

**Selection of Concessionaire for**

**Integrated Developme nt and Operation of Sewage Treatment Plants and Faecal Sludge Management System**

**under**

**Hybrid Annuity Model of**

**Public-Private Partnership**

Request for Proposals

**[Name of the Executing Agency] [Month, 20\*\*]**

## TABLE OF CONTENTS

[DISCLAIMER 3](#_TOC_250007)

[GLOSSARY 4](#_TOC_250006)

[SECTION I INTRODUCTION 17](#_TOC_250005)

SECTION II ELIGIBILITY AND QUALIFICATION CRITERIA 26

SECTION III INSTRUCTION TO BIDDERS 43

[PART A. GENERAL 43](#_TOC_250004)

[PART B. BID SECURITY, PERFORMANCE SECURITY AND ESHS PERFORMANCE SECURITY](#_TOC_250003)

............................................................................................................................................ 49

[PART C. PREPARATION AND SUBMISSION OF BIDS 54](#_TOC_250002)

[PART D. OPENING AND EVALUATION OF BIDS 61](#_TOC_250001)

[PART E. AWARD OF PROJECT 65](#_TOC_250000)

ANNEXURES 68

## DISCLAIMER

The information contained in this RFP or any other information provided to the Bidders, whether verbally or in writing or in any other form, by or on behalf of the [EXECUTING AGENCY] or (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY)1 and its employees or advisors is provided to the Bidders 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 further it is neither an offer nor an invitation by the [EXECUTING AGENCY] to the Bidders or any other Person. The purpose of this RFP is to provide the Bidders with information that may be useful to them in the preparation and submission of their Bids.

This RFP includes statements which reflect various assumptions and assessments arrived at by the [EXECUTING AGENCY], (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) and

their advisors for the Project. Such assumptions, assessments and statements do not purport to contain all the information that the Bidders may require. The information contained in this RFP may not be appropriate for all Persons and it is not possible for the [EXECUTING AGENCY], (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) and their employees or advisors to consider the investment objectives, financial situation and particular needs of each Person who reads this RFP. The assumptions, assessments, statements and information contained in this RFP 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.

The information provided in this RFP to the Bidders is on a wide range of matters, some of which may depend upon interpretation of the 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 the law. The [EXECUTING AGENCY], (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY)

and their employees and advisors accept no responsibility for the accuracy or otherwise for any interpretation or opinion on laws expressed in this RFP.

The issue of this RFP does not imply that the [EXECUTING AGENCY] is bound to qualify any Bidder or to award the Project to any Bidder. The [EXECUTING AGENCY] reserves the right to reject all or any of the Bids without assigning any reasons whatsoever.

1 Delete if not applicable.

## GLOSSARY

In this RFP, unless the context otherwise requires, capitalised terms shall have the meaning given to them in the table below. Capitalised terms not defined below shall have the meaning given to them in the Concession Agreement.

|  |  |
| --- | --- |
| **Acre** | means a unit of land area equal to 43,560 sq.ft. |
| **Addendum or Addenda** | means an addendum or addenda to this RFP. |
| **Additional Performance Security** | means a performance security that must be submitted by the Selected Bidder to [EXECUTING AGENCY] together with the Performance Security and ESHS Performance Security to secure the obligations of the Concessionaire/Bidder in relation to the *clause 16.5 of the RFP document.* |
| **Annexure** | means an annexure to this RFP. |
| **Appointed Date** | means the date of signing of the Concession Agreement. |
| **Associate** | means, in relation to a Bidder or a Member of a Consortium, a Person who Controls, or is Controlled by/ with such Bidder or Member of a Consortium. |
| **Associated Infrastructure** | means infrastructure facilities associated with operation of an STP and/or FSTP including but not limited to sewage pumping stations (including main pumping stations, intermediate pumping stations and any other pumping stations) and the rising mains, as described in greater details in technical specifications of each STP /FSTP in relevant Facility Schedule, which need to be constructed and/or renovated and/or operated and maintained by the Concessionaire in accordance with this Agreement, and complete such infrastructure as lighting, ancillary infrastructure, other functional building such as administrative building, etc. if any. |
| [EXECUTING AGENCY] | Refers to the ***EXECUTING AGENCY***, i.e., [EXECUTING AGENCY] |

|  |  |
| --- | --- |
| **Average Guaranteed Energy Consumption** | has the meaning ascribed to it in Clause 2.5 |
| **[Bank]2** | means [the International Bank for Reconstruction and  Development (**IBRD**)/ International Development Association (**IDA**)] |
| **Bid** | means a bid consisting of the Qualification Proposal and the Financial Proposal submitted by a Bidder for qualification and award of the Project, and **Bids** mean collectively, all the bids for the Project. |
| **Bid Due Date** | means the last date for submission of the Bids specified in the Bid Schedule, as may be extended from time to time in accordance with Clause 19. |
| **Bid Price Sheet** | means the sheet provided on the e-Procurement Portal, in which the Bidders shall quote for the [LOCATION] STP and/or FSTP and its Associated Infrastructure, the: (a) Bid Project Cost (including all Taxes); (b) [LOCATION] Facilities O&M Charges for the first month after COD for the STP and the Associated Infrastructure (including all Taxes); (c) Guaranteed Energy Consumption for the O&M Period for the STP and for the Associated infrastructures; and (d) [LOCATION] Facilities Land Requirement, as required based on which the Bid Price will be calculated. |
| **Bid Process** | means the single-stage bidding process, with two sub-stages, undertaken by [EXECUTING AGENCY] to award the Project to the Selected Bidder on the terms and conditions set out in this RFP. The Bid Process has commenced with the issuance of this RFP and will end on the date that the Concession Agreement is executed with the Special Purpose Vehicle incorporated by the Selected Bidder for the Project. |
| **Bid Project Cost** | means the cost of construction of the [LOCATION] Facilities, any power plant proposed to be set up by the Bidder, as quoted |

2 For Bank Funded Projects

|  |  |
| --- | --- |
|  | by a Bidder in its Bid, which must include the interest during  construction, Taxes and all other pre-operative expenses in relation to the [LOCATION] Facilities and the power plant, if any. |
| **Bid Schedule** | means the schedule of the Bid Process set out in Clause 2.14, as may be amended from time to time. |
| **Bid Security** | means a bid security that must be submitted by a Bidder along with its Bid in accordance with Clause 15. |
| **Bidder** | means an interested entity or a Consortium of entities as described in Clause 3.1(a) which submits a Bid to [EXECUTING AGENCY] in accordance with this RFP and includes each Member when the Bidder is a Consortium, and **Bidders** shall be construed accordingly. |
| **BOD** | means biochemical oxygen demand. |
| **Capital** | means, in respect of the SPV that is incorporated by the Selected Bidder to act as the Concessionaire, the total capital of such SPV that will be raised by the issuance of equity shares, preference shares and convertible instruments. |
| **Clause** | means a clause of this RFP. |
| **COD Certificate** | means the certificate issued or deemed to be issued by [EXECUTING AGENCY] upon successful completion of the Trial Operations of the [LOCATION] Facilities, in accordance with the Concession Agreement. |
| **Commercial Operations Date or COD** | means the date on which the COD Certificate is issued or deemed to be issued to the Concessionaire in accordance with the Concession Agreement. |
| **Companies Act** | means the (Indian) Companies Act, 1956 or the (Indian) Companies Act, 2013, as amended from time to time, as the context may require. |
| **Company** | means a company incorporated under the Companies Act or a foreign company incorporated under the relevant statute of its |

|  |  |
| --- | --- |
|  | jurisdiction. |
| **Concession Agreement** | means the tripartite concession agreement to be executed between (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) , [EXECUTING AGENCY] and the  Concessionaire. A draft of the Concession Agreement is attached to this RFP. |
| **Concessionaire** | means the Special Purpose Vehicle incorporated by the Selected Bidder to implement the Project. |
| **Conflict of Interest** | has the meaning ascribed to it in Clause 3.3. |
| **Consortium** | means any combination of Companies that have formed a consortium for the purpose of submitting a Bid and to implement the Project if such consortium is declared the Selected Bidder. |
| **Construction Completion Date** | means, with respect to the [LOCATION] Facility, the date on which the Construction Completion Certificate is issued or deemed to be issued to the Concessionaire and with respect to [LOCATION] Facility in accordance with the Concession Agreement and the reference to **Construction Completion Date** shall be construed accordingly. |
| **Construction Period** | means the period from the Effective Date until the Construction Completion Date. |
| **Control** | means, with respect to a Person:   1. the ownership, directly or indirectly, of more than 50% of the voting shares of such Person; or 2. the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise,   and the term **Controlled and Controlling** shall be construed accordingly. |
| **Effective Date** | means the date on which all the Conditions Precedent have been satisfied by [EXECUTING AGENCY], (NAME OF THE |



|  |  |
| --- | --- |
|  | STATE /NATIONAL LEVEL AGENCY IF ANY) , and the  Concessionaire in accordance with the Concession Agreement. |
| **Eligibility Criteria** | means the eligibility criteria set out in Clause 3 that a Bidder is required to satisfy (in addition to the Qualification Criteria), to be qualified for evaluation of the Financial Proposal. |
| **e-Procurement Portal** | means the e-procurement portal of the Go*[xx]* available at the following url: https://etender.up.nic.in |
| **ESHS** | means environment, social, health and safety. |
| **ESHS Performance Security** | means [LOCATION]   and the term '**ESHS Performance Securities**' shall mean collectively, the ESHS Performance Security of all [LOCATION] Facilities combined. |
| ***EXECUTING AGENCY*** | means the [EXECUTING AGENCY], a statutory body constituted under the [Reference of the Act] |
| **Expiry Date** | means the date which is 15 years from the COD |
| **FSTP** | Faecal Sludge Treatment Plant |
| **[LOCATION] Facilities** | means collectively, the [LOCATION] STP and/or FSTP, the online monitoring system for the STP/FSTP and SPS, the on- site testing laboratory facilities, and such other facilities associated with the [LOCATION] STP, and its Associated Infrastructure, or under any schedule, required to be set up by the Concessionaire, as described in greater detail in the Scope of Work and Technical Specifications. |
| **[LOCATION] Facilities Bid Price** | means the price calculated for each Bidder, based on the values provided by such Bidder in the Bid Price Sheet, as a part of its Financial Proposal, to design, finance, develop, construct, operate, and maintain the [LOCATION] Facilities |
| **[LOCATION] Facilities Capex Annuity** | means the amount to be specified in the Concession Agreement, which is payable to the Concessionaire per quarter during the O&M Period, towards reimbursement of 60% of the  *[LOCATION]*  Bid Project Cost, as adjusted to |

|  |  |
| --- | --- |
|  | account for inflation in accordance with the Concession  Agreement. |
| *[LOCATION]* ***Facilities* Construction Completion Certificate** | means the certificate issued to the Concessionaire to certify completion of construction of the *[LOCATION]* Facilities in accordance with the Concession Agreement. |
| *[LOCATION]* ***Facilities* ESHS Performance Security** | means a demand bank guarantee that must be submitted by the Selected Bidder or the Concessionaire to [EXECUTING AGENCY], in accordance with Clause 16A, on or before execution of the Concession Agreement to secure the obligations of the Concessionaire to comply with the ESHS requirements in relation to the ***[LOCATION]*** Facilities, as set out in the Concession Agreement. |
| *[LOCATION]* ***Facilities* Land Price** | means the price of the land required by the Bidder to develop the [LOCATION] Facilities, determined by multiplying the [LOCATION] Facilities Land Requirement quoted by such Bidder and the [LOCATION] Facilities Land Rate. |
| ***[LOCATION] Facilities* Land Rate** | means the cost per Acre of the land forming the *[LOCATION] Facilities Site*, which, for the purpose of this RFP shall be INR *[MENTION LAND RATE].* |
| *[LOCATION]* ***Facilities* Land Requirement** | means the area required by the Selected Bidder at the Site to construct, operate and maintain the [LOCATION] STP and/or FSTP and other assets to be created at the STP site by the Concessionaire as per the scope of work. |
| ***[LOCATION] Facilities* O&M Charges** | means the amount required by a Bidder per quarter (including all Taxes) to operate and maintain the *[LOCATION]* Facilities, excluding the *[LOCATION] Facilities* Power Charges, during the O&M Period.  The *[LOCATION] Facilities* O&M Charges for the first quarter after the COD will be determined on the basis of the O&M Charges quoted by the Bidder for the first month from the COD, in its Financial Proposal, which amount shall be adjusted to account for inflation, in accordance with the Concession Agreement. |

|  |  |
| --- | --- |
| ***[LOCATION] Facilities***  **Payment Milestones** | means the milestones listed in the Concession Agreement for release of 40% of the *[LOCATION] Facilities* Bid Project Cost (as adjusted to account for inflation in accordance with the Concession Agreement) to the Concessionaire. |
| ***[LOCATION] Facilities* Power Charges** | means the cost of the power consumed by the Concessionaire to operate and maintain the *[LOCATION]* Facilities during the O&M Period, which will be calculated in accordance with the Concession Agreement.  For the purpose of evaluation of Bids, the '***[LOCATION] Facilities* Power Charges'** means the cost of power (for operation and maintenance of the *[LOCATION]* Facilities) for each Bidder determined in accordance with the formula set out in the Bid Price Sheet. |
| ***[LOCATION]* STP /FSTP** | means the STP of [CAPACITY OF STP in MLD] MLD and/or FSTP of [CAPACITY in cubic meter] to be set up as part of the Project. |
| **Financial Capacity** | means the financial capacity and strength of the Bidder, as determined in accordance with Clause 4.2. |
| **Financial Proposal** | means the financial proposal, comprising the Bid Price Sheet, to be submitted by a Bidder in accordance with this RFP. |
| **Financial Year** | means each 12-month period commencing on 1 April of one calendar year and ending on 31 March of the next calendar year; and if different for a Bidder, then the 12-month period for which such Bidder files its statutory audited accounts in the normal course of its business. |
| **GoI** | means the Government of India. |
| **Go[xx]** | means the Government of [xx] |
| **Guaranteed Energy Consumption** | means the maximum number of units of power quoted by a Bidder in its Financial Proposal, which it expects the Concessionaire to consume during the O&M Period (other than any units expected to be generated and consumed from  any power plant proposed to be set up by the Concessionaire), |

|  |  |
| --- | --- |
|  | to operate and maintain the *[LOCATION]* Facilities (at varying  volumes and BOD of sewage). |
| **Guidelines** | has the meaning ascribed to it in Clause 1.8 |
| **Information Memorandum** | means the Project Information Memorandum for the Project set out in Schedules. |
| **Joint Bidding Agreement** | means a binding joint bidding agreement to be entered into by the Members of a Consortium that submits a Bid pursuant to this RFP, in the format set out at Annexure 1K. |
| **Lead Member** | means the Member nominated by the Members of the Selected Bidder to act as the lead member. |
| **LOA** | means the letter of award that will be issued by [EXECUTING AGENCY] to the Selected Bidder in accordance with Clause 30. |
| **Member** | means a member of a Consortium. |
| **MLD** | means million litres per day. |
| **Mo-------** | means the Ministry of 3 |
| **Net Worth** | means the net worth of a Bidder, which shall be determined as follows, in case of a:   1. ***Company****, means*    1. subscribed and paid up equity share capital; and    2. reserves LESS 2. revaluation reserves; 3. miscellaneous expenditure not written off; 4. reserves not available for distribution to equity shareholders; and 5. aggregate value of accumulated losses   (b) ***trust*** *or* ***society***, means the sum of available corpus |

3 If applicable.

|  |  |
| --- | --- |
|  | and reserves;   1. ***partnership firm***, means the sum of the partners' capital account and undistributed profits; 2. ***limited liability partnership***, means the sum of partners' capital account and undistributed profits as per the 'Statement of Account' prepared as per Limited Liability Partnership Rules, 2009; 3. ***sole proprietorship***, means the value of all assets minus liabilities of the proprietorship but does not include the personal assets or liabilities of the sole proprietor; and 4. ***individual***, means the sum of the value of all unencumbered assets owned by the individual minus the sum of the value of all liabilities of the individual. |
| **[Sponsoring/Funding entity]4** | means the (Name of the state /national level agency if any)5. |
| **Nominated STP Sub- Contractor** | means a sub-contractor nominated by the Bidder, in accordance with Clause 4.1(a)(F)(ii) and 4.1(b)(ii) of this RFP, for construction and operation and maintenance of STPs for the Project. |
| **O&M** | means operation and maintenance. |
| **O&M Period** | means the period of 15 years from the COD during which the Concessionaire is required to operate and maintain the [LOCATION] Facilities. |
| **Performance Security** | means a performance security that must be submitted by the Selected Bidder or the Concessionaire to [EXECUTING AGENCY] on or before execution of the Concession Agreement to secure the obligations of the Concessionaire in relation to the [LOCATION] Facilities during the Construction Period in accordance with Clause 16. |

4 If there is a State Level/National Level intermediate agency funding the project and such an entity is part of the contract/procurement process the name of that agency can be inserted here. Otherwise all references to the National/State Level agency in the document are to be deleted.

5 Delete if not applicable. In such a case the concession agreement will be bipartite.

|  |  |
| --- | --- |
| **Person** | means any [individual,] company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organization or any other legal entity. |
| **Power Unit Rate** | means the cost per unit of power drawn from the grid (through the relevant distribution licensee for the Site), which for the purpose of evaluation of the Financial Proposals is INR *7.47* (Seven Rupees and Forty-Seven paise) per kWh. For the purpose of reimbursement of Power Charges to the Concessionaire during the O&M Period, the Concessionaire will be paid on the basis of the then prevailing cost per unit of power charged by the relevant distribution licensee and/or the cost of fuel for any power consumed from any diesel generator back-up sets, installed by the Concessionaire. |
| **PPP** | means public private partnership. |
| **Pre-Bid Meeting** | means the meeting to be held in accordance with Clause 8.2. |
| **Preferred Bidder** | means the Bidder which: (a) meets the Qualification Criteria and the Eligibility Criteria; and (b) quotes the lowest [LOCATION] Facilities Bid Price. |
| **Project** | means the design, development, finance, construction, operation and maintenance of the [LOCATION] Facilities at the Site in accordance with the Concession Agreement. |
| **Project Engineer** | means the engineering firm appointed by (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) for the  Project, in accordance with the Concession Agreement. |
| **Public Financial Institution** | means a Public Financial Institution referred to in the Companies Act 2013 and/or as regulated by the Reserve Bank of India. |
| **Qualification Criteria** | means the qualification criteria set out in Clause 4 that a Bidder is required to satisfy (in addition to the Eligibility Criteria), to be qualified for evaluation of the Financial Proposal. |

|  |  |
| --- | --- |
| **Qualification Proposal** | means the proposal to be submitted by each Bidder to demonstrate that it meets the Eligibility Criteria and the Qualification Criteria as set out in Clause 3 and Clause 4. |
| **RFP** | means this request for proposal dated [DATE] along with its Schedules and Annexures and includes any Addenda, if issued. |
| **Rupee(s) or INR or Rs** | means Indian National Rupees, the lawful currency of Republic of India. |
| **Schedule** | means a schedule of this RFP. |
| **Scheduled Bank** | means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934. |
| **Scheduled Construction Completion Date** | means the date which is 21 months from the Effective Date. |
| **Scope of Work** | means the scope of work for construction and O&M of the [LOCATION] Facilities as set out in the Concession Agreement. |
| **Second Preferred Bidder** | means the Bidder who: (a) meets the Qualification Criteria and the Eligibility Criteria; and (b) quotes the second lowest [LOCATION] Facilities Bid Price. |
| **Section** | means a section of this RFP. |
| **Selected Bidder** | means the eligible Bidder selected by [EXECUTING AGENCY] for award of the Project. |
| **Site** | (or the [LOCATION] Facilities Site) means the location for the *[LOCATION]* Facilities, admeasuring [AREA AVAILABLE FOR STP FACILITIES] in *[LOCATION]*, as  set out in more detail in the [LOCATION] Project Information Memorandum provided. |
| **SPV or Special Purpose Vehicle** | means a company incorporated under the Companies Act by the Selected Bidder to carry out the obligations of the Concessionaire under the Concession Agreement. |

|  |  |
| --- | --- |
| **STP** | means a sewage treatment plant. |
| **Sub-Contractor Undertaking** | means an irrevocable and duly notarized undertaking to be submitted by the Nominated STP Sub-Contractor on a stamp paper, to meet the Technical Criteria defined in Clause 4.1(a)(B), 4.1(a)(F)(ii) and 4.1(b)(ii) of this RFP, in the format set out at Annexure 1M. |
| **Supporting Infrastructure** | means the supporting infrastructure facilities required for the operation of the [LOCATION] Facilities, which will be provided, operated and maintained by [EXECUTING AGENCY] during the term of the Concession Agreement. |
| **Taxes** | means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, goods and services tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Concessionaire. |
| **Technical Capacity** | means the technical capacity and experience of a Bidder, as determined in accordance with Clause 4.1. |
| **Technical Specifications** | means the technical specifications for design, construction, operation and maintenance of the [LOCATION] Facilities, which the Concessionaire and/or its subcontractors must comply with, as set out in the Concession Agreement. |
| **Technology Agreement** | means a binding agreement to be entered into between the proposed technology provider and the Bidder that submits a Bid pursuant to this RFP, to meet the technology requirement to be adopted for the proposed STP and/or FSTP in this Project as defined in Clause 4.1(a)(F)(ix) of this RFP. |
| **Technology Performance Security** | means additional performance security that shall be submitted by the technology provider, which has been named by the Selected Bidder as part of the bid, to the [EXECUTING  AGENCY] to secure the obligations of the technology |

|  |  |
| --- | --- |
|  | provider in relation to the Clause 16.6 of this RFP document. |
| **Trial Operations** | means the operation of the [LOCATION] Facilities on a trial basis for 3 months post the Construction Completion Date in accordance with the Concession Agreement. |

## SECTION I INTRODUCTION

1. **BACKGROUND**

**1.1** -- - - - - - - - - - - - - --(**Brief about the genesis of the project).**

* 1. The Government of India has received loan (Loan number: IBRD- ) and credit (Credit number: IDA ---- Reconstruction and Development (IBRD) and International Development Association (IDA)

illion under the ----



-----------------(Name of the loan). The loan will be used in various currencies toward the cost of the Project (name of the project/scheme). The Borrower intends to apply a portion

of the proceeds of this loan to eligible payments under the contract for which this RFP is issued.6

* 1. The [EXECUTING AGENCY] ([EXECUTING AGENCY]), hereinafter referred to as the [EXECUTING AGENCY], is a statutory body constituted under , and has the power to . With a view to implement the --------------(Name of the project/scheme), the [EXECUTING AGENCY] in association with the (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) , has decided to undertake the development, operation and maintenance of STP and/or FSTP, with a proposed capacity of [STP CAPACITY IN MLD] STP and their Associated Infrastructure at *[LOCATION]*, on a PPP basis, through a hybrid annuity model. While the [EXECUTING AGENCY] will be the principal executing agency and bidding authority for the Project, (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) will be responsible for making payments to the Concessionaire.
  2. The objectives that (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) and [EXECUTING AGENCY] wish to achieve through the Project are to:
     1. intercept raw sewage flowing into the (name of water body/source) and divert the raw sewage to the [LOCATION] STP7;
     2. treatment of the raw sewage and/or septage/faecal sludge at the [LOCATION] STP;
     3. implement viable technologies and international best practices for development, operation and maintenance of the [LOCATION] Facilities; and
     4. demonstrate large scale private sector participation and mobilization of private sector investment to further the national aim of (insert the aim of any).

