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**REQUEST FOR PROPOSAL**  
**for**  
**DEVELOPMENT OF SEWAGE TREATMENT PLANTS**  
**ON Hybrid Annuity PPP BASIS**  
*Kolkata Municipal Corporation (KMC) Area, State of West Bengal*

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## 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 *KMC* or *NMCG* 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 *KMC* 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 *KMC*, *NMCG* 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 *KMC*, *NMCG* 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 *KMC*, *NMCG* 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 *KMC* is bound to qualify any Bidder or to award the Project to any Bidder. The *KMC* reserves the right to reject all or any of the Bids without assigning any reasons whatsoever.

## 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.

<b>Addendum or Addenda</b>	means an addendum or addenda to this RFP.
<b>Additional Performance Security</b>	means a performance security that must be submitted by the Selected Bidder to the <i>KMC</i> , along with <i>Performance Security and ESHS Security</i> , to secure the obligations of the Concessionaire/Bidder in relation to the <i>clause 16.5 of the RFP document</i> .
<b>Annexure</b>	means an annexure to this RFP.
<b>Appointed Date</b>	means the date of signing of the Concession Agreement.
<b>Associate</b>	means, in relation to a Bidder or a Member of a Consortium, , a Person who Controls, or is Controlled by the Selected Bidder or Member of the Selected Bidder, as the case may be.
<b>Average Guaranteed Energy Consumption</b>	means a particular facility's Average Guaranteed Energy Consumption
<b>Bank</b>	means [the International Bank for Reconstruction and Development ( <b>IBRD</b> )/International Development Association ( <b>IDA</b> )].
<b>Bid</b>	means a bid consisting of the Qualification Proposal and the Financial Proposal submitted by a Bidder for qualification and award of the Project, and <b>Bids</b> mean collectively, all the bids for the Project.
<b>Bid Due Date</b>	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 19.2.
<b>Bid Price</b>	means the aggregate of Bid Price of all of the Locations as calculated in Bid price sheet

<b>Bid Price Sheet</b>	means the sheet provided on the e-Procurement Portal, in which the Bidders shall quote, separately for each facility, the: (a) Bid Project Cost (including all Taxes and Goods and Services Tax); (b) O&M Charges for the first month after COD for the STP and the Associated Infrastructure (including all Taxes and Goods and Services Tax); (c) Guaranteed Energy Consumption for the O&M Period for the STP and for the Associated Infrastructure; and (d) Land Requirement, as required, based on which the Bid Price will be calculated.
<b>Bid Process</b>	means the single-stage bidding process, with two sub-stages, undertaken by the <i>KMC</i> 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.
<b>Bid Project Cost</b>	means any location's Bid Project Cost, as the context may require.
<b>Bid Schedule</b>	means the schedule of the Bid Process set out in Clause 2.14, as may be amended from time to time.
<b>Bid Security</b>	means a bid security that must be submitted by a Bidder along with its Bid in accordance with Clause 15.
<b>Bidder</b>	means an interested Company or a Consortium of Companies which submits a Bid to the <i>KMC</i> in accordance with this RFP and includes each Member when the Bidder is a Consortium, and <b>Bidders</b> shall be construed accordingly.
<b>BOD</b>	means biochemical oxygen demand.
<b>Capex Annuity</b>	means the <i>any location's</i> Capex Annuity, as the context may require.
<b>Capital</b>	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.
<b>Clause</b>	means a clause of this RFP.

<b>COD Certificate</b>	means the certificate issued or deemed to be issued by the <i>KMC</i> upon successful completion of the Trial Operations of the <i>Tolly's Nallah</i> Facilities and/or <i>Garden Reach</i> Facilities, in accordance with the Concession Agreement.
<b>Commercial Operations Date or COD</b>	For a facility which is to be newly constructed or renovated, means the date on which the COD Certificate is issued or deemed to be issued to the Concessionaire in accordance with the Concession Agreement.
<b>Companies Act</b>	means the (Indian) Companies Act, 1956 or the (Indian) Companies Act, 2013, as amended from time to time, as the context may require.
<b>Company</b>	means a company incorporated under the Companies Act or a foreign company incorporated under the relevant statute of its jurisdiction.
<b>Concession Agreement</b>	means the tripartite concession agreement to be executed between NMCG, the <i>Kolkata Municipal Corporation</i> and the Concessionaire. A draft of the Concession Agreement is attached to this RFP.
<b>Concessionaire</b>	means the Special Purpose Vehicle incorporated by the Selected Bidder to implement the Project.
<b>Conflict of Interest</b>	has the meaning ascribed to it in Clause 3.3.
<b>Consortium</b>	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.
<b>Construction Completion Date</b>	means, with respect to any Facility, the date on which the Construction Completion Certificate is issued or deemed to be issued to the Concessionaire and with respect to the <i>that facility</i> , in accordance with the Concession Agreement and the reference to <b>Construction Completion Date</b> shall be construed accordingly.
<b>Construction Period</b>	means the period from the Effective Date until the Construction Completion Date.
<b>Control</b>	means, with respect to a Person:  (a) the ownership, directly or indirectly, of more than 50% of the voting shares of such Person; or

	<p>(b) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise,</p> <p>and the term <b>Controlled and Controlling</b> shall be construed accordingly.</p>
<b>Effective Date</b>	means the date on which all the Conditions Precedent have been satisfied by the <i>KMC</i> , <i>NMCG</i> , and the Concessionaire in accordance with the Concession Agreement.
<b>Eligibility Criteria</b>	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.
<b>e-Procurement Portal</b>	means the e-procurement portal of the GoWB available at the following url: <a href="https://www.wbtenders.gov.in">https://www.wbtenders.gov.in</a>
<b>ESHS</b>	means environment, social, health and safety.
<b>ESHS Performance Security</b>	means any location's ESHS Performance Security, as the context may require, and the term ' <b>ESHS Performance Securities</b> ' shall mean collectively, the ESHS Performance Security of all locations combined.
<b>Facilities</b>	means the Facilities at any location or under any schedule, as the context may require, and the term <b>Facility</b> shall be construed accordingly.
<b>Financial Capacity</b>	means the financial capacity and strength of the Bidder, as determined in accordance with Clause 4.2.
<b>Financial Proposal</b>	means the financial proposal, comprising the Bid Price Sheet, to be submitted by a Bidder in accordance with this RFP.
<b>Financial Year</b>	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.
<b>Ganga 2016 Order</b>	has the meaning ascribed to it in Clause 1.2.

<b>GoI</b>	means the Government of India.
<b>GoWB</b>	means the Government of West Bengal
<b>Guaranteed Energy Consumption</b>	means the Guaranteed Energy Consumption of a particular facility, as the context may require.
<b>Guidelines</b>	has the meaning ascribed to it in Clause 1.8.
<b>Information Memorandum</b>	means the information memorandum for the Project set out in Schedule 1.
<b>Average Guaranteed Energy Consumption</b>	has the meaning ascribed to it in Clause 2.5.
<b>Bid Price</b>	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 Facilities.
<b>Bid Project Cost of any location</b>	means the cost of construction of the Facilities of that location, any power plant proposed to be set up by the Bidder at those locations, as quoted by a Bidder in its Bid, which must include the interest during construction, Taxes (other than service tax) and all other pre-operative expenses in relation to the Facilities and the power plant, if any.
<b>Capex Annuity</b>	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 Bid Project Cost, as adjusted to account for inflation in accordance with the Concession Agreement.
<b>Construction Completion Certificate</b>	means the certificate issued to the Concessionaire to certify completion of construction of the <i>particular</i> Facility in accordance with the Concession Agreement.
<b>ESHS Performance Security</b>	means a demand bank guarantee that must be submitted by the Selected Bidder or the Concessionaire to the <i>KMC</i> , in accordance with Clause 16A, to secure the obligations of the Concessionaire to comply with the ESHS requirements in relation to the Facilities of a particular location, as set out in the Concession Agreement.
<b>Facilities</b>	means collectively, the STPs, the online monitoring system, the on-site testing laboratory facilities, the main



	<p>pumping station, the intermediary pumping stations (if any), and common sewage pumping station (if any) and such other facilities associated with the STPs of that location, required to be set up/renovated/maintained by the Concessionaire, as described in greater detail in the Scope of Work and Technical Specifications.</p>
<b>Guaranteed Energy Consumption</b>	<p>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&amp;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 Facilities (at varying volumes and BOD of sewage).</p>
<b>Commercial Operations Date or COD</b>	<p>means the date on which the COD Certificate is issued or deemed to be issued to the Concessionaire, after successful Trial Operations and testing of the Facility</p>
<b>O&amp;M Charges</b>	<p>means the amount required by a Bidder per quarter (including all Taxes other than service tax) to operate and maintain the Facilities of a particular Location, excluding the Power Charges, during the O&amp;M Period.</p> <p>The O&amp;M Charges for the first quarter after the COD will be determined on the basis of the O&amp;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.</p>
<b>Payment Milestones</b>	<p>means the 8 milestones for Tolly’s Nallah Facilities or 4 milestones for Garden Reach Facilities, , listed in the Concession Agreement for release of 40% of the Bid Project Cost of each location (as adjusted to account for inflation in accordance with the Concession Agreement) to the Concessionaire.</p>
<b>Performance Security</b>	<p>means a performance security for any location (amongst Garden Reach Facilities and Tolly’s Nallah Facilities) that must be submitted by the Selected Bidder or the Concessionaire to the <i>KMC</i> on or before execution of the Concession Agreement to secure the obligations of the Concessionaire in relation to the Facilities during the Construction Period in accordance with Clause 16.</p>
<b>Power Charges</b>	<p>means the cost of the power consumed by the</p>

	<p>Concessionaire to operate and maintain the Facilities of a particular location (amongst Garden Reach Facilities, Keorapukur Facilities, Tolly's Nallah Facilities, Kudghat PS) during the O&amp;M Period, which will be calculated in accordance with the Concession Agreement.</p> <p>For the purpose of evaluation of Bids, each facility's <b>Power Charges</b> means the cost of power (for operation and maintenance of that facility) for each Bidder determined in accordance with the formula set out in the Bid Price Sheet.</p>
<b>Site</b>	means the location for the Tolly's Nallah Facilities or Garden Reach Facilities or Keorapukur Facilities or Kudghat PS in Kolkata set out in more detail in the Information Memorandum provided in Schedule 1.
<b>STP(s)</b>	means the STP(s) to be set up/renovated/maintained at the locations, as part of the Project.
<b>Supporting Infrastructure</b>	means the supporting infrastructure facilities required for the operation of each location's Facilities, which will be provided, operated and maintained by the <i>KMC</i> during the term of the Concession Agreement.
<b>Joint Bidding Agreement</b>	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.
<b>Land Price</b>	means the price of the land required by the Bidder to develop the Facilities, determined by multiplying the Land Requirement quoted by such Bidder and the Land Rate.
<b>Land Rate</b>	means the cost per Acre of the land forming the Site, which, for the purpose of this RFP shall be for Tolly's Nallah STP 1 (Police Telecom) – INR 18.89 Cr per acre Tolly's Nallah STP 2 (Kavi Nazrul) – INR 18.89 Cr per acre Tolly's Nallah STP 3 (Golf Green) – INR 18.89 Cr per acre
<b>Land Requirement</b>	means the area required by the Selected Bidder at the Tolly's Nallah Site to construct, operate and maintain the STPs.
<b>Lead Member</b>	means the Member nominated by the Members of the Selected Bidder to act as the lead member.

