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder and Original copy of Joint Venture/Consortium Agreement is/or not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA.

3.3.5 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Bidder to submit Performance Security and Additional Performance Security (if any) within the period prescribed/extended by Authority and then execute the Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement.

3.3.6 The Bid security of other than selected Bidders shall be returned within 7 working days of issue of LOA. The Authority shall be responsible to return the Bid Security, as above, and the Bidders shall not be required to ask for the same.

3.3.7 In case, Selected Bidder is Consortium, then Selected Bidder have to deposit the Original copy of Consortium Agreement duly registered as per prevailing Law within 45 days of the receipt of the LOA to Authority.

3.3.8 In case, Selected Bidder is a Joint Venture, then on issue of LOA, the Joint Venture Agreement between members of the Joint Venture to whom work has been awarded, with the same shareholding pattern as was declared in the Joint bidding agreement document submitted along with RFP, shall be got registered before the Registrar/Sub- Registrar under "The Indian Company Act-2013 (in case of Company) or before the Registrar/Sub- Registrar under the " The Indian Partnership Act-1932 (in case of Partnership firm) or under LLP Act-2008 (in case of LLP) and deposit the Original copy of Joint Venture Agreement within 45 days of the receipt of the LOA to Authority.

3.4 Contacts during Bid Evaluation

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

3.5 Correspondence with Bidder

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

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

SECTION-4

FRAUD AND CORRUPT PRACTICES

4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise.

4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, or otherwise if a Bidder or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Agreement, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder, or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

4.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the EPC Contract or arising there from, 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 Clause 2.6.4, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the EPC Contract, as the case may be, any person in respect of any matter relating to the Project or the LOA or the EPC Contract, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

(b) "fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

(c) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;

(d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

(e) "restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

SECTION-5

PRE-BID CONFERENCE

5.1 Pre-Bid conference of the Bidders shall be convened at the designated date, time and place. A maximum of two representatives of prospective Bidders shall be allowed to participate on production of authority letter from the Bidder.

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

SECTION-6

MISCELLANEOUS

6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at [New Delhi] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

(a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;

(b) consult with any Bidder in order to receive clarification or further information;

(c) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or

(d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDIX –IA

LETTER COMPRISING THE TECHNICAL BID

(Refer Clause 2.1.4, 2.11 and 3.1.6)

[**The Chief Engineer of concerned Authority**]

[Address of concerned Authority]

Sub: Bid for *** ** Project

Dear Sir,

With reference to your RFP document dated *** **[$], I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Contractor for the aforesaid Project, and we certify that all information provided in the Bid and it's the Annexure I to VI along with the supporting documents are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.

3. This statement is made for the express purpose of our selection as EPC Contractor for the development, construction of the aforesaid Project and rectification of defects in Project during the Defect Liability Period.

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

5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last three years, we/ any of the {Consortium/Joint Venture} partners have neither failed to perform for the works of Railways, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against us, nor been expelled or terminated by Ministry of Railway or its implementing agencies for breach on our part.

7. I/ We declare that:

   (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and

   (b) I/We do not have any conflict of interest in accordance with Clauses 2.2.1 (c) and 2.6.4 of the RFP document; and

   (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in

respect of any tender or request for proposal issued by or any Agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and

(d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and

(e) the undertakings given by us along with the Bid in response to the RFP for the Project were true and correct as on the date of making the Bid and are also true and correct as on the Bid Due Date and I/we shall continue to abide by them.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16.2 of the RFP document.

9. I/We believe that we/our {Consortium/Joint Venture} satisfy(s) the Technical Capacity, Net Worth criteria and meet(s) the requirements as specified in the RFP document.

10. I/ We declare that we/ any member of the {Consortium/Joint Venture} or our/{Consortium/Joint Venture member}, are not a member of any other Consortium/Joint Venture submitting a Bid for the Project.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any member of the {Consortium/Joint Venture} or any of our/their { Consortium/Joint Venture } member have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any member of the { Consortium/Joint Venture } or any of our/their { Consortium/Joint Venture } member have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us/any member of {Consortium/Joint Venture} or against our CEO or any of our directors/ managers/ employees.

14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated 13.7.01, a copy of which forms part of the RFP at Annexure VI of Appendix-IA thereof.

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.

16. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Agreement upto its validity. It would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.

