



Infrastructure Corporation of Andhra Pradesh Limited (INCAP)

**REQUEST FOR PROPOSAL (RFP)
(International Competitive Bidding)**

Volume 1: Instructions to Bidder

**SELECTION OF THE DEVELOPER FOR A CONVENTION CENTRE AT
VISAKHAPATNAM IN ANDHRA PRADESH ON PPP BASIS**

(September 2015)

(BID DUE DATE: 16-10-2015)

(This RFP document is meant for exclusive purpose of submitting the proposals and shall not be transferred, reproduced or otherwise used for purposes other than that for which it is specifically issued)



Vice Chairman and Managing Director,
Infrastructure Corporation of Andhra Pradesh Limited (INCAP)
10-2-1, III Floor, FDC Complex, AC Guards,
Hyderabad – 500 028, India

Selection of the Developer for a Convention Centre at Visakhapatnam in Andhra Pradesh on PPP basis

Notice No. INCAP /P/ Infrastructure Projects/116/2015 Dt: 01-09-2015

REQUEST FOR PROPOSAL DOCUMENT

Bids in the prescribed format are invited for the project

1	Name of the Project	Selection of the Developer for a Convention Centre at Visakhapatnam in Andhra Pradesh on PPP basis
2	Last date & time for submission of Bid (Bid Due Date)	15.00 Hours IST on 16-10-2015
3	Time and Place of Pre Bid Conference	11.00 Hours IST on 23-09-2015 in the Board Room of Infrastructure Corporation of Andhra Pradesh, #10-2-1, 3 rd FLOOR, FDC COMPLEX, AC GUARDS, HYDERABAD – 500028, India.
4	Date & time for opening of Threshold Bids	15.30 Hours IST on 16-10-2015 in the Board Room of Infrastructure Corporation of Andhra Pradesh, #10-2-1, 3 rd FLOOR, FDC COMPLEX, AC GUARDS, HYDERABAD – 500028, India.
5	Date & time for opening of Technical Bids	11.00 Hours IST on 23-10-2015 in the Board Room of Infrastructure Corporation of Andhra Pradesh, #10-2-1, 3 rd FLOOR, FDC COMPLEX, AC GUARDS, HYDERABAD – 500028, India.
6	Date & time for opening of Financial Bids	11.00 Hours IST on 06-11-2015 in the Board Room of Infrastructure Corporation of Andhra Pradesh, #10-2-1, 3 rd FLOOR, FDC COMPLEX, AC GUARDS, HYDERABAD – 500028, India.
7	RFP processing fee	Non-refundable ₹ 50,000/- (Rupees fifty thousand only) In the form of demand draft issued by one of the Nationalized/Scheduled Banks in India in favour of the Vice Chairman and Managing Director, INCAP Limited., payable at Hyderabad. The Demand Draft shall remain valid for one month after the Bid Due Date.

Acknowledgement:

This document shall be returned duly signing each page by the authorized person accepting the terms and conditions.

It is expressly understood that the party has subscribed to this document with an express understanding that they will use this document only for the sole purpose of participating in the Selection process for the **Selection of the Developer for a Convention Centre at Visakhapatnam in Andhra Pradesh on PPP basis** and must not be used for any other purpose. This document must not be passed to a third party except professional advisers assisting with this Bid submission. The document may not be reproduced or communicated, in whole or in part, and its contents may not be distributed in written or oral form without written permission from the issuing authority.

Signature of the issuing Authority

Vice Chairman & Managing Director

Infrastructure Corporation of Andhra Pradesh Ltd. (INCAP)

10-2-1, 3rd Floor, FDC Complex,

AC Guards, Hyderabad – 500028, India.

Tel: +91-40-2332 1771/72 Fax: +91-40-2332 1773

Email: incap@incap.co.in, md@incap.co.in.

Web: www.incap.co.in

Table of Contents

Acknowledgement:	3
Disclaimer.....	7
Glossary	9
1 INTRODUCTION	11
1.1 Background.....	11
1.2 Brief description of Bidding Process	14
1.3 Schedule of Bidding Process	16
1.4 Pre-Bid Conference.....	17
2 INSTRUCTIONS TO BIDDERS	18
A. GENERAL	18
2.1 Eligibility of Bidders.....	18
2.2 General terms of Bidding	23
2.3 Change in composition of the consortium.....	25
2.4 Number of Bids and costs thereof.....	25
2.5 Site visit and verification of information.....	25
2.6 Verification and disqualification.....	26
B. DOCUMENTS	27
2.7 Contents of the RFP	27
2.8 Clarifications	29
2.9 Amendment of Bidding Documents.....	30
C. BID SECURITY	30
2.10 Bid Security	30
3 PREPARATION AND SUBMISSION OF BIDS	32
3.1 Format and signing of bid.....	32
3.2 Sealing and marking of Bids.....	32
3.3 Instructions for submission of Threshold Bid.....	33
3.4 Instructions for submission of Technical Bid	34
3.5 Instructions for submission of Financial Bid.....	34
3.6 Common instructions	35
3.7 Language	35

3.8	Bid Due Date	35
3.9	Late Bids	35
3.10	Modifications/Substitution/Withdrawal of Bids	36
3.11	Rejection of Bids	36
3.12	Validity of bids	36
3.13	Confidentiality	36
3.14	Correspondence with the Bidder.....	37
4	EVALUATION OF BIDS	37
4.1	Opening and Evaluation of Bids	37
4.2	Test of responsiveness.....	38
5	CRITERIA FOR EVALUATION	40
5.1	Threshold Evaluation	40
5.2	Technical Evaluation.....	41
5.3	Details of Experience	44
5.4	Financial information for purposes of evaluation	44
5.5	Financial Bid.....	44
5.6	Selection of Bidder.....	45
5.7	Contacts during Bid Evaluation	46
6	FRAUD AND CORRUPT PRACTICES	47
7	PRE-BID CONFERENCE	49
8	MISCELLANEOUS	50
	APPENDICES	51
	PART A – FORMATS FOR BID SUBMISSION	52
	APPENDIX–A1	53
	APPENDIX–A2.....	57
	APPENDIX–A3	59
	APPENDIX-A4.....	62
	APPENDIX–A5	68
	APPENDIX–A6.....	71
	APPENDIX-A7.....	73
	PART B – FORMATS FOR THRESHOLD BID SUBMISSION.....	74
	APPENDIX-B1	75

APPENDIX-B2.....	77
APPENDIX-B3.....	80
APPENDIX-B4.....	83
APPENDIX-B5.....	85
PART C – FORMATS FOR TECHNICAL BID SUBMISSION.....	90
APPENDIX-C1.....	91
APPENDIX-C2.....	94
PART D – FORMAT FOR FINANCIAL BID SUBMISSION.....	99
APPENDIX–D1.....	100

Disclaimer

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

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in 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 and obtain independent advice from appropriate sources.

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

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

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

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

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and the Authority

reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

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

Glossary

Associate	As defined in Clause 2.1.1
Authority	As defined in Clause 1.1.1
Bank Guarantee	As defined in Clause 2.10.1
Bids	As defined in Clause 1.2.2
Bidding Documents	As defined in Clause 1.1.7
Bid Due Date	As defined in Clause 1.1.7
Bidding Process	As defined in Clause 1.2.1
Bid Security	As defined in Clause 1.2.8
Concession	As defined in Clause 1.1.5
Concession Agreement	As defined in Clause 1.1.2
Concessionaire	As defined in Clause 1.1.2
Consortium	As defined in Clause 2.1.1
Conflict of Interest	As defined in Clause 2.1.1
Damages	As defined in Clause 2.1.1
DBFOT	As defined in Clause 1.1.1
Demand Draft	As defined in Clause 2.10.2
Eligible Experience	As defined in Clause 5.2.3
Estimated Project Cost	As defined in Clause 1.1.4
Experience Score	As defined in Clause 5.2.8
Financial Capacity	As defined in Clause 5.1.1
Government	Government of Andhra Pradesh
Highest Bidder	As defined in Clause 1.2.10
Joint Bidding Agreement	As defined in Clause 2.1.3
LOA	As defined in Clause 5.6.4
Lead Member	As defined in Clause 2.1.3
Member	Member of a Consortium
Net Worth	As defined in Clause 5.1.3
PIM or Project Information Memorandum	As defined in Clause 1.2.7
PPP	Public Private Partnership
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee

