

REQUEST FOR PROPOSAL FOR SUBSTITUTION

PIPRAKOTHI RAXAUL ROAD PROJECT



MAY 2018



Strand Road Branch
3A, Hare Street
Kolkata – 700 071

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Indian Bank
Strand Road Branch
3A, Hare Street, Kolkata – 700 071

NOTICE INVITING TENDER

Ref: RFP/ Substitution/Tantia/2018

Dated: 29th May 2018

RFP for Substitution of Concessionaire in the Project of “Two Laning of Piprakothi–Raxaul Section of NH-28A (from km 0.600 to km 62.064) and Construction of 2–Lane Link Road from Km 62.064 to ICP Raxaul (7.33 km length) in the State of Bihar under NHDP Phase III on DBFOT (Toll) Basis”

The National Highways Authority of India (the “**Authority**”) resolved to upgrade the existing 2 lane section of Piprakothi – Motihari – Raxaul to 2 laning with paved shoulder from km 0.600 to km 62.064 including construction of 2 lane Link Road from km 62.064 to ICP Raxaul section of National Highway No. 28A (hereinafter called the “NH-28A”) in the State of Bihar by Two-Laning thereof (the “**Project**”) on design, build, finance, operate and transfer (the “**DBFOT**”) basis. The Project was awarded to *Tantia Raxaul Tollway Private Limited* (the “**Concessionaire**”) by way of execution of a Concession Agreement dated 15th April 2011 for a period of 20 years.

Indian Bank (the “**Lenders’ Representative**”), Bank of India, Dena Bank, India Infrastructure Finance Company Limited, Oriental Bank of Commerce and State Bank of India (together referred to as the “**Senior Lenders**”) have part financed the Project by way of rupee term loan aggregating to INR 204.51 Crores in accordance with the terms and conditions set forth in the Financing Agreements dated 28th September 2011. An additional rupee term loan of INR 65.71 Crores was subsequently sanctioned by the Senior Lenders to fund the cost overruns.

Brief particulars of the Project are as follows:

No.	Particulars	Description
1.	Project Name	Two Laning of Piprakothi–Raxaul Section of NH-28A (from km 0.600 to km 62.064) and Construction of 2–

No.	Particulars	Description
		Lane Link Road from Km 62.064 to ICP Raxaul (7.33 km length) in the State of Bihar on DBFOT (Toll) Basis
2.	Length of Project	69.33 km
3.	Authority	The National Highways Authority of India
4.	Concession Period	20 Years
5.	Original Construction Period	2.5 Years
6.	Appointed Date	10 th October 2011
7.	Original SCOD	8 th April 2014 (EOT recommended up to 30 th June 2017)
8.	Physical Progress	60% (approximately)
9.	NHAI Cost	INR 375.09 Crores
10.	Equity Support - NHAI	INR 149.80 Crores (INR 139.02 Crores disbursed)
11.	Debt – Senior Lenders	INR 270.22 Crores (Balance outstanding as on 31 st March 2018 in total with all the Senior Lenders is INR 285.32 Cr)

The Concessionaire has failed to fulfil its obligations as per the provisions of the Concession Agreement and has been served a notice by the Authority regarding its intention to issue a Termination Notice. The Senior Lenders, in exercise of their rights under the Substitution Agreement executed among the Authority, Concessionaire & Lenders' Representative, have decided to carry out the bidding process for selection of a private entity to substitute the Concessionaire. Indian Bank, on behalf of the Senior Lenders, has mandated iValue Advisors Private Limited to manage the substitution process.

The complete BID document can be viewed / downloaded from the websites of Indian Bank (<http://www.indianbank.in> & <http://www.ivalueadvisors.com> respectively) from 29th May 2018 to 17th June 2018 (up to 1700 Hrs. IST). Bid must be submitted physically on or before 18th June 2018 (up to 1100 hours IST). Technical submissions of the Bids received shall be opened on 18th June 2018 (at 1130 hours IST).

Bid submitted through any other mode shall not be entertained. Please note that the Lenders'

Representative reserves the right to accept or reject all or any of the BIDs without assigning any reason whatsoever.

Mr. Anupam Saha

Assistant General Manager

Indian Bank

Strand Road Branch

3A, Hare Street

Kolkata – 700 071

DISCLAIMER

The information contained in this Request for Proposal document (the “RFP”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Lenders’ Representative 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 Lenders’ Representative to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (BIDs) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Lenders’ Representative 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 Lenders’ Representative, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, especially the estimates of the works carried out till date on the Project, 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 Lenders’ Representative accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Lenders’ Representative, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything

contained in this 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 Lenders' Representative 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 Lenders' Representative 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 Lenders' Representative is bound to select a Bidder or to appoint the Selected Bidder or Nominated Company, as the case may be, for the Project and the Lenders' Representative 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 Lenders' Representative 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 Lenders' Representative 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 2.1.18
Authority	As defined in the Notice Inviting Tender
Bank Guarantee	As defined in Clause 2.20.1
BID(s)	As defined in the Disclaimer
Bidders	As defined in Clause 1.2.2
Bidding Documents	As defined in Clause 1.1.5
BID Due Date	As defined in Clause 1.1.5
Bidding Process	As defined in Clause 1.2.1
BID Security	As defined in Clause 1.2.4
Concession	As defined in Clause 1.1.4
Concession Agreement	As defined in Clause 1.1.2
Concessionaire	As defined in the Notice Inviting Tender
Conflict of Interest	As defined in Clause 2.2.1
Consortium	As defined in Clause 2.2.1(a)
Demand Draft	As defined in Clause 2.20.2
Government	Government of India
Lenders' Representative	As defined in Clause 1.1.1
LOA	As defined in Clause 3.8.4
Nominated Company	As defined in Clause 1.1.2
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposal	As defined in the Disclaimer
Selected Bidder	As defined in Clause 3.8.1

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

1. INTRODUCTION

1.1. Background

1.1.1 Indian Bank (the “**Lenders’ Representative**”) is one of India’s leading financial institutions and has part financed the “**Two Laning of Piprakothi–Raxaul Section of NH-28A (from km 0.600 to km 62.064) and Construction of 2–Lane Link Road from Km 62.064 to ICP Raxaul (7.33 km length) in the State of Bihar**” (the “**Project**”) awarded to *Tantia Raxaul Tollway Private Limited* (the “**Concessionaire**”) on Design, Build, Finance, Operate and Transfer (“**DBOT Toll**”) basis, and has decided to carry out the bidding process for selection of a private entity to substitute the Concessionaire. Brief particulars of the Project are as follows:

No.	Particulars	Description
1.	Project Name	Two Laning of Piprakothi–Raxaul Section of NH-28A (from km 0.600 to km 62.064) and Construction of 2–Lane Link Road from Km 62.064 to ICP Raxaul (7.33 km length) in the State of Bihar on DBFOT (Toll) Basis
2.	Length of Project	69.33 km
3.	Authority	The National Highways Authority of India
4.	Concession Period	20 Years
5.	Original Construction Period	2.5 Years
6.	Appointed Date	10 th October 2011
7.	Original SCOD	8 th April 2014 (EOT recommended up to 30 th June 2017)
8.	Physical Progress	60% (approximately)
9.	NHAI Cost	INR 375.09 Crores
10.	Equity Support - NHAI	INR 149.80 Crores (INR 139.02 Crores disbursed)
11.	Debt – Senior Lenders	INR 270.22 Crores (Balance outstanding as on 31 st March 2018 in total with all the Senior Lenders is INR 285.32 Cr)

1.1.2 The Selected Bidder, who is either a company incorporated under the Companies Act, 1956 or the Companies Act, 2013 or its substitute thereof or undertakes to incorporate

as such prior to transfer of the Concession by the Authority, (the “**Nominated Company**”) shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of the concession agreement entered into between the Concessionaire and the Authority on 15th April 2011 (the “**Concession Agreement**”), as provided by the Lenders’ Representative as part of the Bidding Documents pursuant thereto.

- 1.1.3 The scope of work will broadly include completion of the balance works related to construction of the Project Highway on the Site set forth in the Concession Agreement and its schedules and the operation and maintenance thereof.
- 1.1.4 The Concession Agreement and its Schedules sets forth the detailed terms and conditions for transfer of the concession to the Nominated Company, including the scope of the Nominated Company’s services and obligations (the “**Concession**”).
- 1.1.5 The Lenders’ Representative shall receive Bids pursuant to and in accordance with the terms set forth in this RFP and other documents to be provided by the Lenders’ Representative pursuant to this RFP (collectively the “**Bidding Documents**”), and all Bids shall be prepared and submitted in accordance with such terms on or before the Bid due date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).

1.2. Brief description of Bidding Process

- 1.2.1 The Lenders’ Representative has adopted a single stage two envelope process (referred to as the “**Bidding Process**”) for selection of the Bidder for transfer of the Concession. Under this process, the Bid shall be invited under two envelopes. Along with the Bid, the Bidder shall submit a Demand Draft of **INR 50,000/- (Rupees Fifty Thousand Only)** in favour of “**Indian Bank A/c Tantia Raxaul Tollways Pvt Ltd-Substitution Process Escrow a/c**” to the Lenders’ Representative as the cost of the RFP process which shall be non-refundable. Eligibility and qualification of the Bidder will be first examined based on the details submitted under first envelope (Technical Bid) with respect to eligibility and qualifications criteria prescribed in this RFP. (The “**Bidder**”, which expression shall, unless repugnant to the context, include the members of the

Consortium). The Financial Bid under the second envelope shall be opened of only those Bidders whose Technical Bids are responsive to eligibility and qualifications requirements as per this RFP.

GOI has issued guidelines (see **Annexure VI of Appendix-1A** of RFP) for qualification of bidders seeking to acquire stakes in any public-sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Lenders' Representative shall be entitled to disqualify any Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at **Appendix-IA**.

- 1.2.2 Interested bidders (the **"Bidders"**) are being called upon to submit their Bid in accordance with the terms specified in this Bidding Document. The Bid shall be valid for a period of 180 days from the date specified in Clause 1.3 for submission of Bids (the **"Bid Due Date"**).
- 1.2.3 The complete Bidding Documents including the Concession Agreement for the Project is enclosed for the Bidders. The aforesaid documents and any addenda issued subsequent to this RFP Document and uploaded on the websites of Indian Bank and iValue Advisors Private Limited, will be deemed to form part of the Bidding Documents.
- 1.2.4 A Bidder is required to deposit, along with its Bid, a Bid Security of **INR 1,00,00,000/- (Rupees One Crore only)** (the **"Bid Security"**), refundable not later than 90 (ninety) days from the Bid Due Date. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Lenders' Representative in favour of **"Indian Bank A/c Tantia Raxual Tollways Pvt Ltd-Substitution Process Escrow a/c"**, as per format at **Appendix-II**, and in such event, the validity period of the bank guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date with a claim period of 60 (sixty) days, and such time periods may be extended as may be mutually agreed between the Lenders' Representative and the Bidder from time to time and that the validity of the demand draft shall not be less than 90 (ninety) days from the Bid Due Date. Upon submission of the demand draft, the same shall

be encashed by the Lenders' Representative. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 90 (ninety) days from the Bid Due Date.

- 1.2.5 During the Bid Stage, Bidders are advised to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Concession.
- 1.2.6 Other details of the process to be followed under this bidding process and the terms thereof are spelt out in this RFP.
- 1.2.7 Any queries or request for additional information concerning this RFP shall be submitted by e-mail to the officer designated in Clause 2.11.5 below with identification/ title: **"Queries/Request for Additional Information: RFP for Substitution of Concessionaire in the Project of Two Laning of Piprakothi - Raxaul Section of NH-28A (from km 0.600 to km 62.064) and construction of 2-lane link road from km 62.064 to Integrated Check Post (ICP) Raxaul (7.33 km length) in the state of Bihar on DBFOT (Toll) Basis."**

1.2 Schedule of Bidding Process

The Lenders' Representative shall endeavour to adhere to the following schedule:

Sl. No.	Event Description	Date
1.	Invitation of RFP (NIT)	29 th May 2018
2.	Last date for receiving queries	5 th June 2018
3.	Lenders' Representative response to queries latest by	11 th June 2018
4.	Bid Due Date	18 th June 2018
5.	Opening of Technical Bids at venue provided in Clause 2.11.5	at 1130 Hrs. on Bid Due Date

6.	Declaration of eligible / qualified Bidders	To be intimated
7.	Opening of Financial Bid	1 day after the Bid Due Date
8.	Letter of Award (LOA)	To be intimated
9.	Validity of Bid	180 days from Bid Due Date
10.	Transfer of Concession to the Nominated Company	Within 15 days of award of LOA subject to approval from NHAI

2. INSTRUCTION TO BIDDERS

A. GENERAL

2.1 General terms of Bidding

- 2.1.1 No Bidder shall submit more than one Bid for the Project. A Bidder bidding 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.
- 2.1.2 An international Bidder bidding individually or as a member of a Consortium shall ensure that Power of Attorney is legalised/apostilled by appropriate authority notarised in the jurisdiction where the Power of Attorney is being issued and requirement of Indian Stamp Act is duly fulfilled.
- 2.1.3 The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids.
- 2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the 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.
- 2.1.5 The Bid shall be furnished in the format exactly as per **Appendix-I** i.e. Technical Bid as per **Appendix-IA** and Financial Bid as per **Appendix-IB**. Bid amount shall be indicated clearly in both figures and words, in Indian Rupees, in prescribed format of Financial Bid and shall be 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.
- 2.1.6 Deleted.
- 2.1.7 Deleted.