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

18. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into an Agreement in accordance with the draft EPC Agreement that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft EPC agreement and agree to abide by the same.

19. I/ We have studied all the Bidding Documents carefully and also surveyed the [project]. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Agreement.

20. I/ We offer a Bid Security of Rs.**** (Rupees **** only) to the Authority in accordance with the RFP Document.

21. The Bid Security in the form of a e-payment receipt is attached.

22. The documents accompanying the Technical Bid, as specified in Clause 2.11.1 of the RFP, have been submitted in separate files.

23. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Contract is not awarded to me/us or our Bid is not opened or rejected.

24. The Bid Price has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft EPC Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.

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

26. I/We, the {Consortium/Joint Venture } agree and undertake to be jointly and severally liable for. all the obligations of the EPC Contractor under the Contract Agreement}.

27. I/ We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.

28 I/ We hereby submit our Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the draft EPC Agreement.

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

Yours faithfully,

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

Name & seal of Bidder/Lead Member

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

APPENDIX – IB

Letter comprising the Financial Bid
(Refer Clauses 2.1.4, 2.11 and 3.1.6)

Dated:

[**The Chief Engineer of concerned Authority]**

Sub: Bid for *** ** Project

Dear Sir,

With reference to your RFP document dated *** **, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Financial Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Contractor for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.

3. The Bid Price has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft EPC Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.

4. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

5. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into an Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

6. I/ We shall keep this offer valid for 180 (one hundred and Eighty) days from the Bid Due Date specified in the RFP.

7. I/ We have quoted Bid Price on e-portal for undertaking the aforesaid Project in accordance with the Bidding Documents and the draft EPC Agreement.

Yours faithfully,

Date:
Place:

(Signature, name and designation of the Authorised Signatory)
Name & seal of Bidder/Lead Member:.....
Class III DSC ID of Authorised Signatory:.....

ANNEX-I
Details of Bidder

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 Bidder including details of its main lines of Business and proposed role and responsibilities in this Project:

3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
   (a) Name:
   (b) Designation:
   (c) Company:
   (d) Address:
   (e) Telephone Number:
   (f) E-Mail Address:
   (g) Fax Number:

4. Particulars of the Authorised Signatory of the Bidder:
   (a) Name:
   (b) Designation:
   (c) Address:
   (d) Phone Number:
   (e) Fax Number:
   (f) Class III Digital Signature Certificate ID number

5. In case of a {Consortium/Joint Venture}:
   (a) The information above (1-4) should be provided for all the Members of the {Consortium/Joint Venture}
   (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.1.11(f) should be attached to the Application.
   (c) Information regarding the role of each Member should be provided as per table below:

Sl.	**Name of Member**	**Role*** {Refer Clause 2.1.11(d)}[$]	**Share holding of members in** Consortium/Joint Venture {Refer Clauses 2.1.11(a), (f) }
1.			
2.			
3.			

* The role of each member, as may be determined by the Bidder, should be indicated.

……contd

[$] All provisions contained in curly parenthesis shall be suitably modified by the Bidders to reflect the particulars relating to such Bidder.

Appendix IA
Annex-I

(d) The following information shall also be provided w.r.t para 2.1.14 for each member of the {Consortium/Joint Venture}:

Name of Bidder/ member of Consortium/Joint Venture:

Sl. No.	Criteria	Yes/No
1.	Has the Bidder/ constituent of the {Consortium/Joint Venture} been barred by the Ministry of Railway or its implementing agencies for the works of Railway, from participating in Bidding.	
2	If the answer to 1 is yes, does the bar subsist as on Bid due date.	

6(a) I/ We certify that in the last three years, we/ any of the {Consortium/Joint Venture} partners have neither failed to perform for the works of Railways as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitral award against us, nor been expelled or terminated by Ministry of Railway or its implementing agencies for breach on our part.

(b) I/ We certify that we/ any of the {Consortium/Joint Venture } partners do not fall in any of the categories of being a Non-Performing entity given at Clause 2.1.14 of Instructions to Bidders in the projects of Ministry of Railways or its implementing agencies and furnished the complete details.

7(a) I/ We further certify that no investigation by a regulatory authority is pending either against us/any member of {Consortium/Joint Venture} or our sister concern or against our CEO or any of our directors/managers/employees.