<b>LOA</b>	means the letter of award that will be issued by the <i>KMC</i> to the Selected Bidder in accordance with Clause 30.
<b>Location</b>	Means Tolly's Nallah Facilities or Garden Reach Facilities or Keorapukur Facilities or Kudghat PS, as the context may require
<b>Member</b>	means a member of a Consortium.
<b>MLD</b>	means million litres per day.
<b>MoWR</b>	means the Ministry of Water Resources, River Development and Ganga Rejuvenation.
<b>Net Worth</b>	<p>means the net worth of a Bidder, which shall be determined as follows, in case of a:</p> <p>(a) <b><i>Company, means</i></b></p> <p style="padding-left: 40px;">(i) subscribed and paid up equity share capital; and</p> <p style="padding-left: 40px;">(ii) reserves</p> <p style="padding-left: 40px;">LESS</p> <p style="padding-left: 40px;">(iii) revaluation reserves;</p> <p style="padding-left: 40px;">(iv) miscellaneous expenditure not written off;</p> <p style="padding-left: 40px;">(v) reserves not available for distribution to equity shareholders; and</p> <p style="padding-left: 40px;">(vi) aggregate value of accumulated losses.</p> <p>(b) <b><i>trust or society</i></b>, means the sum of available corpus and reserves;</p> <p>(c) <b><i>partnership firm</i></b>, means the sum of the partners' capital account and undistributed profits;</p> <p>(d) <b><i>limited liability partnership</i></b>, means the sum of partners' capital account and undistributed profits as per the 'Statement of Account' prepared as per Limited Liability Partnership Rules, 2009;</p> <p>(e) <b><i>sole proprietorship</i></b>, 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</p>

	(f) <b>individual</b> , 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.
<b>NMCG</b>	means the National Mission for Clean Ganga, a statutory body constituted under the Environment (Protection) Act, 1986.
<b>O&amp;M</b>	means operation and maintenance.
<b>O&amp;M Charges</b>	means the <i>Tolly's Nallah</i> O&M Charges and/or the <i>Garden Reach</i> O&M Charges and/or Keorapukur O&M Charges and/or Kudghat PS O&M Charges, as the context may require.
<b>O&amp;M Period</b>	<p>a. For Garden Reach Facilities and Tolly's Nallah Facilities means the period from the Tolly's Nallah COD till Expiry Date</p> <p>b. For Keorapukur Facilities means the period from the Keorapukur Handover Date till Expiry Date</p> <p>c. For Kudghat PS means the period from the Kudghat Handover Date till Expiry Date</p> <p>during which the Concessionaire is required to operate and maintain the Facilities for each Location.</p>
<b>Payment Milestones</b>	means the Tolly's Nallah Payment Milestones or the <i>Garden Reach</i> Payment Milestones, and <b>Payment Milestone</b> shall mean any one of them, as the context may require.
<b>Performance Security</b>	means the Tolly's Nallah Performance Security or the <i>Garden Reach</i> Performance Security, as the context may require, and the term ' <b>Performance Securities</b> ' shall mean collectively, the Tolly's Nallah Performance Security and the <i>Garden Reach</i> Performance Security.
<b>Person</b>	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.
<b>Power Charges</b>	means the Tolly's Nallah Power Charges and/or the <i>Garden Reach</i> Power Charges and/or Keorapukur Power Charges and/or Kudghat PS Power Charges, as the context may require.

<b>Power Unit Rate</b>	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 9.2 [ <i>nine rupees and twenty paise</i> ] 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.
<b>PPP</b>	means public private partnership.
<b>Pre-Bid Meeting</b>	means the meeting to be held in accordance with Clause 8.2.
<b>Preferred Bidder</b>	means the Bidder which: (a) meets the Qualification Criteria and the Eligibility Criteria; and (b) quotes the lowest Bid Price.
<b>Project</b>	means the design, development, finance, construction, renovation, operation and maintenance of the Facilities at the Site in accordance with the Concession Agreement.
<b>Project Engineer</b>	means the engineering firm appointed by NMCG for the Project, in accordance with the Concession Agreement.
<b>Qualification Criteria</b>	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.
<b>Qualification Proposal</b>	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.
<b>RFP</b>	means this request for proposal dated 26 April 2018 (as amended) along with its Schedules and Annexures and includes any Addenda, if issued.
<b>Rupee or INR</b>	means Indian Rupees, the lawful currency of India.
<b>Schedule</b>	means a schedule of this RFP.
<b>Scheduled Bank</b>	means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934.

<b>Scheduled Construction Completion Date</b>	means the date which is 30 months from the Effective Date for Tolly's Nallah STP 1, Tolly's Nallah STP 2, Tolly's Nallah STP 3 and Tolly's Nallah Associated Infrastructure 1 and which is 15 months from Effective Date Tolly's Nallah Associated Infrastructure 2 and Garden Reach STP
<b>Scope of Work</b>	means the scope of work for construction/renovation and O&M of the Facilities as set out in the Concession Agreement.
<b>Second Preferred Bidder</b>	means the Bidder who: (a) meets the Qualification Criteria and the Eligibility Criteria; and (b) quotes the second lowest Bid Price.
<b>Section</b>	means a section of this RFP.
<b>Selected Bidder</b>	means the eligible Bidder selected by the <i>KMC</i> for award of the Project.
<b>Site</b>	Means the Tolly's Nallah Site and/or Garden Reach Site and/or Keorapukur Site or Kudghat PS Site, as the context may require.
<b>SPV or Special Purpose Vehicle</b>	means a company incorporated under the Companies Act by the Selected Bidder to carry out the obligations of the Concessionaire under the Concession Agreement.
<b>STP</b>	means a sewage treatment plant.
<b>Supporting Infrastructure</b>	means collectively, Supporting Infrastructure for all the locations
<b>Taxes</b>	means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, sales tax, value added tax, service tax, goods and services tax, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Concessionaire.
<b>Technical Capacity</b>	means the technical capacity and experience of a Bidder, as determined in accordance with Clause 4.1.
<b>Technical Specifications</b>	means the technical specifications for design, construction, operation and maintenance of the Facilities, which the

	Concessionaire and/or its subcontractors must comply with, as set out in the Concession Agreement.
<b>Trial Operations</b>	means the operation of the Facilities on a trial basis for 3 months post the Construction Completion Date in accordance with the Concession Agreement.

## 1. BACKGROUND

- 1.1 The GoI, recognizing that long-term rejuvenation of the river Ganga will have significant social and economic benefits on the lives of the 500 million people living along its basin, has identified cleaning of the river Ganga as one of its priorities. For this purpose, in May 2015, the GoI approved the flagship Namami Gange programme for cleaning, rejuvenation, and protection of the river Ganga. In January 2016, the GoI approved a hybrid annuity model to implement STP projects under the Namami Gange programme on a PPP basis.
- 1.2 Subsequently, the MoWR issued the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016 (**Ganga 2016 Order**) to constitute various authorities to assist the GoI in achieving its aim of effective abatement of pollution in the river Ganga. The Ganga 2016 Order applies to all states in the catchment of the river Ganga basin.. The Ganga 2016 Order revised the legal status of NMCG (which was initially constituted as a registered society under the Societies Registration Act, 1860) to an authority constituted under the Environment (Protection) Act, 1986 and designated NMCG as the nodal agency for the implementation of the Ganga 2016 Order.
- 1.3 The Government of India has received loan (Loan number: IBRD- 8065-IN) and credit (Credit number: IDA – 4955-IN) (hereafter jointly or separately called “loan”) from the International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA) (hereafter interchangeably called “the Bank”) of the U.S. dollar amount **one Billion under** the National Ganga River Basin Project (NGRBP). The loan will be used in various currencies toward the cost of the Project “DEVELOPMENT OF SEWAGE TREATMENT PLANTS ON Hybrid Annuity PPP BASIS in Kolkata Municipal Corporation (KMC) Area, State of West Bengal”. 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.
- 1.4 The ‘Kolkata Municipal Corporation’ (“**KMC**”) has been entrusted with the responsibility to develop, maintain and regulate water supply and sewerage works in Kolkata Town. The ‘Kolkata Municipal Corporation’ in association with the NMCG, has decided to (i) construct, operate and maintain 3 STPs in Tolly’s Nallah with an aggregate proposed capacity of 26 MLD (ii) renovate, operate and maintain Tolly’s Nallah Associated Infrastructure (iii) renovate, operate and maintain one Existing Garden Reach STP with capacity of 57 MLD (iv) operate and maintain Garden Reach Associated Infrastructure (vi) operate and maintain one Existing Keorapukur STP with capacity of 50 MLD along with Associated Infrastructure, (vii) operate and maintain Kudghat PS, in Kolkata Town. The project will be implemented on PPP basis, through a hybrid annuity model. While ‘Kolkata Municipal Corporation, hereafter referred to



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as ‘*KMC*’, be the principal executing agency and bidding authority for the Project, NMCG will be responsible for making payments to the Concessionaire.

1.5 The objectives that NMCG and the *KMC* wish to achieve through the Project are to:

- (a) intercept raw sewage flowing into the river Ganga and divert the raw sewage to the Kolkata STPs;
- (b) treatment of the raw sewage at each of the Kolkata STPs;
- (c) implement viable technologies and international best practices for development, operation and maintenance of each of the Kolkata STPs and other Facilities; and
- (d) demonstrate large scale private sector participation and mobilisation of private sector investment to further the national aim of rejuvenation of the river Ganga.

1.6 The main features of the Project are set out below:

(a) The *KMC* will provide such part of the Site, as required by the Concessionaire to construct/rehabilitate Tolly’s Nallah Facilities (based on Tolly’s Nallah Land Requirement quoted by the Selected Bidder in Bid Price Sheet), Garden Reach Facilities , Keorapukur Facilities and Kudghat PS, and implement the Project, free of all encumbrances and encroachments, and along with all necessary rights of way.

(b) The Concessionaire will be responsible for

- (i). Designing, financing, constructing and completing Tolly’s Nallah STP 1 by Scheduled Tolly’s Nallah STP 1 Construction Completion Date, Tolly’s Nallah STP 2 by Scheduled Tolly’s Nallah STP 2 Construction Completion Date and Tolly’s Nallah STP 3 by Scheduled Tolly’s Nallah STP 3 Construction Completion Date in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the Construction Plan, the ESHS Documents and Good Industry Practices;
- (ii). Designing, financing, constructing/ renovating and completing Tolly’s Nallah Associated Infrastructure 1 by the Scheduled Tolly’s Nallah Associated Infrastructure 1 Construction Completion Date, Tolly’s Nallah Associated Infrastructure 2 by the Scheduled Tolly’s Nallah Associated Infrastructure 2 Construction Completion Date in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the Construction Plan, the ESHS Documents and Good Industry Practices;
- (iii). Operating and maintaining Tolly’s Nallah STP 1 from Tolly’s Nallah STP 1 COD until COD, Tolly’s Nallah STP 2 from Tolly’s Nallah STP 2 COD until COD and Tolly’s Nallah STP 3 from Tolly’s Nallah STP 3 COD until Tolly’s Nallah COD, as applicable, in accordance with

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Applicable Laws, Applicable Permits, Technical Specifications and Good Industry Practices to ensure compliance with the Guaranteed Interim Availability;

- (iv). Operating and maintaining Tolly's Nallah Associated Infrastructure 1 from the Tolly's Nallah Associated Infrastructure 1 COD until Tolly's Nallah COD, Tolly's Nallah Associated Infrastructure 2 from Tolly's Nallah Associated Infrastructure 2 COD until COD, in accordance with Applicable Laws, Applicable Permits, Technical Specifications and Good Industry Practices to ensure compliance with the Guaranteed Interim Availability;
- (v). Operating and maintaining Tolly's Nallah Facilities from the Tolly's Nallah COD until Expiry Date, in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Design and Drawings, the O&M Manual, ESHS Documents and Good Industry Practices to ensure compliance with KPIs, as applicable;
- (vi). Operating and maintaining Kudghat PS from the Kudghat Handover Date until Expiry Date, in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Design and Drawings, existing O&M Manual, ESHS Documents and Good Industry Practices to ensure compliance with the KPIs, as applicable.
- (vii). Designing, financing, renovating and completing Garden Reach STP by Scheduled Garden Reach Construction Completion Date in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the Construction Plan, the ESHS Documents and Good Industry Practices;
- (viii). Operating and maintaining Garden Reach STP and Existing Garden Reach Facilities from the Effective Date until Tolly's Nallah COD, in accordance with Applicable Laws, Applicable Permits, Technical Specifications and Good Industry Practices to ensure compliance with the Guaranteed Interim Availability;
- (ix). Operating and maintaining Garden Reach Facilities from the Tolly's Nallah COD until Expiry Date, in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Design and Drawings, the O&M Manual, ESHS Documents and Good Industry Practices to ensure compliance with KPIs, as applicable;
- (x). Operating and maintaining Keorapukur Facility from the Keorapukur Handover Date until Expiry Date, in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Design and Drawings,

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existing O&M Manual, ESHS Documents and Good Industry Practices to ensure compliance with the KPIs, as applicable and installing and commissioning on-line monitoring systems within 4 months of Keorapukur Handover Date as per the scope mentioned in Schedule 1.