- 2.1.8 The Bidder should submit a Power of Attorney as per the format at **Appendix-III**, authorising the signatory of the Bid to commit the Bidder.
- 2.1.9 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of any Member, which Member shall thereafter be identified as the Lead Member, in the format at **Appendix-IV**¹. In case the Bidder is a Consortium, Joint Bidding Agreement in the format at **Appendix-V** shall be submitted by the Bidder.
- 2.1.10 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.11 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.12 The Bidding documents including this RFP and all attached documents, provided by the Lenders' Representative are and shall remain or become the property of the Lenders' Representative 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 2.1.12 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Lenders' Representative will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.13 This RFP is not transferable.
- 2.1.14 Any transfer of Concession pursuant to this RFP shall be subject to the terms of Bidding Documents.

¹ In case of a Consortium, the Members should submit a Power of Attorney in favour of any Member as per the format as Appendix-IV. Such Member shall thereafter be identified as the Lead Member. The Lead Member should submit a power of Attorney as per the format in Appendix-III, authorising the signatory of the Application. Members of the Consortium need not submit Power of Attorney as per the format at Appendix-III, authorising the signatory of the Application.

2.1.15 Where the Bidder is a single entity, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 2013 (the “SPV”), to which the Concession shall be transferred for implementation of the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

- (a) None of the members in a consortium shall have an equity share holding of less than 26% (twenty-six per cent) of the paid up and subscribed equity of the SPV. Further, none of the members in a Consortium should be under any sort of ineligibility under the Bid documents;
- (b) subject to the provisions of clause (a) above, the Bid should contain the information required for each member of the Consortium including brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (c) members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”). The nomination(s) shall be supported by a Power of Attorney, as per the format at **Appendix-IV**, signed by all the other members of the Consortium;
- (d) an individual Bidder cannot at the same time be member of a Consortium applying for the RFP. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for RFP;
- (e) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at **Appendix-V** (the “**Jt. Bidding Agreement**”), for the purpose of submitting a Bid. The Jt. Bidding Agreement, to be submitted along with the Application, shall, inter alia:
 - (i) convey the intent to form an SPV, solely for the purpose of domiciling the Project and no other purpose, with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would take over the Concession and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the Concession to undertake the Project is transferred 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) comply with all equity lock-in requirements set forth in the Concession Agreement; and
- (v) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Nominated Company in relation to the Project; and
- (f) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Lenders' Representative.

2.1.16 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.

2.1.17 A Bidder including any Consortium Member or Associate should, in the last 2 (two) 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 any public entity for breach by such Bidder, Consortium Member or Associate. Lenders' Representative would place sole reliance on the certification provided by the Bidder in this regard in its letter comprising the Technical Bid.

2.1.18 In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.4, 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.

It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium Member shall be provided to demonstrate that a person is an Associate of the Bidder or the Consortium as the case may be.

2.1.19 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 Annexes 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 RFP submissions, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (d) in case the Bidder is a Consortium, each Member should substantially satisfy the RFP requirements to the extent specified herein.

2.2 Eligibility and qualification requirements of Bidder

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

- (a) The Bidder may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. The term Bidder used herein would apply to both a single entity and a Consortium.
- (b) Bidder may be a natural person, private entity, or any combination of them with a formal intent to enter into a Joint Bidding 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 2.1.15.
- (c) 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 Lenders' Representative shall be entitled to forfeit and appropriate 5% of the value of the Bid Security, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Lenders' Representative and not by way of penalty for, *inter alia*, the time, cost and effort of the Lenders' Representative, including consideration of such Bidder's proposal (the "**Damages**"), without prejudice to any other right or remedy that may be available to the Lenders' Representative under the Bidding Documents. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- (i) The Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent hereof) 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 not more than 25% (twenty five percent) of the paid up and subscribed capital; of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is not more than 25% (Twenty five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956/2013; or
- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder or any Associate thereof has participated as a consultant to the Lenders' Representative in the preparation of any documents related to the Project; or
- (iv) such Bidder or its constituent is an Associate of the Concessionaire and / or of the shareholders of the Concessionaire.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.12, 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 percent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

- (d) A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Lenders’ Representative or 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) transfer of Concession. 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 6 (six) months prior to the date of issue of RFP for the Project. 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.

Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, the Bidder may, within 10 (ten) days after the Application Due Date remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof. However, his financial bid shall not be opened.

Provided further, in case the Lenders’ Representative seeks information / clarification from a Bidder related to occurrence / non-occurrence of Conflict of Interest and the Bidder fails to provide such information within a reasonable time, the Lenders’ Representative shall

disqualify the Bidder and encash its Bid Security as per provision of Clause 2.20.6.

- (e) The Bidder or the promoters / directors of the Bidder should neither have been classified as defaulter by any Banks / Financial Institutions nor any legal proceedings be pending against them by any statutory bodies. Further, the Bidder's name should not be there in the defaulter list of RBI/ CIBIL/ ECGC.

2.2.2 To be eligible for this RFP a 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 Project(s); and/or
- (ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.4.1; and/ or
- (iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.4.1,

such that the sum total of the above, as further adjusted in accordance with clause 3.4.6, is more than **INR 3,75,09,00,000 (Rupees Three Hundred Seventy-Five Crores and Nine Lakh only)** (the “**Threshold Technical Capability**”).

Provided that at least one fourth of the Threshold Technical Capability shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 3.4.1.

(B) **Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) of **INR 93,77,00,000 (Rupees Ninety-Three Crores and Seventy-Seven Lakh only)** at the close of the preceding financial year.

In case of a Consortium, the combined technical capability and net worth of the Members

should satisfy the above conditions of eligibility; provided that each such Member shall comply with all equity lock-in requirements set forth in the Concession Agreement.

2.2.3 **O&M Experience:** The Bidder shall engage an experienced O&M contractor or hire qualified and trained personnel for operation and maintenance of the Project in conformity with the provisions of the Concession Agreement.