(b) I/ We further certify that no investigation by any investigating agency in India or outside is pending either against us/ any member of {Consortium/Joint Venture} or our sister concern or against our CEO or any of our directors/managers/employees.

I/ We certify that the list is complete and covers all the projects of Railways or its implementing agencies and that we/ any of the {Consortium/Joint Venture} partners do not fall in any of the above categories of being a Non-Performing entity.

(Signature, name and designation of the authorised signatory)

For and on behalf of……..

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

ANNEX-II

Technical Capacity of the Bidder@

(*Refer to Clauses 2.2.2.1, 2.2.2.4 and 2.2.2.6 of the RFP*)

Bidder type #	**Project Code***	**Cate-gory$**	**% Share**	**Experience** (Equivalent Rs. crore)$$		**Technical capacity£**
				Payments received for construction of Eligible Projects in Categories 3 & 4 duly multiplied by factor mentioned in clause 2.2.2.4(i)	Value of self-construction in Eligible Projects in Categories 1 and 2 duly multiplied by factor mentioned in clause 2.2.2.4(i)	
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)=**4*(5or 6)*0.5 (for OECD)/1 (non OECD)
Single entity Bidder or Members of the Consortium / Joint Venture	**a**					
	b					
	c					
	d					
	e					
	f					
					Aggregate Technical capacity =	

@ *Provide details of only those projects that have been undertaken by the Bidder, or its member in case of Consortium/Joint Venture, under its own name and/ or by an Associate specified in Clause 2.2.2.9 and/ or by a project company eligible under Clause 2.2.2.5(i)/(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 2.2.2.5(i)/(c) and for Categories 3 and 4, include only those projects where the payments received exceed the amount specified in Clause 2.2.2.5(ii). In case the Bid Due Date falls within 3 (three) months of the close of the latest Financial Year, refer to Clause 2.1.13.*

In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.2.9, shall be provided.

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

$ *Refer Clause 2.2.2.4.*

** *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 Experience Score of an Eligible Project.

$$ *The conversion rate of USD into Rupees shall be the daily representative exchange rates published by the Reserve Bank of India for the relevant date. Where relevant date should be as on the date 60 (Sixty) days prior to the Bid Due Date. 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 Bid 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.*

£ *In the case of an Eligible Project situated in an OECD country, the Technical Experience so arrived at shall be further multiplied by 0.5, in accordance with the provisions of Clause 2.2.2.4(ii), and the product thereof shall be the Technical Capacity for such Eligible Projects.*

NOTE: i) In case of a {Consortium/Joint Venture}, information in Annex-II of Appendix-IA shall be provided separately for all members so as to establish Threshold Technical Capacity. *(Refer Clause 2.1.11 (c).*

ii) Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

ANNEX-III

Financial Capacity of the Bidder

(*Refer to Clauses 2.2.2.2, 2.2.2.8(i), 2.2.2.7(iii) of the RFP*)

(In Rs. crore[$])

Bidder type [$$]	**Net Cash Accruals**					**Net Worth[£]**
	Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 1**
Single entity Bidder or Member of the Consortium/Joint Venture						
TOTAL						

NOTE: In case of a {Consortium/Joint Venture}, information in Annex-III of Appendix-IA shall be provided separately for all Members so as to establish the Financial Capacity. *(Refer Clause 2.1.11 (c).*

Name & address of Bidder's Bankers:

[$] For conversion of other currencies into rupees, see note below Annex-II of Appendix-IA.

[$$] In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.2.9, shall be provided.

[£] The Bidder should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.2.9.

Instructions:

1. The Bidder shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
   (a) reflect the financial situation of the Bidder and its Associates where the Bidder 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 (the "Net worth") shall meansthe aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

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 Bid Due Date falls within 3 (three) months of the close of the latest Financial Year, refer to Clause 2.1.13.

5. In the case of a {Consortium/Joint Venture}, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.1.11 (f) of the RFP document.

6. The Bidder shall also provide the name and address of the Bankers to the Bidder.

7. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.2.8 (ii) of the RFP document.