- (c) The Concessionaire will be required to design, finance, construct/renovate (wherever mentioned in the scope of work), operate and maintain facilities and fulfil the KPIs, in accordance with the Concession Agreement.
- (d) The *KMC* will provide, operate and maintain the Supporting Infrastructure, to enable the Concessionaire to operate Tolly's Nallah Facilities, Garden Reach Facilities, Kudghat PS and Keorapukur Facilities in accordance with the Concession Agreement.
- (e) In order to meet its power consumption requirements, the Concessionaire may construct and operate a biogas power plant at any or all of the Facilities and utilise the bio gas generated from the treatment of raw sewage at those Facilities to produce clean energy. The Concessionaire may also set up a rooftop solar project at any or all of the Facilities to meet its power consumption requirements.
- (f) The Concessionaire will be required to operate and maintain the (i) Tolly's Nallah STP 1, Tolly's Nallah STP 2 and Tolly's Nallah STP 3 from Tolly's Nallah STP 1 COD, Tolly's Nallah STP 2 COD and Tolly's Nallah STP 3 COD, respectively, until Expiry Date (ii) Tolly's Nallah Associated Infrastructure 1 and Tolly's Nallah Associated Infrastructure 2 from Tolly's Nallah Associated Infrastructure 1 COD and Tolly's Nallah Associated Infrastructure 2 COD, respectively (iii) Garden Reach Facilities from the Effective Date and until the Expiry Date and (iv) Keorapukur Facilities and Kudghat PS from the relevant Handover Date and until the Expiry Date in accordance with the Concession Agreement, such that the Facilities meet the Guaranteed Interim Availability and/or Key Performance Indicators, as applicable, as specified in the Concession Agreement.
- (g) It is clarified that the Concessionaire shall be entitled to receive the O&M Charges for O&M of (i) Tolly's Nallah Facilities only from Tolly's Nallah COD and (ii) Garden Reach Facilities only from Tolly's Nallah COD. O&M charges incurred in operations and maintenance of Facilities at a Location from the Effective Date to Tolly's Nallah COD will be considered and quoted by the concessionaire as a part of the Location Bid Project Cost. It is further clarified that the concessionaire shall not be entitled to receive any O&M charges for the operation and maintenance of the any of the Facilities during the relevant Location Construction Period.
- (h) Upon the expiry of the O&M Period, the Facilities and any power plant set up by the Concessionaire, will be transferred to the *KMC* after the rectification of any defects or deficiencies, in accordance with the Concession Agreement.

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- (i) The construction, renovation and O&M of all the locations and their facilities must be in accordance with Applicable Laws, Applicable Permits and other requirements specified in the Concession Agreement.
  - (j) Prior to the Effective Date, NMCG will appoint a Project Engineer to assist the *KMC* in supervising the construction, renovation, operation and maintenance of the all the Facilities. The Project Engineer shall support the *KMC* in monitoring compliance with the key performance indicators to be specified in the Concession Agreement. NMCG will solely bear the costs of the Project Engineer.
  - (k) The Concessionaire shall operate all the Facilities at its risk for the term of the Concession Agreement.
  - (l) 40% of the relevant Bid Project Cost will be reimbursed to the Concessionaire during (i) the Tolly's Nallah Construction Period for the Tolly's Nallah Facilities, and (ii) the Garden Reach Construction Period for the Garden Reach Facilities, which will be linked to completion and certification of the works corresponding to specified Payment Milestones (refer clause 9.3 of Concession Agreement).
  - (m) From the Tolly's Nallah COD, the Capex Annuity (along with interest) and the O&M Charges will be paid on a quarterly basis to the Concessionaire for both Tolly's Nallah Facilities and Garden Reach Facilities. Additionally, the Concessionaire will also be reimbursed on a quarterly basis for the Power Charges at actuals (subject to a cap of the Power Charges based on the Guaranteed Energy Consumption) for power consumed for the O&M of the Facilities. If the Concessionaire consumes more power for O&M of any Facility than the relevant Guaranteed Energy Consumption for such Facility in any given quarter, it will be liable to pay damages to the *KMC* in accordance with the Concession Agreement.
  - (n) The NMCG will set up a revolving escrow account for the Project, and all Payment Milestones (refer linked construction payments, Capex Annuities (along with interest), O&M Charges and the Power Charges will be paid to the Concessionaire through this escrow account.
    - i. For Tolly's Nallah Facilities and Garden Reach Facilities, from the Effective Date and until the Tolly's Nallah Construction Completion Date and Garden Reach Construction Completion Date, respectively, NMCG will ensure that the escrow account is funded with an amount equivalent to the construction payments due to the Concessionaire for the next 2 Payment Milestones for each Location. From the Tolly's Nallah COD and at all times thereafter until the expiry or termination of the Concession Agreements, NMCG shall keep the escrow account funded with (i) Tolly's Nallah Capex Annuity (along with interest), and Garden Reach Capex Annuity (along with interest); (ii) Tolly's Nallah

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- O&M Charges and Garden Reach O&M Charges; and (iii) the estimated Power Charges for each of Tolly's Nallah Facilities and Garden Reach Facilities (based on the Guaranteed Energy Consumption) for the subsequent 2 years.
- ii. For Keorapukur Facilities and Kudghat PS, from the relevant Handover Date, NMCG shall keep the escrow account funded with (i) the relevant O&M Charges (ii) and the estimated relevant Power Charges, based on the Guaranteed Energy Consumption, for subsequent 2 years
- (o) Subject to early termination, the Concession Agreement shall be valid until 15 years from the Tolly's Nallah COD.
- 1.7 The *KMC* is now inviting interested natural persons, Companies, other private entities and State-owned entities to submit Bids to implement the Project.
- 1.8 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.
- 1.9 This RFP follows the General Procurement Notice for National Ganga River Basin Project (NGRBP) that was published on United Nations Development Business online on March 30, 2011 and updated on January 31, 2014.
- 1.10 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 *KMC* and NMCG, in the format attached to this RFP.
- 1.11 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:
- (a) the scope of the rights and obligations of the Concessionaire, which will be set out definitively in the Concession Agreement; or
  - (b) the *KMC'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. NMCG and the *KMC* will not entertain any claims on account of such omissions, conflicts or contradictions.

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## **2. BRIEF DESCRIPTION OF THE BID PROCESS**

- 2.1 The KMC 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.
- 2.2 A complete set of bidding documents will be available on the West Bengal Tenders website (<http://www.wbtenders.gov.in>) w.e.f. **26.04.2018**. The bidders who are interested to participate in the bidding process can download the bid documents from the website. A complete set of bidding documents will be available on the e-Procurement portal in the “Latest Tenders” section and will be available only until the specified time on the Bid Due Date. The KMC 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.
- 2.3 Each Bidder is required to submit a single Bid, which should consist of 2 parts: (a) the Qualification Proposal; and (b) the Financial Proposal.

### **2.4 Evaluation stages**

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

- (a) 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 Clauses 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.
- (b) The second sub-stage will involve evaluation of the Financial Proposals of those Bidders whose Qualification Proposals meet the requirements set out in Clauses 3 and 4, to identify the Selected Bidder for the Project.

### **2.5 Bid parameter**

- (a) Each Bidder will be required to quote separately in the Bid Price Sheet
- (i) For the Tolly’s Nallah Facilities, the following components: (a) the Tolly’s Nallah Bid Project Cost (including all Taxes); (b) Tolly’s Nallah STP O&M Charges and Tolly’s Nallah Associated Infrastructure O&M Charges (along with a break-up of the O&M Charges for the components specified in the Bid Price Sheet) for the first month after the Tolly’s Nallah Facilities COD (including all Taxes); (c) Separate Tolly’s Nallah STP Guaranteed Energy Consumption and Tolly’s Nallah Associated Infrastructure Guaranteed Energy Consumption, for the O&M Period and (d) Tolly’s Nallah Land Requirement.

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- (ii) For the Garden Reach Facilities, the following components: (a) the Garden Reach Bid Project Cost (including all Taxes); (b) Garden Reach STP O&M Charges and Garden Reach Associated Infrastructure O&M Charges (along with a break-up of the O&M Charges for the components specified in the Bid Price Sheet) for the first month after the Garden Reach Facilities COD (including all Taxes); (c) Separate Garden Reach STP Guaranteed Energy Consumption and Garden Reach Associated Infrastructure Guaranteed Energy Consumption, for the O&M Period.
- (iii) For the Keorapukur Facilities, the following components: (a) the Keorapukur STP O&M Charges and Keorapukur Associated Infrastructure O&M charges (along with a break-up of the O&M Charges for the components specified in the Bid Price Sheet) for the first month after the Keorapukur Handover Date (including all Taxes); (b) the Keorapukur STP Guaranteed Energy Consumption and Keorapukur Associated Infrastructure Guaranteed Energy Consumption, for the O&M Period
- (iv) For the Kudghat PS, the following components: (a) the Kudghat PS O&M Charges (along with a break-up of the O&M Charges for the components specified in the Bid Price Sheet) for the first month after the Kudghat Handover Date (including all Taxes); (b) the Kudghat Guaranteed Energy Consumption, for the O&M Period
- (b) For each of the Facilities, the Bidders must provide a break-up of the O&M Charges for the components specified in the Bid Price Sheet, including details of manpower, repairs and maintenance of civil and electro-mechanical works and consumables.
- (c) For the purposes of calculation of the 'Guaranteed Energy Consumption' for each relevant STP, 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, as specified in the format of the Bid Price Sheet. 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 treated at relevant STP(s) will be calculated using the formula specified in the Bid Price Sheet (such average, the location's **Average Guaranteed Energy Consumption**). The Location Average Guaranteed Energy Consumption will be used to calculate the Location Power Charges of a Bidder in accordance with the Bid Price Sheet.
- (d) The relevant STP(s) Power Charges of a Bidder will be calculated by multiplying the relevant Average Guaranteed Energy Consumption quoted by such Bidder with the Power Unit Rate, in accordance with the Bid Price Sheet.

For Tolly's Nallah Facilities and Keorapukur Facilities, only the Guaranteed Energy Consumption limit specified for Dry Weather Flow (DWF) will be applicable for the months of January, February, March, April, May, June, November and December.

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During this period, the Concessionaire will not be reimbursed for any SWF pumping. The reimbursement for SWF pumping will be made only in the months of July, August, September and October. In these 4 months, the Maximum Guaranteed Power Consumption will be sum of Maximum Guaranteed Power Consumption for DWF and Maximum Guaranteed Power Consumption for SWF.

Based on the components quoted by the Bidders in the Bid Price Sheet for Tolly's Nallah Facilities, Garden Reach Facilities, Keorapukur Facilities and Kudghat PS the overall Bid Price will be calculated as per the formula in the Bid Price Sheet.

- (e) Bidder shall carefully quote the Land Requirement for Tolly's Nallah Facilities 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 KMC based on availability, may consider to allocate 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 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 the KMC, a sum of equivalent to (a) one hundred and fifty percentage of the relevant Land Rate for each additional acres of Land and part thereof; OR (b) the difference between Bid Price of Second Preferred Bidder and the revised Bid Price of the Selected Bidder; whichever is higher.

Based on the components quoted by the Bidders in the Bid Price Sheet for each location's facilities, the Bid Price for each location, and the overall 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 Bid Price.

- 2.6 The Bidder shall quote the Bid Project Cost in 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.
- 2.7 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 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 KMC may, in its discretion, select the Second Preferred Bidder as the Selected Bidder or annul the



- 2.8 Bidders are required to submit 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 and payable at *Kolkata* in favour of "*Kolkata Municipal Corporation*" represented by the *Joint Municipal Commissioner, KMC*, in the format set out at Annexure II. The original Bid Security must be submitted to the *KMC* at the 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.
- 2.9 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.
- 2.10 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 *KMC* shall facilitate such site visits provided that the Bidder gives the *KMC* at least 2 days' prior written notice of its intention to visit the Site.
- 2.11 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 of 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.