RFP or Request for Proposals	As defined in the Disclaimer
Selected Bidder	As defined in Clause 5.5.2
Technical Capacity	As defined in Clause 5.1.1

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

1 INTRODUCTION

1.1 Background

1.1.1 The Infrastructure Corporation of Andhra Pradesh (“INCAP” or the “**Authority**”) is the Government of Andhra Pradesh agency and is envisaged to expressly increase the pace of infrastructure development by assisting the setting up and development of Public Private Partnership projects in the State. As a part of this endeavor INCAP has decided to undertake development, operation and maintenance of the Convention Centre in Visakhapatnam (the “**Project**”) through Public Private Partnership (the “**PPP**”) on Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis, and has, therefore, decided to carry out the bidding process for selection of an entity as the Bidder to whom the Project may be awarded. Brief particulars of the project are as follows:

Name of the Project	Key Components	Estimated Project Cost
		(In Rs. cr.)
Selection of the Developer for a Convention Centre at Visakhapatnam in Andhra Pradesh on PPP Basis	Convention Centre Exhibition Centre 5-Star Hotel Commercial Complex	380

1.1.2 The Selected Bidder, who is either a company incorporated under the Companies Act, 1956/2013 or undertakes to incorporate as such prior to execution of the concession agreement (the “**Concessionaire**”), shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of a 33 years concession agreement (the “**Concession Agreement**”) to be entered into between the Selected Bidder and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

1.1.3 The Project shall include development, management, operation and maintenance of a Convention Centre, Exhibition Centre, 5-Star Hotel and Commercial Complex as per Norms and Guidelines provided by Ministry of Tourism, Government of India (GoI) and applicable Local By-laws. The Bidder would be given the option to plan and design the Project Facilities conforming to the applicable Building Bye-Laws and regulations/norms/standards for respective project components including arranging approval from the competent authority. The nature of the Project Facilities (Minimum and Optional) that shall be allowed and the list of prohibited activities are detailed in the table below.

S. No.	Project Facilities	Facilities
1.	Minimum Development Obligations / Essential Facilities	<p>1. Convention Centre</p> <p>a. 5,000 pax single multipurpose hall with removable partitions and retractable seating, entrance lobby, 1 Hall of 250 pax capacity, 2 Halls of 200 pax capacity, 2 Halls of 40 pax capacity each with seating arrangement, provisions for Board Rooms and 2 Nos.(two) VVIP rooms.</p> <p>b. Other basic facilities such as Reception, Information counters, public facilities, eating stalls, as per the requirement & norms. Reception area with a minimum of 8 Terminals to be provided. Provision for additional Terminals if required.</p> <p>c. Facility to interpret 6 languages and wireless IR receivers of minimum 2,000 Nos.</p> <p>d. Convention Centre shall be maintained by the Hotel Chain operating the Hotel component.</p> <p>2. Exhibition Centre</p> <p>a. Exhibition space of minimum 50,000 sq. ft. of covered air-condition space is to be developed.</p> <p>b. Exhibition Centre shall be maintained by the Hotel Chain operating the Hotel component.</p> <p>3. Five Star Hotel</p> <p>a. Minimum number of rooms shall be 150 (provision for future expansion of minimum 100 additional keys to be made in the building design).</p> <p>b. Coffee Shop of 100 seating capacity</p> <p>c. Specialty Restaurant of 100 seating capacity</p> <p>d. Lounge / Bar of 100 seating capacity</p> <p>e. Executive Health Club which includes Gymnasium, Swimming Pool, Spa & Health Club, Indoor & Outdoor recreation Facilities.</p> <p>f. Food-Beverages & Other ancillary facilities as per the standards and requirements meeting the Ministry of Tourism Guidelines.</p> <p>4. Commercial complex</p> <p>a. Minimum Gross leasable area of Commercial Space shall be 200,000 sq. ft. with multiplex of at least 4 screens,</p>

S. No.	Project Facilities	Facilities
		<p>anchor stores, hyper market & super market.</p> <p>b. The allowed commercial area can be maintained by the hotel chain operating the Five Star Hotel or as required by the bidder</p> <p>c. Commercial Area / Space would essentially mean Retail shopping, Branded showrooms, Anchor stores, and Entertainment complex/zone and office/business spaces within Commercial complex only</p> <p>5. Support Facilities & infrastructure like internal road network, parking areas, security, air conditioning, water supply and rain – water harvesting, Power, sewage treatment, solid waste management, landscaping and other services required for the complex.</p> <p>6. Parking: Provision of Car parking should be made as per Local Building Bye-Laws and applicable parking norms.</p>
2.	Optional Facilities	<p>1) Convention and Exhibition Centre</p> <p>a) Additional seating capacity in the Convention Centre over and above 5,000 pax</p> <p>b) Additional exhibition space, exceeding the mandatory obligation of 50,000 sq. ft</p> <p>c) Restaurants and cafeteria can be constructed as optional facility</p> <p>2) Five Star Hotel:</p> <p>a) Budget hotel and Service apartments as optional facility can be constructed along with the Five Star Hotel. Budget hotel and Service apartments shall be maintained by the Hotel Chain operating the Five Star Hotel.</p> <p>3) Commercial Complex</p> <p>a) Additional Gross Leasable Area can be built subject to the maximum built up Commercial Area/Space as per applicable bye laws and after prior approval of the Authority prescribed in the concession agreement</p>
3.	Prohibited Activities	<p>1) Prohibited activities includes but not limited to, use of any built up space for the purposes directly or indirectly, as Residential, Hospital, Warehousing, Car Showrooms, Industrial Activities, Automobile-repair/services/vehicular servicing shops, LPG Godowns, Petrol Bunk, any trade or activity involving any kind of obnoxious,</p>

S. No.	Project Facilities	Facilities
		hazardous, inflammable, non-compatible and polluting substance or process.

- 1.1.4** The estimated cost of the Project (the “**Estimated Project Cost**”) has been specified in Clause 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.5** The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “**Concession**”).
- 1.1.6** The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.
- 1.1.7** The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the “**Bidding Documents**”), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).

1.2 Brief description of Bidding Process

- 1.2.1** The Authority has adopted a single-stage bidding process (the “**Bidding Process**”) for selection of the Bidder for award of the Project.
- 1.2.2** The Bidders are required to submit their Bids (the “**Bids**”) in three parts/envelopes (i) Threshold Bid (ii) Technical Bid, and (iii) Financial Bid.
- 1.2.3** Along with submitting the Bid, the Bidder shall pay to the Authority a sum of Rs. 50,000 (Rupees fifty thousand) as the cost of the RFP process. The cost is to be paid in the form of a Demand Draft issued by one of the Nationalized/Scheduled Banks in India in favour

of the Vice Chairman and Managing Director, INCAP Limited., payable at Hyderabad. The Demand Draft shall remain valid for one month after the Bid Due Date.

- 1.2.4** The first stage of the process involves qualification of interested parties/consortia who submit a bid in accordance to the provisions of this RFP. At the end of this stage, all those bidders who qualify the Threshold Criteria will be evaluated based on the Technical Bids.
- 1.2.5** Opening and evaluation of the Technical Bid is the second stage of the process. At the end of this stage, the Authority expects to announce a short-list of up to seven (7) suitable Bidders who shall be eligible for opening and evaluation of the Financial Bid which is the final stage of evaluation.
- 1.2.6** Government of India has issued guidelines (see Appendix-A6) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Authority shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-AI and Appendix-C1.
- 1.2.7** The Bidding Documents include the Draft Concession Agreement for the Project and Project Information Memorandum (the “PIM”). Subject to the provisions of Clause 2.2.1, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- 1.2.8** A Bidder is required to deposit, along with its Bid, a bid security of Rs. 3.8 crore (the “Bid Security”), refundable not later than 60 (sixty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have to provide Bid Security in the form of a Demand Draft or a bank guarantee acceptable to the Authority. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. Where a demand draft is provided, its validity shall not be less than 80 (eighty) days from the Bid Due Date, for the purposes of encashment by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 1.2.9** During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.
- 1.2.10** Generally, the Highest Bidder (the “**Highest Bidder**”) shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 4 and Clause 5 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.
- 1.2.11** The Concessionaire shall, in consideration of its investment and services, be entitled to levy and collect a pre-determined user fee/receive a unitary charge.
- 1.2.12** Details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP.
- 1.2.13** Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/ courier/ special messenger and by e-mail so as to reach the officer designated in Clause 3.2.4 by the specified date. The envelopes/ communication shall clearly bear the following identification/ title:

“Queries/Request for Additional Information: RFP for Selection of the
Developer for a Convention Centre at Visakhapatnam in Andhra Pradesh on
PPP basis”

1.3 Schedule of Bidding Process

The authority shall endeavor to adhere to the following schedule:

S. No.	Event Description	Date
1	Last date for receiving queries	23 rd September, 2015
2	Pre-Bid Conference	23 rd September, 2015
3	Authority response to queries latest by	30 th September, 2015
4	Bid Due Date	16 th October, 2015
5	Opening date and time of Threshold Bids	16 th October, 2015, 1530 hrs
7	Opening date and time of Technical Bids	23 rd October, 2015, 1100 hrs

9	Opening date and time of Financial proposal	6 th November, 2015, 1100 hrs
10	Issue of Letter of Award	Within 30 days of Bid Due Date
11	Validity of Bids	120 days of Bid Due Date
12	Signing of Concession Agreement	Within 30 days of LOA

1.4 Pre-Bid Conference

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

Date: 23rd September, 2015

Time: 1100 hrs

Venue: Infrastructure Corporation of Andhra Pradesh Limited (INCAP)

10-2-1, III Floor, FDC Complex, AC Guards,
Hyderabad – 500 028, India

2 INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 Eligibility of Bidders

2.1.1 For determining the eligibility of bidders hereunder, the following shall apply:

- i. The Bidder for qualification and selection may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
- ii. A Bidder may be a natural person, private entity, government-owned entity incorporated under the Indian Companies Act 1956/2013 or applicable laws of foreign countries or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.1.3 below.
- iii. A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, *inter alia*, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal (the “**Damages**”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if
 - a. The Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate is less than 5 per cent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.1.1(iii), indirect shareholding held

- through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “Subject Person”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
- b. a constituent of such Bidder is also a constituent of another Bidder; or
 - c. such Bidder or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
 - d. such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
 - e. such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other’s information about, or to influence the Bid of either or each other; or
 - f. such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.1, shall include each Member of such Consortium.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the “Associate”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company

or corporation, the power to direct the management and policies of such person by operation of law.

2.1.2 The Bidder should submit a Power of Attorney as per the format in Appendix-A2, authorizing the signatory of the Bidder to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-A3.

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

- a) Number of members in a consortium shall not exceed 6 (six); but information sought in the Bid may be restricted to 4 (four) members in the order of their equity contribution;
- b) Subject to the provisions of sub-clause (a) above, the Bid should contain the information required for each member of the Consortium;
- c) Members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-A3, signed by all the other members of the Consortium;
- d) The Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- e) An individual Bidder cannot at the same time be member of a Consortium submitting a bid. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium submitting a bid;
- f) The members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- g) Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-A4 (the “**Joint Bidding Agreement**”), for the purpose of making the Bid. The Joint Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:
 - i. Convey the intent to form an SPV with shareholding/ownership equity commitment(s) in accordance with this RFP, which would enter into the

Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;

- ii. clearly outline the proposed roles and responsibilities, if any, of each member;
- iii. commit the minimum equity stake to be held by each member;
- iv. commit that each of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;
- v. members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the commercial operation date of the Project; and
- vi. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and
- h) Except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Authority.

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

2.1.5 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.1.5 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any wilful

default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

- 2.1.6** In computing the Technical Capacity and Net Worth of the Bidder/Consortium Members under Clause 5.1.1, 5.1.3 and 5.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

- 2.1.7** The following conditions shall be adhered to while submitting a Bid:

- a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Appendices is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- b) Information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms.
- c) In responding to the Bid submissions, Bidders should demonstrate their capabilities in accordance with Clause 5 below.
- d) In case the Bidder is a Consortium, each Member should substantially satisfy the qualification requirements to the extent specified herein.

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

- a) Where, on the date of the Bid, 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
- b) if at any subsequent stage after the date of the Bid, there is an acquisition of 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

then the Qualification of such Bidder or in the event described in sub clause (b) above, the continued Qualification of the Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

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

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

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

2.2 General terms of Bidding

- 2.2.1** The PIM is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the PIM shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the PIM.

- 2.2.2** Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- 2.2.3** Any condition or qualification or any other essential stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.2.4** The documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the properties of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.2.4 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.2.5** A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Explanation: In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.5, shall include each Member of such Consortium.

- 2.2.6** This RFP is not transferable.

2.2.7 Any award of Concession pursuant to this RFP shall be subject to the terms of Bidding Documents.

2.3 Change in composition of the consortium

2.3.1 Approval for change in the composition of a Consortium shall be at the sole discretion of the Authority and must be approved by the Authority in writing.

2.3.2 Notwithstanding anything to the contrary contained in sub-clause (iii) (a) of Clause 2.1.1, a Bidder may, within 10 (ten) days after the Bid Due Date, remove from its Consortium any member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

2.4 Number of Bids and costs thereof

2.4.1 No Bidder shall submit more than one Bid for the Project. 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 Consortium, as the case may be.

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

2.5 Site visit and verification of information

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

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

- a) made a complete and careful examination of the Bidding Documents;
- b) received all relevant information requested from the Authority;
- c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above;

- d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
- f) acknowledged that it does not have a Conflict of Interest; and
- g) agreed to be bound by the undertakings provided by it under and in terms hereof

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

2.6 Verification and disqualification

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

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

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

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

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member may be disqualified / rejected. If such disqualification / rejection occur after the Bids have been opened and the Highest Bidder gets disqualified / rejected, then the Authority reserves the right to:

- a) invite the remaining Bidders to submit their Bids in accordance with Clauses 5.6.2 and 5.6.3; or
- b) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.6.4 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by the Authority, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.

B. DOCUMENTS

2.7 Contents of the RFP

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

GLOSSARY

Section 1	INTRODUCTION
Section 2	INSTRUCTIONS TO BIDDERS
Section 3	PREPARATION AND SUBMISSION OF BIDS

Section 4	EVALUATION OF BIDS
Section 5	CRITERIA FOR EVALUATION
Section 6	FRAUD AND CORRUPT PRACTICES
Section 7	PRE-BID CONFERENCE
Section 8	MISCELLANEOUS

APPENDICES:

PART A – FORMATS FOR BID SUBMISSION

Appendix A1-Letter comprising the Bid for Threshold and Technical Evaluation

Appendix A2- Power of Attorney for Signing of Bid

Appendix A3-Power of Attorney for Lead Member of Consortium

Appendix A4-Joint Bidding Agreement

Appendix A5-Bank Guarantee for Bid Security

Appendix A6-Guidelines of the Department of Disinvestment

Appendix A7-Statement of Legal Capacity

PART B – FORMATS FOR THRESHOLD BID SUBMISSION

Appendix B1-Particulars of the Bidder

Appendix B2 - Threshold Capacity of the Bidder in Category 1 and 3 projects

Appendix B3- Threshold Technical Capacity of the Bidder

Appendix B4-Financial Capacity of the Bidder

Appendix B5-Details of Eligible Projects

PART C – FORMATS FOR TECHNICAL BID SUBMISSION

Appendix C1- Technical Capacity of the Bidder

Appendix C2-Details of Eligible Projects

PART D – FORMATS FOR FINANCIAL BID SUBMISSION

Appendix D1-Letter comprising the financial bid

2.7.2 The draft Concession Agreement and the PIM provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFP.

2.8 Clarifications

2.8.1 Bidders requiring any clarification on the RFP may notify the Authority in writing by speed post/ courier/ special messenger and by e-mail in accordance with Clause 1.2.13. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be sent by e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

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

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

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

2.8.5 If a Bidder does not provide clarifications sought under Clause 2.8.4 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

2.9 Amendment of Bidding Documents

- 2.9.1** At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the bidding documents by issuance of addenda.
- 2.9.2** Any Addendum issued shall be part of the Bidding Document and shall be available on the website www.incap.co.in.
- 2.9.3** In order to afford the Bidders a reasonable time for taking an Addendum into account for preparing their bids, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