ANNEX-IV

Details of Eligible Projects

(*Refer to Clauses 2.2.2.1, 2.2.2.4 and 2.2.2.6 of the RFP*)

Project Code:

Entity: Bidder/ Member (including associates if any) of Consortium/Joint Venture

Item (1)	**Refer Instruction** (2)	**Particulars of the Project** (3)
Title & nature of the project		
Category	5	
Year-wise (a) payments received for construction, or (b) expenditure on construction works undertaken by itself in a PPP project	6	
Entity for which the project was constructed	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	16	

Note: In case of a {Consortium/Joint Venture}, information in Annex-IV of Appendix-IA shall be provided separately for all Members so as to establish the Threshold Technical Capacity. (Refer Clause 2.1.11 (c).

Instructions:

1. Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 2.2.2.5 of the RFP, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.

2. The Project Codes would be a, b, c, d etc.

3. A separate sheet should be filled for each Eligible Project.

4. In case the Eligible Project relates to an Associate, write "Associate".

5. Refer to Clause 2.2.2.4(i) of the RFP for category number.

6. The total payments received and/ or expenditure incurred on construction works undertaken by itself in a PPP project are to be stated for each Eligible Project in Annex-II of this Appendix-IA. 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 Bid 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 2.1.13). For Categories 1 and 2, expenditure on construction of the project by the Applicant itself should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 2.2.2.5(i)/(c). In case of Categories 3 and 4, payments received only in respect of construction should be provided, but only if the amount received exceeds the minimum specified in Clause 2.2.2.5(ii). Receipts for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.

7. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to concession, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.

8. Provided the estimated capital cost of Eligible Project. Refer to Clauses 2.2.2.5.

9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.

10. For Categories 1 and 2, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 2.2.2.5(i)).

11. Experience for any activity relating to an Eligible Project shall not be claimed twice. In other words, no double counting in respect of the same experience shall be permitted in any manner whatsoever.

12. Certificate from the Bidder's statutory auditor[$] or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Associate may provide the requisite certification.

13. If the Bidder is claiming experience under Categories 1 & 2 it should provide a certificate from its statutory auditor in the format below:

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

Certificate from the Statutory Auditor regarding PPP projects[Φ]

Based on its books of accounts and other published information authenticated by it, this is to certify that …….. *(name of the Bidder/ Associate)* is/ was an equity shareholder in …….. *(title of the project company)* 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 ……... *(date)* to …….. *(date)*[¥]. The project was/ is likely to be commissioned on ……. *(date of commissioning of the project)*.

We further certify that the total estimated capital cost of the project is Rs. …… cr. (Rupees ……crore), of which Rs. …… cr. (Rupees …… crore) of capital expenditure was incurred on construction work undertaken by the aforesaid Bidder/ Associate itself, during the past five Financial Year s as per year-wise details noted below:

……

……

Name of the audit firm:

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

Date:

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

Certificate from the Statutory Auditor/ Client regarding construction works[Φ]

Based on its books of accounts and other published information authenticated by it, {this is to certify that …….. *(name of the Bidder/ Associate)* was engaged by …….. *(title of the project company)* to execute …… *(name of project)* for ……. *(nature of project)}*. The construction of the project commenced on …….. *(date)* and the project was/ is likely to be commissioned on …… *(date, if any)*. It is certified that ……. *(name of the Bidder/ Associate)* received 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 Bidder/ Associate received Rs. …… cr. (Rupees …… crore), in terms of Clauses 2.2.2.1/i and 2.2.2.5/ii of the RFP, during the past five Financial Years as per year-wise details noted below:

……

……

{It is further certified that the receipts indicated above are restricted to the share of the Bidders who undertook these works as a partner or a member of Consortium/Joint Venture.}[♠]

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

€ Refer instruction no. 10 in this Annex-IV.

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

♣ Refer Clauses 2.2.2.4 and 2.2.2.5(ii) of the RFP.

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

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

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

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.2.9, the Bidder should also provide a certificate in the format below:

Certificate from Statutory Auditor/ Company Secretary regarding Associate[$]

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of …… (*name of the Associate*) is held, directly or indirectly[£], by …….. (*name of Bidder*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.2.9 of the RFP.
A brief description of the said equity held, directly or indirectly, is given below:

{*Describe the share-holding of the Bidder in the Associate*}

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

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 and Financial capacity[Θ].

[$] In the event that the Bidder/Consortium/Joint Venture members 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.

[£] 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.

[Θ] Refer Clause 2.2.2.4(i) of the RFP.