## **2.12 e-Procurement**

- (a) 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 signature certificate may be procured from a registered certifying authority as stipulated by Controller of Certifying Authorities, GoI.
- (b) 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.
- (c) The Bidders must: (i) upload a soft copy/scanned copy of their Qualification Proposal, including a copy of the Bid Security and the demand draft/cashier's

cheque for the Bid processing fee 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. However, Bid Security, copy of online receipt towards payment of cost of Bid, Power of Attorney, Joint Bidding Agreement, etc. shall be submitted physically by the Bidder on or before 1400 Hrs on 19.06.2018.

- (d) The Bidders are encouraged to visit the e-Procurement Portal to acquaint themselves with the process of submitting their Bids online.
- (e) 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 *KMC*.

2.13 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.

#### 2.14 Schedule for the Bid Process

The *KMC* shall endeavour to adhere to the following schedule for the Bid Process:

S. No.	Event	Date/Location
1.	Issue of RFP	26 April 2018, After 1700 Hrs
2.	Site Visit	Upto 8 May 2018, 1800 Hrs
3.	Last date for receiving queries from Bidders	Up to 10 May 2018, 1600 Hrs
4.	Pre-Bid Meeting	11 May 2018, 1230 Hrs, Conference Room-1. First Floor, KMC Office, 5, SN Bannerjee Road, Kolkata - 700013
5.	Issue of Addendum/Revised RFP and Concession Agreement by KMC latest by	18 May 2018
6.	Bid Due Date	Upto 18 June 2018, 1230 Hrs
7.	Opening of Bids (Qualification Proposals)	19 June 2018, 1500 Hrs

<b>S. No.</b>	<b>Event</b>	<b>Date/Location</b>
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 opening of Qualification Proposals
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 the LOA to the Selected Bidder

## **SECTION II: ELIGIBILITY AND QUALIFICATION CRITERIA**

### **3. ELIGIBILITY OF BIDDERS**

#### **3.1 Nature of Bidder**

- (a) 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 the Executing Agency's country 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 NMCG or the Executing Agency.

To be eligible, a government-owned enterprise or institution shall establish to the Bank's satisfaction, through all relevant documents, including its Charter and other information the 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.

- (b) Eligible countries:
- (i) 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

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Bank-financed projects. As an exception, firms of a country or goods manufactured in a country may be excluded if:

- (A) 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
  - (B) Paragraph 1.10 (a)(ii): by an act of compliance with a decision of the 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.
- (ii) For the information of Bidders, at the present time, firms, goods and services from the following countries are excluded from this bidding:
- (A) With reference to paragraph 1.10 (a) (i) of the Guidelines:  
*none*
  - (B) With reference to paragraph 1.10 (a)(ii) of the Guidelines:  
*none*
- (c) If a Bidder is a Consortium, then the Consortium and its Members shall comply with the following conditions:
- (i) The number of Members in such Consortium shall not exceed 3.
  - (ii) 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.
  - (iii) 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.
  - (iv) The Members of the Consortium shall enter into a binding 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 the *KMC*.

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### 3.2 Lock-in Restrictions and Change in Control

- a. Each Bidder (whether a single entity or Consortium) is required to incorporate a Special Purpose Vehicle to implement the Project.
- b. 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:
  - i. The Lead Member shall hold not less than 26% of the total Capital and voting rights of the Concessionaire until 3 years after the Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later.
  - ii. The Member, other than the Lead Member, whose Technical Capacity or Financial Capacity is being assessed solely for construction of S&D Network, as outlined in Clause 4.1 (a)(ii), shall hold at least 10% of the total Capital and Voting rights of the Concessionaire until 3 years after the Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later.
  - iii. any Member, other than the Lead Member and the Member referred to in Clause 3.2(b)(ii) above, 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 rights of the Concessionaire until 3 years after the Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later.
  - iv. After the expiry of 3 years from Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later, the Lead Member and any 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).
- c. If the Selected Bidder is a single entity, then:
  - i. The Selected Bidder shall hold at least 51% of the total Capital and voting rights of the Concessionaire until Tolly's Nallah Facilities COD or Garden Reach Facilities COD, whichever is later, and at least 26% of the total Capital and voting rights of the Concessionaire until 3 years after the Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later.
  - ii. After the expiry of 3 years from the Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever

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is later, 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).

- d. If, post submission of the Bid, any Associate, whose credentials have been taken into consideration for determining Technical Capacity, ceases or will cease to be an Associate of the Bidder or such Member, then, the Selected Bidder shall seek the approval of the *KMC* for such occurrence. If the *KMC* is of the view that such occurrence is likely to affect the Technical Capacity of the Bidder adversely, then the *KMC* 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 *KMC* incurring any liability towards the Selected Bidder or the Concessionaire for such withdrawal or possible termination. While the *KMC* will not unreasonably withhold or delay such approval, the decision of the *KMC* will be final in this regard.

### **3.3 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:

- (a) 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>. 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
- (b) they receive or have received any direct or indirect subsidy from any of them; or
- (c) they have the same legal representative for purposes of this Bid; or
- (d) 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 the *KMC* regarding this Bid Process; or
- (e) the Bidder participates in more than one Bid for the same Project (as described in Clause 17); or
- (f) the Bidder, or any of its Group Companies or Associates participated as a

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consultant in the preparation of any documents, design or technical specifications of the Project that are subject of the Bid; or

(g) the Bidder or any of its Group Companies or Associates has been hired (or is proposed to be hired) by the KMC as project manager for the Project.

(h) The Bidder or any of its Group Companies or Associates has a close business or family relationship with a professional staff of NMCG (or of the KMC, or of a recipient of a part of the loan) who: (i) 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 the Bank throughout the Bid Process and execution of the Concession Agreement.

### 3.4 Fraud and Corruption

It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), bidders, 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 contracts.<sup>1</sup> In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
- (i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;<sup>2</sup>
  - (ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;<sup>3</sup>
  - (iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;<sup>4</sup>

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<sup>1</sup> In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

<sup>2</sup> For the purpose of this sub-paragraph, "*another party*" refers to a public official acting in relation to the procurement process or contract execution. In this context, "*public official*" includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

<sup>3</sup> For the purpose of this sub-paragraph, "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

<sup>4</sup> For the purpose of this sub-paragraph, "parties" refers to participants in the procurement process (including 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 levels, or are privy to each other's bid prices or other conditions.

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- (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;<sup>5</sup>
- (v) “obstructive practice” is
- A. 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
  - B. acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 1.16(e) below.
- (b) 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;
- (c) 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 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;
- (d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank’s sanctions procedures,<sup>6</sup> 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 nominated<sup>7</sup>;

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<sup>5</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution.

<sup>6</sup> A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank’s sanctions 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.

<sup>7</sup> 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.



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- (e) 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 appointed by the Bank.”

### **3.4.1 Inspection and Audit**

In further pursuance of the policy referred to in Clause 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.

### **3.5 Other Eligibility Criteria**

- (a) 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.
- (b) 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/judgement by any court/judicial KMC after the submission of bid affects or could have a material adverse effect on the financial condition, prospects or business of such Bidder or Member or its ability to fulfil its obligations under the Concession Agreement, the Bid will not be evaluated further by the KMC.
- (c) 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.
- (d) 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 the KMC'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 fulfil its obligations under the Concession Agreement, the Bid will not be evaluated further by the KMC.

Bidders will provide such evidence of their continued eligibility as the *KMC* may request at any time during or after the Bid Process.

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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.

## 4. 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:

### 4.1 Technical Criteria

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

a. Development/Design and Construction experience

*STP Construction Experience*

(i) The Bidder shall have developed or designed and constructed 1 STP of at least 12 MLD capacity or 2 STPs of at least 10 MLD capacity each or 3 STPs of at least 8 MLD capacity each across locations/contracts. Each of these shall:

- A. have been developed or designed and constructed using [any technology;
- B. have been (A) developed or (B) designed and constructed in the 7 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
- C. have been successfully operational for any 24 consecutive months in the 7 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.

*S&D Construction Experience*

(ii) The Bidder shall have developed or designed and constructed (A) a minimum 65 kms length of sewage and drainage network of at least 500 mm dia during the last 7 years and (B) a cumulative of 250 metres length of sewage and drainage network with at least 2100 mm dia. Each of these shall have been developed or designed and constructed in the 7 years preceding the Bid Due Date, as evidenced by the issuance

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of a completion certificate by the relevant government authority/client, certifying that the S&D network have been completed in terms of the concession agreement or similar contract executed for such S&D; and

- (iii) To claim development experience for STP and S&D network as mentioned in Clause 4.1(a).(i) and Clause 4.1(a).(ii) respectively, the entity claiming the experience shall have held, in the company developing the STP, a minimum of 26% equity share capital as on the commercial operations date of such project.
- (iv) To claim design and construction experience for STP and S&D network as mentioned in Clause 4.1(a).(i) and Clause 4.1(a).(ii) respectively, 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) and any other subcontractor experience is not permitted for claiming Technical Capacity.
- (v) The Bidder may develop the STPs at the locations in the scope of this package using different technologies, provided that each such technology should be the same as the technology adopted for at least one of the STP(s) for which experience is being claimed under this Clause 4.1(a)(i) to demonstrate Technical Capacity

a. Operation and maintenance experience

- (i) The Bidder shall have (A) successfully operated and maintained 1 STP of at least 40 MLD capacity or 2 STPs of at least 25 MLD capacity each or 3 STPs of at least 20 MLD capacity each. Each of these STPs shall have been operational for at least 24 consecutive months in the 7 years immediately preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STP(s). The STP(s) for which the Bidder is claiming O&M experience should have been developed using any technology.
- (ii) For this purpose, the Company claiming the experience will be required to submit a certificate issued by the relevant government authority.

b. It is clarified that:

- (i) 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;
- (ii) 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

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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

- (iii) in case of a Consortium, the development/design and construction experience set out in Clause 4.1(a)(i) must be demonstrated by one Member. The development/design and construction experience set out in Clause 4.1(a)(ii), may be claimed by a different Member. Similarly, the O&M experience set out in Clause 4.1(b) may be claimed by a different Member;
- (iv) in case of a Consortium, if the Consortium is claiming O&M experience on the basis of more than 1 STP, then each of the STPs should have been operated and maintained by the same Member;
- (v) if the STP development/design and construction experience as set out Clause 4.1(a)(i) and the O&M experience as set out Clause 4.1(b) is being claimed by a different Members, then the Member who demonstrates development/design and construction experience for STP construction as outlined in Clause 4.1(a)(i) and the Member who demonstrates the O&M experience as outlined in Clause 4.1(b) must each hold 26% of the total Capital and voting rights of the Concessionaire for at least 3 years post Tolly's Nallah COD, Garden Reach COD or Keorapukur Handover Date, whichever is later. If the S&D development/design and construction experience as set out Clause 4.1(a)(ii) is claimed by a third different Member and this Member is not claiming STP development/design as outlined in Clause 4.1(a)(i) or O&M experience as outlined in Clause 4.1(b), then this Member must hold at least 10% of the total Capital and voting rights of the Concessionaire for at least for 3 years after the Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later.
- (vi) the development/design and construction experience and the O&M experience 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 STPs, 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
- (vii) for certificates claiming development/design and construction and O&M 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

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Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

- (d) If the Bidder proposes to set up a biogas power plant at any location in accordance with the Concession Agreement, then 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:
- (A) a capacity of at least 0.25 MW;
  - (B) been based on STP effluent;
  - (C) been developed or designed and constructed in the 7 years preceding the Bid Due Date, as evidenced by the issuance of a completion certificate by the relevant government authority, certifying that the biogas power plant has been completed in terms of the relevant contract executed for such biogas power plant; and
  - (D) successfully operational for any 24 consecutive months in the 7 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;

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).

## 4.2 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.

- (a) Net worth
- (i) In each of the 3 Financial Years immediately preceding the Bid Due Date, the Bidder's Net Worth (as per the annual financial statements) shall be at least INR 120 Cr [*One Hundred Twenty crores*].

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- (ii) If the Bidder is a Consortium, then the Net Worth, as required in Clause 4.2 (a)(i) above will 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 until 3 years after the Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later. Except in case there is Member whose technical capability was evaluated solely to qualify for S&D construction experience as outlined in Clause 4.2(a)(ii), then this Member shall hold 10% of the total Capital and voting rights of the Concessionaire for 3 years after the Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later.
  