6 For Bank Funded Projects only. If the funding is from any other Multilateral agency this clause and reference in the definition may be suitably modified.

7 These lines may be replaced suitably to reflect the nature of project such as I &D works or sewerage networks.

* 1. The main features of the Project are set out below:
     1. The [EXECUTING AGENCY] will provide such part of the Site as required by the Concessionaire to develop the [LOCATION] Facilities and implement the Project based on the [LOCATION] Facilities Land Requirement quoted by the Selected Bidder, free of all encumbrances and encroachments, and along with all necessary rights of way.
     2. The Concessionaire will be required to design, finance, construct and complete the [LOCATION] Facilities on or prior to the Scheduled Construction Completion Date, in accordance with the Concession Agreement.
     3. The [EXECUTING AGENCY] will provide, operate and maintain the Supporting Infrastructure for the *[LOCATION]* STP , to enable the Concessionaire to operate the *[LOCATION]* STP in accordance with the Concession Agreement.
     4. In order to meet its power consumption requirements for the *[LOCATION]* Facilities, the Concessionaire [shall/may]8 construct and operate a biogas power plant at the *[LOCATION] STP* Site, to utilise the biogas generated from the treatment of raw sewage at the *[LOCATION]* STP to produce clean energy. The Concessionaire may also set up a rooftop solar project at the *[LOCATION] STP* Site to meet its power consumption requirements.
     5. On and from the COD and until the Expiry Date, the Concessionaire will be required to operate and maintain the [LOCATION] Facilities in accordance with the Concession Agreement, such that the [LOCATION] Facilities meet the key performance indicators specified in the Concession Agreement.
     6. Upon the expiry of the O&M Period, the [LOCATION] Facilities and any power plant set up by the Concessionaire, will be transferred to the [EXECUTING AGENCY] after the rectification of any defects or deficiencies, in accordance with the Concession Agreement.
     7. The construction, operation and maintenance of the [LOCATION] Facilities must be in accordance with Applicable Laws, Applicable Permits and other requirements specified in the Concession Agreement.
     8. Prior to the Effective Date, (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) will appoint a Project Engineer to assist the [EXECUTING AGENCY] in supervising the construction, operation and maintenance of the [LOCATION] Facilities. The Project Engineer shall support the [EXECUTING AGENCY] in monitoring compliance with the key performance indicators to be specified in the Concession Agreement. (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) will

8 Construction of bio gas power plant compulsory in case of STP capacity > 40 MLD

solely bear the costs of the Project Engineer.

* + 1. The Concessionaire shall operate the [LOCATION] Facilities at its risk for the term of the Concession Agreement.
    2. 40% of the [LOCATION] Facilities Bid Project Cost will be reimbursed to the Concessionaire during the Construction Period, which will be linked to completion and certification of the works corresponding to specified [LOCATION] Facilities Payment Milestones (refer clause 9.3 of Concession Agreement)
    3. From the COD, the [LOCATION] Facilities Capex Annuity (along with interest) and the [LOCATION] Facilities O&M Charges will be paid on a quarterly basis to the Concessionaire. Additionally, the Concessionaire will also be reimbursed on a quarterly basis for the [LOCATION] Facilities Power Charges at actuals (subject to a cap of the [LOCATION] Facilities Power Charges based on the Guaranteed Energy Consumption) for power consumed for O&M of the Facilities. If the Concessionaire consumes more power for O&M of the Facility than the Guaranteed Energy Consumption in any given quarter, it will be liable to pay damages to the [EXECUTING AGENCY] in accordance with the Concession Agreement.
    4. The (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) will set up a revolving escrow account for the Project, and all Payment Milestone (linked construction payments, Capex Annuities (along with interest), [LOCATION] Facilities O&M Charges and the [LOCATION] Facilities Power Charges will be paid to the Concessionaire through this escrow account. From the Effective Date and until the Construction Completion Date, (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) will ensure that the escrow account is funded with an amount equivalent to the construction payments due to the Concessionaire for the next 2 [LOCATION] Facilities Payment Milestones. From the COD and at all times thereafter until the expiry or termination of the Concession Agreement, (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) shall keep the escrow account funded with the Capex Annuities (along with interest), the [LOCATION] Facilities O&M Charges and the estimated [LOCATION] Facilities Power Charges (based on the Guaranteed Energy Consumption) for the *[LOCATION]* Facilities for the subsequent 2 years.
    5. Subject to early termination, the Concession Agreement shall be valid until the Expiry Date.
  1. The [EXECUTING AGENCY] is now inviting interested natural persons, Companies, other private entities and State-owned entities to submit Bids to implement the Project.
  2. The bidding will be conducted through the International Competitive Bidding (ICB) procedures specified in the World Bank's Guidelines: Procurement of Goods, Works and Non-consulting

Services under IBRD Loans and IDA Credits& Grants, January 2011, revised July 2014 (Guidelines) and is open to all Bidders from eligible source countries as defined in the Guidelines.9

* 1. This RFP follows the General Procurement Notice for -------------------------(name of the scheme/project if any) that was published on United Nations Development Business online Page 17 of 92 on March 30, 2011 and updated on January 31, 2014.10
  2. The Selected Bidder is required to incorporate a Special Purpose Vehicle to implement the Project and such Special Purpose Vehicle will be required to execute the Concession Agreement with the [EXECUTING AGENCY] and (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) in the format attached to this RFP.
  3. The statements and explanations contained in this RFP are intended to provide the Bidders with an understanding of the subject matter of this RFP and the Project. Such statements and explanations should not be construed or interpreted as limiting in any way or manner:
     1. the scope of the rights and obligations of the Concessionaire, which will be set out definitively in the Concession Agreement; or
     2. the [EXECUTING AGENCY]'s right to alter, amend, change, supplement or clarify the rights and obligations of the Concessionaire or the terms and conditions that will be set out in the Concession Agreement, in accordance with this RFP.

Consequently, any omissions, conflicts or contradictions between this RFP and the Concession Agreement are to be noted, interpreted and applied appropriately to give effect to this intent. (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) and the [EXECUTING

AGENCY] will not entertain any claims on account of such omissions, conflicts or contradictions.

## BRIEF DESCRIPTION OF THEBID PROCESS

* 1. The [EXECUTING AGENCY] has adopted a single-stage Bid Process for declaration of the Selected Bidder for award of the Project, which is divided into 2 sub-stages.
  2. The Bidders shall download the RFP from the e-Procurement Portal [web address for TENDER PORTAL]. A complete set of bidding documents will be available on the e-Procurement Portal in the 'Active Tenders'' section and will be available only until the specified time on the Bid Due Date. The [EXECUTING AGENCY] is not responsible for the completeness of the RFP, if it is not downloaded directly from the e-Procurement Portal complete with Addenda, if issued and uploaded on the e-Procurement Portal by the bid inviting authority.

9 For Bank Funded Projects

10 For Bank Funded Projects

* 1. Each Bidder is required to submit a s ingle Bid, which should consist of 2 parts: (a) the Qualification Proposal; and (b) the Financial Proposal.

## Evaluation stages

The evaluation of the Bids will be carried out in 2 sub-stages:

* + 1. The first sub-stage will involve qualification of the Bidders based on the evaluation of their Qualification Proposals to determine compliance with the Eligibility Criteria and the Qualification Criteria in accordance with Clause 3 and 4. Only those Bidders who are found to meet the Eligibility Criteria and the Qualification Criteria will be qualified for the next sub-stage.
    2. The second sub-stage will involve evaluation of the Financial Proposals of those Bidders whose Qualification Proposals meet the requirements set out in Clause 3 and 4, to identify the Selected Bidder for the Project.

## Bid parameter

Each Bidder will be required to quote in the Bid Price Sheet, for the *[LOCATION]* Facilities, the following 4 components (on the basis of net present value): (a) the [LOCATION] Facilities Bid Project Cost (including all Taxes); (b) the [LOCATION] Facilities O&M Charges for the first month after COD (including all Taxes); (c) the Guaranteed Energy Consumption for the O&M Period; and (d) the [LOCATION] Facilities Land Requirement.

For the purposes of calculation of the 'Guaranteed Energy Consumption' of the *[LOCATION]* Facilities, each Bidder will be required to quote in its Bid Price Sheet the maximum number of units of power (in kWh) per MLD which it expects the Concessionaire to consume to treat the varying volumes (expressed in MLD) and BOD of sewage and faecal sludge, as specified in the format of the Bid Price Sheet for the *[LOCATION]* Facilities. Based on the number of units of power per MLD quoted by a Bidder for the varying volumes and BOD of sewage, the average number of units (in kWh) that the Concessionaire is expected to consume per MLD of sewage and /or faecal sludge treated at the *[LOCATION]* STP will be calculated using the formula specified in the Bid Price Sheet (such average, the *[LOCATION]* **Average Guaranteed Energy Consumption**). The *[LOCATION]* Average Guaranteed Energy Consumption will be used to calculate the *[LOCATION] Facilities* Power Charges of a Bidder in accordance with the Bid Price Sheet.

Bidder shall carefully quote the [LOCATION] Facilities Land Requirement in the Financial Proposal. No additional Land shall be ordinarily allocated to the Concessionaire beyond the quoted Land in the Financial Proposal for the Construction of the Project. However, under unavoidable circumstances and in the interest of the Project, the [EXECUTING AGENCY] based on availability, may consider allocating additional land for the construction of the Project upon the request of the Concessionaire and such allocation shall be subject to the payment of a

sum equivalent to one hundred and fifty percentage of the [LOCATION] Facilities Land Rate, for each additional acres of Land and part thereof. If the additional land requirement changes position of the Selected Bidder/Concessionaire vis a vis the Second Preferred Bidder, then the Concessionaire shall pay to [EXECUTING AGENCY], a sum of equivalent to (a) one hundred and fifty percentage of the [LOCATION] Facilities Land Rate for each additional acres of Land and part thereof; OR (b) the difference between [LOCATION] Facilities Bid Price of Second Preferred Bidder and the revised [LOCATION] Facilities Bid Price of the Selected Bidder; whichever is higher.

Based on the components quoted by the Bidders in the Bid Price Sheet for the *[LOCATION]* Facilities, the *[LOCATION] Facilities* Bid Price, will be calculated as per the formula in the Bid Price Sheet.

The only criterion for evaluation and comparison of Financial Proposals will be the [LOCATION] Facilities Bid Price.

* 1. The Bidder shall quote the [LOCATION] Facilities Bid Project Cost in INR i.e., Indian National Rupees. However, for any inputs required by the Bidder from outside India during the Construction Period, the Bidder may specify in its [Financial Proposal] the percentage of the Bid Project Cost that it would want to receive in a foreign currency. Payments for such inputs required from outside India may be quoted in up to 3 foreign currencies using RBI selling (exchange) rate prevailing 28 days prior to the Bid Due Date. It is clarified that the aggregate construction payments due to the Concessionaire during the Construction Period shall not exceed 40% of the Bid Project Cost, as quoted by the Selected Bidder in Rupees and adjusted for inflation under the Concession Agreement, on account of a percentage of the Bid Project Cost being paid to the Concessionaire in foreign currencies.11
  2. Subject to Clause 7.1(e), the Preferred Bidder shall be the one which: (a) meets the Qualification Criteria and the Eligibility Criteria; and (b) quotes the lowest [LOCATION] Facilities Bid Price. Generally, the Preferred Bidder shall be the Selected Bidder for the Project. If the Preferred Bidder withdraws its Bid or is not selected for any reason, then the [EXECUTING AGENCY] may, in its discretion, select the Second Preferred Bidder as the Selected Bidder or annul the Bid Process.
  3. Bidders are required to submit the Bid Security along with their Bids as per Clause 15. The Bidders shall provide the Bid Security in the form of a bank guarantee issued by a Scheduled Bank in India or by a foreign bank listed with the Reserve Bank of India or a guarantee issued by a Public Financial Institution, and payable at *[LOCATION]* in favour of "[EXECUTING AGENCY]" represented by the Project Manager, Urban Works Unit 2nd, in the format set out at Annexure 1I. The original Bid Security must be submitted to [EXECUTING AGENCY] at the

11 For Bank Funded Proejcts and International Projects

address mentioned in Clause 24.11 below before the date/time of opening of the Bids (Qualification Proposals), either by registered/speed post/courier or by hand, failing which the Bid will be declared non-responsive. A scanned copy of the Bid Security must be uploaded by the Bidders on the e-Procurement Portal along with their Bids.

* 1. All Bids are required to be prepared and submitted electronically in accordance with the terms of this RFP on or before the Bid Due Date.
  2. The Bidders may inspect the Site and carry out, at their own cost, such inspections as may be required to submit their respective Bids at any time prior to the date specified in the Bid Schedule. The [EXECUTING AGENCY] shall facilitate such site visits provided that the Bidder gives the [EXECUTING AGENCY] at least 3 days' prior written notice of its intention to visit the Site.
  3. It will be assumed that the Bidders have accounted for all relevant factors, including technical data, status and condition of the Supporting Infrastructure, the Site conditions, climate, weather conditions, availability of power (including the requirement of any power back-up), water and other utilities for construction and/ or operations and maintenance of the [LOCATION] Facilities, access to the Site, handling and storage of materials, Applicable Laws and Applicable Permits while submitting their Bids. The Bidders will be deemed to have full knowledge of the Project, including the scope of activities required to be undertaken by the Bidders to undertake the Project.

## e-Procurement

* + 1. The Bid Process will be conducted by way of e-tendering. In order to participate in the Bid Process, a Bidder must procure a digital signature certificate (class II or III) and register on the e-Procurement Portal using its digital signature. A digital s ignature certificate may be procured from a registered certifying authority as stipulated by Controller of Certifying Authorities, GoI.
    2. In case of a Consortium, the Bidder must register with the e-Procurement Portal in the name of the Lead Member, using the digital signature certificate issued in the name of the authorized signatory of the Lead Member.
    3. The Bidders must: (i) upload a soft copy/scanned copy of their Qualification Proposal, including a copy of the Bid Security on the e-Procurement Portal in PDF format; and (ii) populate the Bid Price Sheet provided on the e-Procurement Portal, before the specified time on the Bid Due Date. Upon submitting the Qualification Proposals and the Financial Proposals on the e-Procurement Portal, the Bidders must affix their digital signature both to the Qualification Proposals and the Financial Proposals.
    4. The Bidders are encouraged to visit the e-Procurement Portal to acquaint themselves with the process of submitting their Bids online.
    5. For the purposes of determining the cut-off time for submission of queries and Bids, the central server time displayed on the clock on the e-Procurement Portal will be followed by the Bidders and the [EXECUTING AGENCY].
  1. Any queries or requests for additional information relating to this RFP should be submitted by the Bidder on the e-Procurement Portal on or before the specified time and date mentioned in the Bid Schedule.
  2. [EXECUTING AGENCY] shall endeavour to adhere to the following schedule for the Bid Process:

|  |  |  |
| --- | --- | --- |
| **S. No.** | **Event** | **Date/Location** |
| 1. | Issue of RFP | From [Date], through website [WEB ADDRESS]  [EXECUTING AGENCY], [LOCATION] |
| 2. | Site Visit | Up to [1 week from issue of RFP] |
| 3. | Last date for receiving queries from Bidders | Date: [10 days from issue of RFP] Time: 16:00 hrs  Email: |
| 4. | Pre-Bid Meeting | Date [2 weeks from issue of RFP] time: 12:00 Hrs  Location: [Address of the ***EXECUTING AGENCY***] |
| 5. | Issue of Addendum/Revised RFP and Concession Agreement by [EXECUTING AGENCY]  latest by | [2 weeks from the Pre-bid Meeting] |
| 6. | Bid Due Date | [4 weeks from issue of Addendum] |
| 7. | Opening of Bids (Qualification Proposals) | [within 2 days from the Bid Due Date]  [Bid Opening Address] |
| 8. | Notification of qualified Bidders | Within 7 days from the date of opening of Qualification Proposals |

|  |  |  |
| --- | --- | --- |
| 9. | Opening of Financial Proposals | Within 7 days from the date of notification of qualified Bidders |
| 10. | Issue of LOA | Within 30 days from the date of opening of Financial Proposals |
| 11. | Signing of the Concession Agreement | Within 45 days from the date of issue of LOA to the Selected Bidder |

## SECTION II

**ELIGIBILITY AND QUALIFICATION CRITERIA**

## ELIGIBILITY OF BIDDERS

* 1. **Nature of Bidder**
     1. A Bidder may be a natural person, a Company registered under the Companies Act or an equivalent law outside India, or any other private entity or State-owned entity, acting in its individual capacity or as a Consortium. The term Bidder used in this RFP shall apply to both a single entity as well as a Consortium.

However, Bidders that are Government-owned enterprises or institutions in India may participate only if they can establish that they (i) are legally and financially autonomous

(ii) operate under commercial law, and (iii) are not dependent agencies of (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) or [EXECUTING AGENCY].

To be eligible, a government-owned enterprise or institution shall establish to [EXECUTING AGENCY] satisfaction, through all relevant documents, including its Charter and other information [EXECUTING AGENCY] Bank may request, that it: (i) is a legal entity separate from the government (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to the government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt; and (iv) is not bidding for a contract to be awarded by the department or agency of the government which under their applicable laws or regulations is the reporting or supervisory authority of the enterprise or has the ability to exercise influence or control over the enterprise or institution.



* + 1. Eligible Countries12
       1. In accordance with paragraph 1.10 of the Guidelines, the Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects. As an exception, firms of a country or goods manufactured in a country may be excluded if:
          1. Paragraph 1.10 (a)(i): as a matter of law or official regulation, India prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the services required under the Project; or
          2. Paragraph 1.10 (a)(ii): by an act of compliance with a decision of the

12 For Bank Funded Projects and International Projects

United Nations Security Council taken under Chapter VII of the Charter of the United Nations, India prohibits any import of goods from that country or any payments to persons or entities in that country.