2.2.4 The Bidders shall enclose with its bid, to be submitted as per the format at Appendix-IA, complete with its Annexes, the following:

- (i) Certificate(s) from its statutory auditor or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 years in respect of the projects specified in paragraph 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the 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 its statutory auditors 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 2.2.4 (ii). For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.

2.3 Deleted

2.4 Cost of Bidding

The Bidders shall be responsible for all of the costs associated with the preparation of

their Bids and their participation in the Bidding Process. The Lenders' Representative 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 & other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them. Bidders are advised to visit the site and familiarise themselves with the Project within the stipulated time of submission of the Bid. No extension of time is likely to be considered for submission of Bids.

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

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Lenders' Representative;
- (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 Lenders' Representative 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 Lenders' Representative, or a ground for termination of the Concession Agreement by the Nominated Company;
- (f) acknowledged that it does not have a Conflict of Interest;
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

2.6 Verification and Disqualification

2.6.1 In case it is found that one or more of the eligibility and /or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Nominated Company. In such an event, the Lenders' Representative shall be entitled to forfeit and appropriate the Bid Security, as Damages, without prejudice to any other right or remedy that may be available to the Lenders' Representative under this RFP, the Bidding Documents or otherwise. If the Bidder has been already appointed as the Nominated Company, the Lenders' Representative shall be entitled to take suitable legal action against the Bidder and levy appropriate damages.

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.

Invitation for BIDs

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

Appendices

- IA. Letter comprising the Technical Bid including Annexure I to VI
- IB. Letter comprising the Financial Bid
- II. Bank Guarantee for Bid Security
- III. Power of Attorney for signing of Bid
- IV. Power of Attorney for Lead Member of Consortium
- V. Joint Bidding Agreement for Consortium

2.7.2 The Concession Agreement 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 Lenders' Representative in writing or by fax and e-mail in accordance with Clause 1.2.7. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Lenders' Representative shall endeavour to respond to the queries within the period specified therein, but no later than 7 (seven) days prior to the Bid Due Date. The responses will be sent by fax or e-mail. The Lenders' Representative will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

2.8.2 The Lenders' Representative shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Lenders' Representative 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 Lenders' Representative to respond to any question or to provide any clarification.

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

2.9 Amendment of RFP

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

2.9.2 Any Addendum issued hereunder will be in writing and shall be send to all the Bidders.

2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Lenders' Representative may, at its own discretion, extend the Bid Due Date².

² While extending the Bid Due Date on account of an addendum, the Lenders' Representative shall have due regard for the time required by Bidders to address the amendments specified therein.

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

2.10.1 The Bidder shall provide all the information sought under this RFP. The Lenders' Representative will evaluate only those Bids that are received in the required formats and complete in all respects.

2.10.2 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, 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.

2.11 Sealing and Marking of Bids

2.11.1 The Bidder shall submit the Financial Bid in the format specified at Appendix-IB, and seal it in an envelope and mark the envelope as "FINANCIAL BID".

2.11.2 The documents accompanying the Technical Bid shall be placed in a separate envelope and marked as "TECHNICAL BID". The documents shall include:

- (a) Appendix-IA (Letter comprising the Technical Bid) including Annexure I to V and supporting certificates / documents;
- (b) Power of Attorney for signing the BID as per the format at Appendix-III;
- (c) if applicable, Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;
- (d) if applicable, Joint Bidding Agreement for Consortium as per the format at Appendix-V;
- (e) Copy of Memorandum and Articles of Association, if the Applicant is a body corporate, and if a partnership then a copy of its partnership deed;
- (f) Copies of Applicant's duly audited balance sheet and profit and loss statement for preceding 5 years;

- (g) BID Security of INR 1,00,00,000/- (Rupees One Crore only) in the form of a Demand Draft or a Bank Guarantee in the format at Appendix-II from a Scheduled Bank.
- (h) An undertaking from the person having PoA referred to in Sub. Clause-(b) above that they agree and abide by the Bid documents uploaded by Lenders' Representative and amendments uploaded, if any.
- (i) Demand Draft towards cost of Tender Document of INR 50,000/- (Rupees Fifty Thousand only).

2.11.3 A true copy of the documents, as specified in Clause 2.11.2 above, shall be bound together in hard cover and the pages shall be numbered serially. Each page thereof shall be initialled in blue ink by the authorised signatory of the Bidder. This copy of the documents shall be placed in a separate envelope and marked "Copy of Documents".

2.11.4 The three envelopes specified in Clauses 2.11.1, 2.11.2 and 2.11.3 shall be placed in an outer envelope, which shall be sealed. Each of the four envelopes shall clearly bear the following identification:

"BID for Substitution of Concessionaire in the Project of Two Laning of Piprakothi - Raxaul Section of NH-28A (from km 0.600 to km 62.064) and construction of 2-lane link road from km 62.064 to Integrated Check Post (ICP) Raxaul (7.33 km length) in the state of Bihar on DBFOT (Toll) Basis" and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of the envelopes.

2.11.5 Each of the envelopes shall be addressed to:

ATTN. OF: Mr. Anupam Saha
DESIGNATION: Assistant General Manager
ADDRESS: Indian Bank
Strand Road Branch, 3A Hare Street, Kolkata – 700 071
PHONE NO: 033-2210 6192
E-MAIL ADDRESS: strandroad@indianbank.co.in

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

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

2.12 Bid Due Date

Bids shall be submitted on or before 1100 hrs IST on 18th June 2018 at the address provided in Clause 2.11.5 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.5.

2.13 Late Bids

Bids received by the Lenders' Representative after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.14 Procedure for tendering

2.14.1 Accessing/ Purchasing of Bid documents

2.14.1.1 The complete Bid document can be viewed / downloaded by the Bidder from the websites of Indian Bank and iValue Advisors Private Limited (<http://www.indianbank.in> & <http://www.ivalueadvisors.com> respectively) from 29th May 2018 to 17th June 2018 (up to 1700 Hrs. IST).

2.14.2 Modifications/ Substitution/ withdrawal of Bids

2.14.2.1 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 Lenders' Representative prior to the Bid Due Date. No Bid can be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date & Time.

2.14.2.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.11, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.

2.14.2.3 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 Lenders’ Representative, shall be disregarded.

2.15 Rejection of Bids

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

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

2.16 Validity of Bids

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

2.17 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Lenders’ Representative in relation to, or matters arising out of, or concerning the Bidding Process. The Lenders’ Representative 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 Lenders’ Representative 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 Lenders' Representative or as may be required by law or in connection with any legal process.