  - (iii) The calculation of Net Worth must be based on the unconsolidated audited annual accounts of the Bidder for the preceding Financial Year. If the annual accounts for the Financial Year immediately preceding the Bid Due Date are not audited, the Bidder shall provide the provisional annual accounts for such Financial Year. The provisional annual accounts shall be accompanied by an undertaking by the Bidder to the effect that:
    - (A) if it is chosen as the Selected Bidder, the Bidder will submit the audited annual accounts for the Financial Year immediately preceding the Bid Due Date prior to the Effective Date; and
    - (B) the Net Worth as per such audited annual accounts shall not vary by more than 5% from the provisional accounts submitted by it with its Bid.

A Bidder or a Member of a Consortium is not permitted to rely on the Net Worth of its Associate for demonstrating its Financial Capacity.

- (b) The Bidder (and in case of a Consortium, any Member) 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):
  - (i) the Bidder having been categorized as a willful defaulter in accordance with Applicable Laws or laws of the country of its incorporation.
  - (ii) the Bidder 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

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- (iii) the Bidder 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.
- (c) The Bidder (and in case of a Consortium, any Member) 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:
- (i) related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation or other payment was levied against the Bidder or any of its directors, partners, trustees, officers or managers; or
  - (ii) resulted in the permanent or temporary suspension of the rights of the Bidder to provide any service or carry on any type of business or operations.

## **SECTION III: INSTRUCTION TO BIDDERS**

### **PART A. GENERAL**

## **5. SCOPE OF RFP**

- 5.1 The *KMC* wishes to receive Bids in accordance with this RFP for award of the Project.
- 5.2 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 the *KMC* at the earliest. The *KMC* 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:
- (a) the Bid Process, the provisions of the RFP shall prevail; and
  - (b) 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.

## **6. ACKNOWLEDGEMENT BY THE BIDDER**

- 6.1 It shall be deemed that by submitting the Bid, the Bidder has:

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- (a) made a complete and careful examination of the RFP (including all instructions, forms, terms and specifications) and any other information provided by the *KMC* 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;
  - (b) received all relevant information requested from the *KMC* and NMCG;
  - (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the *KMC*;
  - (d) satisfied itself about all things, matters and information, necessary and required to submit a Bid;
  - (e) 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 the *KMC* or NMCG, or a ground for termination of the Concession Agreement;
  - (f) satisfied itself regarding the suitability of the Site conditions to undertake the Project; and
  - (g) agreed to be bound by the undertakings provided by it under and in terms of this RFP.

6.2 The *KMC* 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.

## **7. RIGHTS OF THE *KMC***

7.1 The *KMC*, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- (a) suspend the Bid Process and/or amend and/or supplement the Bid Process or modify the dates or other terms and conditions relating thereto;
- (b) consult with any Bidder in order to receive clarification or further information at any stage of the Bid Process;
- (c) retain any information, documents and/or evidence submitted to the *KMC* by and/or on behalf of any Bidder;



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- (d) independently verify, disqualify, reject and/or accept any and all documents, information and/or evidence submitted by or on behalf of any Bidder;
  - (e) reject any Bid, if:
    - (i) at any time, a material misrepresentation is made or uncovered; or
    - (ii) the Bidder in question does not provide, within the time specified by the *KMC*, the supplemental information sought by the *KMC* for evaluation of the Bid; or
  - (f) 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 the *KMC* annuls the Bid Process and rejects all Bids, it may in its sole discretion invite fresh Bids for the Project.

7.2 If the *KMC* exercises its right under this RFP to reject a Bid and consequently, the Preferred Bidder for the Project gets disqualified or rejected, then the *KMC* reserves the right to:

- (a) select the Second Preferred Bidder as the Selected Bidder for the Project; or
- (b) take any such measure as may be deemed fit in the sole discretion of the *KMC*, including inviting fresh Financial Proposals from the qualified Bidders or annulling the entire Bid Process.

7.3 If it is found during the Bid Process, at any time before signing the Concession Agreement, 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 the *KMC* to the Selected Bidder.

Upon any disqualification, cancellation or termination in accordance with this Clause 7.3, the *KMC* will not be liable in any manner whatsoever to the Bidder. Additionally, the *KMC* 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 the *KMC* for, amongst others, the *KMC*'s time, cost and efforts in conducting the Bid Process. Such forfeiture will be without prejudice to any other right or remedy that the *KMC* may have under the RFP, the Concession Agreement or

## **8. CLARIFICATIONS ON THE RFP**

### **8.1 Clarifications and Queries**

- (a) 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 the *KMC* on the e-Procurement Portal 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.
- (b) The *KMC* shall make reasonable efforts to respond to the queries or requests for clarifications on or before the date mentioned in the Bid Schedule. The *KMC*'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.
- (c) The *KMC* may, on its own initiative, if deemed necessary, issue clarifications to all the Bidders. All clarifications and interpretations issued by the *KMC* shall be deemed to be part of this RFP. Should the *KMC* 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.
- (d) It shall be the responsibility of the Bidders to check the e-Procurement Portal for the response to the queries or requests for clarifications.
- (e) Verbal clarifications and information given by NMCG, the *KMC* or any other Person for or on its behalf shall not in any way or manner be binding on NMCG or the *KMC*.

### **8.2 Pre-Bid Meeting**

- a. 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.
- b. 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 *jmc\_dev@kmcgov.in*.
- c. During the course of the Pre-Bid Meeting, all interested Companies will be free to seek clarifications and make suggestions to the *KMC*.

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- d. Non-attendance at the Pre-Bid Meeting will not be a cause for disqualification of an interested Company from participating in the Bid Process.

## **9. AMENDMENT OF THE RFP**

- 9.1 Up until the date that is mentioned in the Bid Schedule, the *KMC* 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-Procurement Portal under “Latest Corrigendum” and email notification is also automatically sent to those bidders who have moved this tender to their “My Tenders” area. Any addendum thus issued shall be part of the bidding documents and deemed to have been communicated to all the bidders who have moved this tender to their “My Tenders” area.
- 9.2 All Addenda/amendments and amended RFP & amended draft Concession Agreement will be uploaded on the e-Procurement Portal.
- 9.3 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.
- 9.4 Each Addendum/amendment will be binding on the Bidders, whether or not the Bidders convey their acceptance of the Addendum/amendment.
- 9.5 Any oral statements made by NMCG or the *KMC* or its advisors regarding the Bid Process, the RFP or on any other matter, shall not be considered as amending the RFP.
- 9.6 The *KMC* will assume that the information contained in the Addendum/amendments will have been taken into account by the Bidder in its Bid. The *KMC* 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.

## **10. AVAILABILITY OF INFORMATION**

- 10.1 The information relating to or in connection with the Project, the Bid Process and this RFP, including all notices issued by the *KMC* to all Bidders in accordance with this RFP; queries and responses or clarifications and any Addenda will be uploaded on the e-Procurement Portal.
- 10.2 All such information will be made available for review by the Bidders until the Bid Due Date.
- 10.3 If a Bidder faces any technical issue or technical error in accessing the e-Procurement Portal, the Bidder may seek assistance from the *KMC* by sending an e-mail request to [jmc\\_dev@kmcgov.in](mailto:jmc_dev@kmcgov.in), no later than 3 days prior to the Bid Due Date.

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- 10.4 The *KMC* 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.

## **11. CORRESPONDENCE WITH BIDDERS**

Save as expressly provided in this RFP, NMCG and the *KMC* will not entertain any correspondence with the Bidders, whether in connection with the acceptance or rejection of their Bids or otherwise.

## **12. CONFIDENTIAL INFORMATION AND PROPRIETARY DATA**

### 12.1 Proprietary Data

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

### 12.2 Confidentiality Obligations of the *KMC*

The *KMC* 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. The *KMC* may not divulge any such information or any information relating to evaluation of Bids or the qualification of Bidders unless:

- (a) such publication is contemplated under this RFP;
- (b) such publication is made to any Person who is officially involved with the Bid Process or is a retained professional advisor advising the *KMC*, NMCG or the Bidder on matters arising out of or in connection with the Bid Process;
- (c) it is directed to do so by any statutory authority that has the power under law to require its disclosure;
- (d) such publication is to enforce or assert any right or privilege of the statutory authority and/or the *KMC* and/or NMCG or as may be required by law (including under the Right to Information Act, 2005); or
- (e) in connection with any legal process.

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## 13. GOVERNING LAW AND JURISDICTION

### 13.1 Governing Law

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

### 13.2 Exclusive Jurisdiction

The competent courts in *West Bengal* shall have jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bid Process, this RFP and the Bids.

## 14. VALIDITY OF THE BIDS

- 14.1 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 the *KMC* as being non-responsive.
- 14.2 In exceptional circumstances, prior to the expiry of the Bid validity period, the *KMC* may request Bidders to extend the Bid validity period. The request and the responses shall be made in writing. A Bidder may refuse the *KMC*'s request to extend the 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.

## PART B. BID SECURITY, PERFORMANCE SECURITY AND ESHS PERFORMANCE SECURITY

### 15. BID SECURITY

- 15.1 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 3,30,00,000 [*Three crores thirty lakhs*] or an equivalent amount in a freely convertible currency.
- 15.2 The Bid Security shall remain valid for 45 days beyond the Bid validity period as specified in Clause 14.
- 15.3 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. The Bid Security shall be issued in favour of the

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"*Kolkata Municipal Corporation*"", represented by the Joint Municipal Commissioner, payable at *Kolkata* and in the format set out in Annexure 1I.

- 15.4 Unless forfeited in accordance with Clause 15.5 below, the Bid Security of the unsuccessful Bidders will be returned by the KMC no later than 30 days from the date of execution of the Concession Agreement with 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 Performance Securities in accordance with Clause 16 and ESHS Performance Security in accordance with Clause 16A.

- 15.5 The Bid Security shall be forfeited and appropriated by the KMC as mutually agreed genuine pre-estimated compensation and damages payable to the KMC for time, cost and effort of the KMC, without prejudice to any other right or remedy that may be available to the KMC hereunder or otherwise, under the following conditions:
- (a) 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 the *KMC*), Clause 17 (Number of Bids) and Clause 31.3 (Execution of Concession Agreement);
  - (b) if, after the Bid Due Date, a Bidder withdraws its Bid during the Bid validity period; or
  - (c) if a Bidder is selected as the Selected Bidder and it fails, within the specified time limit, to:
    - (i) sign and return, as acknowledgement, the duplicate copy of the LOA;
    - (ii) cause the Concessionaire to furnish the Performance Security in accordance with Clause 16;
    - (iii) cause the Concessionaire to furnish the ESHS Performance Security in accordance with Clause 16A;
    - (iv) fulfil any other condition precedent to the execution of the Concession Agreement; or
    - (v) cause the Concessionaire to execute the Concession Agreement.

## **16. PERFORMANCE SECURITY**

- 16.1 The Selected Bidder shall cause the Concessionaire to furnish to the *KMC* (i) Tolly's Nallah Performance Security for a value equal to 9% of the Tolly's Nallah Bid Project Cost and (ii) Garden Reach Performance Security for a value equal to 9% of the Garden Reach Bid Project Cost on or before execution of the Concession Agreement to secure the obligations of the Concessionaire under the Concession Agreement.
- 16.2 The Performance Security/Securities for each Location's Facility shall remain valid until 25 months from the Effective Date or 1 month from COD of that Location, whichever is later.

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- 16.3 The Selected Bidder shall cause the Concessionaire to provide the Performance Security/Securities in the form of bank guarantee(s) issued by a Scheduled Bank in India. The Performance Security/Securities shall be issued in favour of "**Kolkata Municipal Corporation**", represented by the Jt. Municipal Commissioner, payable at *Kolkata* and in the format set out in Annexure 4.
- 16.4 If the Selected Bidder fails to cause the Concessionaire to furnish the Performance Security /Securities for any or all the relevant sites in accordance with this Clause 16 on or before the execution of the Concession Agreement, then the *KMC* shall have the right to forfeit the Bid Security of the Selected Bidder in accordance with Clause 15.5(c).
- 16.5 During evaluation of Financial Proposal and before award of the Project, if it is found that the Selected Bidder has submitted an unbalanced or frontloaded Bid for the entire Project or for any components thereof, the *KMC* 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 the *KMC* 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 Additional Performance security should be submitted together with the Performance Security and ESHS performance security. 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.