* + - 1. For the information of Bidders, at the present time, firms, goods and services from the following countries are excluded from this bidding:
         1. With reference to paragraph 1.10(a)(i) of the Guidelines: *none*
         2. With reference to paragraph 1.10(a)(ii) of the Guidelines: *none*
    1. If a Bidder is a Consortium, then the Consortium and its Members shall comply with the following conditions:
       1. The number of Members in such Consortium shall not exceed 3.
       2. The Bid submitted by the Consortium should contain the required information for each Member and a brief description of the roles and responsibilities of each Member.
       3. The Consortium will nominate one of the Members as the Lead Member. Such nomination will be supported by a power of attorney from each Member of the Consortium and will be in the format set out in Annexure 1J. The Lead Member will have the authority to represent and bind all the Members during the Bid Process.
       4. The Members of the Consortium shall enter into a binding and enforceable Joint Bidding Agreement, in the format set out in Annexure 1K, and shall appoint one of the Members to represent the Consortium. All Members shall be jointly and severally liable for the performance of the Project till the end of the term of the Concession Agreement or till the date of exit from the Concessionaire subject to clause 3.2(b)(iii) of the RFP document, whichever is earlier. The Members will not be permitted to amend or terminate the Joint Bidding Agreement, at any time during the validity of the Bid without the prior consent of [EXECUTING AGENCY].

## Lock-in Restrictions and Change in Control

* + 1. Each Bidder (whether a single entity or Consortium) is required to incorporate a Special Purpose Vehicle to implement the Project.
    2. If the Selected Bidder is a Consortium, then the Members are required to comply with the following conditions with respect to the SPV to be incorporated by the Selected Bidder to implement the Project:
       1. the Lead Member shall hold not less than 26% of the total Capital and voting rights of the Concessionaire until 3 years after the COD;
       2. any Member, other than the Lead Member, whose Technical Capacity or Financial Capacity is being assessed for the purpose of qualification, shall hold at least 26% of the total Capital and voting r ights of the Concessionaire for 3 years after the COD; and
       3. after the expiry of 3 years from the COD, the Lead Member and/or other Members can exit the Concessionaire, subject to: (A) the Member who demonstrated the O&M experience for the purposes of qualification continuing to be part of the Concessionaire; or (B) the entity acquiring the shareholding of the Lead Member/any other Member in the Concessionaire meeting the technical qualification criteria set out in Clause 4.1 (b); or (C) the Concessionaire appointing an O&M contractor who complies with the technical qualification criteria set out in Clause 4.1 (b).
    3. If the Selected Bidder is a single entity, then:
       1. the Selected Bidder shall hold at least 51% of the total Capital and voting rights of the Concessionaire until the COD, and at least 26% of the total Capital and voting rights of the Concessionaire for 3 years after the COD; and
       2. after the expiry of 3 years from the COD, the Selected Bidder can exit the Concessionaire, subject to: (A) the entity acquiring the shareholding of the Selected Bidder in the Concessionaire meeting the technical qualification criteria set out in Clause 4.1 (b); or (B) the Concessionaire appointing an O&M contractor who complies with the technical qualification criteria set out in Clause 4.1 (b).
    4. If, post submission of the Bid, any Associate and/ or Nominated STP Sub-Contractor, whose credentials have been taken into consideration for determining Technical Capacity and/or Financial Capacity, ceases or will cease to be an Associate of the Bidder or such Member, or Nominated STP Sub-Contractor of the Bidder, then, the Selected Bidder shall seek the approval of the [EXECUTING AGENCY] for such occurrence. If the [EXECUTING AGENCY] is of the view that such occurrence is likely to affect the Technical Capacity and/or Financial Capacity of the Bidder adversely, then the [EXECUTING AGENCY] may disqualify the Bidder from participation in the Bid Process; or, if the Bidder has been declared as the Selected Bidder, withdraw the LOA or treat such occurrence as a Concessionaire event of default in accordance with the Concession Agreement, without the [EXECUTING AGENCY] incurring any liability towards the Selected Bidder or the Concessionaire for such withdrawal or possible

termination. While the [EXECUTING AGENCY] will not unreasonably withhold or delay such approval, the decision of the [EXECUTING AGENCY] will be final in this regard.

* + 1. In the event of the experience of Nominated STP Sub-Contractor being claimed for qualification purpose, as per clause 4.1, and if such entity ceases to be the sub-contractor after the issue of LoA and/ or before the completion of 2 years from the COD, then with prior approval of [EXECUTING AGENCY] and/ or (NAME OF THE STATE

/NATIONAL LEVEL AGENCY IF ANY) , the Selected Bidder shall propose to substitute such entity with another sub-contractor who shall meet the qualification criteria set out in Clause 4.1(a)(B), 4.1(a)(F)(ii) and 4.1(b)(ii) of this RFP. The substituted sub-contractor shall then be the Nominated STP Sub-Contractor. While the [EXECUTING AGENCY] will not unreasonably withhold or delay such approval, the decision of the [EXECUTING AGENCY] will be final in this regard.

If the [EXECUTING AGENCY] is of the view that such occurrence is likely to affect the Technical Capacity of the Bidder adversely, then the [EXECUTING AGENCY] may withdraw the LOA or treat such occurrence as a Concessionaire event of default in accordance with the Concession Agreement, without the [EXECUTING AGENCY] incurring any liability towards the Selected Bidder or the Concessionaire for such withdrawal or possible termination.

## Conflict of Interest

Any Bidder found to have a conflict of interest (**Conflict of Interest**) shall be disqualified. A Bidder, a Member (in case of a Consortium), its Group Companies or Associates may be considered to have a Conflict of Interest with one or more Bidders, its Members, its Group Companies or Associates in this Bid Process if, as indicated in this Clause 3.3:

* + 1. they have a common Controlling partner, except that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in the Companies Act, 2013. Bidder can view the Companies Act, 2013 at [http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf.](http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf) The current list of Public Financial Institutions is annexed at Annexure 6. The Bidders are advised to ascertain the updated list of Public Financial Institutions from the available sources; or
    2. they receive or have received any direct or indirect subsidy from any of them; or
    3. they have the same legal representative for purposes of this Bid; or
    4. they have a relationship with each other, directly or through common third parties, that puts them in a position to access the information about or influence the Bid of another

Bidder, or influence the decisions of [EXECUTING AGENCY] regarding this Bid Process; or

* + 1. the Bidder participates in more than one Bid for the same Project (as described in Clause 17); or
    2. the Bidder, or any of its Group Companies or Associates participated as a consultant in the preparation of any documents, design or technical specifications of the Project that are subject of the Bid; or
    3. the Bidder or any of its Group Companies or Associates has been hired (or is proposed to be hired) by [EXECUTING AGENCY] as project manager for the Project.
    4. The Bidder or any of its Group Companies or Associates has a close business or family relationship with a professional staff of (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) (or of [EXECUTING AGENCY], or of a receipt of a part of the loan) who:
    5. are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or

(ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to [EXECUTING AGENCY]the Bank throughout the Bid Process and execution of the Concession Agreement.

## Fraud and Corrupt Practices

It is th suppliers, contractors and their agents (whether declared or not), sub-contractors, sub- consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts13. In pursuance of this policy, the Bank:

* + 1. defines, for the purposes of this provision, the terms set forth below as follows:

fering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;14;

13 In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

14 For the purpose of



this sub-



*another party*



*public official* Bank staff and

employees of other organizations taking or reviewing procurement decisions.



(ii)    

knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;15

(iii)    

achieve an improper purpose, including to influence improperly the actions of another party;16

(iv) 

or indirectly, any party or the property of the party to influence improperly the actions of a party;17

* + - 1. obstructive  is

(aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise  audit rights provided for under paragraph 1.16(e) below.

* + 1. will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
    2. will declare misprocurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action

15 For the purpose of this sub-

relate to the procurement process or contract exec procurement process or contract execution.

16 For the purpose of this sub-   public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non -competitive



17 For the purpose of this sub- execution.

satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;

* + 1. will sanction a firm or individual, at any time, in accordance with the prevailing

18 including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated19;



* + 1. will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub- contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appoin 

3.4.1 Inspection and Audit

In further pursuance of the policy referred to in ITB 3.4 above, Bidders shall permit and shall cause its agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers and any personnel thereof, to permit the Bank to inspect all accounts, records and other documents relating to any prequalification process, bid submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Bank.

## Other Eligibility Criteria

* + 1. A Bidder or any Member of a Consortium that has been sanctioned by the Bank in accordance with the Bank's Guidelines on Preventing and Combating Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants, shall be ineligible to be awarded a Bank-financed contract, or benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall determine.
    2. If the Bidder or any Member (in case of a Consortium) is party to any litigation (required to be disclosed as per Annexure 1H), in which, any subsequent ruling/judgment by any court/judicial authority after the submission of bid affects or could have a material adverse effect on the financial condition, prospects or business of such Bidder or

18 A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i)

 proceedings as per its sanctions procedures, including, inter alia, cross - debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines.



19 A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

Member or its ability to fulfill its obligations under the Concession Agreement, the Bid will not be evaluated further by [EXECUTING AGENCY].

* + 1. If a Company has entered into a contract for operation of the e-Procurement Portal, which is currently valid and subsisting, then such Company and its Associates will not be eligible to submit a Bid. The e-Procurement portal (etender.up.nic.in) is operated by National Informatics Centre.
    2. If any contract of the Bidder or any Member (in case of a Consortium) has been suspended or terminated and/or performance security has been called by an employer for reasons related to the non-compliance by the Bidder with any ESHS requirements or safeguard in the past 5 years (required to be disclosed as per Annexure 1L), which, in [EXECUTING AGENCY]'s opinion, affects or could have a material adverse effect on the financial condition, prospects or business of such Bidder or Member or its ability to fulfill its obligations under the Concession Agreement, the Bid will not be evaluated further by [EXECUTING AGENCY].

Bidders will provide such evidence of their continued eligibility as [EXECUTING AGENCY] may request at any time during or after the Bid Process.

If a Bidder is a Consortium, then the term "**Bidder**" as used in Clause 3.3, Clause 3.4 and Clause

3.5 shall include each Member of such Consortium, and the term "**Associate**" as used in Clause 3.3, Clause 3.4 and Clause 3.5 shall include Associates of each Member of the Consortium.

If the Bidder has a Nominated STP Sub-Contractor to meet the Technical Criteria defined in Clause 4.1 (a) and Clause 4.1 (b), then the Clause 3.3, Clause 3.4 and Clause 3.5 shall also be applicable to such Nominated STP Sub-Contractor.

## QUALIFICATION CRITERIA

The Bidders should satisfy the following minimum technical criteria and financial criteria set out in Clause 4.1 and Clause 4.2 respectively to qualify for evaluation of the Financial Proposals:

## Technical Criteria

To demonstrate its technical capacity and experience (**Technical Capacity**), the Bidder must have the following experience:

* + 1. Development/Design and Construction experience
       1. For demonstrating technical capacity and experience (the

), the Bidder shall, during the 5 Financial Years immediately preceding the Bid Due Date, have:

* + - * 1. paid for, or received payments for, construction of Eligible Project(s); and/or
        2. paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 4.1(a)(B); and/ or
        3. collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 4.1(a)(B),

such that the sum total of the above, is more than Rs. [Capital Cost of the Project] (the ).

If the Bidder is a Consortium, then the Threshold Technical Capability as required above shall be demonstrated cumulatively, i.e. the Consortium as a whole should meet the requirement.

If the Bidder is relying on a Nominated STP Sub-Contractor for the Project Specific STP experience as per the clause 4.1(a)(F), then 25% of the Threshold Technical Capability shall be met by such **Nominated STP Sub-Contractor**. The bidder shall meet the remaining 75% of the Threshold Technical Capability requirement.

The Bidder shall provide the necessary information relating to Technical Capacity in the formats provided in Annexure 1E Part-III and Annexure 1E Part- IV along with the necessary supporting documents as per this RFP.

## Technical Capacity for purpose of evaluation

Subject to the provisions of Clause 4.1(a)(A), 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 4.1(a)(C) and 4.1(a)(D) (the **"Eligible Projects"**):

Category 1: Development (PPP) experience on Eligible Projects in Infrastructure Sector that qualify under Clause 4.1(a)(C)

Category 2: Construction experience on Eligible Projects in Infrastructure Sector that qualify under Clause 4.1(a)(D)

* + - * 1. For the purpose of this RFP, Infrastructure Sector would be deemed to include highways/roads, power, telecom, ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation, sewerage network, water, waste water, drainage and real estate development.
        2. Eligible Experience in respect of each category shall be evaluated only for Eligible Projects.
        3. The Bidders shall quote experience in respect of a particular Eligible Project under any one category only, even though the Bidder (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.
        4. The Bidder shall furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, in the format provided in Annexure 1E Part-IV.
      1. For a project to qualify as an Eligible Project under Category 1:
         1. It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;
         2. 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;
         3. the capital cost of the project should be more than Rs. [10% of the Project Capital Cost]; and
         4. the entity claiming experience shall, during the 5 Financial Years immediately preceding the Bid Due Date, have (1) paid for development of the project (excluding the cost of land), and/ or (2) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from highways, airports, ports and railway infrastructure, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products, telecommunications or fare/freight revenues and other incomes of the company owning the Project.
      2. For a project to qualify as an Eligible Project under Category 2:
         1. the entity claiming experience shall, during the 5 Financial Years immediately preceding the Bid Due Date, have paid for the execution of

its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 Financial Years immediately preceding the Bid Due Date. For the avoidance of doubt, construction works shall not include operation and maintenance costs, 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.

* + - * 1. only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify;
        2. the capital cost of the project should be more than Rs. [10% of the Project Capital Cost];
      1. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting in respect of the same experience shall be permitted in any manner whatsoever. Provided that, the experience taken into assessment will be only of those who contribute a minimum 26% share to the Consortium.

Further, in case of a Nominated STP Sub-Contractor, experience for any activity relating to an Eligible Project shall not be claimed by both the Nominated STP Sub-Contractor and the Bidder.

* + - 1. Specific Experience to the project:
         1. The Bidder shall have developed and/or designed and constructed, in the last 10 years immediately preceding the Bid Due Date, 1 Sewage Treatment Plant (STP) / Effluent Treatment Plant (ETP) / Common Effluent Treatment Plant (CETP) of at least [25% of the Project STP Capaicty] Capacity, which shall have been developed or designed and constructed using any technology;
         2. Provided if the Bidder does not have the STP/ ETP/ CETP experience, then the bidder may rely upon the experience of a Nominated STP Sub- Contractor for the purpose. In such case, the Nominated STP Sub- Contractor shall meet the eligibility criteria under this section. Further, the same Nominated STP Sub-contractor shall also meet the Operation & Maintenance Experience specified under clause 4.1(b) of this RFP.
         3. The bidder shall submit a Sub-contractor Undertaking to the extent that such Nominated STP Sub-Contractor will be engaged for designing and/or constructing the proposed Project along with the certificate of experience from the relevant government authority/client for the project experience. In addition to this, both the Nominated STP Sub-Contractor

and the bidder shall each submit 50% of the Performance Security as mentioned in Clause 16.1 of this RFP. The Performance Security submitted by the Nominated STP Sub-Contractor shall be liable to be forfeited in the event of the Nominated STP Sub-Contractor leaving the project before the COD. In such situation, the Concessionaire is required to nominate another sub-contractor as per the Clause 3.2(e) of this RFP.

* + - * 1. One Nominated STP Sub-Contractor can associate with only one Bidder at any point in time during the bidding. The approved Nominated STP Sub-Contractor shall not be changed without prior approval of [EXECUTING AGENCY] and/or (NAME OF THE STATE

/NATIONAL LEVEL AGENCY IF ANY) .

* + - * 1. The experience claimed shall be evidenced by the issuance of a completion certificate by the relevant government authority/client, certifying that the STP/ETP/CETP have been completed in terms of the concession agreement or similar contract executed for such plants;
        2. To claim development experience, the entity claiming the experience shall have held, in the company developing the STP/ETP/CETP, a minimum of 26% equity share capital as on the commercial operations date of such project.
        3. To claim design and construction experience, the entity claiming experience should have been appointed as the principal contractor (i.e., the contractor hired directly by the owner of the project/entity developing the relevant STP/ETP/CETP) and any other subcontractor experience is not permitted for claiming Technical Capacity.
        4. The Bidder shall be required to develop the [LOCATION] STP Project using any technology prescribed in the CPHEEO Manual.
        5. For using technologies other than those mentioned in the CPHEEO manual, the bidder shall t ie up with a suitable technology provider subject to following conditions:

That the Bidder shall clearly indicate the name of the technology provider in Annexure 1B;

That the STPs using such new technology have been developed

or designed and constructed in the 5 years preceding the Bid Due Date, as evidenced by the issuance of a completion certificate by the relevant government authority/client, certifying that the STP(s) have been completed in terms of the

concession agreement or similar contract executed for such STP(s); and

That the STPs using such new technology have been successfully operational for any 24 consecutive months in the 5 years preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STP(s), as evidenced by a certificate from the relevant government authority.

That the technology provider undertakes to associate with the construction of the proposed Project up to completion of 2 years from COD as evidenced by a suitable Technology Agreement and a Technology Performance Security of 5% of the Bid Project Cost, which shall be forfeited if the technology provider leaves the project before the completion of 2 years from COD. The Technology Performance Security shall be returned on completion of 2 years from COD.

That one technology provider can associate with one Bidder at any point in time during the bidding

* + 1. Operation and maintenance experience

1. The Bidder shall have successfully operated and maintained 1 STP/ETP/CETP of at least [25% of the Project STP Capacity] capacity for any 12 consecutive months in the 10 years immediately preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STP/ETP/CETP. For demonstrating O&M experience of STP/ETP/CETP, the Bidder (and in case of a Consortium, any Member) is required to submit a certificate from the relevant governmental authority, evidencing successful operations and maintenance of the STP/ETP/CETP for which the Bidder is claiming O&M experience.
2. Provided if the Bidder does not have the required experience, then the bidder may rely upon the experience of the Nominated STP Sub- Contractor whose experience is claimed for the requirement under clause 4.1(a)(F) for the purpose.
3. The bidder shall submit a Sub-contractor Undertaking to the extent that such Nominated STP Sub-Contractor will be engaged for the Operation & Maintenance of the proposed Project, along with the certificate of experience from the relevant government authority/client for the project experience. In addition to this, both the Nominated STP Sub-Contractor

and the bidder shall each submit 50% of the O&M Securities as mentioned in Clause 16B.1 of this RFP. The performance security submitted by the Nominated STP Sub-Contractor shall be liable to be forfeited in the event of the Nominated STP Sub-Contractor leaving the project before the completion of 2 years from the COD. In such situation, the Concessionaire is required to nominate another sub- contractor as per the Clause 3.2(e) of this RFP. Also, one Nominated STP Sub-Contractor can associate with only one Bidder at any point in time during the bidding.

* + 1. It is clarified that:

1. the Bidder must demonstrate both development/design and construction experience specified in Clause 4.1(a) above and O&M experience specified in Clause 4.1(b) above to be technically qualified for evaluation of the Financial Proposals;
2. the Bidder/Member may rely on the experience of its Associate(s) for demonstrating the Technical Capacity (including, if applicable, under Clause 4.1(d). However, a Bidder claiming the experience of the Associates for Technical Capacity, shall submit a Letter of Commitment from such Associate that the expertise of the Associate will be made available during the development and operation of the Project;
3. in case of a Consortium, the development/design and construction experience set out in Clause 4.1(a) above, may be demonstrated by one Member and the O&M experience of the STP set out in Clause 4.1(b) may be demonstrated by a different Member;
4. if the development/design and construction experience as set out in clause 4.1(a)(i) and the O&M experience as set out in the clause 4.1(b) is being claimed by a different Member, then the Member who demonstrates development/design and construction experience and the Member who demonstrates the O&M experience must each hold 26% of the total Capital and voting rights of the Concessionaire for atleast 3 years post COD;
5. the development/design and construction experience of STP as set out in clause 4.1(a)(i) and the O&M experience as set out in clause 4.1(b) may be claimed in relation to the same STP. If, however, the development/design and construction experience and the O&M experience is being claimed for different STP, then it is clarified that the STP for which O&M experience is being claimed may be based on a

technology which is different from the technology used in the STP(s) for which development/design and construction experience is being claimed; and

1. for certificates claiming Technical Capacity through an experience that are issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the certificate is being issued. However, the certificates provided by the Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.
   * 1. [The Bidder shall set up a biogas power plant at the [LOCATION] Facilities Site.]20 [If the Bidder proposes to setup a biogas power plant at its own discretion,]21, the Bidder/Member will be required to demonstrate its experience (in the format set out in Annexure 2) in developing or designing and constructing a biogas power plant, which should have:
        1. a capacity of at least 0.25MW;
        2. been based on STP effluent/faecal sludge;
        3. been developed or designed and constructed in the 10 years preceding the Bid Due Date, as evidenced by the issuance of a completion certificate by the relevant government authority/ client, certifying that the biogas power plant has been completed in terms of the relevant contract executed for such biogas power plant; and
        4. successfully operational for any 24 consecutive months in the 10 years preceding the Bid Due Date, in accordance with the relevant contract executed for such biogas power plant, as evidenced by a certificate from the relevant government authority/ client;

If the Bidder or any Member of the Consortium does not have any experience of having developed or designed and constructed a biogas power plant, the Bidder will be required to nominate an experienced power plant developer which has developed and/or designed a biogas power plant, which meets the criteria set out in (A) to (D) above. The nominated Subcontractor will be engaged to develop the power plant for the Project, if the Bidder is declared the Selected Bidder, and will be required to provide a consent letter in the format set out in Annexure 3 (along with certificate(s) from the relevant government authority).