2.18 Correspondence with the Bidder

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

D. BID SECURITY

2.20 Bid Security

2.20.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clause 1.2.4 hereinabove in the form of a bank guarantee issued by nationalised bank, or a Scheduled Bank in India having a net worth of at least INR 10,00,00,00,000 (INR One Thousand Crores), in favour of **"Indian Bank A/c Tantia Raxual Tollways Pvt Ltd-Substitution Process Escrow a/c"** in the format at **Appendix-II** (the **"Bank Guarantee"**) and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date and a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Lenders' Representative 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 nationalised 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.

2.20.2 Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of **"Indian Bank A/c Tantia Raxual Tollways Pvt Ltd-Substitution Process Escrow a/c"** and payable at Kolkata (the **"Demand Draft"**). The Lenders' Representative shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

2.20.3 Save and except as provided in Clauses 1.2.4 above, the Bid Security of unsuccessful Bidders will be returned by the Lenders' Representative, 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 Lenders' Representative, and in any case within 90 (ninety) 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 Lenders' Representative give the name and address of the person in whose favour the said demand draft shall be drawn by the Lenders' Representative 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.

2.20.4 The Selected Bidder's Bid Security will be returned, without any interest, upon the transfer of the Concession.

2.20.5 The Lenders' Representative shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.20.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Lenders' Representative will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.

2.20.6 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Lenders' Representative under the Bidding Documents and/or under the Concession Agreement, or otherwise, under the following conditions:

a) If a Bidder submits a non-responsive Bid;

Subject however that in the event of encashment of Bid Security occurring due to operation of para 2.20.6 (a), the Damage so claimed by the Lenders' Representative shall be restricted to 5% of the value of the Bid Security.

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

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

Representative;

- d) In the case of Selected Bidder, if it fails within the specified time limit
 - i) to sign and return the duplicate copy of LOA;
 - ii) to sign the relevant agreements for the transfer of the Concession.

3. EVALUATION OF BIDS

3.1 Opening and Evaluation of Technical Bids

3.1.1 The Lenders' Representative shall open the Technical Bids at **1130 hours IST on 18th June 2018**, at the place specified in Clause 2.11.5 and in the presence of the Bidders who choose to attend.

3.1.2 The Lenders' Representative will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.

3.1.3 To facilitate evaluation of Bids, the Lenders' Representative may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.2 Tests of responsiveness

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

- (a) Technical Bid is received as per the format at Appendix-IA including Annexure I to V;
- (b) Technical Bid is accompanied by the Bid Security as specified in Clause 1.2.4;
- (c) Technical Bid is accompanied by the Power of Attorney as specified in Clauses 2.1.8;
- (d) Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium and the Joint Bidding Agreement as specified in Clause 2.1.9, if so required;
- (e) Technical Bid contain all the information (complete in all respects);
- (f) Technical Bid does not contain any condition or qualification;
- (g) it is not non-responsive in terms hereof.

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

3.3 Evaluation parameters

3.3.1 Only those Bidders who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Section 3. Bids of firms/ consortia who do not meet these criteria shall be rejected.

3.3.2 A Bidder's competence and capability is proposed to be established by the following parameters:

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

3.4 Technical Capacity for purposes of evaluation

3.4.1 Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects as stipulated in Clauses 3.4.3 and 3.4.4 (the "**Eligible Projects**"):

Category 1: Project experience on Eligible Projects in highways sector that qualify under Clause 3.4.3

Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 3.4.3

Category 3: Construction experience on Eligible Projects in highways sector that qualify under Clause 3.4.4

Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 3.4.4

For the purpose of this RFP:

- (a) highways sector would be deemed to include highways, expressways, bridges, tunnels and airfields; and
- (b) core sector would be deemed to include power, telecom, ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation,

water supply, sewerage and real estate development.³

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

3.4.3 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 **INR 37,51,00,000 (Rupees Thirty-Seven Crores and Fifty-One Lakh only)**; and
- (d) the entity claiming experience shall, during the last 5 (five) financial years preceding the Application Due Date, have (i) paid for development of the project (excluding the cost of land), and/ or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from highways, airports, ports and railway infrastructure, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products telecommunications or fare/freight revenues and other incomes of the company owning the Project.

3.4.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Applicant should have paid for execution of its construction 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 Experience Score. However, payments/receipts of less

³ Real estate development shall not include residential flats unless they form part of a real estate complex or township which has been built by the Applicant.

than **INR 37,51,00,000 (Rupees Thirty-Seven Crores and Fifty-One Lakh only)**; 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.

- 3.4.5 The Bidders shall quote experience in respect of a particular Eligible Project under any one category only, even though the Bidder (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.
- 3.4.6 A Bidder's 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 2.2.2 (A), divided by one crore and then multiplied by the applicable factor in Table 3.4.6 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 3.4.6: Factors for Experience across categories

	Factor
Category 1	1.45
Category 2	0.85
Category 3	0.85
Category 4	0.45

- 3.4.7 The Experience Score determined in accordance with Clause 3.4.6 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.
- 3.4.8 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

- 3.4.9 (a) The Experience Score of the Bidder shall be computed as a weighted average of the Experience Score of a member and its proposed equity stake (%) in the Consortium,
- (b) Similarly, the Financial Score of the Bidder shall be computed as a weighted average of the Financial Score of a member and its proposed equity stake (%) in the Consortium

Illustration:

For illustration and avoidance of any doubts, the following method is placed in clarification:

If Company A (Net-Worth: Rs 1000 crores) & Company B (Net-Worth: Rs 500 crores) in a Consortium with shareholding of A as 60% and B as 40% then the Weighted Financial Score of the Consortium shall be:

For Weighted Financial Score

$$1000 \times 60\% + 500 \times 40\% = \text{Rs } 800 \text{ Crores}$$

For Weighted Experience Score

If Company A has been assessed to have an Experience Score of 1000 and Company B has been assessed to have an Experience Score of 500, in a Consortium with shareholding of A as 60% and B as 40%, then the Weighted Experience Score of the Consortium shall be

$$1000 \times 60\% + 500 \times 40\% = 800$$

3.5 Details of Experience

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

3.5.2 The Bidders must provide the necessary information relating to Technical Capacity as per

format at Annex-II of Appendix-IA.

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

3.6 Financial information for purposes of evaluation

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

- 3.6.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make the same 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.

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

- 3.6.4 In case of foreign companies, a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium Member in the formats provided in the country where the project has been executed shall be accepted, provided it contains all the information as required in the prescribed format of the RFP.