#### **16A. ESHS Performance Security**

16.A.1 The Selected Bidder shall cause the Concessionaire to furnish to the *KMC*, ESHS Performance Security

- a. prior to the Appointed Date
  - i. an unconditional and irrevocable bank guarantee for an amount corresponding to 1% of the Bid Project Cost for Tolly's Nallah Facilities towards "Tolly's Nallah ESHS Performance Security";
  - ii. an unconditional and irrevocable bank guarantee for an amount corresponding to 1% of the Bid Project Cost for Garden Reach Facilities towards "Garden Reach ESHS Performance Security", respectively;
- b. prior to the Keorapukur Handover Date for Keorapukur Facilities, an unconditional and irrevocable bank guarantee for an amount corresponding to 1% of the Total O&M cost and Power Charges (i.e. Monthly quoted O&M cost X 144 + Monthly quoted DWF Power Charges X 144 + Monthly quoted SWF Power Charges X 48) for Keorapukur Location towards "Keorapukur ESHS Performance Security";
- c. prior to the Kudghat Handover Date for Kudghat PS, an unconditional and irrevocable bank guarantee for an amount corresponding to 1% of the Total O&M cost and Power Charges (i.e. Monthly quoted O&M cost X 120 + Monthly quoted DWF Power Charges X 120 + Monthly quoted SWF Power Charges X 40) for Kudghat PS towards "Kudghat ESHS Performance Security"

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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.

16A.3 The Selected Bidder shall cause the Concessionaire to provide the ESHS Performance Security/Securities in the form of bank guarantees issued by a Scheduled Bank in India. The ESHS Performance Security/Securities shall be issued in favour of "**Kolkata Municipal Corporation**", represented by the Jt. Municipal Commissioner, payable at *Kolkata* and 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 the *KMC* shall have the right to forfeit the Bid Security of the Selected Bidder in accordance with Clause 15.5(c).

## **PART C. PREPARATION AND SUBMISSION OF BIDS**

### **17. NUMBER OF BIDS**

17.1 Each Bidder shall be permitted to submit only 1 Bid for the Project, either individually or as a Member of a Consortium. It is clarified that a Bidder shall submit a single Bid for all the facilities and if any Bidder submits separate Bids for the one or more facilities, then the Bids submitted by such Bidder shall be deemed to be non-responsive and all such Bids shall be rejected by the *KMC*. 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.

### **18. LANGUAGE OF BIDS AND CORRESPONDENCE**

18.1 The Bid prepared by the Bidder and all correspondence and documents related to the Bid exchanged by the Bidder and the *KMC* shall be in English.

18.2 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 of the relevant foreign country where the project is situated. Supporting materials which are not translated into English or



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certified/notarised in accordance with this Clause 18.2 may not be considered by the *KMC*.

## **19. BID DUE DATE**

- 19.1 The Bid shall be submitted on or before the date, time and place specified in the Bid Schedule.
- 19.2 The *KMC* 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 the *KMC* and the Bidders will thereafter be subject to the Bid Due Date as extended.
- 19.3 Bidders should note that the electronic bidding system would not allow any late submission/uploading of Bid after the Bid Due Date and time as per server time.

## **20. 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

- 20.1 The Qualification Proposal submitted by a Bidder shall comprise scanned copies of the following:
- (a) bid letter in the format set out in **Annexure 1A**;
  - (b) description of the Bidder/Members 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;
  - (d) certificate issued by the statutory auditor of the Bidder, in the format set out in **Annexure 1D**, certifying the Net Worth of the Bidder and compliance with other financial qualification criteria specified in Clause 4.2;
  - (d) details of the eligible STP(s) 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(s) for which O&M experience is being claimed in the format set out in **Annexure 1E – Part II** and details of the eligible S&D network for which development/design and construction experience is being claimed in the format set out in **Annexure 1E – Part III**;

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- (e) certificate from the statutory auditor certifying the shareholding of the Bidder (or in case of a Consortium, the relevant Member) in the Company developing the STP(s) for which development is being claimed by the Bidder in the format set out in **Annexure 1F**;
  - (f) self-attested certificate regarding Associate, if applicable, in the format set out in **Annexure 1G**;
  - (g) information on any litigation that the Bidder is a party to, in the format set out at **Annexure 1H**;
  - (h) Bid Security in the format set out at **Annexure 1I**;
  - (i) 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;
  - (j) for each STP for which development/design and construction experience is being claimed, certificate from the relevant government authority/client certifying that the STP has been completed/commissioned in accordance with the concession agreement or similar contract executed for such STP; for each S&D network for which development/design and construction experience is being claimed, certificate from the relevant government authority/client certifying that the network has been completed/commissioned in accordance with the concession agreement or similar contract executed for such network
  - (k) for each STP, certificate from the relevant government authority certifying that the STP has been completed and has been successfully operational for 24 consecutive months in the 7 years immediately preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STP
  - (l) for each STP, 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 for which O&M experience is being claimed, for at least 24 consecutive months in the 7 years immediately preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STP;
  - (m) annual financial statements of the Bidder (including profit and loss statements) for the 3 Financial Years immediately preceding the Bid Due Date;
  - (n) 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;
  - (o) Declaration listing the contract(s) of the Bidder or each Member (in case of a

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Consortium) 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 II**; and

- (p) an amount of INR Twenty Five Thousand as Bid processing fees, or or US\$ 383 equivalent amount in a freely convertible currency in the form of a Demand Draft/Cashier's Cheque issued by a nationalized bank / foreign bank listed with the Reserve Bank of India having its branches in India, payable at *Kolkata* in favour of the *Joint Commissioner, Kolkata Municipal Corporation*

20.2 If the Bidder is a Consortium, it will also be required to submit the following documents:

- (a) 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.
- (b) Joint Bidding Agreement in the format set out at **Annexure 1K**.

## **21. FINANCIAL PROPOSAL**

21.1 The Financial Proposal submitted by a Bidder shall comprise the Bid Price Sheet provided on the e-Procurement Portal.

21.2 The Bidders shall quote in the Bid Price Sheet, separately for each Facility the:

(a) Bid Project Cost (including all Taxes and GST), for Tolly's Nallah Facilities and Garden Reach Facilities;

(b) O&M Charges for the first month after COD for Tolly's Nallah Facilities and Garden Reach Facilities and O&M Charges for the first month after the relevant Handover Date for Keorapukur Facilities and Kudghat PS (including all Taxes and GST) for all facilities;

(c) Guaranteed Energy Consumption for the O&M Period for all facilities; and

(d) Land Requirement (For Tolly's Nallah STP 1, Tolly's Nallah STP 2, Tolly's Nallah STP 3).

Based on these 4 components quoted by a Bidder, the Bid Price is calculated by the system using the formula set out in Bid Price Sheet.

21.3 The Bidder shall quote 1(one) figure for any of the components of the Bid Price after all discounts the Bidder wishes to offer on any or all of the components of the Bid Price.

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21.4 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, the KMC 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.

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.

To the extent the KMC 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 60days of signing of the Concession Agreement for material, equipment and machinery.

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 the KMC 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.

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.

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.

## **22. COST AND CURRENCY OF BIDS**

### **22.1 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 the *KMC* or *NMCG* 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

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the Bidders and the *KMC*, *NMCG* 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.

## 22.2 Currency of the Bid

All amounts in the Bid should be stated in Rupees.

## 23. SIGNING OF BIDS

23.1 Each Bidder (and in case of a Consortium, the Lead Member) must affix the digital signature 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.

## 24. SUBMISSION OF BIDS

24.1 Each Bidder is required to upload a soft copy/scanned copy of its Bid on the e-Procurement Portal.

24.2 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 and the demand draft/cashier's cheque for the Bid processing fee 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.

24.3 The Bidders should ensure the legibility of the documents uploaded to the e-Procurement Portal.

24.4 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. The *KMC* and *NMCG* will not be responsible for any failure, malfunction or breakdown of the electronic system during the e-procurement process.

24.5 The Bidder should check the system generated summary of its Bid submission to confirm successful uploading of its Bid.

24.6 All Bids uploaded to the e-Procurement Portal will be encrypted and the encrypted Bids can only be opened by the authorised representatives of the *KMC* at or after the date/time specified for opening of bids (Qualification Proposal)

24.7 Each Bidder shall submit a hard copy of the original Bid Security, Power of Attorney, joint bidding agreement and the demand draft/cashier's cheque for the Bid processing fee to the *KMC*, before the date and time specified in Clause 2.12 (c).

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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.

- 24.8 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.
- 24.9 The hard copy of the Bid Security, Power of Attorney, joint bidding agreement, etc will be duly sealed in an envelope, which will be super-scribed as follows:

**"KOLKATA STP PPP PROJECT  
QUALIFICATION PROPOSAL  
DO NOT OPEN BEFORE SPECIFIED TIME ON BID DUE DATE"**

- 24.10 The sealed envelope 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, the *KMC* assumes no responsibility for the misplacement or premature opening of the contents of the Qualification Proposal and consequent losses, if any, suffered by the Bidder.
- 24.11 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:

Office of the Jt. Municipal Commissioner,  
Kolkata Municipal Corporation,  
5, SN Banerjee Road,  
Kolkata, West Bengal – 700013  
Mobile: +91 – 98303 24 324

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

## **25. SUBSTITUTION/WITHDRAWAL/MODIFICATION OF BIDS**

- 25.1 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 re-submission, the Bidder is not required to withdraw his bid submitted earlier. The last modified Bid submitted by the Bidder within the

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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.

- 25.2 Bids requested to be withdrawn in accordance with Clause 25.1 shall not be opened.
- 25.3 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 Clause 15.5.

## **PART D. OPENING AND EVALUATION OF BIDS**

### **26. PUBLIC OPENING OF BIDS**

- 26.1 The KMC 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.
- 26.2 The KMC 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:

Kolkata Municipal Corporation,  
5, SN Banerjee Road,  
Kolkata, West Bengal – 700013

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.

- 26.3 If the specified date for opening the Qualification Proposals is declared a holiday in KMC's office, then the Qualification Proposals will be opened at the specified time and location on the next working day.
- 26.4 The KMC 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.

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- 26.5 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.
- 26.6 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.
- 26.7 Any information contained in a Bid will not in any manner be construed as binding on the KMC, its agents, successors or assigns; but will be binding on the Bidder.

## **27. DETERMINATION OF RESPONSIVENESS AND EVALUATION OF QUALIFICATION PROPOSALS**

- 27.1 The *KMC* 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 the *KMC* and not included for further consideration. No request for alteration, modification, substitution or withdrawal shall be entertained by the *KMC* in respect of such Bid.
- 27.2 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:
- (a) 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;
  - (b) the Bid is received by the specified time on the Bid Due Date;
  - (c) it is signed, marked, and uploaded as stipulated in Clauses 23 and 24;
  - (d) it contains all the information and documents (complete in all respects) as requested in this RFP; and
  - (e) it does not contain any condition or qualification.
- 27.3 The *KMC* shall then evaluate and determine whether the Bidders who have submitted



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responsive Qualification Proposals satisfy the Eligibility Criteria and the Qualification Criteria set out at Clause 3 and Clause 4 respectively.

- 27.4 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, the *KMC* will review the documentary evidence of the Bidder's eligibility and qualifications submitted by the Bidder and any additional information which the *KMC* seeks from the Bidder.
- 27.5 Where any information provided by a Bidder is found to be patently false or amounting to a material misrepresentation, the *KMC* reserves the right to reject the Bid submitted by such Bidder.
- 27.6 Upon completion of evaluation of the Qualification Proposals, and issuance of the Bank's no objection (if applicable), the *KMC* 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:
- (a) their Qualification Proposals of Bid failed to meet the requirements of the RFP and the reasons for disqualification;
  - (b) their Financial Proposals of Bid shall not be opened; and
  - (c) notify them of the date and time for public opening of Financial Proposals of the Bids.
- 27.7 The *KMC* 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:
- (a) their Qualification Proposal has been evaluated as substantially responsive to the RFP and met the Qualification Criteria;
  - (b) their Financial Proposal of Bid will be opened at the public opening of the Financial Proposals; and
  - (c) notify them of the date and time on which their Financial Proposals will be opened.
- [The opening date shall be not less than 10 days from the date of announcement of the results of the evaluation of Qualification Proposal.]