20 Applicable if the STP capacity is > 40MLD

21 Applicable if the STP capacity is < 40MLD

## Financial Criteria

To demonstrate its financial capacity to undertake the Project (**Financial Capacity**), the Bidder must meet each of the financial qualification criteria specified in this Clause 4.2.

* + 1. Net worth

1. In each of the Financial Years [Mention the 3 Financial Years preceding the Bid Due Date], the Bidder's Net Worth (as per the audited annual financial statements) shall be at least INR [25 to 33% of the Bid Project Cost].
2. If the Bidder is a Consortium, then the Net Worth, as required in Clause 4.2 (a)(i) above shall be demonstrated cumulatively, i.e., the Consortium as a whole should meet the requirement. Provided further that if the Bidder is subsequently declared the Selected Bidder for the Project, then any Member of the Consortium whose Net Worth was assessed for the purposes of demonstrating that the Consortium has the Financial Capacity to undertake the Project, shall hold at least 26% of the total Capital and voting rights of the Concessionaire for 3 years post the COD.
3. A Bidder or a Member of a Consortium may rely on the Net Worth of its Associate(s) for demonstrating its Financial Capacity. In such a case, the Bidder or a Member of a Consortium shall submit an undertaking from the Associate(s) stating that the necessary proportionate equity for the project will be provided for successful implementation of the project. In addition to this, during Financial Closure, necessary board resolution from the Associate(s) has to be submitted to the extent of equity contribution.
   * 1. The Bidder (and in case of a Consortium, any Member) and its Associate(s) (in case the Net Worth of the Associate is being claimed) is not affected by and has not been affected by any of the following events, conditions or circumstances in the 3 Financial Years immediately preceding the Bid Due Date, as certified by the statutory auditor of the Bidder (and in case of a Consortium, the statutory auditor of a Member) and its Associate(s) (if applicable):
4. the Bidder (and the Associate(s), if applicable) having been categorized as a wilful defaulter in accordance with Applicable Laws or laws of the country of its incorporation;
5. the Bidder (and the Associate(s), if applicable) being subject to proceedings for declaration of or being declared bankrupt, being wound up, or having its affairs administered or conducted by any court, administrator, receiver; or
6. the Bidder (and the Associate(s), if applicable) having been declared by a court or other competent authority as being unable to pay its debts, or having made

any composition or arrangements with creditors or having had the repayment of its debts suspended.

* + 1. The Bidder (and in case of a Consortium, any Member) and its Associate(s) (if applicable) has not been convicted or otherwise being found responsible (or having any of its directors, partners, trustees, officers or managers convicted or being found responsible) by any court, tribunal, regulatory, public or other competent authority for a breach of any laws or regulations which:

1. related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation or other payment was levied against the Bidder (and the Associate(s), if applicable) or any of its directors, partners, trustees, officers or managers; or
2. resulted in the permanent or temporary suspension of the rights of the Bidder (and the Associate(s), if applicable) to provide any service or carry on any type of business or operations.

## SECTION III

**INSTRUCTION TO BIDDERS**

## PARTA. GENERAL

1. **SCOPEOF RFP**
   1. [EXECUTING AGENCY] wishes to receive Bids in accordance with this RFP for award of the Project.
   2. The RFP must be read as a whole. If any Bidder finds any ambiguity or lack of clarity in this RFP, the Bidder must inform [EXECUTING AGENCY] at the earliest. [EXECUTING AGENCY] will then direct the Bidders regarding the interpretation of the RFP. If any discrepancy, ambiguity or contradiction arises between the terms of the RFP and the Concession Agreement in relation to:
      1. the Bid Process, the provisions of the RFP shall prevail; and
      2. the scope of services or any other terms or conditions of the Concession Agreement, including Technical Specifications, the provisions of the Concession Agreement shall prevail.

## ACKNOWLEDGEMENT BY THEBIDDER

* 1. It shall be deemed that by submitting the Bid, the Bidder has:
     1. made a complete and careful examination of the RFP ( including all instructions, forms, terms and specifications) and any other information provided by [EXECUTING AGENCY] under this RFP and the Bidder acknowledges that its submission of a Bid that is not substantially responsive to the RFP in every respect will be at the Bidder's risk and may result in rejection of the Bid;
     2. received all relevant information requested from [EXECUTING AGENCY] and (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) ;
     3. accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of [EXECUTING AGENCY];
     4. satisfied itself about all things, matters and information, necessary and required to submit a Bid;
     5. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the RFP or ignorance of any matter in relation to the Project shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations or loss of profits or revenue from [EXECUTING

AGENCY] or (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) , or

a ground for termination of the Concession Agreement;

* + 1. satisfied itself regarding the suitability of the Site conditions to undertake the Project; and
    2. agreed to be bound by the undertakings provided by it under and in terms of this RFP.
  1. [EXECUTING AGENCY] 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 relating to the RFP or the Bid Process.

1. **RIGHTS OF** [EXECUTING AGENCY]
   1. [EXECUTING AGENCY], in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
      1. suspend the Bid Process and/or amend and/or supplement the Bid Process or modify the dates or other terms and conditions relating thereto;
      2. consult with any Bidder in order to receive clarification or further information at any stage of the Bid Process;
      3. retain any information, documents and/or evidence submitted to [EXECUTING AGENCY] by and/or on behalf of any Bidder;
      4. independently verify, disqualify, reject and/or accept any and all documents, information and/or evidence submitted by or on behalf of any Bidder;
      5. reject any Bid, if:
         1. at any time, a material misrepresentation is made or uncovered; or
         2. the Bidder in question does not provide, within the time specified by [EXECUTING AGENCY], the supplemental information sought by [EXECUTING AGENCY] for evaluation of the Bid; or
      6. accept or reject a Bid, annul the Bid 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 whatsoever to any Person, including the Bidders.

If [EXECUTING AGENCY] annuls the Bid Process and rejects all Bids, it may in its sole discretion invite fresh Bids for the Project.

* 1. If [EXECUTING AGENCY] exercises its right under this RFP to reject a Bid and consequently, the Preferred Bidder for the Project gets disqualified or rejected, then [EXECUTING AGENCY] reserves the right to:
     1. select the Second Preferred Bidder as the Selected Bidder for the Project; or
     2. take any such measure as may be deemed fit in the sole discretion of [EXECUTING AGENCY], including inviting fresh Financial Proposals from the qualified Bidders or annulling the entire Bid Process.
  2. If it is found during the Bid Process, at any time before signing the Concession Agreement or after its execution and while it is in force, that one or more of the Qualification Criteria and/or the Eligibility Criteria have not been met by a Bidder or that the Bidder has ceased to meet them, or a Bidder has made material misrepresentations or has given any materially incorrect or false information, then such Bidder will be disqualified.

If such Bidder has been declared as the Selected Bidder or has already been issued the LOA or has entered into the Concession Agreement, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated, by a notice in writing from [EXECUTING AGENCY] to the Selected Bidder. Upon any disqualification, cancellation or termination in accordance with this Clause 7.3, [EXECUTING AGENCY] will not be liable in any manner whatsoever to the Bidder. Additionally, [EXECUTING AGENCY] will have the right to forfeit and appropriate the Bid Security or, as the case may be, appropriate an equivalent amount from the Performance Security if the Concession Agreement has been executed, as a mutually agreed genuine pre- estimate of the loss suffered by [EXECUTING AGENCY] for, amongst others, [EXECUTING AGENCY]'s time, cost and efforts in conducting the Bid Process. Such forfeiture will be without prejudice to any other right or remedy that [EXECUTING AGENCY] may have under the RFP, the Concession Agreement or Applicable Laws.

## CLARIFICATIONS ON THERFP

* 1. **Clarifications and Queries**
     1. If a Bidder requires any clarification on or has any query in relation to the RFP, it should submit such query or request for clarification to [EXECUTING AGENCY] on the e- Procurement Portal or send an email to [email ID] before the specified time and date mentioned in the Bid Schedule. All queries or clarification requests should be received on or before the date and time mentioned in the Bid Schedule.
     2. [EXECUTING AGENCY] shall make reasonable efforts to respond to the queries or requests for clarifications on or before the date mentioned in the Bid Schedule. [EXECUTING AGENCY]'s responses (including an explanation of the query but not identification of its source) will be made available to all the Bidders and shall be uploaded on the e-Procurement Portal.
     3. [EXECUTING AGENCY] may, on its own initiative, if deemed necessary, issue

clarifications to all the Bidders. All clarifications and interpretations issued by [EXECUTING AGENCY] shall be deemed to be part of this RFP. Should [EXECUTING AGENCY] deem it necessary to amend the RFP as a result of a request for clarification, it will do so following the procedure under Clause 9.

* + 1. It shall be the responsibility of the Bidders to check the e-Procurement Portal for the response to the queries or requests for clarifications.
    2. Verbal clarifications and information given by (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) , [EXECUTING AGENCY] or any other Person for or on its behalf shall not in any way or manner be binding on (NAME OF THE STATE

/NATIONAL LEVEL AGENCY IF ANY) or [EXECUTING AGENCY].

## Pre-Bid Meeting

* + 1. All interested Companies shall be invited to attend the Pre-Bid Meeting on the date, time and place mentioned in the Bid Schedule. The purpose of the Pre-Bid Meeting will be to clarify issues and answer questions on any matter relating to the RFP, the Bid Process and the Project.
    2. All interested Companies may nominate up to 3 authorized representatives to participate in the Pre-Bid Meeting, by confirming the participation of its authorized representatives at the Pre-Bid Meeting at least 3 days prior to the date of the Pre-Bid Meeting. Such confirmation shall be sent by e-mail to [email ID].
    3. During the course of the Pre-Bid Meeting, all interested Companies will be free to seek clarifications and make suggestions to [EXECUTING AGENCY].
    4. Non-attendance at the Pre-Bid Meeting will not be a cause for disqualification of an interested Company from participating in the Bid Process.

## AMENDMENTOF THERFP

* 1. Up until the date that is mentioned in the Bid Schedule, [EXECUTING AGENCY] may, for any reason, whether on its own initiative or in response to a query raised or clarifications requested by a Bidder, amend the RFP by issuing an Addendum or an amended RFP and amended draft Concession Agreement. The addendum will appear on the e-

atically sent to those bidders who have moved



documents and deemed to have been communicated to all the bidders who have moved this

rea.

* 1. All Addenda/amendments and amended RFP & amended draft Concession Agreement will be uploaded on the e-Procurement Portal.
  2. The Bidders are required to visit the website before submission of the Bid so as to take into account with any Addenda/amendments that may be issued in accordance with this Clause 9.
  3. Each Addendum/amendment will be binding on the Bidders, whether or not the Bidders convey their acceptance of the Addendum/amendment.
  4. Any oral statements made by (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) or [EXECUTING AGENCY] or its advisors regarding the Bid Process, the RFP or on any other matter, shall not be considered as amending the RFP.
  5. [EXECUTING AGENCY] will assume that the information contained in the Addendum/amendments will have been taken into account by the Bidder in its Bid. [EXECUTING AGENCY] assumes no responsibility for the failure of a Bidder to submit the Bid in accordance with the terms of the Addendum/amendments or for any consequent losses suffered by the Bidder.

## AVAILABILITY OF INFORMATION

* 1. The information relating to or in connection with the Project, the Bid Process and this RFP, including all notices issued by [EXECUTING AGENCY] to all Bidders in accordance with this RFP; queries and responses or clarifications and any Addenda will be uploaded on the e- Procurement Portal.
  2. All such information will be made available for review by the Bidders until the Bid Due Date.
  3. If a Bidder faces any technical issue or technical error in accessing the e-Procurement Portal, the Bidder may seek assistance from [EXECUTING AGENCY] by sending an e-mail request to [email ID], no later than 3 days prior to the Bid Due Date.
  4. [EXECUTING AGENCY] will use its best endeavours to respond to a written e-mail request and resolve the technical issue or error or provide an alternative solution to the Bidder within 3 days of receipt of such request.

## CORRESPONDENCE WI TH BIDDERS

Save as expressly provided in this RFP, (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) and [EXECUTING AGENCY] will not entertain any correspondence with the Bidders, whether in connection with the acceptance or rejection of their Bids or otherwise.

## CONFIDENTIAL INFORMATION AND PROPRIETARY DATA

* 1. **Proprietary Data**

All documents and other information provided by [EXECUTING AGENCY] or submitted by a Bidder to [EXECUTING AGENCY] will remain or become the property of [EXECUTING AGENCY], as the case may be. Bidders are required to treat all information provided by [EXECUTING AGENCY] in the RFP as strictly confidential and not to use them for any purpose other than for preparation and submission of their Bids.

* 1. **Confidentiality Obligations of** [EXECUTING AGENCY]

[EXECUTING AGENCY] will treat all information, submitted as part of a Bid as confidential and will require all those who have access to such material to treat it in confidence. [EXECUTING AGENCY] may not divulge any such information or any information relating to evaluation of Bids or the qualification of Bidders unless:

* + 1. such publication is contemplated under this RFP;
    2. such publication is made to any Person who is officially involved with the Bid Process or is a retained professional advisor advising [EXECUTING AGENCY], (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) or the Bidder on matters arising out of or in connection with the Bid Process;
    3. it is directed to do so by any statutory authority that has the power under law to require its disclosure;
    4. such publication is to enforce or assert any right or privilege of the statutory authority and/or [EXECUTING AGENCY] and/or (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) or as may be required by law (including under the Right to Information Act, 2005); or
    5. in connection with any legal process.

## GOVERNI NG LAW AND JURISDICTION

* 1. **Governing Law**

The Bid Process, this RFP and the Bids shall be governed by, and construed in accordance with, the laws of India.

## Exclusive Jurisdiction

The competent courts in [Name of the State] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bid Process, this RFP and the Bids.

## VALIDITY OF THE BIDS

* 1. The Bids shall remain valid for a period of 180 days from the Bid Due Date. A Bid valid for a shorter period shall be rejected by [EXECUTING AGENCY] as being non-responsive.
  2. In exceptional circumstances, prior to the expiry of the Bid validity period, [EXECUTING AGENCY] may request Bidders to extend the Bid validity period. The request and the responses

shall be made in writing. A Bidder may refuse [EXECUTING AGENCY]  validity period of its Bid, without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its bid.

## PARTB. BID SECURITY, PERFORMANCE SECURI TY AND ESHS PERFORMANCE SECURITY

1. **BID SECURITY**
   1. The Bidder shall furnish as part of its Bid, a bid security for the Project (the **Bid Security**). The Bid Security shall be for an amount equivalent to INR [*2% of the capital cost for contracts estimated to cost up to INR 1000 million, or 1% of the capital cost subject to a minimum of INR 20 million if estimated cost exceeds INR 1000 million. In case of NCB, amount should be in INR only. Provide US$ option in case of ICB]* or an equivalent amount in a freely convertible currency.
   2. The Bid Security shall remain valid for 45 days beyond the Bid validity period specified in Clause 14.
   3. The Bidder shall provide the Bid Security in the form of a bank guarantee issued by a Scheduled Bank in India or by a foreign bank listed with the Reserve Bank of India having its branches in India or a guarantee issued by a Public Financial Institution. The Bid Security shall be issued in favour of the "[EXECUTING AGENCY]", represented by the [**Designation of the Representative**]**{-,** payable at [LOCATION], and in the format set out in Annexure 1I.

**Details of the Beneficiary**

**Bank Account Holder Name Bank Account Number Bank Name**

## IFSC Code

* 1. Unless forfeited in accordance with Clause 15.5 below, the Bid Security of the unsuccessful Bidders will be returned by [EXECUTING AGENCY] no later than 30 days from the date of execution of the Concession Agreement with the SPV incorporated by the Selected Bidder.

The Bid Security of the Selected Bidder will be returned upon the SPV incorporated by the Selected Bidder furnishing the [LOCATION]   and, if applicable, Additional Performance Security, in accordance with Clause 16 and ESHS Performance Security in accordance with Clause 16A.

* 1. The Bid Security shall be forfeited and appropriated by [EXECUTING AGENCY] as mutually agreed genuine pre-estimated compensation and damages payable to [EXECUTING AGENCY] for time, cost and effort of [EXECUTING AGENCY], without prejudice to any other right or remedy that may be available to [EXECUTING AGENCY] hereunder or otherwise, under the following conditions:
     1. if a Bidder is disqualified in accordance with, Clause 3.2 (Lock-in Restrictions and Change in Control), Clause 3.3 (Conflict of Interest), Clause 3.5 (Other Eligibility Criteria), Clause 7.3 (Rights of [EXECUTING AGENCY]), Clause 17 (Number of Bids) and Clause 31 (Execution of Concession Agreement);
     2. if, after the Bid Due Date, a Bidder withdraws its Bid during the Bid validity period; or
     3. if a Bidder is selected as the Selected Bidder and it fails, within the specified time limit, to:
        1. sign and return, as acknowledgement, the duplicate copy of the LOA;
        2. cause the Concessionaire to furnish the Performance Security, and if applicable, the Additional Performance Security, in accordance with Clause 16;
        3. cause the Concessionaire to furnish the ESHS Performance Security in accordance with Clause 16A;
        4. cause the Concessionaire to furnish the O&M Performance Security in accordance with Clause 16B;
        5. fulfil any other condition precedent to the execution of the Concession Agreement; or
        6. cause the Concessionaire to execute the Concession Agreement.

## PERFORMANCE SECURITY

* 1. Subject to clause 16.2, the Selected Bidder shall cause the Concessionaire to furnish to [EXECUTING AGENCY] the Performance Security for a value equal to 9% of the [LOCATION] Facilities Bid Project Cost, on or before execution of the Concession Agreement to secure the obligations of the Concessionaire under the Concession Agreement.

If the Selected Bidder has nominated a Sub-Contractor to meet the Technical Criteria defined in Clause 4.1(a), the bidder and the Nominated STP Sub-Contractor shall each submit 50% of the [LOCATION] Performance Security as mentioned in this Clause 16.1. On substitution of Nominated STP Sub-Contractor as per Clause 3.2 (e), the new sub-contractor shall submit to the [EXECUTING AGENCY] 50% of the [LOCATION] Performance Security.

* 1. The Performance Security/Securities shall remain valid until 1 month from the COD.
  2. The Selected Bidder shall cause the Concessionaire to provide the [LOCATION] Performance Security in the form of bank guarantee(s) issued by a Scheduled Bank in India or a guarantee issued by a Public Financial Institution. The [LOCATION] Performance Security shall be issued [EXECUTING AGENCY]   **[Designation of the**

**Representative]**, payable at [LOCATION] and in the format set out in Annexure 4.

* 1. If the Selected Bidder fails to cause the Concessionaire to furnish the Performance Security

/Securities in accordance with this Clause 16 on or before the execution of the Concession Agreement, then [EXECUTING AGENCY] shall have the right to forfeit the Bid Security of the Selected Bidder in accordance with Clause 15.5.

* 1. During evaluation of Financial Proposal and before award of the Project, if it is found that the Selected Bidder has submitted an unreasonable Bid for the entire Project or for any components thereof, [EXECUTING AGENCY] reserves right to seek Additional Performance Security over and above that is mentioned in the Clause 16.1. The quantum of such Additional Performance Security will be determined by [EXECUTING AGENCY] on the basis of reasonable assessment of various Project components and after seeking suitable justifications/clarifications on the price components of the Bid from the Selected Bidder. The Selected Bidder shall submit this Additional Performance Security together with the Performance Security and ESHS Performance Security. The Additional Performance Security shall be in force till the end of Construction period if the Bid Project Cost is found to be unreasonable and till the end of the Concession Period if [LOCATION] Facilities O&M Charges are found to be unreasonable. The Additional Performance Security shall be liable to be forfeited, either fully or partially, as it deems fit for the reasons mentioned in Clause 16.1 of the draft Concession agreement.
  2. If the Bidder has associated with a technology provider to meet to meet the technology requirement to be adopted for the proposed STP/FSTP in this Project, as defined in Clause 4.1(a)(F)(ix) of this RFP, then the technology provider shall furnish to the [EXECUTING AGENCY][EXECUTING AGENCY] a Technology Performance Security of 5% of the Bid Project Cost.