C. BID SECURITY

2.10 Bid Security

- 2.10.1** The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clause 1.2.8 hereinabove in the form of a bank guarantee issued by a nationalised bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. one thousand crore), in favour of the Authority in the format at Appendix–A5 (the “**Bank Guarantee**”) and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 2.10.2** Bid Security can also be in the form of a demand draft issued by one of the Nationalized/Scheduled Banks in India in favour of the Vice Chairman and Managing Director, INCAP Limited., payable at Hyderabad (the “**Demand Draft**”). The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.10.3** Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.10.4** Save and except as provided in Clauses 1.2.8 and Clause 1.2.9 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority, and in any case within 60 (sixty) days from the Bid Due

Date. Where Bid Security has been paid by demand draft, the refund thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said demand draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

- 2.10.5** The Selected Bidder's Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.
- 2.10.6** The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages *inter alia* in any of the events specified in Clause 2.10.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.10.7** The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Concession Agreement, or otherwise, if
- a) a Bidder submits a non-responsive Bid;
 - b) a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 6 of this RFP;
 - c) a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
 - d) the Selected Bidder fails within the specified time limit –
 - i. to sign and return the duplicate copy of LOA; or
 - ii. to sign the Concession Agreement; or
 - iii. to furnish the Performance Security within the period prescribed therefor in the Concession Agreement.
 - e) the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

3 PREPARATION AND SUBMISSION OF BIDS

3.1 Format and signing of bid

- 3.1.1** The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable to rejection.
- 3.1.2** The Bidder shall prepare 1 (one) original set of the Bid (together with the documents required to be submitted pursuant to this RFP) and clearly marked as “ORIGINAL”. In addition, the Bidder shall submit 1 (one) copy of such Bid documents, which shall be marked as “COPY”. The Bidder shall also provide 2 (two) soft copies thereof on a Compact Disc (CD). In the event of any discrepancy between the original and the copy, the original shall prevail.
- 3.1.3** The Bid documents and its copy shall be typed or written in indelible ink. It shall be signed by the authorised signatory of the Bidder who shall also initial each page of the Bid (including each Appendix) in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid. The Bid documents shall contain page numbers and shall be bound together in a manner that does not allow replacement of any page.

3.2 Sealing and marking of Bids

- 3.2.1** The bid shall be submitted in three separate envelopes as under; placed in an outer envelope:
- a) Envelope I: Threshold Bid**
 - b) Envelope II: Technical Bid**
 - c) Envelope II: Financial Bid**
- 3.2.2** The following shall be submitted in the Outer Envelope of the Bid, in Original:
- i. Bid as per the prescribed format in Appendix-A1
 - ii. Power of Attorney for signing the Bid as per the format at Appendix-A2;
 - iii. if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-A3;

- iv. copy of the Joint Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-A4;
- v. Bank Guarantee towards Bid Security as per the format in Appendix-A5
- vi. Guidelines of the Department of Disinvestment Signatory as per Appendix-A6
- vii. Statement of Legal Capacity Signatory as per Appendix-A7
- viii. Demand Draft issued by one of the Nationalized/Scheduled Banks in India for Rs. 50,000/- (Rs. fifty thousand) in favour of the Vice Chairman & Managing Director, INCAP Limited, payable at Hyderabad towards the Bid Processing Cost
- ix. A copy of the Concession Agreement (Part E of Appendices) with each page initialled by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause iii hereinabove.
- x. copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;

3.2.3 All the above submissions in original shall be placed inside the Outer Envelope along with Envelope I, Envelope II and Envelope III. The Outer Envelope shall be sealed, labelled as “BID FOR SELECTION OF THE DEVELOPER FOR A CONVENTION CENTRE AT VISAKHAPATNAM IN ANDHRA PRADESH ON PPP BASIS” and NOT TO BE OPENED BEFORE THE DUE DATE/TIME FOR BID SUBMISSION AND OPENING. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

3.2.4 Each of the envelopes shall be addressed to:

The Vice Chairman and Managing Director,
Infrastructure Corporation of Andhra Pradesh Ltd
10-2-1, III Floor, FDC Complex, AC Guards,
Hyderabad - 500 028, Telangana, India
Tel: +91-40-2332 1771/2;
Email: incap@incap.co.in, Website: www.incap.co.in

3.3 Instructions for submission of Threshold Bid

3.3.1 The following shall be submitted as a part of Envelope I

- i. General particulars of the Bidder as per the format in Appendix-B1
- ii. Threshold Capacity of the Bidder in Category 1 and 3 projects in Appendix B2

- iii. Technical Capacity of the Bidder as per the format in Appendix-B3
- iv. Financial Capacity of the Bidder as per the format in Appendix-B4
- v. Details of Eligible projects as per the format prescribed in Appendix-B5
- vi. Copies of Bidder's duly audited balance sheet and profit and loss account for the preceding five years; and
- vii. Two (2) soft copies of the Threshold Bid in a Compact Disc (CD)

3.3.2 The Bidders shall prepare and submit one (1) original and one (1) copy of the Threshold Bid in Envelope I duly marking "ORIGINAL" and "COPY". This envelope shall be sealed, labelled as "ENVELOPE I: THRESHOLD BID FOR SELECTION OF THE DEVELOPER FOR A CONVENTION CENTRE AT VISAKHAPATNAM IN ANDHRA PRADESH ON PPP BASIS", and placed inside the Outer Envelope. In case of any difference of data/information submitted in the Original and Copy, the information provided in the Original shall be treated as final.

3.4 Instructions for submission of Technical Bid

3.4.1 The following shall be submitted as a part of Envelope II

- i. Technical Capacity of the Bidder as per the format in Appendix-C1
- ii. Details of Eligible projects as per the format prescribed in Appendix-C2
- iii. Copies of Bidder's duly audited balance sheet and profit and loss account for the preceding five years; and
- iv. Two (2) soft copies of the Technical Bid in a Compact Disc (CD)

The Bidders shall prepare and submit one (1) original and one (1) copy of the Technical Bid in Envelope II duly marking "ORIGINAL" and "COPY". This envelope shall be sealed, labelled as "ENVELOPE II: TECHNICAL BID FOR SELECTION OF THE DEVELOPER FOR A CONVENTION CENTRE AT VISAKHAPATNAM IN ANDHRA PRADESH ON PPP BASIS", and placed inside the Outer Envelope. In case of any difference of data/information submitted in the Original and Copy, the information provided in the Original shall be treated as final.

3.5 Instructions for submission of Financial Bid

3.5.1 The Bidders shall be required to submit their Financial Bid as under:

- i. Bid Letter and format as per Appendix-D1 duly filled in to quote the "REVENUE SHARE" payable to the Authority.

3.5.2 Bidders shall prepare and submit only one (1) original document of the Price Bid in Envelope III. The Envelope containing the Financial Bid shall be sealed, labelled as “ENVELOPE III: FINANCIAL BID FOR SELECTION OF THE DEVELOPER FOR A CONVENTION CENTRE AT VISAKHAPATNAM IN ANDHRA PRADESH ON PPP BASIS”, and placed inside the Outer Envelope.

3.6 Common instructions

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

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

3.7 Language

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

3.8 Bid Due Date

3.8.1 Bids should be submitted before 1500 hours IST on the Bid Due Date at the address provided in Clause 3.2.4 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 3.2.4.

3.8.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

3.9 Late Bids

3.9.1 Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected

3.10 Modifications/Substitution/Withdrawal of Bids

- 3.10.1** The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.
- 3.10.2** The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 3.2, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- 3.10.3** Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

3.11 Rejection of Bids

- 3.11.1** Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul or modify the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 3.11.2** The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

3.12 Validity of bids

- 3.12.1** The bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority

3.13 Confidentiality

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

the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

3.14 Correspondence with the Bidder

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

4 EVALUATION OF BIDS

4.1 Opening and Evaluation of Bids

4.1.1 The Authority shall open the Bids at 1530 hours IST on the Bid Due Date, at the place specified in Clause 3.2.4 and in the presence of the Bidders who choose to attend.

4.1.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 3.10 shall not be opened.

4.1.3 The Authority will subsequently examine and evaluate Bids in accordance with the provisions set out in Section 5.

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

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

4.1.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.

4.1.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant project from computation of the Experience Score of the Bidder.

4.1.8 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from computation of the Experience Score, and may also, while computing the aggregate Experience Score of the Bidder make a further deduction

equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the Bid in accordance with the provisions of Clauses 2.6.3 and 2.6.4.