## **28. PUBLIC OPENING AND EVALUATION OF FINANCIAL PROPOSALS**

- 28.1 The *KMC* shall open the Financial Proposals of only those Bidders whose Qualification Proposals meet the criteria set out in this RFP.

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28.2 The Financial Proposals of the Bids shall be opened publicly in the presence of Bidders' designated representatives and anyone who chooses to attend, and this could also be viewed by the Bidders online. The *KMC* shall open the Financial Proposal of each qualified Bidder and announce the Bid Price for Tolly's Nallah Facilities, Garden Reach Facilities, Kudghat PS and Keorapukur Facilities and the aggregate Bid Price quoted by the bidders. The *KMC* 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.

### 28.3 Evaluation of Financial Proposals

Following the opening of the Financial Proposals,

- a. the *KMC* shall evaluate the Financial Proposals for responsiveness. If any Financial Proposal is found:
  - i. not to be complete in all respects;
  - ii. not duly signed by the authorized signatory of the Bidder/Lead Member;
  - iii. not to be in the prescribed format; or
  - iv. to contain any hand-written values

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

- b. 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 Bid Prices for each STP as under:
  - (i) **Design-Build Price** (Bid Project Cost) including all taxes & GST;
  - (ii) **O&M prices for n years** = (O&M Charges including all taxes & GST for first month after COD) \* n \* 12  
Where n = number of years  
n = 15 for Tolly's Nallah Facilities  
n = 15 years from Garden Reach Facilities  
n = 12 years for Keorapukur Facilities  
n = 10 years for Kudghat PS
  - (iii) **Cost of Energy Consumption for the STP during the O&M Period** =  
Average Guaranteed Energy Consumption per MLD flow rate \* Base Energy Tariff Rate \* Average Effluent Flow Rate \* Number of days of the O&M period  
For the purpose of this calculation of energy cost:

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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 9.2/KWh;

Number of days of the O&M period =  $n \times 365$

Where  $n$  = number of years

$n = 15$  for Tolly's Nallah Facilities

$n = 15$  years from Garden Reach Facilities

$n = 12$  years for Keorapukur Facilities

$n = 10$  years for Kudghat PS

- (iv) **Cost of Land required for the STP** = Land Requirement in Acres as quoted by the Bidder (in acres) \* Land Price per Acre

For the purpose of evaluation,

For Tolly's Nallah STP 1, Tolly's Nallah STP 2 and Tolly's Nallah STP 3, land price = INR 18.89 Cr per acre

- (v). **Cost of Energy Consumption for associated infrastructure during O&M period** = Average Guaranteed Energy Consumption per MLD flow rate of DWF (and SWF, in case of Tolly's Nallah Facilities) \* Base Energy Tariff Rate \* Pumping Capacity \* Number of days of the O&M period

Base Energy Tariff Rate = INR 9.2/KWh;

Number of days of the O&M period =  $n \times 365$

(where  $n$  = number of years

$n = 15$  for Tolly's Nallah Facilities

$n = 15$  years from Garden Reach Facilities

$n = 12$  years for Keorapukur Facilities

$n = 10$  years for Kudghat PS

**Total Evaluated Bid Price for the STP** = (i) + (ii) + (iii) + (iv) + (v)

Evaluated Bid Prices determined in the above manner for each STP will be aggregated to arrive at the Total Evaluated Bid Price.

- c. The Executing Agency shall compare the Total Evaluated Bid Prices of all substantially responsive Financial Proposals to determine the Lowest Evaluated Bid.
- d. The Bidder whose Bid has been determined to be the Lowest Evaluated Bid, will be the Preferred Bidder, and shall be selected for award.

## 29. CLARIFICATION ON BIDS

- 
- 29.1 To facilitate evaluation of the Bids, the *KMC* 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 the *KMC* 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 the *KMC* will not be considered.
- 29.2 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, the *KMC* 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 the *KMC*.

## **PART E. AWARD OF PROJECT**

### **30. LETTER OF AWARD (LOA)**

30.1 After declaration of the Selected Bidder, the *KMC* will issue the LOA to the Selected Bidder in duplicate:

- a. Declaring it as the Selected Bidder
- b. Accepting its Financial Proposal;
- c. Requesting it to sign and return, as acknowledgement, a copy of the LOA within 15 days of receipt of the LOA;
- d. Requesting it to submit the Performance Securities in accordance with Clause 16, 16A; and
- e. Requesting it to incorporate the Special Purpose Vehicle, which will act as the Concessionaire.

30.2 If the Selected Bidder fails to return a duly signed copy of the LOA to the *KMC* within 15 days of receipt of the LOA, then the *KMC* 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 the *KMC* elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.

30.3 After notification of award in accordance with Clause 30.1, the *KMC* shall 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:

- (i) name of each Bidder who submitted a Bid;
- (ii) results of evaluation of Qualification Proposals;

- 
- (iii) names of bidders whose Qualification Proposals were rejected and the reasons for their rejection
  - (iv) bid prices as read out at opening of Financial Proposals;
  - (v) name and evaluated prices of each Bid that was evaluated;
  - (vi) names of bidders whose Financial Proposals were rejected and the reasons for their rejection; and
  - (vii) name of the Selected Bidder, the Price it offered and summary scope of the contract awarded.

30.4 The *KMC* 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.

### **31. EXECUTION OF THE CONCESSION AGREEMENT**

31.1 The Special Purpose Vehicle incorporated by the Selected Bidder shall execute the Concession Agreements in the draft form provided by the *KMC*, with minimal changes or amendments to reflect facts or to correct minor errors. The *KMC* 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.

31.2 The *KMC* 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 the *KMC* under Clause 31.1.

31.3 If the Selected Bidder seeks to materially negotiate or seeks any material deviations from the final execution draft of the Concession Agreement, the *KMC* may elect to disqualify the Selected Bidder and revoke the LOA issued to the Selected Bidder. If the *KMC* elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.

31.4 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.

31.5 If the Special Purpose Vehicle fails to execute the Concession Agreement on or before the date specified in Clause 31.4, the *KMC* may, unless it consents to an extension, without prejudice to any of its rights under the RFP or law, disqualify the Selected

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Bidder, revoke the LOA and forfeit the Bid Security. If the *KMC* elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.

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## ANNEXURE 1A: FORMAT OF BID LETTER

*INSTRUCTIONS TO BIDDERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE DOCUMENT*

*The Bidder must prepare this Letter of Bid on stationery with its letterhead clearly showing the Bidder's complete name and business address.*

*Note: All italicized text is to help Bidders in preparing this form which should be deleted from the final document.*

**Date of this Bid submission:** *[insert date (as day, month and year) of Bid submission]*

**Invitation for Bid No.:** *[insert identification]*

To,

**Name of Office/Unit**

*[Executing Agency]*

*[Location A]*

*[City name]*

**Sub: Bid for***[City name]* **STP PPP Project**

Sir/Madam,

We, the undersigned, hereby submit our Bid in respect of the above mentioned project and complying with the Request for Proposal (RFP) issued by the *KMC*, in two separate Folders in accordance with Clause 20 as under:

- (i) Qualification Proposal, as submitted through this letter in accordance with Clause 20; and
- (ii) Financial Proposal – comprising the Bid Price Sheet, which has been filled and submitted online in the separate Folder.

In submitting the Qualification Proposal, we make the following declarations:

- 
- (a) **No reservations:** We have examined and have no reservations to the bidding documents, namely Request (RFP) and the Concession Agreement issued by the *KMC*, including Addenda issued in accordance with Instructions to Bidders (Clause 9);
- (b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with Clause 3;
- (c) **Conformity:** We submit this offer to qualify as a Bidder and to execute the contract for the design, finance, construction, completion, operation and maintenance of the Facilities in accordance with the Concession Agreement.
- (d) **Bid Validity Period:** Our Bid shall be valid for a period specified in Clause 14.1 (or as amended if applicable) from the Bid Due Date as specified in Clause 19 (or as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (e) **Performance Security:** If our Bid is accepted, we commit to obtain a Performance Security and an Environmental, Social, Health and Safety (ESHS) Performance Security, in accordance with Clause 16;
- (f) **One Bid Per Bidder:** We are not submitting any other Bid(s) as an individual Bidder or as a subcontractor, and we are not participating in any other Bid(s) as a Member of a Consortium or Joint Venture member, and meet the requirements of Clause 17;
- (g) **No Separate Bid from Associates:** We declare that we and our Associates are not submitting separate Bids;
- (h) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, associates or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the World Bank Group or a debarment imposed by the World Bank Group in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the World Bank and other development banks. Further, we are not ineligible under the Executing Agency's country laws or official regulations or pursuant to a decision of the United Nations Security Council;
- (i) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state-owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of Clause 3.1 (a)];*
- (j) **Binding Contract:** We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract, until a formal contract is prepared and executed;
- (k) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated Bid, the Preferred Bid or any other Bid that you may receive;
- (l) In the event being declared as the Selected Bidder, we agree to incorporate a Special Purpose Vehicle, which will enter into a Concession Agreement provided by the *KMC*. We agree not to seek any changes in or deviations from the aforesaid draft Concession Agreement and agree to abide by the same; and
- (m) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.



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**Name of the Bidder:** \*[insert complete name of person signing the Bid]

**Name of the person duly authorized to sign the Bid on behalf of the Bidder:** \*\* [insert complete name of person duly authorized to sign the Bid]

**Title of the person signing the Bid:** [insert complete title of the person signing the Bid]

**Signature of the person named above:** [insert signature of person whose name and capacity are shown above]

**Date signed** [insert date of signing] **day of** [insert month], [insert year]

\*: In the case of the Bid submitted by Consortium/Joint Venture specify the name of the Joint Venture as Bidder

\*\* : Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid

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## ANNEXURE 1B: DESCRIPTION OF THE BIDDER

1.
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Principal Address:
  - (d) Date of incorporation and/or commencement of business:
  - (e) GST No:
2. Brief description of the Bidder including details of its main lines of business: [*Note. Such description shall not exceed 5 type-written pages.*]
3. Details of individual(s) who will serve as the point of contact/communication for *Kolkata Municipal Corporation* and *NMCG*:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Telephone Number:
  - (e) E-mail Address:
  - (f) Fax Number:
4. In case of a Consortium:
  - (a) The information above (1-3) should be provided for all the Members of the Consortium.
  - (b) 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.		
3.		

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## 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*), ..... son/daughter/wife of ..... and presently residing at ....., who is presently employed with us/the Lead Member of our Consortium and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the **Attorney**) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the [*City name*] STP PPP Project proposed or being developed by the Kolkata Municipal Corporation (**KMC**) and the National Mission for Clean Ganga (**NMCG**), 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 the Kolkata Municipal Corporation, representing us in all matters before the Kolkata Municipal Corporation and NMCG, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Kolkata Municipal Corporation and NMCG 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 the Kolkata Municipal Corporation and NMCG.

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

IN WITNESS WHEREOF WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 20.....

For

.....

(Signature, name, designation and address)

Witnesses:

1.

2.

(Notarised)

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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 documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

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## 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)*

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

- (a) As on *(insert date)*, the Bidder's/Member's Net Worth is Rs..... (Rupees .....).

Further, the annual Net Worth as per the balance sheets of past 3 Financial Years (including the above) exceeds Rs. *[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 ..... has been calculated in accordance with the terms set out in the Request For Proposal (**RFP**) issued by the Kolkata Municipal Corporation on *[insert date]*.