The Technology Performance Security shall be forfeited if the technology provider leaves the project before the completion of 2 years from COD. The Technology Performance Security shall be returned to the technology provider on completion of 2 years after COD.

## 16A. ESHS PERFORMANCE SECURITY

16A.1 The Selected Bidder shall cause the Concessionaire to furnish to [EXECUTING AGENCY], the [LOCATION] Facilities ESHS Performance Security for a value equal to 1% of the [LOCATION] Facilities Bid Project Cost, on or before execution of the Concession Agreement to secure due performance of the ESHS obligations of the Concessionaire under the Concession Agreement.

16A.2 The ESHS Performance Security/Securities shall remain valid for the entire term of the Concession Agreement. The ESHS Security shall have an initial validity period till COD, which must thereafter be renewed on a year-on-year basis, before the expiry of the 11th month of the relevant year, until the Expiry Date. If any of the ESHS Security is not renewed by the expiry of the 11th month of the relevant year, then [EXECUTING AGENCY] shall be entitled to drawdown the total amount available under the ESHS Security and retain suc h amount as cash security until such time that the Concessionaire submits an extension or replacement of the ESHS Security.

16A.3 The Selected Bidder shall cause the Concessionaire to provide the [LOCATION] ESHS Performance Security in the form of bank guarantees issued by a Scheduled Bank in India or a guarantee issued by a Public Financial Institution. The [LOCATION] ESHS Performance

 [EXECUTING AGENCY]", represented by the **[Designation of the Representative],** payable at [LOCATION], in the format set out in Annexure 5.

16A.4 If the Selected Bidder fails to cause the Concessionaire to furnish the ESHS Performance Security/Securities in accordance with this Clause 16A on or before the execution of the Concession Agreement, then [EXECUTING AGENCY] shall have the right to forfeit the Bid Security of the Selected Bidder in accordance with Clause 15.5(c).

## 16B. O&M SECURITY

16B.1 The Selected Bidder shall cause the Concessionaire to furnish to [EXECUTING AGENCY], the O&M Security, within 60 days of the Construction Completion Date or 30 days before COD, whichever is earlier. The O&M security should be an unconditional and irrevocable bank guarantee to [EXECUTING AGENCY] for an amount corresponding to 4% of the Bid Project Cost. The O&M security for [LOCATION] Facilities would need to be furnished to secure the obligations of the Concessionaire under the Concession Agreement. If the Selected Bidder has nominated a Sub Contractor to meet the Technical Criteria defined in Clause 4. 1(a), the bidder and the Nominated STP Sub-Contractor shall each submit 50% of the [LOCATION] O&M Performance Security as mentioned in this Clause 16B.1. On substitution of Nominated STP Sub-Contractor as per Clause 3.2 (e), the new sub-contractor will furnish the O&M Security. Further, in case the Nominated STP Sub-Contractor choses to leave the project after 2 years from COD, the Concessionaire shall fulfil the requirement of O&M Security, as specified in this Clause, for the remaining period.

16B.2 The O&M Security shall have an initial validity period of 1 year, which must be renewed on a year-on-year basis, before the expiry of the 11th month of the relevant year, until the expiry of the O&M Period. If any of the O&M Securities is not renewed by the expiry of the 11th month of the relevant year of the O&M Period, then [EXECUTING AGENCY] shall be entitled to drawdown the total amount available under the O&M Security, and retain such amount as cash

security until such time that the Concessionaire submits an extension or replacement of the O&M Security

16B.3 The Selected Bidder shall cause the Concessionaire to provide the [LOCATION] O&M Security in the form of bank guarantees issued by a Scheduled Bank in India or a guarantee issued by a Public Financial Institution. The [LOCATION] O&M Security shall be issued in favour of [EXECUTING AGENCY]", represented by the **[Designation of the Representative],** payable at [LOCATION].

16B.4 If the Selected Bidder fails to cause the Concessionaire to furnish the O&M Security/Securities in accordance with this Clause 16B on or before the respective due dates, then [EXECUTING AGENCY] shall have the right to forfeit the Bid Security of the Selected Bidder in accordance with Clause 15.5.

## PARTC. PREPARATION AND SUBMISSION OF BIDS

1. **NUMBER OF BIDS**

Each Bidder shall be permitted to submit only 1 Bid for the Project, either individually or as a Member of a Consortium. A Bidder applying individually or as a Member of a Consortium shall not be entitled to submit another Bid either individually or as a Member of any other Consortium, as the case may be. A Bidder who submits or participates in more than 1 Bid for the Project shall cause all the Bids with the Bidder's participation to be disqualified.

## LANGUAGE OF BIDS AND CORRESPONDENCE

* 1. The Bid prepared by the Bidder and all correspondence and documents related to the Bid exchanged by the Bidder and [EXECUTING AGENCY] shall be in English.
  2. Any document furnished by the Bidder may be in another language, as long as such document is accompanied by an English translation, in which case, for purposes of interpretation of the Bid, the English translation shall take precedence. If any document submitted by a Bidder is in a local language, then the English translation must be certified by an advocate and notarised in India. If any document submitted by a Bidder is in a foreign language, then the English translation must be certified by the embassy/consulate/high commission of the relevant foreign country in India or the Ministry of Foreign/External Affairs or any other relevant ministry empowered to certify such English translations in the foreign country where the project is situated. Supporting materials which are not translated into English or certified/notarised in accordance with this Clause 18.2 may not be considered by [EXECUTING AGENCY].

## BID DUEDATE

* 1. The Bid shall be submitted on or before the date, time and place specified in the Bid Schedule.
  2. [EXECUTING AGENCY] may, at its discretion and for any reason, extend the Bid Due Date for all Bidders by issuing an Addendum in accordance with Clause 9, in which case all rights and obligations of [EXECUTING AGENCY] and the Bidders will thereafter be subject to the Bid Due Date as extended.
  3. Bids received by [EXECUTING AGENCY] after the specified time on the Bid Due Date will not be eligible for consideration and will be summarily rejected.

## QUALIFICATION PROPOSAL

The Bidder shall submit Bids online in two separate Folders/Envelopes as under: Folder I - for submission of Qualification Proposal; and

Folder II for submission of Financial Proposals

* 1. The Qualification Proposal submitted by a Bidder shall comprise scanned copies of the

following:

* + 1. ) bid letter in the format set out in **Annexure 1A**;
    2. ) description of the Bidder/ Members/ Nominated STP Sub-Contractor / technology provider (if applicable) in the format set out in **Annexure 1B**;

(c ) Power of Attorney in the format set out in **Annexure 1C**, executed by the Bidder or the Lead Member authorizing the signatory of the Bid to commit the Bidder;

1. ) certificate issued by the statutory auditor of the Bidder (and its Associate(s), if applicable), in the format set out in **Annexure 1D**, certifying the Net Worth of the Bidder (and its Associate(s), if applicable) and compliance with other financial qualification criteria specified in Clause 4.2;
2. details of the eligible STP/ ETP/ CETP for which development/design and construction experience is being claimed in the format set out in **Annexure 1E Part 1** and details of the eligible STP/ ETP/ CETP for which O&M experience is being claimed in the format set out in **Annexure 1E Part 2**;
3. certificate from the statutory auditor certifying the shareholding of the Bidder (or in case of a Consortium, the relevant Member) or Nominated STP Sub- Contractor (if applicable) in the Company developing the STP/ ETP/ CETP, for which development experience is being claimed by the Bidder in the format set out in **Annexure 1F**;
4. self-attested certificate regarding Associate, if applicable, in the format set out in

## Annexure 1G;

1. information on any litigation that the Bidder (or in case of a Consortium, the relevant Member) or Nominated STP Sub-Contractor (if applicable) is a party to, in the format set out at **Annexure 1H**;
2. Bid Security in the format set out at **Annexure 1I**;
3. if applicable, experience certificate for a biogas power plant in the format set out at **Annexure 2** or a consent letter for a biogas power plant in the format set out at **Annexure 3**, along with certificate(s) from the relevant government authority

/ client;

1. for each STP/ ETP/ CETP for which O&M experience is being claimed, certificate from the relevant government authority certifying that the Bidder (or, in case of a Consortium, the relevant Member) has successfully operated and maintained the STP/ ETP/ CETP for which O&M experience is being claimed, for at least 12 consecutive months in the 10 years immediately preceding the Bid

Due Date, in accordance with the relevant concession agreement or similar contract executed for such STP;

1. audited annual financial statements of the Bidder (including profit and loss statements) as well as the Associate (if the Net Worth of the Associate is being claimed) for the 3 Financial Years FY2016-17, FY2017-18 and FY2018-19;
2. Self-attested copies of the certificate of incorporation, memorandum of association and articles of association. If the Bidder is a Consortium, then each Member shall submit self-attested copies of its certificate of incorporation, memorandum of association and articles of association; In case of a Nominated STP Sub-Contractor being nominated by the Bidder for meeting the Technical Criteria defined in Clause 4.1(a) and Clause 4.1(b), then such Nominated STP Sub-Contractor shall also submit self-attested copies of its certificate of incorporation, memorandum of association and articles of association; and
3. declaration listing the contract(s) of the Bidder or each Member (in case of a Consortium) and the Nominated STP Sub-Contractor (if applicable) that has/have been suspended or terminated and/or performance security that has been called by an employer for reasons related to the non- compliance by such Bidder or Member(s) with any ESHS requirements or safeguard in the past 5 years, in the format set out at **Annexure IL.**
4. Details of the Eligible Projects for which development or construction experience is being claimed for meeting the Threshold Technical Capability, in the formats set out in Annexure 1E Part-III and Annexure 1E Part-IV.
5. For each project submitted in Annexure 1E Part-IV, certificate(s) from the relevant government authority/client certifying the experience being claimed, along with certificate from the statutory auditors stating the payments made/ received, as the case may be, during the past 5 financial years, in respect of the projects specified in clause 4.1(a)(A). In case a particular job/ contract has been jointly executed by the entity (Bidder and/ or the Nominated STP Sub- contractor) claiming the experience (as part of a Consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client. (In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFP);
   1. If the Bidder is a Consortium, it will also be required to submit the following documents:
      1. Power of Attorney in the format set out at **Annexure 1J**, executed by the Members of the Consortium authorizing the Lead Member of the Consortium to act on behalf of and

commit the Consortium.

* + 1. Joint Bidding Agreement in the format set out at **Annexure 1K**.

## FINANCIAL PROPOSAL

* 1. The Financial Proposal submitted by a Bidder shall comprise the Bid Price Sheet provided on the e-Procurement Portal.
  2. The Bidders shall quote in the Bid Price Sheet, for the [LOCATION] Facilities, the: (a) Bid Project Cost (including all Taxes); (b) [LOCATION] Facilities O&M Charges for the first month after COD (including all Taxes); (c) Guaranteed Energy Consumption for the O&M Period; and

(d) [LOCATION] Facilities Land Requirement. Based on these components quoted by a Bidder, the Bid Price is calculated by the system using the formula set out in the Bid Price Sheet.

* 1. The Bidder shall quote 1 (one) figure for any of the components of the [LOCATION] Facilities Bid Price after all discounts the Bidder wishes to offer on any or all of the components of the [LOCATION] Facilities Bid Price.
  2. If the Bidder: (a) quotes more than 1 figure for any of the components of the [LOCATION] Facilities Bid Price; (b) offers a discount on any or all of the components of the [LOCATION] Facilities Bid Price; (c) quotes a [LOCATION] Facilities Land Requirement which is in excess of the area of the Facilitates STP and/or FSTP Site(s); then the Financial Proposal of such Bidder will be deemed to be non-responsive.
  3. Bidders may like to ascertain availability of excise/custom duty exemption benefits available in India to the contracts financed under World Bank loan/credits. They are solely responsible for obtaining such benefits which they have considered in their bid and in case of failure to receive such benefits for reasons whatsoever, [EXECUTING AGENCY] will not compensate the bidder (Operator). The bidder shall furnish along with his bid a declaration to this effect in the Declaration Format provided in Annexure 7 of the bidding documents.
  4. Where the bidder has quoted taking into account such benefits, he must give all information required for issue of certificates in terms of the Government of India Central Excise Notification and Customs Notification as per form stipulated in Annexure 7 of the bidding documents. In case the bidder has not provided the required information or has indicated to be furnished later on in the Declaration Format, the same shall be construed that the goods/equipment for which certificate is required is Nil.
  5. To the extent [EXECUTING AGENCY] determines the quantities indicated therein are reasonable keeping in view the work schedule, construction programme and methodology, the certificates will be issued, and no subsequent changes will be permitted. The certificate will be

issued within 60 days of signing of the Concession Agreement for material, equipment and machinery.

* 1. If the bidder has considered the customs/excise duty exemption for materials/construction equipment to be bought for the work, the bidder shall confirm and certify that [EXECUTING AGENCY] will not be required to undertake any responsibilities of the Government of India Scheme or the said exemptions being available during the contract execution, except issuing the required certificate.
  2. The bids which do not conform to the above provisions or any condition by the bidder which makes the bid subject to availability of customs duty/Tax exemption for materials/construction equipment or compensation on withdrawal of any variations to the said exemptions will be treated as non-responsive and rejected.
  3. Any delay in procurement of the construction equipment /machinery/goods as a result of the above shall not be entertained as a reason for granting any extension of time.

## COSTAND CURRENCY OF BIDS

* 1. **Cost of the Bid**

The Bidders will bear their own costs associated with or relating to the preparation and submission of their Bids, including copying, postage, delivery charges and expenses associated with any presentations which may be required by [EXECUTING AGENCY] or (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) or any other costs incurred in connection with or relating to their Bids, including any costs incurred on conducting any due diligence. All such costs and expenses will be borne by the Bidders and [EXECUTING AGENCY], (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) and their

employees and advisors will not be liable in any manner whatsoever for such costs and expenses, regardless of the conduct or outcome of the Bid Process.

## Currency of the Bid

All amounts in the Bid should be stated in INR (Indian Rupees).

## SIGNING OF BIDS

23.1 Each Bidder (and in case of a Consortium, the Lead Member) must affix the digital s ignature of its authorised signatory to the soft copies of both the Qualification Proposal and the Financial Proposal, upon uploading the soft copy of the Qualification Proposal and submission of the Financial Proposal to the e-Procurement Portal.

## SUBMISSION OF BIDS

* 1. Each Bidder is required to upload a soft copy/scanned copy of its Bid on the e-Procurement Portal.
  2. While uploading the Bid on the e-Procurement Portal, Bidder must ensure that files containing the Qualification Proposal and scanned copies of the Bid Security are uploaded separately under the relevant heads in a PDF format. The Bidder shall be required to fill all mandatory forms and fields indicated in the e-Procurement Portal at the time of uploading its Bid.
  3. The Bidders should ensure the legibility of the documents uploaded to the e-Procurement Portal.
  4. The Bidder shall upload the Bid sufficiently before the specified time on the Bid Due Date to avoid any technical issues or malfunction in the network caused by heavy traffic of Bidders on the Bid Due Date. [EXECUTING AGENCY] and (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) will not be responsible for any failure, malfunction or breakdown of the electronic system during the e-procurement process.
  5. The Bidder should check the system generated summary of its Bid submission to confirm successful uploading of its Bid.
  6. All Bids uploaded to the e-Procurement Portal will be encrypted and the encrypted Bids can only be opened by the authorised representatives of [EXECUTING AGENCY] at or after the specified time for opening of Bids (Qualification Proposals).
  7. Each Bidder shall also submit a hard copy of the original Bid Security, Power of Attorney, Joint Bidding Agreement, Sub-contractor Undertaking (if applicable) to [EXECUTING AGENCY], before the date/ time specified in clause 2.12 (c).

It is clarified that the Bidder will not be required to submit a hard copy of its Financial Proposal, and if a hard copy of the Financial Proposal is submitted, then the Bid submitted by such Bidder shall be rejected as being non-responsive.

* 1. The Bid will contain no alterations, omissions or additions, unless such alterations, omissions or additions are signed by the authorized signatory of the Bidder/Lead Member. Any interlineations, erasures, or overwriting will be valid only if they are signed by the authorized signatory of the Bidder/Lead Member.
  2. The hard copy of the Bid Security, Power of Attorney, Joint Bidding Agreement, Sub-contractor Undertaking (if applicable), etc. will be duly sealed in an envelope, which will be super-scribed as follows:

## "[LOCATION] STP PPP PROJECT

**QUALIFICATION PROPOSAL**

## DO NOT OPEN BEFORE SPECIFIED TIME FOR OPENI NG OF BIDS (QUALIFICATION PROPOSALS)"

* 1. The sealed envelope containing the Bid Security, Power of Attorney, joint bidding agreement, etc will clearly indicate the name, address and contact details of the Bidder. If the envelope is not sealed, marked and submitted as instructed in this Clause 24, [EXECUTING AGENCY] assumes no responsibility for the misplacement or premature opening of the contents of the envelope and consequent losses, if any, suffered by the Bidder.
  2. The hard copy of the Bid Security, Power of Attorney, Joint Bidding Agreement, etc. will either be hand delivered or sent by registered post acknowledgement due or courier to the address below:

**[** Designation of the Representative, and Address]

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

* 1. [EXECUTING AGENCY] will not be responsible for any delays, loss or non-receipt of Bids.

## SUBSTITUTION/WITHDRAWAL/MODIFICATION OF BIDS

* 1. Bidders may modify their bids by using the appropriate option for bid modification on e- Procurement Portal, before the deadline for submission of bids. For bid modification and consequential resubmission, the Bidder is not required to withdraw his bid submitted earlier. The last modified Bid submitted by the Bidder within the Bid Due Date shall be considered as the Bid. For this purpose, modification/withdrawal by other means will not be accepted. In online system of bid submission, the modification and consequential re-submission of Bid is allowed any number of times. A bidder may withdraw his Bid by using the appropriate option for Bid withdrawal, before the deadline for submission of Bids. However, if the Bid is withdrawn, re- submission of the Bid is not allowed.
  2. Bids requested to be withdrawn in accordance with ITB 25.1 shall not be opened.
  3. No Bid may be withdrawn, substituted, or modified in the interval between the Bid Due Date and the expiration of Bid validity period specified by the Bidder in the Bid Letter or any extension thereof. This will result in the forfeiture of the Bid Security pursuant to ITB 15.5.

## PARTD. OPENING AND EVALUATION OF BIDS

1. **OPENING OF BIDS**
   1. [EXECUTING AGENCY] will publicly open all Bids that are submitted on or before the specified time on the Bid Due Date, and this could be viewed by the Bidders online.
   2. [EXECUTING AGENCY] will open the soft copy of the Bids (Qualification Proposals) at the time and on the date specified in the Bid Schedule at the following address:

**[** Designation of the Representative and Address]

The Financial Proposals of the Bids shall remain unopened in the e-Procurement System, until the subsequent public opening in accordance with Clause 28 following the evaluation of the Qualification Proposals of the Bids.

The Bids will be opened in the presence of the Bidders whose designated representatives choose to be present. The Bidders can also view the summary of opening of Bids by logging on to the e- Procurement Portal.

* 1. If the specified date for opening the Qualification Proposals is declared a holiday in [EXECUTING AGENCY]'s office, then the Qualification Proposals will be opened at the specified time and location on the next working day, which will be notified through an addendum.
  2. [EXECUTING AGENCY] will prepare a record of the opening of the Bids that will include, as a minimum, the names of the Bidders from whom Bids have been received. The Bidders' representatives who are present will be requested to sign the record. The omission of a Bidder's representative's signature on the record will not invalidate the contents and effect of the record.
  3. Once all the Qualification Proposals have been opened, they will be evaluated for responsiveness and to determine whether the Bidders are qualified for opening of the Financial Proposals. The procedure for evaluation of the Qualification Proposals is set out in Clause 27.
  4. Once the Qualification Proposals have been evaluated, all Bidders whose Qualification Proposals meet the Qualification Criteria and the Eligibility Criteria, will be informed of a date, time and place for opening of their Financial Proposals. The Financial Proposals will be opened in the presence of the representatives of the qualified Bidders that choose to be present. The procedure for evaluation of the Financial Proposals is set out in Clause 28.
  5. The qualification of Bidders will be entirely at the discretion of [EXECUTING AGENCY]. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bid Process or selection will be given.
  6. Any information contained in a Bid will not in any manner be construed as binding on [EXECUTING AGENCY], its agents, successors or assigns; but will be binding on the Bidder.