ANNEX-V
Statement of Legal Capacity

*(On the letter head of the Bidder/Lead Member of {*Consortium/Joint Venture*})*

Ref. Date:

To,
****
****

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of……..

**Please strike out whichever is not applicable.*

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

APPENDIX-IA
Annexure VI

Guidelines of the Department of Disinvestment
(Refer Clause1.2.1)

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

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

OFFICE MEMORANDUM

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

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

(a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the Bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.

(b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the Bidding party or by any sister concern of the Bidding party would result in disqualification. The decision in regard to the relationship between the sisters concerns would be taken based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

(c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.

(d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

(e) The disqualification criteria would come into effect immediately and would apply to all Bidders for various disinvestment transactions, which have not been completed as yet.

(f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

(g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The Bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-
(A.K. Tewari)
Under Secretary to the Government of India

APPENDIX-II

Format for Power of Attorney for signing of Bid

(Refer Clause 2.1.5)

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

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

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

For ……..

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

Witnesses:

1.

2.

Accepted

……

(Signature)

(Name, Title and Address of the Attorney)

(Notarized)

Person identified by me/ personally appeared before me/
Attested/ Authenticated*

(*Notary to specify as applicable)

(Signature Name and Address of the Notary)

Seal of the Notary

Registration No. of the Notary

Date:……

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Appostille certificate.*

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

APPENDIX-III

Format for Power of Attorney for Lead Member of {Consortium/Joint Venture}

(Refer Clause 2.1.6)

Whereas the [Railways] (the "**Authority**") has invited Bids for the ***** Project (the "Project").

Whereas, ……..., ……..., and …….. (collectively the "{**Consortium/Joint Venture** }") being Members of the { **Consortium/Joint Venture** } are interested in Bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other Bid documents including agreement in respect of the Project, and

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

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

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

For …….. (Signature) …….. (Name & Title)	For …….. (Signature) …….. (Name & Title)	For …….. (Signature) …….. (Name & Title)

(Executants)
(To be executed by all the Members of the {Consortium/Joint Venture})

Witnesses:
1.
2.

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Appostille certificate.*

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

APPENDIX IV

Format for Joint Bidding Agreement for {Consortium/**Joint Venture}**

(Refer Clause 2.1.11)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

1. {…… Limited, 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, having its registered office at …… }and (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {…… Limited, 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)

4. {…… Limited, and having its registered office at ……} (hereinafter referred to as the "**Fourth Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

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

WHEREAS,

(A) The President of India represented by the Ministry of Railways, ********** (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) (the **"Authority"**), having its principal office at ********, [New Delhi,110001, India"] is engaged in the development of railways and related infrastructure, and as part of this endeavour, has invited Bids (the **Bids**") by its Request for Proposal No. …… dated ……(the "**RFP**") for award of contract for [construction/electrification] of the railway line [(Name of the section) of the name of the project ***] (the **"Project"**) through an Engineering, Procurement and Construction (the "**EPC**") Contract.

(B) The Parties are interested in jointly Bidding for the Project as members of a { Consortium/Joint Venture } and in accordance with the terms and conditions of the RFP document and other Bid documents in respect of the Project, and

(C) It is a necessary condition under the RFP document that the members of the {Consortium/Joint Venture**}** shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. {Consortium/Joint Venture}

2.1 The Parties do hereby irrevocably constitute a Consortium/Joint Venture (the "{**Consortium/Joint Venture}**") for the purposes of jointly participating in the Bidding Process for the Project.

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

3. Covenants

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

4. Role of the Parties

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

(a) Party of the First Part shall be the Lead member of the {Consortium/Joint Venture} and shall have the power of attorney from all Parties for conducting all business for and on behalf of the {Consortium/Joint Venture} during the Bidding Process and for performing all its obligations as the Contractor in terms of the EPC Contract for the Project;

(b) Party of the Second Part shall be {the member of the Consortium/Joint Venture}; and

(c) Party of the Third Part shall be {the member of the Consortium/Joint Venture.}

(d) Party of the 4th Part shall be {the member of the Consortium/Joint Venture.}

5. Joint and Several Liability

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

6. Share of work in the Project

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

First Party:
{Second Party:}
{Third Party:}
{Fourth Party:}

Further, the Lead Member shall itself undertake and perform at least 30 (thirty) per cent of the total length of the project highway if the Contract is allocated to the {Consortium/Joint Venture}