4.2 Test of responsiveness

4.2.1 Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:

- a) it is received as per formats prescribed in Appendices Part-A, Part-B, Part-C and Part-D;
- b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 3.8.2;
- c) it is signed, sealed, bound together in hard cover, and marked as stipulated in Clauses 3.1 and 3.2;
- d) it is accompanied by the Bid Security as specified in Clause 1.2.8;
- e) it contains all the information and documents (complete in all respects) as requested in this RFP;
- f) it contains information in formats same as those specified in this RFP;
- g) it contains certificates from its statutory auditors in the formats specified in Part B and Part C of Appendices of the RFP for each Eligible Project;
- h) it contains the Demand Draft issued by one of the Nationalized/Scheduled Banks in India for Rs. 50,000/- (Rs. fifty thousand) in favour of the Vice Chairman & Managing Director, INCAP Limited, payable at Hyderabad towards the Bid Processing Cost;
- i) it does not contain any condition or qualification; and
- j) it is not non-responsive in violation of terms hereof.

4.2.2 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid. Provided, however, that the Authority may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.

4.2.3 Proprietary data

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

4.2.4 Correspondence with the Bidder

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

5 CRITERIA FOR EVALUATION

5.1 Threshold Evaluation

5.1.1 To be eligible for short-listing i.e. opening and evaluation of the Technical Bid, the Bidder shall fulfil the following conditions of eligibility:

A. **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall, over the past 5 (five) financial years preceding the Bid Due Date, have:

- i. Paid for, or received payments for, construction of Eligible Projects; and/or
- ii. Paid for development of Eligible Projects in Category 1 and/or Category 2 specified in Clause 5.2.3; and/or
- iii. Collected and appropriated revenues from Eligible Projects in Category 1 and/or Category 2 specified in Clause 5.2.3,

Such that:

- a) The sum total of the total payments/receipts as specified above is more than Rs. 760 crores (Rs. Seven hundred and sixty crore) (the “**Threshold Technical Capacity**”)

AND

- b) The sum total of the payments/receipts from Category 1/Category 3 projects exceed Rs. 190 crores (Rs. Two hundred crores)

OR

The sum total of total built up area in Category 1/Category 3 projects is over 200,000 sq. ft.

B. **Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) of Rs. 95 crore (Rs. Ninety five crore) at the close of the preceding financial year.

In case of a Consortium, the combined technical capacity and Net Worth of those Members, who shall have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement

5.1.2 O&M Experience: In the event that the Bidder does not have the requisite O&M experience, it shall either enter into an agreement, for a period of 5 (five) years from COD, with an entity having the aforesaid experience relating to the performance of O&M obligations, or engage experienced and qualified personnel for discharging its O&M obligations in accordance with the provisions of the Concession Agreement, failing which the Concession Agreement shall be liable to termination.

Additionally, if Bidder has not tied up with an international/national chain of Five Star Hotel, it shall have to enter into an agreement to tie-up within six (6) months of signing of agreement.

5.1.3 The Bidder shall enclose with its Bid, to be submitted as per the formats in Part B and Part C of the Appendices, the following:

- i. Certificate from statutory auditors of the Bidder or its Associates or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 (five) years in respect of the projects specified in paragraph 5.1.1 (A) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
- ii. certificate(s) from statutory auditors of the Bidder or its Associates specifying the Net Worth of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 5.1.3 (ii). For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders

5.2 Technical Evaluation

5.2.1 Only those Bidders who meet the eligibility criteria specified in Clause 5.1.1 and 5.1.2 shall qualify for evaluation under this Clause 5.2. Bids of firms/ consortia who do not meet these criteria shall be rejected.

5.2.2 The Bidders competence and capability is proposed to be established by the following parameters:

- a) Technical Capacity; and
- b) Financial Capacity

Technical Capacity for purposes of evaluation

5.2.3 Subject to the provisions of Clause 2.1 and Clause 5.1, the following categories of experience would qualify as Technical Capacity and eligible experience (the “**Eligible Experience**”) in relation to eligible projects as stipulated in Clauses 5.2.5 and 5.2.6 (the “Eligible Projects”):

- Category 1: Project experience on Eligible Projects in 3-Star category and above Hotel/Convention centre/Exhibition Centre/Commercial Complex that qualify under Clause 5.2.5
- Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 5.2.5
- Category 3: Construction experience on Eligible Projects in 3-Star category and above Hotel/Convention centre/Exhibition Centre/Commercial Complex that qualify under Clause 5.2.6
- Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 5.2.6

For the purpose of this RFP:

- (i) core sector would be deemed to include road, power, telecom, ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, dams and bridges, residential building, office building, educational building and public utilities

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

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

- (a) It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;
- (b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed;
- (c) the capital cost of the project should be more than Rs. 80 crore (Rs. eighty crore); and

(d) the entity claiming experience shall, during the last 5 (five) financial years preceding the Bid Due Date, have (i) paid for development of the project (excluding the cost of land), and/ or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from highways, airports, ports and railway infrastructure, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products, telecommunications or fare/freight revenues and other incomes of the company owning the Project.

5.2.6 For a project to qualify as an Eligible Project under Categories 3 and 4, the Bidder should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Bid Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the Aggregate Technical Capacity. However, payments/receipts of less than Rs. 80 crore (Rs. Eighty crore) shall not be reckoned as payments/receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder.

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

5.2.8 Subject to the provisions of Clause 5.2.9, a Bidders experience shall be measured and stated in terms of a score (the “**Experience Score**”). The Experience Score for an eligible project in a given category would be the eligible payments and/or receipts specified in Clause 5.1.1 (A), divided by one crore and then multiplied by the applicable factor in Table 5.2.8 below. In case the Bidder has experience across different categories, the score for each category would be computed as above and then aggregated to arrive at its Experience Score.

Table 5.2.8: Factors for Experience across categories

Categories	Factor
Category 1	1.25
Category 2	1.00
Category 3	0.75
Category 4	0.50

5.2.9 The Experience Score determined in accordance with Clause 5.2.8 in respect of an Eligible Project situated in a developed country which is a member of OECD shall be further multiplied by a factor of 0.5 (zero point five) and the product thereof shall be the Experience Score for such Eligible Project.

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

5.3 Details of Experience

5.3.1 The Bidder should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Bid Due Date.

5.3.2 The Bidders must provide the necessary information relating to Threshold Capacity and Technical Capacity as per format at Appendix-B2, Appendix-B3 and Appendix C1.

5.3.3 The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Appendix-B5 and Appendix C2.

5.4 Financial information for purposes of evaluation

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

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

5.4.3 The Applicant must establish the minimum Net Worth specified in Clause 5.1.1 (B), and provide details as per format of Appendix-B4.

5.5 Financial Bid

5.5.1 Bid parameter – Percentage share of Gross Revenues

- 5.5.2** The Bidder who quotes the highest percentage of share on Gross Revenue shall be declared as the selected bidder (the **“Selected Bidder”**). The quote of percentage of share on Gross Revenue shall be greater than zero and shall be rounded off to 2 decimals.
- 5.5.3** The Gross Revenue Share (in Percentage) quote furnished by the Bidder will be payable till the 10th anniversary of the Appointed Date. The percentage quoted will be multiplied by one and a half time (1.5) times to determine the Gross Revenue Share (in Percentage) from the 11th anniversary of the Appointed Date to the 20th anniversary of the Appointed Date and thereafter pay two (2) times the percentage quoted.
- 5.5.4** Bidders would be ranked in the descending order of the highest Gross Revenue Share (in Percentage) furnished by the Bidders.
- 5.5.5** The Financial Bid should be furnished in the format at Appendix–D1, clearly indicating the bid amount in both figures and words, in Indian Rupees, and signed by the Bidder’s authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

5.6 Selection of Bidder

- 5.6.1** In the event that two or more Bidders quote the same amount of Gross Revenue Share (in %) (the **“Tie Bidders”**), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 5.6.2** In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the **“first round of bidding”**), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the **“second round of bidding”**). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.
- 5.6.3** In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 5.6.2, the Authority may, in its discretion, invite fresh Bids (the **“third round of bidding”**) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as

necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.