## DETERMINATION OF RESPONSIVENESS AND EVALUATION OF QUALIFICATION PROPOSALS

* 1. [EXECUTING AGENCY] will examine the Qualification Proposals to determine whether they are complete, whether the documents have been properly signed, and whether the Qualification Proposals are generally in order. If any Bidder is found to be disqualified in accordance with the terms of the RFP or if any Qualification Proposal is found to be non-responsive or not meeting the Technical Capacity or the Financial Capacity, the Bid comprising such Qualification Proposal will be rejected by [EXECUTING AGENCY] and not included for further consideration. No request for alteration, modification, substitution or withdrawal shall be entertained by [EXECUTING AGENCY] in respect of such Bid.
  2. Prior to evaluation of the Qualification Proposals, the Qualification Proposals will be evaluated to determine responsiveness to the RFP. A Qualification Proposal, shall be considered responsive only if:
     1. the Qualification Proposal and all documents specified in Clause 20 are received in the prescribed formats and original documents are received as specified in Clause 24.7;
     2. the Bid is received by the specified time on the Bid Due Date;
     3. it is signed, marked, and uploaded as stipulated in Clauses 23 and 24;
     4. it contains all the information and documents (complete in all respects) as requested in this RFP; and
     5. it does not contain any condition or qualification.
  3. [EXECUTING AGENCY] shall then evaluate and determine whether the Bidders who have submitted responsive Qualification Proposals satisfy the Eligibility Criteria and the Qualification Criteria set out at Clause 3 and Clause 4 respectively.
  4. In order to determine whether the Bidder satisfies the Eligibility Criteria set out at Clause 3 and the Qualification Criteria set out in Clause 4, [EXECUTING AGENCY] will review the documentary evidence of the Bidder's eligibility and qualifications submitted by the Bidder and any additional information which [EXECUTING AGENCY] seeks from the Bidder.
  5. Where any information provided by a Bidder is found to be patently false or amounting to a material misrepresentation, [EXECUTING AGENCY] reserves the right to reject the Bid submitted by such Bidder.
  6. Upon completion of evaluation of the Qualification Proposals, and the i

objection (if applicable), [EXECUTING AGENCY] will notify in writing those Bidders whose

Bids were considered non-responsive to the RFP or failed to meet the Qualification Criteria set out in this RFP, advising them of the following information:

* + 1. their Qualification Proposals of Bid failed to meet the requirements of the RFP and the reasons for disqualification;
    2. their Financial Proposals of Bid shall not be opened; and
    3. notify them of the date and time for public opening of Financial Proposals of the Bids.
  1. [EXECUTING AGENCY] shall, simultaneously, notify in writing those Bidders whose Qualification Proposals have been evaluated as substantially responsive to the RFP and met all Qualifying Criteria, advising them of the following information:
     1. their Qualification Proposal has been evaluated as substantially responsive to the RFP and met the Qualification Criteria;
     2. their Financial Proposal of Bid will be opened at the public opening of the Financial Proposals; and
     3. notify them of the date and time on which their Financial Proposals will be opened.

## PUBLIC OPENING AND EVALUATION OF FINANCIAL PROPOSALS

28.1 [EXECUTING AGENCY] shall open the Financial Proposals of only those Bidders, whose Qualification Proposals meet the criteria set out in this RFP.

28.2   

designated representatives and anyone who chooses to attend, and this could also be viewed by the Bidders online. [EXECUTING AGENCY] shall open the Financial Proposal of each qualified Bidder and announce the [LOCATION] Facilities Bid Price quoted by each Bidder. [EXECUTING AGENCY] shall prepare the minutes of the online opening of the Financial Proposals which will be signed by the representatives of the Bidders present at the time of opening and upload these minutes for viewing online.

## Evaluation of Financial Proposals

* + 1. Following the opening of the Financial Proposals, [EXECUTING AGENCY] shall evaluate the Financial Proposals for responsiveness. If any Financial Proposal is found:
       1. not to be complete in all respects;
       2. not duly signed by the authorized signatory of the Bidder/Lead Member;
       3. not to be in the prescribed format; or
       4. to contain any handwritten values
       5. not in accordance with the Clause 21.3;

then such Financial Proposal shall be deemed to be substantially non-responsive.

* + 1. Financial Proposals, which are substantially responsive to the Bidding Documents (comprising RFP and Concession Agreement), shall be evaluated for each STP included in the scope of work, by adding various components of quoted [LOCATION] Facilities Bid Price for as under (on the basis of net present value):

## Design-Build Price (Bid Project Cost) including all taxes & GST;

* + - 1. **O&M prices for STP and/or FSTP for 15 years**

= ([LOCATION] Facilities O&M Charges including all taxes & GST for first month after COD) \* 180

* + - 1. **Cost of Energy Consumption for STP and /or FSTP during 15 years of O&M Period**= Average Guaranteed Energy Consumption per MLD flow rate \* Base Energy Tariff Rate \* STP and/or FSTP Design Capacity \* Number of days of the O&M period

For the purpose of this calculation of energy cost:

Average Guaranteed Energy Consumption per MLD flow rate = Average of different Guaranteed Energy Consumption figures in KWh quoted in Bid Price Sheet for treating various combinations of effluent flow rates and BOD;

Base Energy Tariff Rate = INR [Rate]/KWh; and Number of days of the O&M period = 5475

* + - 1. **Cost of Land required for the STP and/or FSTP** = [LOCATION] Facilities

Land Requirement in sq.m. as quoted by the Bidder \* [LOCATION] Facilities Land Price per sq.m.

For the purpose of evaluation, land price = INR [Price] per sqm

* + - 1. **O&M prices for Associated Infrastructure for 15 years**= ([LOCATION] Facilities O&M Charges including all taxes & GST for first month after COD)

\* 180

* + - 1. **Cost of Energy Consumption for Associated Infrastructure during O&M period**= Average Guaranteed Energy Consumption per MLD flow rate \* Base Energy Tariff Rate \* Pumping Capacity\* Number of days of the O&M period

For the purpose of this calculation of energy cost:

Average Guaranteed Energy Consumption per MLD flow rate = Average of different Guaranteed Energy Consumption figures in KWh quoted in Bid Price Sheet for treating various combinations of effluent flow rates and BOD;

Base Energy Tariff Rate = INR [Rate]/KWh; and Number of days of the O&M period = 5475

**Total Evaluated [LOCATION] Facilities Bid Price** = (i) + (ii) + (iii) + (iv) + (v) + (vi)

* + 1. [EXECUTING AGENCY] shall compare the Total Evaluated [LOCATION] Facilities Bid Price of all substantially responsive Financial Proposals to determine the Lowest Evaluated Bid.
    2. The Bidder whose Bid has been determined to be the Lowest Evaluated Bid, will be the Preferred Bidder, and shall be selected for award.
    3. The Preferred Bidder shall ordinarily be the Selected Bidder.
    4. If the Bid Price determined for 2 or more qualified Bidders is the same, then the Bidder whose Net Worth is higher shall be the Preferred Bidder.

If the Preferred Bidder is disqualified or rejected for any reason whatsoever, then the procedure set out in Clause 7.2 shall follow.

## CLARIFICATION ON BIDS

* 1. To facilitate evaluation of the Bids, [EXECUTING AGENCY] may, in its sole discretion, seek clarifications and/or any additional information from any Bidder regarding its Bid (including if the Bid is not signed, marked and sealed in accordance with Clauses 23 and 24). Such clarification(s) will be provided within the time specified by [EXECUTING AGENCY] for this purpose. Any request for clarification(s) and all responses to such clarification(s) will be in writing. Any clarification submitted by a Bidder that is not in response to a request by [EXECUTING AGENCY] will not be considered.
  2. If a Bidder does not provide clarifications and/or any additional information sought under Clause

29.1 within the prescribed time, its Bid may be liable for rejection. If the Bid is not rejected, [EXECUTING AGENCY] may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder will be barred from subsequently questioning such interpretation of [EXECUTING AGENCY].

## PART E. AWARD OF PROJECT

1. **LETTER OF AWARD (LOA)**
   1. After declaration of the Selected Bidder, [EXECUTING AGENCY] will issue the LOA to the Selected Bidder in duplicate:
      1. declaring it as the Selected Bidder;
      2. accepting its Financial Proposal;
      3. requesting it to sign and return, as acknowledgement, a copy of the LOA within 15 days of receipt of the LOA;
      4. requesting it to submit the Performance Securities and O&M securities in accordance with Clause 16,16A and 16B; and
      5. requesting it to incorporate the Special Purpose Vehicle, which will act as the Concessionaire.
   2. If the Selected Bidder fails to return a duly signed copy of the LOA to [EXECUTING AGENCY] within 15 days of receipt of the LOA, then [EXECUTING AGENCY] may, unless it consents to an extension, without prejudice to any of its rights under the RFP or law, disqualify the Selected Bidder, revoke the LOA, and forfeit the Bid Security. If [EXECUTING AGENCY] elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.
   3. After notification of award in accordance with Clause 30.1, [EXECUTING AGENCY] may also notify all other Bidders of the results of the bidding, and shall publish in UNDB online and the Procurement Portal, results of the bidding process and the following information:
2. name of each Bidder who submitted a Bid;
3. results of evaluation of Qualification Proposals;
4. names of bidders whose Qualification Proposals were rejected and the reasons for their rejection
5. bid prices as read out at opening of Financial Proposals;
6. name and evaluated prices of each Bid that was evaluated;
7. names of bidders whose Financial Proposals were rejected and the reasons for their rejection; and
8. name of the Selected Bidder, the Price it offered, and summary scope of the contract awarded.
   1. [EXECUTING AGENCY] shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with Clause 30.3, requests in writing the grounds on which its bid was not selected.

## EXECUTION OF THECONCESSION AGREEMENT

* 1. The Special Purpose Vehicle incorporated by the Selected Bidder shall execute the Concession Agreement in the draft form provided by [EXECUTING AGENCY], with minimal changes or

amendments to reflect facts or to correct minor errors. [EXECUTING AGENCY] shall, within 15 days of the acceptance of the LOA by the Selected Bidder, provide the Selected Bidder with the final execution draft of the Concession Agreement.

* 1. [EXECUTING AGENCY] shall not entertain any request from the Selected Bidder for negotiations of or deviations to the final execution draft of the Concession Agreement provided by [EXECUTING AGENCY] under Clause 31.1.
  2. If the Selected Bidder seeks to materially negotiate or seeks any material deviations from the final execution draft of the Concession Agreement, [EXECUTING AGENCY] may elect to disqualify the Selected Bidder and revoke the LOA issued to the Selected Bidder. If [EXECUTING AGENCY] elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.
  3. Subject to satisfaction of the conditions specified in Clause 30.1 and any other conditions specified in the LOA, the Special Purpose Vehicle incorporated by the Selected Bidder shall execute the Concession Agreement within 45 days from the date of acceptance of the LOA by the Selected Bidder.
  4. If the Special Purpose Vehicle fails to execute the Concession Agreement on or before the date specified in Clause 31.4, [EXECUTING AGENCY] may, unless it consents to an extension, without prejudice to any of its rights under the RFP or law, disqualify the Selected Bidder, revoke the LOA and forfeit the Bid Security. If [EXECUTING AGENCY] elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.

## ANNEXURES ANNEXURE 1A

FORMAT OF BID LETTER

*[The bidder must prepare this Letter of Bid on stationery with its letterhead, clearly sho*

*complete name and business address]*

Date: Place:

To,

**[ Designation of the Representative]** [EXECUTING AGENCY]**, [LOCATION]**

Sub: Bid for [LOCATION] STP PPP Project

# Sir/Madam,

Please find enclosed our Qualification Proposal in respect of the above-mentioned project and complying with the Request for Proposal (RFP) issued by the [EXECUTING AGENCY] dated [Date of issue of RFP].

We hereby confirm the following:

1. The Qualification Proposal is being submitted by ***(name of the Bidder/Lead Member)***, who is the Bidder/Lead Member of the Consortium [comprising

***(mention the names of the entities who are Members)*]**22*,* [in association with ***(mention the name of the entity)*** as the Nominated STP Sub-Contractor]**23** [, in association with ***(mentioned the name of the entity)*** as the technology provider]**24** in accordance with the terms and conditions stipulated in the RFP.

1. We have examined in detail and have understood the terms and conditions stipulated for qualification of the Bidders in the RFP issued by [EXECUTING AGENCY]. We agree and undertake to abide by all these terms and conditions. We acknowledge and agree to submission of an unconditional Bid.

22 To be deleted if the bidder is a single entity

23 To be deleted if not applicable

1. This statement is made for the express purpose of qualifying as a Bidder for the design, finance, construction, completion, operation and maintenance of the Moradabad Facilities in accordance with the relevant Concession Agreement.
2. We acknowledge that [EXECUTING AGENCY] and (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Bidder for implementing the Project, and we certify that all information provided in the Bid and Annexures is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. The information submitted with respect to our Qualification Criteria is complete, and strictly as per the requirements stipulated in the RFP. We would be solely responsible for any errors or omissions in our Bid.
4. We shall make available to [EXECUTING AGENCY] any additional information it may find necessary or require to supplement or authenticate the Bid.
5. We acknowledge the right of [EXECUTING AGENCY] to reject our Bid without assigning any reason or otherwise and we hereby waive, to the extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. We acknowledge the right of [EXECUTING AGENCY] to not award the Project without assigning any reason or otherwise and we hereby waive, to the extent permitted by applicable law, our right to challenge the same on any account whatsoever.
7. We certify that in the 3 Financial Years immediately preceding the Bid Due Date, we or any Member of our Consortium [or Nominated STP Sub-Contractor]**25** has not been affected by any of the following circumstances:
   1. failure to perform any contract, as evidenced by the imposition of a penalty by an arbitral or judicial authority or arbitration award or a judicial pronouncement against us or any Member;
   2. expulsion from any project or contract by GoI or any State Government, or its instrumentalities;
   3. termination of a contract by GoI or any State Government, or its instrumentalities for breach by us or any Member;
   4. having been categorized as a wilful defaulter in accordance with Applicable Laws;
   5. being subject to proceedings for declaration of or being declared bankrupt, being wound up, or having its affairs administered or conducted by any court, administrator, receiver;
   6. having been declared by a court or other competent authority as being unable to pay its debts, or having made any composition or arrangements with creditors or having had the repayment of its debts suspended; or
   7. having being convicted or otherwise being found responsible (or having any of its directors, partners, trustees, officers or managers convicted or being found responsible) by any court, tribunal, regulatory, public or other competent authority for a breach of any laws or regulations which:
      1. related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation or other payment was levied against us or any of our directors, partners, trustees, officers or managers; or
      2. resulted in the permanent or temporary suspension of our rights to provide any service or carry on any type of business or operations.
8. We certify that we or any Member of our Consortium [or the Nominated STP Sub-Contractor]**26** have not been determined to be ineligible by the World Bank/ any other multi-lateral agency under the guidelines on preventing and combating fraud and corruption.
9. We certify that we or any Member of our Consortium [or the Nominated STP Sub-Contractor]**27** have not been barred by GoI or any State Government, or its instrumentalities from participating in any project or being awarded any contract and no such bar subsists on the Bid Due Date.
10. We declare that:
11. we have examined and have no reservations to the RFP and do not seek any deviations to the RFP, including any Addendum issued by [EXECUTING AGENCY];
12. we do not have any Conflict of Interest in accordance with Clauses 3.3 of the RFP;
13. 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 3.4 of the RFP, in respect of any tender or request for proposal issued by or any agreement entered into with [EXECUTING AGENCY] or (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) ; and
14. we hereby certify that we have taken steps to ensure that in conformity with the provisions of the RFP and submission of the Bid, no person acting for us or on our behalf has engaged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

26 To be deleted if not applicable

1. We understand that [EXECUTING AGENCY] may cancel the Bid Process at any time and that [EXECUTING AGENCY] is neither bound to accept any Bid that it may receive nor to invite the Bidders to submit a Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 7 of the RFP.
2. The [Bidder/ Consortium of which we are the Lead Consortium Member (strike out whichever is not applicable),] satisfies the legal requirements and in our opinion by itself/along with its Members and Associates [and the Nominated STP Sub-Contractor]**28** [and the technology provider]**29** meets all the Qualification Criteria and Eligibility Criteria laid down in the RFP.
3. We declare that we and our Associates [and the Nominated STP Sub-Contractor]**30** [and the technology provider]**31** are not submitting separate Bids for the Project.
4. We declare that we are not submitting more than 1 Bid for the Project.
5. We certify that in regard to matters other than security and integrity of the country, we or any Member [or the Nominated STP Sub-Contractor]**32** has 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.
6. We further certify that in regard to matters relating to security and integrity of the country, we or any Member [or the Nominated STP Sub-Contractor]**33** has not been charge-sheeted by any agency of the state or convicted by a court of law.
7. We further certify that no investigation by a regulatory authority is pending either against us or against any Member [or the Nominated STP Sub-Contractor]**34** or against our CEO or any of our directors/managers/employees, which could have a material adverse effect on our ability to undertake the Project.
8. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bid Process.
9. Subject to the disclosures made in Annexure 1L, we further certify that any work contracts previously undertaken by us have not been suspended or terminated and/or performance

28 To be deleted if not applicable

29 To be deleted if not applicable 30 To be deleted if not applicable 31 To be deleted if not applicable

32 To be deleted if not applicable 33 To be deleted if not applicable 34 To be deleted if not applicable

security called by an employer for reasons related to the non-compliance with any ESHS requirements or safeguard in the past 5 years

1. We undertake that in case due to any change in facts or circumstances during the Bid Process, we attract the provisions of disqualification in terms of the provisions of the RFP, we shall inform [EXECUTING AGENCY] of the same immediately.
2. In the event of us being declared as the Selected Bidder for the Project, we agree to incorporate a Special Purpose Vehicle, which will enter into a Concession Agreement provided by [EXECUTING AGENCY]. We agree not to seek any changes in or deviations from the aforesaid draft and agree to abide by the same.
3. We agree and undertake to abide by all the terms and conditions of the RFP.
4. We have studied the RFP and all the information carefully. We understand that except to the extent expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by [EXECUTING AGENCY] or in respect of any matter arising out of or concerning or relating to the Bid Process including the award of the Project.
5. [A power of attorney, by all Members of the Consortium, appointing the Lead Member, authorizing the Lead Member to sign the Bid related documents and sign the Concession Agreement, is included as part of the Bid.]35
6. A Power of Attorney from the [Bidder/Lead Member]36 authorizing the undersigned as the authorised representative, signatory and contact person who is authorised to perform all tasks including, but not limited to providing information, responding to queries, entering into contractual commitments on behalf of the Bidder etc., in respect of the Project is included as a part of the Bid.
7. [We have submitted an undertaking from the Associate for deploying the expertise of the associate for the development of the project and/ or commitment of the equity during the construction of the project.]37
8. We certify that in terms of the RFP, our Net Worth is INR [ ] (Rupees in words).
9. We certify that we have the Technical Capacity and Financial Capacity to undertake the Project.
10. We agree and understand that the Bid is subject to the provisions of the RFP. In no case, we shall have any claim or right against [EXECUTING AGENCY] if the Project is not awarded to us or our Bid is not opened.
11. To be deleted for a single entity bidder.
12. Delete Lead Member if the Bidder is a sin gle entity.

37 To be deleted if not applicable. If the Bidder is claiming the credentials of an Associate for meeting the Technical Capacity and/or Financial Capacity requirement, the Bidder shall submi addition to the formats mentioned in this RFP.

1. We have submitted all the relevant information as per the formats specified in the RFP, in 1 original and, where required, 1 copy, along with the requisite Bid Security.
2. Our Bid shall remain valid for a period of not less than 180 days from the Bid Due Date.

For and on behalf of:

Signature:

## (Authorised Representative and Signatory)

Name of the Person: Designation:

## ANNEXURE 1B DESCRIPTION OF THE BIDDER38

1.