- (b) The Bidder/Member is not affected by and has not been affected by any of the following events, conditions or circumstances in the 3 Financial Years preceding the Bid Due Date:
- (i) having been categorized as a willful defaulter in accordance with Applicable Laws;
  - (ii) 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
  - (iii) 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:

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Membership Number:

Designation:

Date:

## ANNEXURE 1E: PART I - FORMAT OF DETAILS OF THE ELGIBILE SEWAGE TREATMENT PLANT

Item (1)	Refer Instruction	Details of the Project
Entity claiming experience		
Capacity of the project and technology		
Entity for which project was developed/developed 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)	
In case of development experience, shareholding in the company developing and owning the project	(6)	
Confirmation that the STP is or was successfully operational for at least 24 consecutive months in the 7 years immediately preceding the Bid Due Date	(7)	

***Instructions:***

- (1) *Bidders are expected to provide information in respect of the projects for which they are claiming design and construction/development experience. A separate sheet should be filled for each 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 project in the format set out at Annexure 1F.*
- (7) *A certificate issued by the relevant government authority specifying the number of years for which the STP has been successfully operational, in accordance with the relevant concession agreement or similar contract executed for the STP, should be provided.*
- (8) *Experience for any activity relating to a 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.*
- (9) *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 SEWAGE TREATMENT PLANT

Item (1)	Refer Instr uctio n	Details of the Project
Entity claiming experience		
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)	

***Instructions:***

- (1) *Bidders are expected to provide information in respect of the STPs for which they are claiming operations and maintenance experience. A separate sheet should be filled for each 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 24 consecutive months in the 7 years immediately preceding the Bid Due Date.  
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 for at least 24 consecutive months in the 7 years immediately preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STP, should be provided.*
- (4) *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.*
- (5) *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 - FORMAT OF DETAILS OF THE ELGIBILE SEWAGE AND DRAINAGE NETWORK

Item (1)	Refer Instruction	Details of the Project
Entity claiming experience		
Length and diameter of the network		
Entity for which project was developed/developed 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)	
In case of development experience, shareholding in the company developing and owning the project	(6)	
Confirmation that the network is or was successfully operational for at least 24 consecutive months in the 7 years immediately preceding the Bid Due Date	(7)	

***Instructions:***

- (1) *Bidders are expected to provide information in respect of the projects for which they are claiming design and construction/development experience. A separate sheet should be filled for each 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 network) 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 project in the format set out at Annexure 1F.*
- (7) *A certificate issued by the relevant government authority specifying the number of years for which the network has been successfully operational, in accordance with the relevant concession agreement or similar contract executed for the STP, should be provided.*
- (8) *Experience for any activity relating to a 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.*

*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.*

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## **ANNEXURE 1F: FORMAT OF CERTIFICATE FROM THE STATUTORY AUDITOR REGARDING DEVELOPMENT EXPERIENCE**

Based on its book of accounts and other published information authenticated by it, this is to certify that ..... (*name of the Bidder/Member/Associate*) is/was an equity shareholder in ..... (*title of the project company*) which developed an STP of [*Insert capacity of STP*] MLD at [*Insert location of STP*] for [*Insert name of implementing agency*] and held/holds Rs. ....cr. (Rupees ..... crore) of equity (which constitutes .....% of the total paid up and subscribed equity capital) of [*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.] for such STP.

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation of the authorised signatory)

Date:

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## **ANNEXURE 1G: FORMAT OF SELF-ATTESTED CERTIFICATE REGARDING ASSOCIATE**

### **Self-Attested Certificate regarding Associate**

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 ..... (name of the Bidder/Member/ Associate) is held, directly or indirectly, by ..... (name of Bidder/Member/Associate)

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

[..... (name of Bidder/Member/Associate) has the power, directly or indirectly, to direct or influence the management and policies of ..... (Bidder/Member) by 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 1H: FORMAT OF INFORMATION ON LITIGATION

(To be provided by the Bidder/each Member)

S. No.	Name	Forum and Counterparty	Brief Description of the matter	Estimated financial liability	Current Status of Litigation	Orders passed against the Bidder/Member

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# ANNEXURE 11: FORM OF BID SECURITY (BANK GUARANTEE)

(in stamp paper)

**B.G.No:**

**Dated:**

WHEREAS, .....(name of Bidder including names of all Joint Venture Participants) (hereinafter called “the Bidder”) has submitted its Bid (hereinafter called the “Bid”) dated (date) for the performance of (name of Contract).

KNOW ALL PEOPLE by these presents that We ..... (name of Bank) of ..... (name of country) having our registered office at ..... (hereinafter called “the Bank”) are bound unto ..... (hereinafter called “the Owner”) in the sum 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 Clause 15(a) and the Bid Data Sheet. The details related to the Bid Security are set out in the same Clause 15..]*

The CONDITIONS of this obligation are:

- a. if the Bidder withdraws its Bid during the Bid Validity Period; or
- b. 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 Clause 23; or
  2. fails to provide the performance security to the Owner in accordance with and when required by Clause 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].

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WITNESS  
(signature, name and address)

---

SIGNATURE OF THE BANK  
SEAL

Name: \_\_\_\_\_

Position: \_\_\_\_\_



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# ANNEXURE 1J: FORMAT OF POWER OF ATTORNEY FOR APPOINTING LEAD MEMBER

(On Requisite Stamp Paper)

Whereas the Kolkata Municipal Corporation (the **KMC**) has invited Bids from interested parties for the **NMCG-KMC Kolkata STP PPP Project** (the **Project**).

Whereas, ....., ....., and ..... (collectively, the **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 the **KMC** 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

We, ..... having our registered office at ....., ..... having our registered office at ....., and ..... having our registered office at ....., (hereinafter collectively referred to as the **Principals**) do hereby irrevocably designate, nominate, constitute, appoint and authorise ..... having its registered office at ....., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the **Attorney**). We hereby irrevocably 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 required or incidental to the submission of the Consortium's Bid for 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 Kolkata Municipal Corporation and the National Mission for Clean Ganga, 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 is entered into with the Kolkata Municipal Corporation and the National Mission for Clean Ganga.

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 20.....

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(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 is so required, the same should be under common seal affixed in accordance with the required procedure.*
- (2) *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- (3) *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*

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*required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

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## ANNEXURE 1K: FORMAT OF JOINT BIDDING AGREEMENT

THIS JOINT BIDDING AGREEMENT ("**Agreement**") is entered into on this [●] Day of [●] 201[●]

AMONGST

1. [●], with its registered office at (referred to as the **First Part** which expression will, unless repugnant to the context include its successors and permitted assigns);

AND

2. [●], with its 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. [●], with its registered office at [●] (referred to as the **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

- (A) Kolkata Municipal Corporation (referred to as the **KMC**, 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 Bidder for the design, finance, construction, completion, operation and maintenance of the Facilities in [City name], on a hybrid annuity PPP basis in accordance with the Concession Agreement (the **Project**).
- (B) The Parties are interested in jointly bidding for the Project as Members of a Consortium and in accordance with the terms and conditions of the RFP.
- (C) 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.

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## **2. Consortium**

- 2.1 The Parties do hereby irrevocably constitute a consortium (the **Consortium**) for the purposes of jointly participating in the Bid Process for the Project.
- 2.2 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.

## **3. Covenants**

- 3.1 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 NMCG and KMC for undertaking the Project.
- 3.2 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.

## **4. Role of the Parties**

- 4.1 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.
- 4.2 Party of the Second Part will be [     ].
- [4.3 Party of the Third Part will be [     ].]

## **5. Shareholding in the SPV**

- 5.1 The Parties agree that the proportion of shareholding among the Parties in the SPV will be as follows:

First Party:  
Second Party:  
[Third Party:]

- 5.2. The Parties undertake that:
- (a) 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 Tolly's Nallah Facilities

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COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later.

- (b) The [Second Member], other than the Lead Member, whose [Technical Capacity or Financial Capacity is being assessed solely for construction of S&D Network], as outlined in Clause 4.1 (a)(ii), shall hold at least 10% of the total Capital and Voting rights of the Concessionaire until 3 years after the Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later.
- (c) [Third Member], whose [Technical Capacity or Financial Capacity] is being assessed for the purpose of qualification, will hold at least 26% of the total Capital and voting rights of the SPV from the Effective Date until 3 years after the Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later.

5.3. The Parties undertake that they will comply with all equity lock-in requirements set out in this Agreement and in the Concession Agreement.

## **6. Representations of the Parties**

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

- (a) such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) the execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - (i) require any consent or approval not already obtained;
  - (ii) violate any applicable law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents;
  - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such

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Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

- (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it;
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement; and
- (e) 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.

## 7. 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.

## 8. Miscellaneous

- 8.1 This Agreement will be governed by the laws of India.
- 8.2 The Parties acknowledge and accept that this Agreement will not be amended by the Parties without the prior written consent of *KMC*.

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
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SIGNED, SEALED AND DELIVERED For and on behalf of the PARTY OF THE
---

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

In the presence of:

1

2.

***Instruction:***

1. *The 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 or each Member, in case of a Consortium]*

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Member: *[insert full name]*

RFP No. and title: *[insert RFP number and 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			
<input type="checkbox"/> <b>No suspension or termination of contract:</b> 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 since the <i>[insert the date]</i> specified in Section II, Eligibility and Qualification Criteria, Clause 3.5(d).			
<input type="checkbox"/> <b>Declaration of suspension or termination of contract:</b> 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 since the <i>[insert the date]</i> specified in Section II, Eligibility and Qualification Criteria, Clause 3.5(d).			
Year	Suspended or terminated portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
...	...	<i>[list all applicable contracts]</i>	...
<b>Performance security called by an employer(s) for reasons related to ESHS performance</b>			
Year	Contract Identification		Total Contract Amount (current

		value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for calling of performance security: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>



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## 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

Kolkata Municipal Corporation [ ]

Dear Sir,

Sub: Experience Certificate for Biogas Power Plant for the Namami Gange [City name] STPs PPP Project

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]<sup>8</sup> 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(s) issued by relevant government authorities to demonstrate that: (1) the biogas power plant was developed or designed and constructed in the 7 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 7 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.

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<sup>8</sup> Delete as applicable.

---

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2018.

Thanking you,

Yours truly,

.....

(Name and signature of Authorized Signatory)

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## ANNEXURE 3: CONSENT LETTER FOR EXPERIENCE 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

Kolkata Municipal Corporation [ ]

Dear Sir,

Sub: Consent Letter for Experience for Biogas Power Plant for the *[City name]* STPs PPP Project

We, the undersigned ..... *[insert name of the entity issuing the consent letter]* hereby confirm that we have *[developed]/[designed and constructed]*<sup>9</sup> 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(s) issued by relevant government authorities to demonstrate that: (1) the biogas power plant was developed or designed and constructed in the 7 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 7 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

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<sup>9</sup> Delete as applicable.

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by the Selected Bidder to develop a biogas power plant at the *[Location A]* Site in accordance with the Concession Agreement:

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2018.

Thanking you,  
Yours truly,

.....  
(Name and signature of Authorized Signatory)

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## ANNEXURE 4: FORMAT OF PERFORMANCE SECURITY

### FORM OF PERFORMANCE SECURITY

\_\_\_\_\_ [Bank's Name, and Address of Issuing Branch or Office]

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

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

**PERFORMANCE GUARANTEE NO.:** \_\_\_\_\_

We have been informed that \_\_\_\_\_ [name of Operator] (hereinafter called "the Bidder") has entered into 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 Kolkata (hereinafter called "the Contract").

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

At the request of the Operator, we \_\_\_\_\_ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of \_\_\_\_\_ [amount in figures] (\_\_\_\_) [amount in words], upon receipt by us of your first demand in writing accompanied by a written statement stating that the Operator 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 later of:

- (a) twenty five months after the Effective Date, as defined in the Contract; or
- (b) one month after the COD of the [location], as defined in the Contract.

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,

[Name of Bank]

\_\_\_\_\_  
*Authorised Signature*



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

**ESHS Demand Guarantee**

**ESHS Demand Guarantee**

*[On requisite stamp paper]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** **KMC** with its registered office –*[insert address]*

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

**ESHS 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 Beneficiary'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.

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*[signature(s)]*

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

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## **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;

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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 CUTY EXEMPTION FOR MATERIALS TO BE PURCHASED FOR USE IN BUILDING THE SEWAGE NETWORK INCLUDING PUMPING STATIONS ETC.**

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

(Bidder’s Name and Address)

**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.
2. We are furnishing below the information required by the [Project 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.
3. The goods, equipment and materials for which certificates are required are as under:

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

- 
4. We agree that no modification to the above list is permitted after bids are opened.
  5. We agree that the certificate will be issued only to the extent considered reasonable by the [Project Executing Agency] for the work, based on the bid submitted by us, construction programme and methodology furnished along with the bid.
  6. 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) \_\_\_\_\_

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**Model Bid price sheet**

*(Attached in the excel format)*