- 5.6.4** After selection, a Letter of Award (the “LOA”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 5.6.5** After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

5.7 Contacts during Bid Evaluation

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

6 FRAUD AND CORRUPT PRACTICES

- 6.1.1** The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or the Authority may terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 6.1.2** Without prejudice to the rights of the Authority under Clause 6.1.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 6.1.3** For the purposes of this Clause 6, the following terms shall have the meaning hereinafter respectively assigned to them:
- a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or

otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.2.5 of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

- b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- d) **“unfair practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

7 PRE-BID CONFERENCE

- 7.1.1** Pre-Bid Conference of the Bidders shall be convened at the designated date, time and place.
- 7.1.2** During the course of Pre-Bid Conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

8 MISCELLANEOUS

- 8.1.1** The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which the Authority has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 8.1.2** The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- a. suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - b. consult with any Bidder in order to receive clarification or further information;
 - c. retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
 - d. independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 8.1.3** It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDICES

PART A – FORMATS FOR BID SUBMISSION

APPENDIX–A1

Letter comprising the Bid for Threshold and Technical Evaluation

(Refer Clause 3.2)

Date:

To,

The Vice Chairman and Managing Director,
Infrastructure Corporation of Andhra Pradesh Limited (INCAP)
#10-2-1, III Floor, FDC Complex, AC Guards,
Hyderabad – 500 028, India

Sub: Bid for Selection of the Developer for a Convention Centre at Visakhapatnam in Andhra Pradesh on PPP basis Project

Dear Sir,

1. With reference to your RFP document dated, I/we, having examined the RFP Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid of the Bidders for the aforesaid Project, and we certify that all information provided in the Bid and in Part A, Part B and Part C of the Appendices is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying for Bidding Process for the design, engineering, finance, procurement, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification Statement.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration

award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:
 - a) I/ We have examined and have no reservations to the RFP Documents, including any Addendum issued by the Authority;
 - b) I/ We do not have any conflict of interest in accordance with Clauses 2.1.1(iii) and 2.2.5 of the RFP document;
 - c) I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 6.1.3 of the RFP document, in respect of any tender or request for proposals issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 4.1.6 of the RFP document.
9. I/ We believe that we/our Consortium satisfy(s) the Net Worth criteria and meet(s) the requirements as specified in the RFP document and am/are qualified to submit a Bid.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for qualification.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a court or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a court.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our directors/ managers/ employees.[£]
14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bidding Process. A copy of the aforesaid guidelines form part of the RFP at Appendix-A6 thereof.
15. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government/ State Government or any entity controlled by it, from participating in any project (BOT or otherwise), and no bar subsists as on the date of Bid
16. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately.
17. The Statement of Legal Capacity as per format provided at Appendix-A7 of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of consortium, as per format provided at Appendix-A2 and Appendix-A3 respectively of the RFP, are also enclosed.
18. I/ We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the Concession Agreement.
19. I/ We hereby confirm that we shall comply with the O&M requirements specified in Clause 5.1.2.
20. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
21. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.

[£] In case the Bidder is unable to provide certification regarding any pending investigation as specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedule hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Bid. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for award hereunder.

22. I/ We certify that in terms of the RFP, my/our Net Worth is Rs. (Rupees); Aggregate Threshold amount for Category 1 and 3 projects is Rs..... (in figures) (in words).; Total Built Up Area Experience for Category 1 and 3 projects isSq. ft (in figures) (in words); Aggregate Threshold Technical amount is Rs..... (in figures) (in words) and the Aggregate Experience Score is (in figures) (in words).
23. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.¹

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

Yours faithfully,

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

Place: Name and seal of Bidder/Lead Member

¹ This Paragraph 23 shall be omitted if the Bidder is not a Consortium

APPENDIX–A2

Power of Attorney for signing of Bid[§]

(Refer Clause 2.1.2)

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

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

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

For.....

(Signature, name, designation and address)

Witnesses:

1.

 [§] To be submitted in original.

2.

Accepted

Notarised

(Signature, name, designation and address of the Attorney)

Notes:

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

APPENDIX–A3

Power of Attorney for Lead Member of Consortium

(Refer Clause 2.1.2)

Whereas the (“the Authority”) has invited Bids from interested parties for the Project (the “Project”).

Whereas,,, and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the, Request for Proposal (RFP) and other connected documents in respect of the Project, and

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s. having our registered office at, M/s. having our registered office at, and having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the selection of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all Bids, bids and other documents and writings, accept the Letter of Award, participate in bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the

Consortium's bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

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

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

For
(Signature, Name & Title)

For
(Signature, Name & Title)

For
(Signature, Name & Title)

(Executants)

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

Witnesses:

1.

2.

Notes:

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

APPENDIX-A4

Joint Bidding Agreement

(Refer Clause 3.2)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

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

AND

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

AND

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

AND

4. { Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the “**Fourth Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}[§]

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

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

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

WHEREAS,

(A) INFRASTRUCTURE CORPORATION OF ANDHRA PRADESH (INCAP),

Represented by its Vice – Chairman & Managing Director and having its principal office at #10-2-1, III Floor, FDC Complex, AC Guards, Hyderabad-500028 (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the “Bids”) by its Request for Proposal No. dated (the “RFP”) for Selection Of The Developer For a Convention Centre at Visakhapatnam in Andhra Pradesh On PPP Basis (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 document and other bid documents in respect of the Project, and

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

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “SPV”) under the Indian Companies Act, 2013 for entering into a Concession Agreement

with the Concessing Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

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

- a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding

Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;

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

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

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

5. Joint and Several Liability

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

6. Shareholding in the SPV

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

First Party:

Second Party:

{Third Party:}

{Fourth Party:}

- 6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the

date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and Net Worth have been reckoned for the purposes of qualification and short-listing of Bidders for the Project in terms of the RFP.

- 6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.
- 6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operation date of the Project.
- 6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

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

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

mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

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

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not selected or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

9. Miscellaneous

- 9.1 This Joint Bidding Agreement shall be governed by laws of India.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of
LEAD MEMBER by:

SECOND PART

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

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of
THIRD PART

For and on behalf of
FOURTH PART

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

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

In the presence of:

1. 2.

Notes:

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

APPENDIX–A5

Bank Guarantee for Bid Security

(Refer Clauses 1.2.8 and 2.10.1)

B.G. No. Dated:

1. In consideration of you,, having its office at, (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of (a company registered under the Companies Act, 1956/ 2013) and having its registered office at (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the Project on DBFOT basis (hereinafter referred to as “the Project”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft concession agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 1.2.8 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. (Rupees only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure

of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. (Rupees only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by

- any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
 9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorized to receive the said notice of claim.
 10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
 11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
 12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.
 13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. crore (Rupees crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [..... (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by Bank

By the hand of Mr./Ms, its and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

APPENDIX–A6²

Guidelines of the Department of Disinvestment

(Refer Clause 1.2.6)

No. 6/4/2001-DD-II

Government of India
Department of Disinvestment

Block 14, CGO Complex

New Delhi.

Dated 13th July 2001.

OFFICE MEMORANDUM

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

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

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

² These guidelines may be modified or substituted by the Government from time to time.

based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

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

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

APPENDIX-A7

Statement of Legal Capacity

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

Ref. Date:

To,

The Vice Chairman and Managing Director,
Infrastructure Corporation of Andhra Pradesh Limited (INCAP)
#10-2-1, III Floor, FDC Complex, AC Guards,
Hyderabad – 500 028, India

Dear Sir,

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

We have agreed that (insert member's name) will act as the Lead Member of our consortium.[§]

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

[§] Please strike out whichever is not applicable.

PART B – FORMATS FOR THRESHOLD BID SUBMISSION

APPENDIX-B1

Particulars of the Bidder

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:

2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:

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

4. Particulars of the Authorised Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:

5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.1.3 (g) should be attached to the Bid.
 - (c) Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role [§]	Percentage of equity in the Consortium ^{§§}
1.			
2.			
3.			
4.			

[§] The role of each Member, as may be determined by the Bidder, should be indicated in accordance with Clause 2.1.3 (d) and instruction 4 at Annex-B4.

^{§§}The percentage of equity should be in accordance with Clause 2.1.3 (a), (c) and (g).