1. Name:
2. Country of incorporation:
3. Principal Address:
4. Date of incorporation and/or commencement of business:
5. GSTIN (GST Number):
6. Br ief description of the Bidder including details of its main lines of business: [ *Note. Such description shall not exceed 5 type-written pages.*]
7. Details of individual(s) who will serve as the point of contact/communication for [EXECUTING AGENCY] and (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) :
   1. Name:
   2. Designation:
   3. Address:
   4. Telephone Number:
   5. E-mail Address:
   6. Fax Number:
8. In case of a Consortium:
   1. The information above (1-3) should be provided for all the Members of the Consortium.
   2. Additional information regarding each Member of the Consortium should be provided as per table below:

|  |  |  |
| --- | --- | --- |
| **S. No.** | **Name of Member** | **Proposed percentage holding in the total Capital of the SPV** |
| 1. |  |  |
| 2. |  |  |

38 The information above (1-3) should be provided for all the Members of the Consortium, Nominated STP Sub-Contractor (if any), Technology Provider (if any).

|  |  |  |
| --- | --- | --- |
| 3. |  |  |

1. Details of the Nominated STP Sub-Contractor, *if applicable*:
2. Details of the technology provider (in case an STP technology other than those mentioned in the CPHEEO manual is being proposed):

## ANNEXURE 1C

**FORMAT OF POWER OF ATTORNEY AUTHORISING THE SIGNATORY OF THE BID**

(*on stamp paper*)

Know all men by these presents, We *name of the Company and address of the registered office*) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (*name *



presently employed with us/the Lead Member of our Consortium and holding the position of





**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 [LOCATION] STP PPP Project proposed or being developed by the [EXECUTING AGENCY] ([EXECUTING AGENCY]) and the (Name of the state /national level agency if any)39, including but not limited to signing

and submission of all Bid documents and other documents and writings, participate in investor consultations and other conferences and providing information/responses to [EXECUTING AGENCY], representing us in all matters before [EXECUTING AGENCY] and (NAME OF THE STATE

/NATIONAL LEVEL AGENCY IF ANY) , signing and execution of all contracts including the

Concession Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with [EXECUTING AGENCY] and (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF

ANY) in all matters in connection with or relating to or arising out of our Bid for the Project and/or

upon award of the Project to us and/or till the entering into of the Concession Agreement with [EXECUTING AGENCY] and (NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY) .

**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.



For

(Signature, name, designation and address) Witnesses:

39 Delete if not applicable

1.

2.

(Notarised) Accepted

(Signature)

(Name, Title and Address of the Attorney)

*Instructions:*

1. *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.*
2. *Wherever required, the Bidder should submit for verification the extract of the charter*



*favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

## ANNEXURE 1D

**FORMAT OF CERTIFICATE FROM THE STATUTORY AUDITOR FOR NET WORTH AND COMPLIANCE WITH OTHER FINANCIAL QUALIFICATION CRITERIA**

*(On the letter head of the statutory auditor of the Bidder/Member/Associate*)

Based on the books of accounts of *(****insert name of the Bidder/Member/Associate****)* and other published information authenticated by it, this is to certify that:

* 1. As on (***insert date***), the ***(insert name of the Bidder/Member/Associate)*** Net Worth is Rs. [.] (Rupees [ ]).

Further, the annual Net Worth as per the balance sheets of the 3 Financial Years (including the above) exceeds Rs. [.] (Rupees [*mention amount in figures and words*]). The details are provided below:

**Financial Year Net Worth (Rs. Crores)**

Financial Year [ ] Financial Year [ ] Financial Year [ ]

The Net Worth of Rs. [.] (Rupees [.] has been calculated in accordance with the terms set out in the Request for Proposal (**RFP**) issued by [EXECUTING AGENCY] on [*insert date*].

* 1. ***(insert name of the Bidder/Member/Associate)*** is not affected by and has not been affected by any of the following events, conditions or circumstances in the 3 Financial Years immediately preceding the Bid Due Date:
     1. having been categorized as a willful defaulter in accordance with Applicable Laws;
     2. being subject to proceedings for declaration of or being declared bankrupt, being wound up, or having its affairs administered or conducted by any court, administrator, receiver; or
     3. having been declared by a court or other competent authority as being unable to pay its debts, or having made any composition or arrangements with creditors or having had the repayment of its debts suspended.

Name of the auditor: Seal of the auditor: Signature:

Name:

Membership Number: Designation:

Date:

*Instructions:*

*In the event that the Networth of an Associate is being claimed, the Bidder should also provide a certificate in the format set out at Annexure 1G.*

## ANNEXURE 1E PART I

**FORMAT OF DETAILS OF THE DEVELOPMENT/DESIGN AND CONSTRUCTION EXPERIENCE FOR ELIGIBLE STP/ ETP/ CETP**

|  |  |  |
| --- | --- | --- |
| **Item**  (1) | **Refer**  **Instruction** | **Details of the Project** |
| Entity claiming experience |  |  |
| Title and Nature of the project (STP/ ETP/ CETP) |  |  |
| Capacity of the project and technology |  |  |
| Entity for which project was developed/designed and constructed | (2) |  |
| Project Cost |  |  |
| Location |  |  |
| Date of award, completion/ commissioning of project/status of project | (3), (4) |  |
| Whether credit is being taken for the experience of an Associate (Yes/No) | (5) |  |
| Whether credit is being taken for the experience of a Nominated STP Sub- Contractor (Yes/No) | (6) |  |
| In case of development experience, shareholding in the company developing and owning the project | (7) |  |

*Instructions:*

1. *Bidders are expected to provide information in respect of the STP/ ETP/ CETP project for which they are claiming design and construction/development experience. A separate sheet should be filled for each STP project.*
2. *In case of development experience, details such as name, postal address, email address and contact details of the authority/implementing agency (i.e., concession grantor) should be provided. In case of design and construction experience, details such as name, postal address, email address and contact details of both the developer (i.e., the concessionaire) and the authority/implementing agency (i.e., the concession grantor) should be provided.*
3. *The date of award of the project and completion or commissioning of the project, as the case may be, should be indicated.*
4. *In case of development experience, the completion certificate/commissioning certificate issued by the relevant government authority and signed by the executive engineer or an equivalent officer, certifying the date of award of the project, the date of completion/commissioning of the project and that the project has been commissioned and completed (as required under the relevant concession agreement or similar contract) should be provided. In case of design and construction experience, the completion certificate/commissioning certificate issued by the client and signed by a duly authorized officer, certifying the date of award of the project, the date of completion/commissioning of the project and that the project has been successfully commissioned and completed (as required under the relevant concession agreement or similar contract for the STP) should be provided.*
5. *In the event that credit is being taken for the experience of an Associate, the Bidder should also provide a certificate in the format set out at Annexure 1G.*
6. *A certificate from the statutory auditor should be furnished stating the shareholding in the entity developing the STP/ ETP/ CETP project in the format set out at Annexure 1F.*
7. *Experience for any activity relating to a STP/ ETP/ CETP project shall not be claimed by two or more Members of the Consortium or the Nominated STP Sub-Contractor (if applicable. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.*
8. *It may be noted that in the absence of any detail in the above format and/or the certificate(s) issued by the relevant government authority/client, the information would be considered inadequate and could lead to exclusion of the relevant project in determining whether the Bidder meets the Qualification Criteria.*

## ANNEXURE 1E PART II

**FORMAT OF DETAILS OF THE OPERATION AND MAINTENANCE (O&M) OF ELIGIBLE STP/ ETP/ CETP**

|  |  |  |
| --- | --- | --- |
| **Item**  (1) | **Refer Instruction** | **Details of the Project** |
| Entity claiming experience |  |  |
| Title and Nature of the project (STP/ ETP/ CETP) |  |  |
| Capacity of the project and technology |  |  |
| Entity for which project being operated and maintained | (2) |  |
| Location |  |  |
| Duration for which O&M experience is being claimed (From month, year to month, year) | (3) |  |
| Whether credit is being taken for the experience of O&M as an Associate (Yes/No) | (4) |  |
| Whether credit is being taken for the experience of O&M of Nominated STP Sub-Contractor (Yes/No) | (5) |  |

*Instructions:*

1. *Bidders are expected to provide information in respect of the STP/ ETP/ CETP for which they are claiming operations and maintenance experience. A separate sheet should be filled for each STP project.*
2. *Details such as name, postal address, email address and contact details of the client and/ the relevant government authority (i.e., the implementing agency) should be provided.*
3. *The duration of the O&M experience must be at least 12 consecutive months in the 10 years immediately preceding the Bid Due Date.*

*For each STP/ ETP/ CETP project, a certificate issued by the relevant government authority (i.e., the implementing agency) and signed by the executive engineer or an equivalent officer*

*certifying the Bidder/Member/Associate that the Bidder/Member/Associate has successfully operated and maintained the STP/ ETP/ CETP for at least 12 consecutive months in the 10 years immediately preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STP/ ETP/ CETP should be provided.*

1. *In the event that credit is being taken for the experience of an Associate, the Bidder should also provide a certificate in the format set out at Annexure 1G.*
2. *It may be noted that in the absence of any detail in the above format and the certificate(s) issued*

*by the relevant government authority, the information would be considered inadequate and could lead to exclusion of the relevant project in determining whether the Bidder meets the Qualification Criteria.*

## Annexure- 1E Part-III

**Technical Capacity of the Bidder@**

(*Refer to Clauses 4.1 and 3.5 of the RFP*)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Bidder type**  **#** | **Proposed**  **Equity Shareholding in Consortium (%)** | **Project**  **Code\*\*** | **Cate-**  **gory$** | **Experience*¥***  $$  Payments Payments | | |
| made/ received for construction of Eligible  Projects | made for development of Eligible Projects in  Category 1 | Revenues  appropriated from Eligible Projects in Category 1  and/or |
| **(1)** | **(2)** | **(3)** | **(4)** | **(5)** | **(6)** | **(7)** |
| Single  entity Bidder |  | A |  |  |  |  |
| B |  |  |  |  |
| C |  |  |  |  |
|  |  |  |  |  |
| Consortium  Member 1 |  | 1a |  |  |  |  |
| 1b |  |  |  |  |
| 1c |  |  |  |  |
|  |  |  |  |  |
| Consortium  Member 2 |  | 2a |  |  |  |  |
| 2b |  |  |  |  |
| 2c |  |  |  |  |
|  |  |  |  |  |
| Nominated  STP Sub-  Contractor |  | 3a |  |  |  |  |
| 3b |  |  |  |  |
| 3c |  |  |  |  |
|  |  |  |  |  |
| **Threshold Technical Capability** | | | | | | |

*@ Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate and/ or by a project company eligible under Clause 4.1(a)(C)(ii). In case of Category 1, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 4.1(a)(C)(iii) and for Category 2, include only those projects where the payments made/received exceed the amount specified in Clause 4.1(a)(D).*

*# A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 20.1(g), shall be provided.*

*\*\* Refer Annexure-1E Part-IV.*

*$ Refer Clause 4.1(a)(B).*

*¥ In the case of Category 2, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included for submission as an Eligible Project.*

*$$ For conversion of US Dollars to Rupees, the rate of conversion shall be as per the rate as on 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.*

## Annexure 1E Part-IV Details of Eligible Projects

**Project Code:**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Item**  (1) | | | | **Refer Instruction** | **Particulars of the Project**  (3) | | | |
| Entity Claiming Experience | | | |  |  | | | |
| Capacity technology | of | the | Project & |  |  | | | |
| Title & nature of the project | | | |  |  | | | |
| Category | | | | 3 |  | | | |
| Year-wise (a) payments received/ made for construction, (b) payments made for  development of PPP | | | | 4 | **Financial Year** | **Payment Cr.)** | **(In** |  |
| FY |  | |
|  |  | |
| Entity for which the project was constructed/ developed | | | | 5 | FY |  | |  |
| FY |  | |
| Location | | | |  |  |  | |  |
| Project cost | | | | 6 | FY |  | |  |
| Date of award, completion/ commissioning of project/ | | | |  |  |  | |  |
| FY |  | |
| **Total** |  | |
| Date of completion/ commissioning | | | | 7 |  |  | |  |
|  | | | |
| Equity shareholding  (with period during which | | | | 8 |  | | | |
| Whether credit is being taken for the Eligible Experience of | | | | 13 |  | | | |

**Instructions:**

* 1. *Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited shall comply with the eligibility criteria specified in Clause 4.1(a)(C) and 4,1(a)(D) 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.*
  2. *A separate sheet should be filled for each Eligible Project.*
  3. *Refer to Clause 4.1(a)(B) of the RFP for category number.*
  4. *The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Annexure-1E Part-III. The figures to be provided here should indicate the break-up for the 5 (five) financial years as mentioned in the table. For Category 1, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 4.1(a)(C)(iii). In case of Category 2, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 4.1(a)(D). Payment for construction works should only include capital expenditure and should not include expenditure on repairs and maintenance.*
  5. *In case of projects in Category 1, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided. In case of projects in Category 2, similar particulars of the client need to be provided.*
  6. *Provide the estimated capital cost of Eligible Project. Refer to Clauses 4.1(a)(C) and 4.1(a)(D).*
  7. *For Category 1, the date of commissioning of the project, upon completion, should be indicated. In case of Category 2, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.*
  8. *For Category 1, 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 4.1(a)(C)).*
  9. *Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever. Further, in case of a Nominated STP Sub-Contractor, the experience for any activity relating to an Eligible Project shall not be claimed by both the Bidder and the Nominated STP Sub-Contractor.*
  10. **

*formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate/ Nominated STP Sub- Contractor may provide the requisite certification.*





* 1. *If the Bidder is claiming experience under Category 1, it should provide a certificate from its statutory auditor in the format below:*



**Certificate from the Statutory Auditor regarding PPP projects**

Based on its books of accounts and other published information authenticated by it, this is

 STP Sub-

Contractor) is/ was an equity shareholder in (title of the project company) and

 40 of the

. (date)41   commissioning of the project).

We further certify that the total estimated capital cost of the project is Rs.

expenditure was incurred during the past five financial years as per year-wise details noted below:

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 4.1(a)(B) and 4.1(a)(C)(iv) of the RFP

-wise details noted

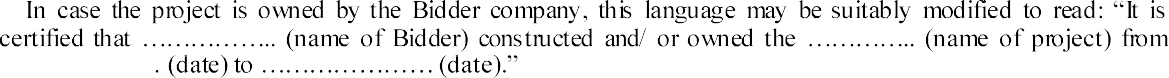
below:

Name of the audit firm:

(Signature, name and designation of the authorised signatory)

Seal of the audit firm: Date:

40 Refer Instruction 8 to this Annexure.



41





* 1. *If the Bidder is claiming experience under Category 2, 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**

Based on its books of accounts and other published information authenticated by it, {this is

 -

 42. The construction of

Rs.   Bidder/Member/Associate/ Nominated STP Sub-Contractor) received/ paid Rs

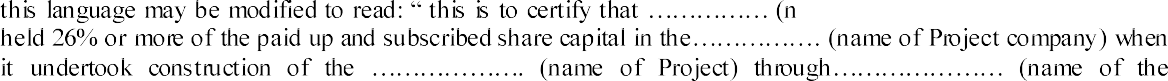
during the past five financial years as per year-wise details noted below:

{It is further certified that the payments/ receipts indicated above are restricted to the share of the Bidder who undertook these works as a partner or a member of Joint Member/ Consortium.}43

Name of the audit firm:

(Signature, name and designation of the authorised signatory)

Seal of the audit firm: Date:



42 In case the Bidder owned the Eligible Project and engaged a contractor for undertaking the construction works,

ame of Bidder/ Member/ Associate)

contractor).

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

* 1. *In the event that credit is being taken for the Eligible Experience of an Associate, the Bidder should also provide a certificate in the format provided in Annexure 1G.*





Based on its book of accounts and other published information authenticated by it, this is to certify

*(name of the Bidder/Member/Associate/ Nominated STP Sub-Contractor)*

is/was an  *(title of the project company) which developed an*

*STP/ ETP/ CETP [strikeout whichever is not applicable] of [Insert capacity of STP/ ETP/ CETP] MLD at [Insert location of STP/ ETP/ CETP] for [Insert name of implementing agency/client]* and

*Insert name of the project company*] as on the [Bid Due Date/commercial operations date/date of issuance of the completion certificate or any other equivalent certificate by the relevant government authority/client.] for such STP/ ETP/ CETP.

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation of the authorised signatory)

Date:

## ANNEXURE 1F

**FORMAT OF CERTIFICATE FROM THE STATUTORY AUDITOR REGARDING DEVELOPMENT EXPERIENCE**

Based on the authenticated record of [*Insert name of the Company*], this is to certify that [more than 50% (fifty per cent) of the subscribed and paid up voting equity of

e of the Bidder/Member/ Associate) is held, directly or

By virtue of the aforesaid, the latter exercises control over the former, who is an Associate.]

ate) has the power, directly or indirectly, to

operation of law, contract or otherwise]. By virtue of the aforesaid, the former exercises control over the latter, who is an Associate.]

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

{Describe the share-holding of the Bidder/Member and the Associate. In the event the Associate is under common Control with the Associate/Consortium Member or the Control is exercised by operation of law, the relationship may be suitably described and similarly certified herein.}

Name of the Bidder/Member:

Seal of the Bidder/Member:

(Signature, name and designation of the authorised signatory).

Date:

## ANNEXURE 1G

**FORMAT OF SELF-ATTESTED CERTIFICATE REGARDING ASSOCIATE**

## Self-Attested Certificate regarding Associate



**ANNEXURE 1H**

## FORMAT OF INFORMATION ON LI TIGATION

(To be provided by the Bidder/each Member/ Nominated STP Sub-Contractor)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **S.**  **No.** | **Name** | **Forum and Counterparty** | **Brief Description of the matter** | **Estimated financial** | **Current Status of** | **Orders passed Against the** |
|  |  |  |  | **liability** | **Litigation** | **Bidder/Member/** |
|  |  |  |  |  |  | **Nominated STP** |
|  |  |  |  |  |  | **Sub-Contractor** |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

## ANNEXURE 1I

**FORMAT OF BID SECURITY (BANK GUARANTEE)**

*(On stamp paper)*

## B.G. No: Dated:

WHEREAS, ...........................(*name of Bidder including names of all Joint Venture Participants*)

 *date*) for

the performance of (*name of Contract*).

KNOW ALL PEOPLE by these presents that We (name of Bank) of





....................for which payment well and truly to be made to the said Owner, the Bank binds itself, its successors, and assigns by these presents.

*[The Bidder should insert the amount of the guarantee in words and in figures. This figure should be the same amount as set out in ITB Section 15.1 and the Bid Data Sheet. The details related to the Bid Security are set out in the same ITB Section 15]*

The CONDITIONS of this obligation are:

1. if the Bidder withdraws its Bid during the Bid Validity Period; or
2. if the Bidder, having been notified of the acceptance of its Bid by the Owner during the period of Bid validity,
   1. fails to sign the Form of Contract in accordance with and when required by ITB Section 23; or
   2. fails to provide the performance security to the Owner in accordance with and when required by ITB Section 16.

We undertake to pay to the Owner up to the above amount upon receipt of its first written demand, without the Owner having to substantiate its demand, provided that in its demand the Owner will note that the amount claimed by it is due to it owing to the occurrence of one or more of the conditions set out above, specifying the occurred condition or conditions.

This Guarantee will remain in full force up to and including 45 days after the expiry of the Bid

Validity Period and it may be extended by the Owner in accordance with the Bidding Documents, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date or the extended date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758 except that the supporting statement under Article 15(a) is hereby excluded.

SEALED with the Common Seal of the said Bank this ....... day of ...................., *[Year]*.

WITNESS SIGNATURE OF THE BANK

(Signature, name and address) SEAL

Name:

Position:

## ANNEXURE 1J

**FORMAT OF POWER OF ATTORNEY FOR APPOINTING LEAD MEMBER**

(*On requisite stamp paper*)

Whereas the [EXECUTING AGENCY] ([EXECUTING AGENCY]) has invited Bids from interested parties for the **(NAME OF THE STATE /NATIONAL LEVEL AGENCY IF ANY)** [EXECUTING AGENCY] **[LOCATION] STP PPP Project** (the **Project**).





**Consortium**) being Members of the Consortium are interested in submitting a Bid for the Project in accordance with the terms and conditions of the Request for Proposal ( **RFP**) issued by [EXECUTING AGENCY] on [*Insert Date*], and

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

## NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS





having our registered office at 

**Principals**) do hereby irrevocably designate, nominate, constitute, appoint and authorise







Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the **Attorney**). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bid Process and, in the event the Consortium is awarded the Project, during the implementation of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or r the Project, including but not limited to signing and submission of all Bid related documents and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Consortium and generally to represent the Consortium in all its dealings with [EXECUTING AGENCY] and the ----------------- (Name of the state /national level agency if any)44, and/or any other government agency or any person, in all matters in connection with or relating to or arising out of the Consortium's Bid for the Project and/or upon award of the Project and/or till the Concession Agreement

44 Delete if not applicable.

is entered into with [EXECUTING AGENCY] and the ( Name of the state /national

level agency if any)45.

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS



(Signature)

(Name & Title)



(Signature)



(Name & Title) Witnesses:

1.

2.



(To be executed by all the Members of the Consortium)

(Notarised) Accepted

(Signature)

(Name, Title and Address of the Attorney)

*Instructions:*

1. *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*

45 Delete if not applicable

*is so required, the same should be under common seal affixed in accordance with the required procedure.*

1. *Also, wherever required, the Bidder should submit for verification the extract of the charter*



*favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

1. *For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the power of attorney is being issued. However, the power of attorney provided by the Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

## ANNEXURE 1K

**FORMAT OF JOINT BIDDING AGREEMENT**

THIS JOINT BIDDING AGREEMENT ("**Agreement ** 



AMONGST

1.  **First Part** which expression will, unless

repugnant to the context include its successors and permitted assigns);

AND

2. registered office at (referred to as the **Second Part** which expression will, unless repugnant to the context include its successors and permitted assigns);



[[AND

3.   **Third Part** which expression will, unless repugnant to the context include its successors and permitted assigns).]