- 3.6.5 (i) In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the Lenders' Representative as incorrect or erroneous, the Lenders' Representative may reject / correct such claim for the purpose of qualification requirements.

- (ii) The Lenders' Representative will get the BID security verified from the issuing authority and after due verification, the Lenders' Representative will evaluate the Technical BIDs for their compliance to the eligibility and qualification requirements

pursuant to clause 2.2.1 & 2.2.2 of this RFP.

- (iii) After evaluation of Technical Bids, the Lenders' Representative will publish a list of Technically Responsive Bidders whose financial bids shall be opened. The Lenders' Representative shall notify other Bidders that they have not been technically responsive. The Lenders' Representative will not entertain any query or clarification from Applicants who fail to qualify.

3.7 Opening and Evaluation of Financial Bids

The Lenders' Representative shall inform the venue and time of opening of the Financial Bids to the Technically Responsive Bidders through e-mail. The Lenders' Representative shall open the Financial Bids on date and time to be informed in this clause in the presence of the authorised representatives of the Bidders who may choose to attend. The Lenders' Representative shall publicly announce the Financial Bids for each of the technically responsive Bidder. The Lenders' Representative shall prepare a record of opening of Financial Bids.

3.8 Selection of Bidder

- 3.8.1 Subject to the provisions of Clause 2.15.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 and who's Financial Bid as evaluated by the Lenders' Representative is found acceptable, shall be declared as the selected Bidder (the "**Selected Bidder**").
- 3.8.2 In the event that, the Financial Bids of two or more Bidders is the same (the "**Tie Bids**"), the Lenders' Representative shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 3.8.3 In the event that the Financial Bids are not found to be acceptable for any reason, the Lenders' Representative shall annul the Bidding Process and invite fresh Bids. In the event that the Lenders' Representative rejects or annuls all the Bids, it may, in its

discretion, invite all eligible Bidders to submit fresh Bids hereunder.

3.8.4 After selection, a Letter of Award (the “LOA”) shall be issued, in duplicate, by the Lenders’ Representative 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 Lenders’ Representative may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA.

3.8.5 After acknowledgement of the LOA as aforesaid by the Selected Bidder, the Lenders’ Representative shall request the Authority to:

- (i) accede to transfer to the Selected Bidder the right to construct, operate and maintain the Project Highway in accordance with the provisions of the Concession Agreement;
- (ii) endorse and transfer the Concession to the Selected Bidder, on the same terms and conditions, for the residual Concession Period; and
- (iii) enter into a substitution agreement with the Lenders’ Representative and the Selected Bidder on the same terms as are contained in the Substitution Agreement dated 15th April 2011.

The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

3.9 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Lenders’ Representative 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 Lenders’ Representative and/ or their employees/ representatives on matters related to the Bids under consideration.

3.10 Correspondence with Bidder

Save and except as provided in this RFP, the Lenders’ Representative shall not entertain

any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

- 3.11 Any information contained in the Bid shall not in any way be construed as binding on the Lenders' Representative, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently transferred to it on the basis of such information.
- 3.12 The Lenders' Representative 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. FRAUD AND CORRUPT PRACTICES

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

5. MISCELLANEOUS

- 5.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Kolkata shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 5.2 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Lenders' Representative, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDIX-IA

LETTER COMPRISING THE TECHNICAL BID

(Refer Clause 2.1.5, 2.11 and 3.2)

The Assistant General Manager

Indian Bank

Strand Road Branch

3A, Hare Street

Kolkata – 700 071

Sub: BID for Substitution of Concessionaire in the Project of Two Laning of Piprakothi - Raxaul Section of NH-28A (from km 0.600 to km 62.064) and construction of 2-lane link road from km 62.064 to Integrated Check Post (ICP) Raxaul (7.33 km length) in the state of Bihar on DBFOT (Toll) Basis

Dear Sir,

1. With reference to your RFP document dated⁴, I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Lenders' Representative will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Nominated Company for the aforesaid Project, and we certify that all information provided in the Bid and in Annexes I to V 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 our selection as a Nominated Company for the transfer of the Concession by the Authority to carry out development, construction, operation and maintenance of the aforesaid Project.

⁴ All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant

4. I/ We shall make available to the Lenders' Representative any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Lenders' Representative 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 two 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 document, including any Addendum issued by the Lenders' Representative.
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the 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, in respect of any tender or request for proposal issued by or any agreement entered into with the Lenders' Representative or 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 document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid

for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.15.2 of the RFP document.

9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) all 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 this 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. I/ We further certify that my/ our name is not there in the defaulter list of RBI/ CIBIL/ ECGC.
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/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.
14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 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-VI 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

provisions of this RFP, we shall intimate the Lenders' Representative of the same immediately.

(a) The Statement of Legal Capacity as per format provided at Annex-V in Appendix-IA 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 III and IV respectively of the RFP, are also enclosed.

(b) I/We hereby confirm that we [are in compliance of/ shall comply with] the O&M requirements specified in Clause 2.2.3.

16. I/We agree and acknowledge that we shall comply with all equity lock-in requirements set forth in the Concession Agreement.

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 shall be taken into consideration for the purposes of selection as Nominated Company under and in accordance with the RFP, I/We shall inform the Lenders' Representative forthwith along with all relevant particulars and the Lenders' Representative may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be.

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 transfer of the Concession.

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 Lenders' Representative 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 assume the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement. I/We further agree to execute relevant agreements to assume

the liabilities and obligations of the Concessionaire towards the Senior Lenders under the Financing Agreements, in accordance with the Financial Bid submitted by me/us.

21. I/We have studied all the Bidding Documents carefully and also surveyed the project highway and the traffic. We understand that we shall have no claim, right or title arising out of any documents or information provided to us by the Lenders' Representative or in respect of any matter arising out of or relating to the Bidding Process including the transfer of Concession.
22. I/We offer a Bid Security of INR 1,00,00,000/- (Rupees One Crore only) to the Lenders' Representative in accordance with the RFP Document.
23. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strikeout whichever is not applicable) is attached.
24. The documents accompanying the Technical Bid, as specified in Clause 2.11.2 of the RFP, have been submitted in a separate envelope and marked as "TECHNICAL BID".
25. 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 transferred to me/us or our Bid is not opened or rejected.
26. The Financial Bid has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Concession Agreement, our own estimates of balance costs and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project.
27. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
28. I/ We certify that in terms of the RFP, my/our Networth is INR (INR in words) and Experience Score is (number in words).