7. Representation of the Parties

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

(a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorized 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/Joint Venture} Member is annexed to this Agreement, and will not, to the best of its knowledge:

(i) require any consent or approval not already obtained;

(ii) violate any Applicable Law presently in effect and having applicability to it;

(iii) violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;

(iv) violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

(v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

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

9. Miscellaneous

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

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

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

For and on behalf of

LEAD MEMBER by:	SECOND PART	THIRD PART
(Signature)	(Signature)	(Signature)
(Name)	(Name)	(Name)
(Designation)	(Designation)	(Designation)
(Address)	(Address)	(Address)

In the presence of:

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executants(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the {Consortium/Joint Venture} Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

APPENDIX-V

LIST OF BID-SPECIFIC CLAUSES[$]

A. Clauses and appendices with non-numerical footnotes

1. Clause 2.2.2.4/iii: Qualification requirement
2. Clause 2.2.28: Qualification requirement
3. Appendix IA: Letter Comprising the Bid for –Qualification.
4. Appendix IA, Annex-I
5. Appendix IA, Annex-II
6. Appendix IA, Annex-III
7. Appendix IA, Annex-IV & V
8. Appendix II, & III
9. Appendix IV & V
10. Appendix VI

B. Clauses and appendices with curly brackets

1. Appendix IA: Letter Comprising the Bid for Qualification: Para's 6, 9, 10, 11, 12, 13, 26
2 Appendix IA, Annex I
3. Appendix IA Annex-II, III, IV and V

C. Clauses and appendices with blank spaces

1. NIT
2. Clause 2.2.2.4/iii, 2.11.1, 2.12. 2.14.1.2, 2.14.2.3
2. Appendix IA, Annex-I, IV, V.
3. Appendix II, III, IV

[$] This Appendix-V contains a list of clauses and appendices that would need to be suitably modified for reflecting applicant-specific provisions. This Appendix-V may, therefore, be included in the RFP document to be issued to prospective Bidders. The blank spaces in Appendices may be filled up by the Bidders and the footnotes may be deleted when it submits its Bid.

APPENDIX-VI

LIST OF PROJECT-SPECIFIC CLAUSES[10]

A. Clauses and appendices with serially numbered footnotes

1. NIT (Footnote No. 1, 2, 3)
2. Clause 1.2.4 : Brief description of Bidding Process (Footnote No. 4)
3. Clause 2.2.2.2 Eligibility of Bidders(Financial Capacity) (Footnote No. 5 &6)
4. Clause 2.2.2.5/ii: Eligibility of Bidders (Footnote No. 7 & 8)
5. Clause 2.9.3 : Amendment of RFP (Footnote No. 9)
7. Appendix VII: List of project-specific clauses (Footnote No. 10)

B. Clauses and appendices with square parenthesis

1. NIT
2. Clause 1.1.1 : Background
3. Clause 1.1.2: Background
4. Clause 1.2.4 : Brief description of Bidding Process
5. Clause 1.3: Schedule of Bidding Process
6. Clause 2.1.4 : General terms of Bidding Process
7. Clause 2.2.2 1/ii: Eligibility of Bidders (Technical Capacity)
8. Clause 2.2.2.2: Eligibility of Bidders (Financial Capacity)
9. Clause 2.2.2.2.4/iii, 2.2.2.5/ii : Evaluation of Technical Capacity
10. Appendix I: Letter Comprising the Bid for Qualification (Name, Designation, Address,)

C . Clauses and appendices with asterisk

1. NIT
2. Clause 1.1.1 and 1.2.4: Brief description of Bidding Process
3. Clause 1.2.4 and 1.2.9: Brief description of Bidding Process
4. Clause 1.3 : Schedule of Bidding Process
5. Clause 2.2.2.5: Eligibility of Bidders
7. Clause 2.11.1. 2.11.3 and, 2.11.4: Documents Comprising Technical & Financial Bid
8. Clause 2.13.3: Sealing and Marking of Bid9. Clause 3.1.1: Evaluation
10. Appendix IA: Letter Comprising the Bid for Qualification (address, subject heading)
11. Appendix IB, Letter Comprising the Bid for Financial bid
12. Appendix IB, Annex-V: Statement of Legal Capacity (Name, Designation)

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