The above mentioned parties of the FIRST [and] [,] SECOND, [and] [,] [THIRD] are collectively referred to as the **Parties** and each is individually referred to as a **Party**.

## WHEREAS

1. [EXECUTING AGENCY] (referred to as [EXECUTING AGENCY], which expression will, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids by its Request for Proposal No dated [ ] (the **RFP**) for selection of a
2. Bidder for the design, finance, construction, completion, operation and maintenance of the Facilities on the relevant Site in [LOCATION], on a hybrid annuity PPP basis in accordance with the Concession Agreement (the **Project**).
3. The Parties are interested in jointly bidding for the Project as Members of a Consortium and in accordance with the terms and conditions of the RFP.
4. It is a necessary condition under the RFP that the Members will enter into a Joint Bidding Agreement and furnish a copy of it with the Bid.

## NOW IT IS HEREBY AGREED as follows:

1. **Definitions and interpretations**

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

## Consortium

* 1. The Parties do hereby irrevocably constitute a consortium (the **Consortium**) for the purposes of jointly participating in the Bid Process for the Project.
  2. The Parties hereby undertake to participate in the Bid Process only through this Consortium and not individually and or through any other consortium constituted for the Project, either directly or indirectly or through any of their Associates.

## . Covenants

* 1. The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it will incorporate a special purpose vehicle (**SPV**) under the Companies Act for entering into the Concession Agreement with (Name of the state /national level agency if any) 46 and [EXECUTING AGENCY] for undertaking the Project.
  2. The Members of the Consortium undertake that they shall be jointly and severally responsible and liable for all matters arising out of or in relation to this RFP.

## . Role of the Parties

* 1. The Parties hereby agree that Party of the First Part will be the Lead Member of the Consortium and will have the power of attorney from all Parties and bind all Parties for and in conducting all business for and on behalf of the Consortium during the Bid Process and, if the Consortium is declared as the Selected Bidder, during the execution of the Project.
  2. Party of the Second Part will be [ ].
  3. Party of the Third Part will be [ ]

## . Shareholding in the SPV

* 1. The Parties agree that the proportion of shareholding among the Parties in the SPV will be as follows:

First Party:

Second Party:

[Third Party:]

* 1. The Parties undertake that:
     1. the First Party, acting as the Lead Member of the Consortium, will control the SPV and subscribe for and hold a minimum of 26% of the total Capital and voting rights of the SPV from the Effective Date until 3 years after the [LOCATION] Facilities COD, and

46 Delete if not applicable. In such a case the agreement will be bipartite.

* + 1. the [Second and/or the Third] Party, whose [Technical Capacity and/or Financial Capacity] is being assessed, will hold at least 26% of the total Capital and voting rights of the SPV from the Effective Date until 3 years after the [LOCATION] Facilities COD.
  1. The Parties undertake that they will comply with all equity lock-in requirements set out in this Agreement and in the Concession Agreement.

## Representations of the Parties

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

* 1. such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
  2. the execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
     1. ) require any consent or approval not already obtained;
     2. violate any applicable law presently in effect and having applicability to it;
     3. violate the memorandum and articles of association, by-laws or other applicable organisational documents;
     4. ) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
     5. ) 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;
  3. this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it;
  4. there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement, and
  5. there is no suspension or termination of any contract of any Party and/or calling of any performance security by an employer for reasons related to the non- compliance by such Party with any ESHS requirements or safeguard in the past 5 years that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

## Termination

This Agreement will be effective from the date hereof and will continue in full force for the entire duration of the Project in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is not selected for award of the Project, the Agreement will stand terminated upon return of the Bid Security as per the RFP.

## Miscellaneous

* 1. This Agreement will be governed by the laws of India.
  2. The Parties acknowledge and accept that this Agreement will not be amended by the Parties without the prior written consent of [EXECUTING AGENCY].

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 the PARTY OF THE FIRST PART by: | SIGNED, SEALED AND DELIVERED For  and on behalf of the PARTY OF THE SECOND PART by: |
| Signature) (Name)  (Designation | Signature) (Name)  (Designation |
| SIGNED, SEALED AND DELIVERED For and  on behalf of the PARTY OF THE THIRD PART |  |

|  |  |
| --- | --- |
| Signature) (Name)  (Designation |  |

In the presence of:

1 2.

***Inst ruction:***

1. *Th*

*e mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by 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.*

## ANNEXURE 1L

**FORMAT OF ENVIRONMENTAL, SOCIAL, HEALTH, AND SAFETY PERFORMANCE DECLARATION**

*[The following table shall be filled by the Bidder oreach Member, in case of a Consortium and the Nominated STP Sub-Contractor (if applicable)]*

Bidder's Name: *[insert full name]* Date: *[insert day, month, year]* Member: *[insert full name]*

RFP No. and title: *[insert RFP numberand title]*

Page *[insert page number]* of *[insert total number]* pages

|  |  |  |  |
| --- | --- | --- | --- |
| Environmental, Social, Health, and Safety Performance Declaration in accordance with Section II, Eligibility and Qualification Criteria | | | |
| **No suspension or termination of contract**: An employer has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental, Social, Health, and Safety (ESHS) performance, as specified in Section II, Eligibility and Qualification Criteria, Clause 3.5(d), at any time in the past 5 years preceding the Bid Due Date. | | | |
| **Declaration of suspension or termination of contract**: The following contract(s) has/have been suspended or terminated and/or performance security called by an employer(s) for reasons related to Environmental, Social, Health and Safety (ESHS) performance, as specified in Section II, Eligibility and Qualification Criteria, Clause 3.5(d), in the past 5 years preceding the Bid Due Date. | | | |
| **Year** | **Suspended or terminated** | **Contract Identification** | **Total Contract Amount (current** |
|  | **portion of** |  | **value, currency,** |
|  | **contract** |  | **exchange rate and** |
|  |  |  | **US$ equivalent)** |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]* | *[insert amount]* |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Address of Employer: *[insert street/city/country]*  Reason(s) for suspension or termination: *[indicate main reason(s)]* |  |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Reason(s) for suspension or termination: *[indicate main reason(s)]* | *[insert amount]* |
|  |  | *[list all applicable contracts]* |  |
| **Performance security called by an employer(s) for reasons relatedto ESHS performance** | | | |
| Year | Contract Identification | | Total Contract  Amount (current  value, currency, exchange rate and US$ equivalent) |
| *[insert year]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Reason(s) for calling of performance security: *[indicate main reason(s)]* | | *[insert amount]* |

## ANNEXURE 1M

**Undertaking for the Nominated STP Sub-Contractor**

(*On the Rs. 100 stamp paper and to be duly notarised*)

From

[*insert name of the entity issuing the undertaking*] [*insert address of the entity issuing the undertaking*]

Date: [*insert date*]

To

[EXECUTING AGENCY] [ ]

Dear Sir,

Sub: Undertaking from the Nominated STP Sub-Contractor for the *[Name of the Project]*





confirm that we have [developed]/[designed and constructed]47 and operated and maintained the following [Sewage Treatment Plant/ Effluent Treatment Plant/ Common Effluent Treatment Plant]:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Title and**  **Nature of the Project** | **Capacity of**  **the Project** | **Location** | **Entity for which the**  **[STP/ETP/CETP] was**  **developed and/or designed**  **and constructed and/or constructed** | **Date of**  **completion** |
|  |  |  |  |  |

The following information and relevant documents are being submitted along with the Bid to satisfactorily meet the RFP conditions:

* 1. Total payments received/ made and/ or revenues appropriated for each Eligible Project in the format set out in Annexure 1E Part-IV of the RFP document along with the certificate from the statutory auditor, meeting the requirement of 25% of the Threshold Technical Capability as per Clause 4.1(a)(B) of the RFP, amounting to Rs. (Rupees );
  2. certificate(s) issued by relevant government authorities to demonstrate that the [STP/ETP/CETP], experience for which is being claimed in the Bid, was developed and/or

47 Delete as applicable.

designed and constructed in the 10 years immediately preceding the Bid Due Date in accordance with the contract executed for the STP/ETP/CETP;

* 1. certificate(s) issued by relevant government authorities to demonstrate that the STP/ETP/CETP, experience for which is being claimed in the Bid, was operated and maintained for any 12 consecutive months in the 10 years immediately preceding the Bid Due Date in accordance with the contract executed for the [STP/ETP/CETP].

We hereby agree that if [*Insert name of the single Bidder/details of Consortium*] is selected as the Selected Bidder,

1. we shall enter into a contract with the Special Purpose Vehicle incorporated by the Selected Bidder to develop the Sewage Treatment Plant(s) for *[Name of the Project]* in accordance with the Concession Agreement;
2. we shall submit the hard copy of the original contract, as stated above, to the [EXECUTING AGENCY] on or before the Effective Date;
3. we shall submit to [EXECUTING AGENCY], prior to the Appointed Date, an unconditional and

irrevocable bank guarantee for an amount corresponding to 50% of the Performance Securities in accordance with the Concession Agreement. We hereby undertake that, as per the conditions stated in the Concession Agreement, the Performance Securities submitted shall be liable to be forfeited as per the Clause 4.1(a)(F)(iii) of the RFP document.

1. we shall submit to [EXECUTING AGENCY], within 60 days of the relevant Construction Completion Date or 30 days before the relevant COD, whichever is earlier, an unconditional and irrevocable bank guarantee for an amount corresponding to 50% of the O&M Securities in accordance with the Concession Agreement. We hereby undertake that, as per the conditions stated in the Concession Agreement, the O&M Securities submitted shall be liable to be forfeited as per the Clause 4.1(b)(iii) of the RFP document.

We hereby confirm that the information provided above is true and correct to the best of our knowledge, and no material fact has been concealed.



For

.

(Signature, name, designation and address)

(Notarised) Accepted

(Signature)

(Name, Title and Address of the Attorney)

*Instructions:*

*(1) For an undertaking executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the power of attorney is being issued. However, the sub-contractor undertaking provided by the Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

## ANNEXURE 2

**EXPERIENCE CERTIFICATE FOR BIOGAS POWER PLANT**

(*On the letter head of the Bidder/ Member*)

From

[*insert name of Bidder/Member*] [*insert address of Bidder/Member*]

Date: [*insert date*]

To

**[Designation of the Representative]** [EXECUTING AGENCY]**, [LOCATION] (**

We, the undersigned[*insert name of the Bidder/ Member*] having read, examined and understood in detail the RFP for development of the Project, hereby confirm that we have [developed]/ [designed and constructed]48 the following biogas power plant based on STP effluent:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Capacity of the biogas power plant | Location | Entity for which biogas plant was set up | Date of completion | Duration for which O&M experience is being claimed (From month, year |
|  |  |  |  |  |

The certificate(s) issued by relevant government authorities to demonstrate that (1) the biogas power plant was developed or designed and constructed in the 10 years immediately preceding the Bid Due Date in accordance with the contract executed for the biogas power plant; and (2) the biogas power plant [was/has been] in successful operation for at least 24 months in the 10 years immediately preceding the Bid Due Date; have been attached.

If selected as the Selected Bidder, we undertake that the Concessionaire shall set up a biogas power plant in accordance with the Concession Agreement.

Dated the day of 2019.

# 48 Delete as applicable.

(Name and signature of Authorized Signatory)

## ANNEXURE 3

**CONSENT LETTER FOR EXPERI ENCE OF BIOGAS POWER PLANT**

(*On the letter head of the entity issuing the consent letter*)

From

[*insert name of the entity issuing the consent letter*] [*insert address of the entity issuing the consent letter*]

Date: [*insert date*]

To

**[ Designation of the Representative]** [EXECUTING AGENCY]**, [LOCATION] (**

Dear Sir,

Sub: Consent Letter for Experience for Biogas Power Plant for the [LOCATION] STP PPP Project

We, the undersigned [*insert name of the entity issuing the consent letter*] hereby confirm that we have [developed]/ [designed and constructed]49 the following biogas power plant based on STP effluent:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Capacity of the  biogas power plant | Location | Entity for which  biogas plant was set up | Date of completion | Duration for which  O&M experience is being claimed (From month, year to month,  year) |
|  |  |  |  |  |

The certificate issued by relevant government authorities/clients to demonstrate that (1)the biogas power plant was developed or designed and constructed in the 10 years immediately preceding the Bid Due Date in accordance with the contract executed for the biogas power plant; and (2) the biogas power plant [was/has been] in successful operation for at least 24 months in the 10 years immediately preceding the Bid Due Date; have been attached.

We hereby agree that if [*Insert name of the single Bidder/details of Consortium*] is selected as the Selected Bidder, we shall enter into a contract with the special purpose vehicle incorporated by the Selected Bidder to develop a biogas power plant at the [Location Name] Site in accordance with the Concession Agreement:

Dated the day of 2019.

# 49 Delete as applicable.

Thanking you, Yours truly,

(Name and signature of Authorized Signatory)

## ANNEXURE 4: FORM OF PERFORMANCE SECURITY

**FORM OF PERFORMANCE S ECURITY**



**Beneficiary:** *[Name and Address of Owner]*

## Date:

**PERFORMANCE GUARANTEE NO.:**

We have been informed that *[name of Operator] ( *

Contract No. *[reference number of the contract]* dated with you, concerning a contract to design, build, operate and transfer STP, New/Replace Outfall/Interceptor sewer Line Pumping Stations, all appurtenant structures and allied works in the city of [LOCATION] 

 *[name of the Nominated STP Sub-Contractor] *

Sub-  *being nominated by the Bidder as the Sub-Contractor for STP construction and operation and maintenance*.]50.

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the [Bidder/Sub-Contractor]51, we *[name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in f igures]* ( ) *[amount in words]*, upon receipt by us of your first demand in writing accompanied by a written statement stating that the [Bidder/Sub-Contractor]52 is in breach of its obligations under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than the earlier of:

1. ) six months after the End Date, as defined in the Contract; or
2. six months after the date of termination of the Contract pursuant to its terms. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758 except that the supporting statement under Article 15(a) is hereby excluded.

Yours truly,

50 To be deleted if not applicable

51 Strikeout whichever is not applicable

52 Strikeout whichever is not applicable

*[Name of Bank]*

*Authorised Signature*

## ANNEXURE 5: FORMAT OF ENVIRONMENTAL, SOCIAL, HEALTH AND SAFETY (ESHS) PERFORMANCE SECURITY

**ES HS Demand Guarantee ESHS Demand Guarantee**

[*On requisite stamp paper*] *[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** [EXECUTING AGENCY] with its registered office *[insert address]*

**Date:** *[Insert date of issue]*

**ES HS PERFORMANCE GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that (hereinafter called **the Applicant**) has been selected as the Selected Bidder for award of contract by the Beneficiary for undertaking the Project (hereinafter called the **Contract**).

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee to secure the Concessionaire's ESHS obligations is required to be submitted by the Applicant prior to signing of the Contract.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of INR [] (Rupees []) ((*Insert amount equal to [1%] of the relevant Bid Project Cost*), such sum being payable in the types and proportions of currencies in which the contract price is payable, upon receipt by us of the Benef iciary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its Environmental, Social, Health and Safety (ESHS) obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall be valid for the term of the Contract, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

**ANNEXURE 6**

**LIST OF PUBLIC FINANCIAL INSTITUTIONS**

# Presently the following institutions have been declared as Public Financial Institutions:

1. The Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913;
2. The Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948;
3. The Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964;
4. The Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956;
5. The Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963.
6. The Infrastructure Development Finance Company Limited, a company formed and registered under the Companies Act, 1956.
7. The Industrial Reconstruction Corporation of India;
8. The General Insurance Corporation of India;
9. The National Insurance Company Limited;
10. The New India Assurance Company Limited;
11. The Oriental Fire and General Insurance Company Limited;
12. The United Fire and General Insurance Company Limited;
13. Tourism Finance Corporation of India Limited;
14. IFCI Venture Capital Funds Limited;
15. Technology Development and Information Company of India Limited;
16. Power Finance Corporation Limited;
17. National Housing Bank;
18. Small Industries Development Bank of India;
19. Rural Electrification Corporation Ltd.;
20. Indian Railway Finance Corpn. Ltd.;
21. Industrial Finance Corporation of India Ltd.;
22. Andhra Pradesh State Financial Corporation;
23. Assam Financial Corporation;
24. Bihar State Financial Corporation;
25. Delhi Financial Corporation;
26. Gujarat State Financial Corporation;
27. Haryana Financial Corporation;
28. Himachal Pradesh Financial Corporation;
29. Jammu & Kashmir State Financial Corporation;
30. Karnataka State Financial Corporation;
31. Kerala Financial Corporation;
32. Madhya Pradesh Financial Corporation;
33. Maharashtra State Financial Corporation;
34. Orissa State Financial Corporation;
35. Punjab Financial Corporation;
36. Rajasthan Financial Corporation;
37. Tamilnadu Industrial Development Corporation Limited;
38. Uttar Pradesh Financial Corporation;
39. West Bengal Financial Corporation;
40. Indian Renewable Energy Development Agency Ltd.;
41. North Eastern Development Finance Corpn. Ltd.;
42. Housing & Urban Development Corpn. Ltd.;
43. Export-Import Bank of India;
44. National Bank for Agriculture & Rural Development (NABARD);
45. National Co-operative Development Corporation (NCDC);
46. National Dairy Development Board;
47. Pradeshiya Industrial and Investment Corporation of U.P. Limited;
48. Rajasthan State Industrial Development and Investment Corporation Limited;
49. SICOM Limited;
50. West Bengal Industrial Development Corporation Limited;
51. Tamil Nadu Industrial Development Corporation Limited;
52. Punjab State Industrial Development Corpn. Ltd. (PSIDC);
53. EDC Limited;
54. Tamil Nadu Power Finance and Infrastructure Development Corporation Ltd.;
55. Tamil Nadu Urban Finance and Infrastructure Development Corporation Limited;
56. Kerala Power Finance Corporation Limited;
57. Kerala State Power & Infrastructure Finance Corporation Limited.

However, Bidders may check the correctness of above list before submitting the bid.

**Annexure -7**

**Declaration regarding customs/excise duty exemption for materials to be purchased for use in building the sewerage network including pumping stations etc.**



**To:**

**Dear Sir:**

# **Ref:** ----------------------[Name of the Project] - Certificate for Import/Procurement of Goods and materials/Construction Equipment.

1. We confirm that we are solely responsible for obtaining customs/excise duty waivers which we have considered in our bid and in case of failure to receive such waivers for reasons whatsoever, the Owner will not compensate us.

# We are furnishing below the information required by the [***EXECUTING AGENCY***] for issue of the necessary certificates in terms of the Government of India Central Excise Notification No. 108/95 along with all subsequent amendments including the amendment dt.01-03-2008 and Customs Notification No. 85/99.

1. The goods, equipment and materials for which certificates are required are as under:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Items** | **Make/ Brand Name**  **/Class** | **Capacity [where applicable]** | **Quantity** | **Value** | **State whether it will be**  **procured locally**  **or imported [if so from which country]** | **Remarks regarding**  **justification for**  **the quantity and their usage in setting up Sewerage**  **Network** |
| Goods | | | | | | |
| [a] |  |  |  |  |  |  |
| [b] |  |  |  |  |  |  |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Items** | **Make/ Brand Name**  **/Class** | **Capacity [where applicable]** | **Quantity** | **Value** | **State whether it will be**  **procured locally or imported [if so from which country]** | **Remarks regarding**  **justification for the quantity and their usage in setting up Sewerage**  **Network** |
| [c] |  |  |  |  |  |  |
| [d] |  |  |  |  |  |  |
| [e] |  |  |  |  |  |  |
| [f] |  |  |  |  |  |  |
| [g] |  |  |  |  |  |  |

# We agree that no modification to the above list is permitted after bids are opened.

1. We agree that the certificate will be issued only to the extent considered reasonable by the ***EXECUTING AGENCY*** for the work, based on the bid submitted by us, construction programme and methodology furnished along with the bid.

# We confirm that the above goods will be exclusively used for the construction of the above work. We are aware that exemption will be issued to only goods/material/equipment which form part of the work on permanent basis but not for the goods/material/equipment which are used by the us for execution of project and after completion of the project, the goods remain with the us being owner of such goods for further deployment in other projects.

Date: \_\_ \_ (Signature) \_\_

# Place: \_\_

(Printed Name) \_\_\_ (Designation) \_\_\_ \_ (Common Seal) \_\_\_ \_