29. I/We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
30. I/ We hereby submit our Bid as indicated in Financial Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

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

Yours faithfully,

Date: (Signature of the Authorised signatory)

Place: (Name and designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Member

APPENDIX-IB

Letter comprising the Financial BID

(Refer Clauses 2.1.5, 2.11.1 and 3.2)

(NOT TO BE SUBMITTED IN THE TECHNICAL BID)

The Assistant General Manager

Indian Bank

Strand Road Branch

3A, Hare Street

Kolkata – 700 071

Dated:

Sub: BID or Substitution of Concessionaire in the Project of Two Laning of Piprakothi - Raxaul Section of NH-28A (from km 0.600 to km 62.064) and construction of 2-lane link road from km 62.064 to Integrated Check Post (ICP) Raxaul (7.33 km length) in the state of Bihar on DBFOT (Toll) Basis

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 Lenders' Representative will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Nominated Company for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. The Bid has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Concession Agreement and its Schedules, our own estimates of balance costs and after a careful assessment of the site and all the conditions that may

affect the Project cost and implementation of the Project.

4. I/ We acknowledge the right of the Lenders' Representative to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. In the event of my/ our being declared as the Selected Bidder, I/We agree to assume the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement. I/We further agree to execute relevant agreements to assume the liabilities and obligations of the Concessionaire towards the Senior Lenders under the Financing Agreements, in accordance with the Financial Bid submitted by me/us. I/We agree not to seek any changes in the Concession Agreement and agree to abide by the same.
6. I/ We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
7. I/ We hereby submit a detailed financial model as a part of our Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

Place:

Yours faithfully,

(Signature, name and designation of the Authorised Signatory)

Date:

Name & seal of Bidder/Lead Member:

Appendix-IA
Annex-I
Details of Bidder

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

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

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

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

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 Joint Bidding Agreement, as envisaged in Clause 2.1.15 (e) should be

attached to the Application.

- (c) Information regarding the role of each Member should be provided as per table below:

S.No	Name of Member	Role* {Refer Clause 2.1.15(b)} ⁵	% equity in the Consortium {Refer Clauses 2.1.15(a), (c) & (e)}
1.			
2.			
3.			
4.			

* The role of each Member, as may be determined by the Bidder, should be indicated in accordance with instruction 4 at Annex-IV.

- (d) The following information shall also be provided for each Member of the Consortium:

Name of Bidder/ member of Consortium:

S. No.	Criteria	Yes	No
1.	Has the Bidder/ constituent of the Consortium been barred ⁶ 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 penalised due to any other reason in relation to execution of a contract, in the last three years?		

6. 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

⁵ All provisions contained in curly parenthesis shall be suitably modified by the Bidder to reflect the particulars relating to such Bidder.

⁶ or has been declared by the Authority as non-performer/blacklisted.

past is given below (Attach extra sheets, if necessary).

APPENDIX-1A
ANNEX-II
Technical Capacity of the Bidder⁷
(Refer to Clauses 2.2.2(A), 3.4 and 3.5 of the RFP)

Bidder type #	Proposed Equity Shareholding in Consortium (%)	Member Code*	Project Code**	Cate-gory ^{\$}	Experience [¥]			Experience Score [£]
					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)	(9)
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 Experience Score =								

⁷ 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 2.1.18 and/ or by a project company eligible under Clause 3.4.3(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.4.3(c) and for Categories 3 and 4, include only those projects where the payments made/received exceed the amount specified in Clause 3.4.4.

- # 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 2.1.18, shall be provided.
- * Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.
- ** Refer Annex-IV of this Appendix-IA. Add more rows if necessary.
- \$ Refer Clause 3.4.1.
- ¥ In the case of Eligible Projects in Categories 1 and 2, the figures in columns 7 and 8 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 64 (Sixty-Four) 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 3.4.6 and in case of a Consortium, further multiply the result thereof by the proposed equity shareholding of the applicable Member, 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 3.4.7, and the product thereof shall be the Experience Score for such Eligible Projects. Above all, the sum total of columns 6, 7 and 8, as the case may be, in respect of each Eligible Project shall be restricted to a ceiling equivalent to the Estimated Project Cost, as specified in Clause 3.4.8.

APPENDIX-IA

ANNEX-III

Financial Capacity of the Bidder

(Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.6 of the RFP)

(In INR Crore\$\$)

Bidder type \$	Member Code [£]	Proposed Equity Shareholding in Consortium (%)	Net Cash Accruals					Net Worth [€]
			Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Single entity Bidder								
Consortium Member 1								
Consortium Member 2								
Consortium Member 3								
Consortium Member 4								
TOTAL								

Name & address of Bidder's Bankers:

^{\$} 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 Annex-IV of this Appendix-IA.

[€] The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 2.1.18.

^{\$\$} For conversion of other currencies into rupees, see note below Annex-II of Appendix-IA.

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 aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.1.15 (e) of the RFP document.
6. The Bidder shall also provide the name and address of the Bankers to the Bidder.
7. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.4 (ii) of the RFP document.

APPENDIX-IA

ANNEX-IV

Details of Eligible Projects

(Refer to Clauses 2.2.2(A), 3.4 and 3.5 of the RFP)

Project Code:

Member Code:

Item (1)	Refer Instruction (2)	Particulars of the Project (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)	16	

Instructions:

- Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.4.3 and 3.4.4 of the RFP, as the case may be. Information provided in this section is intended to serve as a

backup for information provided in the Bid.

Bidders should also refer to the Instructions below.

2. 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 3.4.1 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 Annex-II of this Appendix-IA. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on. For Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.4.3(c). In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 3.4.4. 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 Eligible Project. Refer to Clauses 3.4.3 and 3.4.4.
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 3.4.3).
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 auditor⁸ 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 & 2⁹, it should provide a certificate from its statutory auditor in the format below:

⁸ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

⁹ Refer Clause 3.4.1 of the RFP.

Certificate from the Statutory Auditor regarding PPP projects[@]

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 INR 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 INR cr. (Rupeescrore), of which INR cr. (Rupees crore) of capital expenditure was incurred during the past five financial years as per year-wise details noted below:

.....

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 3.4.1 and 3.4.3 (d) of the RFP during the past five financial years were INR cr. as per year-wise details noted below:

.....

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation
 of the authorised signatory)

Date:

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

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

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

..... (date) to (date).”

14. If the Bidder is claiming experience under Category 3 & 4¹⁰, it should provide a certificate from its statutory auditors or the client in the format below:

Certificate from the Statutory Auditor/ Client regarding construction works @

Based on its books of accounts and other published information authenticated by it, {this is 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)}[§]. 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 INR 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 INR cr. (Rupeescrore), of which the Bidder/Member/Associate received/paid INR cr. (Rupees crore), in terms of Clauses 3.4.1 and 3.4.4 of the RFP, during the past five financial years as per year-wise details noted below:

.....