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

Name of Bidder/ member of Consortium:

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

7. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

APPENDIX-B2**Threshold Capacity of the Bidder in Category 1 and 3 projects[@]***(Refer to Clauses 5.1, 5.2, 5.3 of the RFP)*

Bidder type [#]	Member Code [¥]	Project Code ^{¥¥}	Category [§]	Experience [£] (Equivalent Rs. crore) ^{\$\$}			Total (in Rs. Crore) (8)	Built Up area (in sq. ft) (9)
				Payments made/received for construction of Eligible Projects in Category 3 (5)	Payments made for development of Eligible Projects in Category 1 (6)	Revenues appropriated from Eligible Projects in Category 1 (7)		
Single entity Bidder		A						
		b						
		c						
		d						
Consortium Member 1		1a						
		1b						
		1c						
		1d						
Consortium Member 2		2a						
		2b						
		2c						
		2d						
Consortium		3a						

Member 3		3b						
		3c						
		3d						
Consortium Member 4		4a						
		4b						
		4c						
		4d						
Aggregate Threshold Amount for Category 1 and 3 projects =								

[@] Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.1.6 and/ or by a project company eligible under Clause 5.2.5(b). In case of Category 1, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 5.2.5(c) and for Category 3, include only those projects where the payments made/received exceed the amount specified in Clause 5.2.6. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.9.

[#]A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.1.6, shall be provided.

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

^{¥¥}Refer Appendix-B5. Add more rows if necessary.

[§] Refer Clause 5.2.3.

[£]In the case of Eligible Projects in Category 1, the figures in columns 6 and 7 may be added for computing the total amount of the respective projects. In the case of Category 3, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included while computing the total amount of an Eligible Project.

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

APPENDIX-B3**Threshold Technical Capacity of the Bidder[@]***(Refer to Clauses 5.1, 5.2, 5.3 of the RFP)*

Bidder type [#]	Member Code [¥]	Project Code ^{¥¥}	Category [§]	Experience [£] (Equivalent Rs. crore) ^{\$\$}			Threshold Technical Amount (in Rs. Crore) ^{££}	
				Payments made/ received for construction of Eligible Projects in Categories 3 and 4	Payments made for development of Eligible Projects in Categories 1 and 2	Revenues appropriated from Eligible Projects in Categories 1 and 2		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
Single entity Bidder		A						
		b						
		c						
		d						
Consortium Member 1		1a						
		1b						
		1c						
		1d						
Consortium Member 2		2a						
		2b						
		2c						
		2d						

Consortium Member 3	3a					
	3b					
	3c					
	3d					
Consortium Member 4	4a					
	4b					
	4c					
	4d					
Aggregate Threshold Technical Amount =						

[@] Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.1.6 and/ or by a project company eligible under Clause 5.2.5(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 5.2.5(c) and for Categories 3 and 4, include only those projects where the payments made/received exceed the amount specified in Clause 5.2.6. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.9.

[#]A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.1.6, shall be provided.

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

^{¥¥}Refer Appendix-B5. Add more rows if necessary.

^{\$} Refer Clause 5.2.3.

[£]In the case of Eligible Projects in Categories 1 and 2, the figures in columns 6 and 7 may be added for computing the total amount of the respective projects. In the case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included while computing the total amount of an Eligible Project.

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

APPENDIX-B4**Financial Capacity of the Bidder***(Refer to Clauses 5.1.1(B), 5.1.3 (ii) and 5.4 of the RFP)***(In Rs. crore^{\$})**

Bidder type \$\$	Member Code [£]	Net Cash Accruals					Net Worth ^{££}
		Year 1	Year 2	Year 3	Year 4	Year 5	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Single entity Bidder							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
Consortium Member 4							
TOTAL							

Name & address of Bidder's Bankers:

§For conversion of other currencies into rupees, see notes below Appendix B2.

§§A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

§For Member Code, see instruction 4 at Appendix-B4.

§§The Bidder should provide details of its own Financial Capacity or of an Associate specified in Clause 2.1.6.

Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.9.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.1.3(g) of the RFP document.
6. The Bidder shall provide an Auditor's Certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 5.1.3 (ii) of the RFP document.

APPENDIX-B5**Details of Eligible Projects***(Refer to Clauses 5.1.1(A), 5.2 and 5.3 of the RFP)***Project Code:****Member Code:**

Item	Refer Instruction	Particulars of the Project
(1)	(2)	(3)
Title & nature of the project		
Category	5	
Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or (c) revenues appropriated	6	
Entity for which the project was constructed/ developed	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	15	

Instructions:

1. Bidders are expected to provide information in respect of each Eligible Project in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 5.2.5 and 5.2.6 of the RFP, as the case may be. Information provided in this section is intended to serve as a back up for information provided in the Bid. Bidders should also refer to the Instructions below.

2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each Eligible Project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write “Associate” along with Member Code.
5. Refer to Clause 5.2.3 of the RFP for category number.
6. The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Appendix-B2. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.1.9). For Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 5.2.5(c). In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 5.2.6. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
7. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
8. Provide the estimated capital cost of the Eligible Project. Refer to Clauses 5.2.5 and 5.2.6
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
10. For Categories 1 and 2, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 5.2.5).
11. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.

12. Certificate from the Bidder's statutory auditor[§] or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.
13. If the Bidder is claiming experience under Categories 1 & 2[£], it should provide a certificate from the statutory auditor of the Bidder, or its Associate, in the format below:

Certificate from the Statutory Auditor regarding PPP projects³

Based on its books 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) and holds/ held Rs. cr. (Rupees crore) of equity (which constitutes%[€] of the total paid up and subscribed equity capital) of the project company from (date) to (date)[¥]. The project was/is likely to be commissioned on (date of commissioning of the project).

We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which Rs. cr. (Rupees crore) of capital expenditure was incurred during the past five financial years as per year-wise details noted below:

.....

.....

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 5.2.3 and 5.2.5 (d) of the RFP during the past five financial years were Rs. cr. as per year-wise details noted below:

.....

.....

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation)

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

[£] Refer Clause 5.2.3 of the RFP.

³ Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder or its Associate may provide the certificates required under this RFP.

[€] Refer instruction no. 10 in this Appendix-B4.

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

Date:	of the authorised signatory)
-------	------------------------------

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

Certificate from the Statutory Auditor/ Client regarding construction works^Φ	
Based on its books of accounts and other published information authenticated by it, {this is to certify that (name of the Bidder/Member/Associate) was engaged by (title of the project company) to execute (name of project) for (nature of project)} ^Ψ . The construction of the project commenced on (date) and the project was/ is likely to be commissioned on (date, if any). It is certified that (name of the Bidder/ Member/ Associate) received/paid Rs. cr. (Rupees crore) by way of payment for the aforesaid construction works.	
We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which the Bidder/Member/Associate received/paid Rs. cr. (Rupees crore), in terms of Clauses 5.2.3 and 5.2.6 of the RFP, during the past five financial years as per year-wise details noted below:	
.....	
.....	
<i>{It is further certified that the payments/ receipts indicated above are restricted to the share of the Bidder who undertook these works as a partner or a member of joint venture/ consortium.}</i> [▲]	
Name of the audit firm:	
Seal of the audit firm:	(Signature, name and designation of the

* Refer Clauses 5.2.3 and 5.2.6 of the RFP.

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

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

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

Date: _____ authorised signatory).

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.1.6, the Bidder should also provide a certificate in the format below:

Certificate from the Statutory Auditor/ Company Secretary regarding Associate[§]

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of (*name of the Bidder/ Consortium Member/ Associate*) is held, directly or indirectly[£], by (*name of Associate/ Bidder/ Consortium Member*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.1.6 of the RFP.

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

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

Name of the audit firm:

Seal of the audit firm: _____ (Signature, name and designation of Date: _____)

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

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

16. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Aggregate Technical Capacity[°].

[°] Refer Clause 5.2.8 of the RFP.