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

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation
of the authorised signatory)

Date:

@ Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory

¹⁰ Refer Clauses 3.4.1 and 3.4.4 of the RFP.

auditor means the entity that audits and certifies the annual accounts of the company.

§ 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.

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.1.18, the Applicant should also provide a certificate in the format below:

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

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of (name of the Associate) is held, directly or indirectly[£], by (name of Bidder / Consortium Member). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.1.18 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 in the Associate} Name of the audit firm:

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

§ 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 Experience Score¹¹.

¹¹ Refer clause 3.4.6



Appendix-IA

ANNEX-V

Statement of Legal Capacity

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

Ref.

Date:

To,
The Assistant General Manager
Indian Bank
Strand Road Branch
3A, Hare Street
Kolkata – 700 071

Dear Sir,

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

Appendix-1A

Annexure-VI

Guidelines of the Department of Disinvestment¹²

(Refer Clause 1.2.1)

No. 6/4/2001-DD-II

Government of India

Department of Disinvestment

Block 14, CGO Complex

New Delhi.

Dated 13th July 2001.

OFFICE MEMORANDUM

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

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

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

¹² These guidelines may be modified or substituted by the Government from time to time.

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



to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

APPENDIX – II

Bank Guarantee for Bid Security

(Refer Clauses 1.2.4 and 2.20.1)

B.G. No. Date

1. In consideration of you, **Indian Bank, having its office at Strand Road Branch, 3A, Hare Street, Kolkata – 700 071**, (hereinafter referred to as the “Lenders’ Representative”, 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 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 **Substitution of the Concessionaire in the Project of Two Laning of Piprakothi - Raxaul Section of NH-28A (from km 0.600 to km 62.064) and construction of 2-lane link road from km 62.064 to Integrated Check Post (ICP) Raxaul (7.33 km length) in the state of Bihar on DBFOT (Toll) 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 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 1.2.4 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 Lenders’ Representative an amount of **INR 1,00,00,000/- (Rupees One Crore 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 Lenders’ Representative 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 Lenders' Representative is disputed by the Bidder or not, merely on the first demand from the Lenders' Representative stating that the amount claimed is due to the Lenders' Representative 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 **INR 1,00,00,000/- (Rupees One Crore 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 and a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Lenders' Representative 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 Lenders' Representative 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 Lenders' Representative that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Lenders' Representative 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 Lenders' Representative shall be entitled to treat the Bank as the principal debtor. The Lenders' Representative 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 Lenders' Representative, and the Bank shall not be released from its liability under these presents by any exercise by the Lenders' Representative 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 Lenders' Representative or any indulgence by the Lenders' Representative to the said Bidder or by any change in the constitution of the Lenders' Representative 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 who shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Lenders' Representative 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 Lenders'

Representative 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 unrealised.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Lenders' Representative in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised 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 **INR 1,00,00,000/- (Rupees One Crore only)**. The Bank shall be liable to pay the said amount or any part thereof only if the Lenders' Representative 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).
14. This guarantee shall also be operational at our branch at Kolkata, from whom, confirmation regarding the issue of this guarantee or extension/renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.

Signed and Delivered by

Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

APPENDIX-III
Format for Power of Attorney for signing of Bid
(Refer Clause 2.1.8)

Know all men by these presents, We, (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr. / Ms (Name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the **Substitution of Concessionaire in the Project of Two Laning of Piprakothi - Raxaul Section of NH-28A (from km 0.600 to km 62.064) and construction of 2-lane link road from km 62.064 to Integrated Check Post (ICP) Raxaul (7.33 km length) in the state of Bihar on DBFOT (Toll) Basis** (the “Project”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to **Indian Bank** (the “Lenders’ Representative”), representing us in all matters before the Lenders’ Representative, signing and execution of all contracts and undertakings consequent to acceptance of our bid, and generally dealing with the Lenders’ Representative 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 transfer of the Concession by 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)
of person authorized by Board Resolution
(in case of Firms/Company)/Partner in case
of Partnership Firms

Witnesses:

1.

2.

(Notarised)

Accepted

.....

(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 Apostille certificate.*

APPENDIX-IV

Format for Power of Attorney for Lead Member of Consortium

(Refer Clause 2.1.9)

Whereas the **Indian Bank (“the Lenders’ Representative”)** has invited bids from interested parties for the **Substitution of Concessionaire in the Project of Two Laning of Piprakothi - Raxaul Section of NH-28A (from km 0.600 to km 62.064) and construction of 2-lane link road from km 62.064 to Integrated Check Post (ICP) Raxaul (7.33 km length) in the state of Bihar on DBFOT (Toll) Basis (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 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, and M/s., 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”**) and 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 submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, participate in bidders’ and other conferences, respond to queries, submit information/ documents, sign

and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Lenders' Representative, 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 transfer of the Concession by 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)

Witnesses:

1.

2.

(Executants)

(To be executed by all the Members of the Joint Venture)

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 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 V

Format for Joint Bidding Agreement for Consortium

(Refer Clause 2.1.9 & 2.1.15(e))

(To be executed on Stamp paper of appropriate value)

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

AMONGST

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

AND

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

AND

3. {..... Limited, and having its registered office at} (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

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

WHEREAS,

- (A) INDIAN BANK, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and having its large corporate branch at Strand

Road Branch, 3A, Hare Street, Kolkata – 700 071 (hereinafter referred to as the “**Lenders’ Representative**” 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 an entity for **Substitution of Concessionaire in the Project of Two Laning of Piprakothi - Raxaul Section of NH-28A (from km 0.600 to km 62.064) and construction of 2-lane link road from km 62.064 to Integrated Check Post (ICP) Raxaul (7.33 km length) in the state of Bihar on DBFOT (Toll) 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 1956/2013 for assuming the liabilities and obligations of the Concessionaire towards the Authority in terms of the Concession Agreement for the Project. Further, the SPV shall execute relevant agreements to assume the liabilities and obligations of the Concessionaire towards the Senior Lenders under the Financing Agreements, in accordance with the Financial Bid submitted by me/us.

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 transfer date of the Concession 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 Concession is transferred to the SPV.

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 they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

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

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the 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 transfer of the Project Concession is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Lenders' Representative 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 Lenders' Representative.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SECOND PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of
THIRD PART

(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 legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.*