PART C – FORMATS FOR TECHNICAL BID SUBMISSION

APPENDIX-C1**Technical Capacity of the Bidder[@]***(Refer to Clauses 5.2, 5.3 of the RFP)*

Bidder type [#]	Member Code [¥]	Project Code ^{¥¥}	Category ^{\$}	Experience [£] (Equivalent Rs. crore) ^{\$\$}			Experience Score ^{££}	
				Payments made/ received for construction of Eligible Projects in Categories 3 and 4 (5)	Payments made for developme nt of Eligible Projects in Categories 1 and 2 (6)	Revenues appropriated from Eligible Projects in Categories 1 and 2 (7)		
(1)	(2)	(3)	(4)				(8)	
Single entity Bidder		A						
		b						
		c						
		d						
Consortium Member 1		1a						
		1b						
		1c						
		1d						
Consortium Member 2		2a						
		2b						
		2c						

		2d					
Consortium Member 3		3a					
		3b					
		3c					
		3d					
Consortium Member 4		4a					
		4b					
		4c					
		4d					
Aggregate Technical Capacity =							

[@] Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.1.6 and/ or by a project company eligible under Clause 5.2.5(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 5.2.5(c) and for Categories 3 and 4, include only those projects where the payments made/received exceed the amount specified in Clause 5.2.6. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.9.

[#]A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.1.6, shall be provided.

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

^{¥¥}Refer Appendix-C2. Add more rows if necessary.

^{\$} Refer Clause 5.2.3.

[£]In the case of Eligible Projects in Categories 1 and 2, the figures in columns 6 and 7 may be added for computing the Experience Score of the respective projects. In the case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or

equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included while computing the Experience Score of an Eligible Project.

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

^{££} Divide the amount in the Experience column by one crore and then multiply the result thereof by the applicable factor set out in Table 5.2.8 to arrive at the Experience Score for each Eligible Project. In the case of an Eligible Project situated in an OECD country, the Experience Score so arrived at shall be further multiplied by 0.5, in accordance with the provisions of Clause 5.2.9, and the product thereof shall be the Experience Score for such Eligible Projects.

APPENDIX-C2**Details of Eligible Projects***(Refer to Clauses 5.1.1(A), 5.2 and 5.3 of the RFP)***Project Code:****Member Code:**

Item	Refer Instruction	Particulars of the Project
(1)	(2)	(3)
Title & nature of the project		
Category	5	
Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or (c) revenues appropriated	6	
Entity for which the project was constructed/ developed	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	15	

Instructions:

13. Bidders are expected to provide information in respect of each Eligible Project in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 5.2.5 and 5.2.6 of the RFP, as the case may be. Information provided in this section is intended to serve as a back up for information provided in the Bid. Bidders should also refer to the Instructions below.

14. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
15. A separate sheet should be filled for each Eligible Project.
16. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write “Associate” along with Member Code.
17. Refer to Clause 5.2.3 of the RFP for category number.
18. The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Appendix-C1. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.1.9). For Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 5.2.5(c). In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 5.2.6. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
19. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
20. Provide the estimated capital cost of the Eligible Project. Refer to Clauses 5.2.5 and 5.2.6
21. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
22. For Categories 1 and 2, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 5.2.5).
23. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.

24. Certificate from the Bidder's statutory auditor[§] or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.
13. If the Bidder is claiming experience under Categories 1 & 2[£], it should provide a certificate from the statutory auditor of the Bidder, or its Associate, in the format below:

Certificate from the Statutory Auditor regarding PPP projects⁴

Based on its books 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) and holds/ held Rs. cr. (Rupees crore) of equity (which constitutes%[€] of the total paid up and subscribed equity capital) of the project company from (date) to (date)[¥]. The project was/is likely to be commissioned on (date of commissioning of the project).

We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which Rs. cr. (Rupees crore) of capital expenditure was incurred during the past five financial years as per year-wise details noted below:

.....
.....

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 5.2.3 and 5.2.5 (d) of the RFP during the past five financial years were Rs. cr. as per year-wise details noted below:

.....
.....

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation)

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

[£] Refer Clause 5.2.3 of the RFP.

⁴ Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder or its Associate may provide the certificates required under this RFP.

[€] Refer instruction no. 10 in this Appendix-B4.

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

Date:	of the authorised signatory)
-------	------------------------------

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

Certificate from the Statutory Auditor/ Client regarding construction works^Φ	
Based on its books of accounts and other published information authenticated by it, {this is to certify that (name of the Bidder/Member/Associate) was engaged by (title of the project company) to execute (name of project) for (nature of project)} ^Ψ . The construction of the project commenced on (date) and the project was/ is likely to be commissioned on (date, if any). It is certified that (name of the Bidder/ Member/ Associate) received/paid Rs. cr. (Rupees crore) by way of payment for the aforesaid construction works.	
We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which the Bidder/Member/Associate received/paid Rs. cr. (Rupees crore), in terms of Clauses 5.2.3 and 5.2.6 of the RFP, during the past five financial years as per year-wise details noted below:	
<p>.....</p> <p>.....</p>	
<i>{It is further certified that the payments/ receipts indicated above are restricted to the share of the Bidder who undertook these works as a partner or a member of joint venture/ consortium.}</i> [▲]	
Name of the audit firm:	
Seal of the audit firm:	(Signature, name and designation of the

* Refer Clauses 5.2.3 and 5.2.6 of the RFP.

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

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

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

Date:	authorised signatory).
-------	------------------------

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.1.6, the Bidder should also provide a certificate in the format below:

<p>Certificate from the Statutory Auditor/ Company Secretary regarding Associate[§]</p> <p>Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of (<i>name of the Bidder/ Consortium Member/ Associate</i>) is held, directly or indirectly[£], by (<i>name of Associate/ Bidder/ Consortium Member</i>). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.1.6 of the RFP.</p> <p>A brief description of the said equity held, directly or indirectly, is given below:</p> <p><i>{ Describe the share-holding of the Bidder/ Consortium Member and the Associate. In the event the Associate is under common control with the Bidder/ Consortium Member, the relationship may be suitably described and similarly certified herein. }</i></p> <p>Name of the audit firm:</p> <p>Seal of the audit firm: (Signature, name and designation of Date:</p>

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

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

16. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Aggregate Technical Capacity[°].

[°] Refer Clause 5.2.8 of the RFP.

PART D – FORMAT FOR FINANCIAL BID SUBMISSION

APPENDIX–D1

Letter comprising the Financial Bid

(Refer Clauses 2.2.2 and 5.5.5)

Dated:

To,

The Vice Chairman and Managing Director,
Infrastructure Corporation of Andhra Pradesh Limited (INCAP)
#10-2-1, III Floor, FDC Complex, AC Guards,
Hyderabad – 500 028, India

Sub:

Dear Sir,

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

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Concessionaire for the development, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members[£] or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or

[£] If the Bidder is not a Consortium, the provisions applicable to Consortium may be omitted.

arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:
- (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.1.1 (iii) and 2.2.5 of the RFP document; and
 - (c) I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 6.3 of the RFP document, in respect of any tender or request for proposals issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 6 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 3.11 of the RFP document.
9. I/ We believe that we/ our Consortium satisfy(s) the Net Worth criteria and meet(s) the requirements as specified in the RFP document.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our directors/ managers/ employees.[£]
14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Appendix-A6 thereof.
15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
16. I/ We acknowledge and undertake that if our Consortium gets qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.
17. I/ We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and qualification under and in accordance with the RFP, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.

[£] In case the Bidder is unable to provide certification regarding any pending investigation as specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedule hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Bid. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for award hereunder.

18. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the Concession Agreement.
19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
21. I/ We have studied all the Bidding Documents carefully and also surveyed the site. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
22. I/ We offer a Bid Security of Rs. 3.8 Crores to the Authority in accordance with the RFP Document.
23. I/ We agree to make Lease Rental Payments as per the provisions of Clause 22.1 of the Draft Concession Agreement.
24. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.
25. The documents accompanying the Bid, as specified in Clause 3.2 of the RFP, have been submitted in a separate envelope and marked as "BID".
26. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
27. The **Revenue Share** has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and revenues and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.

28. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
29. { We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement. }
30. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
31. I/ We hereby submit the following Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement:
- (a) I/We offer a Revenue Share at the rate of _____% (in figures) (in words) of gross revenue.

The Gross Revenue Share (in Percentage) quote furnished by the Bidder will be payable to the Authority till the 10th anniversary of the Appointed Date. The percentage quoted will be multiplied by one and a half time (1.5) times to determine the Gross Revenue Share (in Percentage) from the 11th anniversary of the Appointed Date to the 20th anniversary of the Appointed Date and thereafter pay two (2) times the percentage quoted.

The percentage quote shall be greater than zero and shall be rounded off to 2 decimals.

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

Yours faithfully,

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

Place: Name and seal of Bidder/Lead Member