



डेडीकेटेड फ्रेट कोरीडोर

**DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LIMITED**

## **Request For Proposal**

**For**

**Selection of Concessionaire for**

**Development, Operation and Maintenance of Sonnagar (New Chiraila Pauthu)-New Gomoh (approximately 262 km section) double line, electrified Rail System of EDFC**

**on**

**Hybrid- Design, Build, Finance, Operate & Maintain and Transfer (Hybrid-DBFOT)**

**(Participation Through E-Tender only)**

**Disclaimer: This Draft RFP is only for reference purpose.**

**Visit: [www.ireps.gov.in/](http://www.ireps.gov.in/) its link at [www.dfccil.com](http://www.dfccil.com)  
(Help desk of IREPS: 011-23761525)**

March 2022

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**DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LIMITED**  
**A Government of India (Ministry of Railways) Enterprise, 5<sup>th</sup> Floor, Supreme Court Metro**  
**Station Building Complex**  
**New Delhi-110001**

**NOTICE INVITING BID**

Bid/ Package No. DFCCIL/HQ/EN/PPP/SEB-GMO/2022

Date.....

RFP for development, operation and maintenance of Sonnagar (New Chiraila Pauthu)-New Gomoh (approximately 262 km section) double line, electrified Rail System of EDFC on Hybrid- DBFOT mode.

Dedicated Freight Corridor Corporation of India Limited, a Government of India Enterprise under Ministry of Railways (the “**Authority**”), having its registered office at 5<sup>th</sup> Floor, Supreme Court Metro Station Building Complex, New Delhi, 110001, India is engaged in the development of Western Dedicated Freight Corridor (the “**WDFC**”) and Eastern Dedicated Freight Corridor (the “**EDFC**”) and as part of this endeavor, the Authority has decided to undertake the development, operation and maintenance of Sonnagar (New Chiraila Pauthu)-New Gomoh (approximately 262 km section) double line, electrified Rail System of EDFC (the “**Project**”) through Public-Private Partnership (“**PPP**”) on Hybrid- Design, Build, Finance, Operate & Maintain and Transfer (“**Hybrid- DBFOT**”) basis, and has decided to carry out the Bidding Process for selection of an entity as the Bidder to whom the Project may be awarded. A brief description of the Project may be seen in the Project Information Brochure of the Project at <http://www.ireps.gov.in>. Salient particulars of the Project are as follows:

<b>Name of the Project</b>	<b>Approximately route length (in km)</b>	<b>Estimated Project Cost (in Rs. Crores)</b>	<b>Stipulated Construction Period (in months)</b>
Development, operation and maintenance of Sonnagar (New Chiraila Pauthu)- New Gomoh (approximately 262 km section) double line, electrified Rail System of EDFC on Hybrid-Design, Build, Finance, Operate & Maintain and Transfer mode.	<b>262</b>	<b>8749</b>	<b>60</b>

The complete Bidding Documents can be viewed / downloaded from official portal of the Indian Railway website <http://www.ireps.gov.in> (upto ..... Hrs. IST on ..... 2022). Bidder must submit its Technical Bid and Financial Bid at <http://www.ireps.gov.in> on or before 15:00 hours IST on the Bid Due Date. Bids received online shall be opened at 15:30 hours IST on the date specified in Clause 1.3 at the office of the Authority and in the presence of the Bidders who choose to attend.

Bid through any other mode shall not be entertained. However, Power of Attorney and Joint Bidding Agreement etc. shall be submitted physically by the Bidder at Authority's office on or before as specified in Clause 1.3 of Section-1 of this RFP. Please note that the Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever.

Officer In-charge

ATTN. OF : Mr. Pawan Kumar  
DESIGNATION : General Manager/PPP  
ADDRESS : 3<sup>rd</sup> Floor, Dedicated Freight Corridor Corporation of India Limited  
Supreme Court Metro Station Building Complex, New Delhi-01.  
PHONE NO : 011-23454970  
E-MAIL ADDRESS : kumarp@dfcc.co.in

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## DISCLAIMER

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

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

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

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

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

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

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

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## GLOSSARY

- “**ACI**” shall have the meaning as ascribed to it in Clause 2.2.2.8 (ii);
- “**AIF**” means an alternative investment fund as defined in Regulation 2(1)(b) of Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, as may be amended from time to time;
- “**Appointed Date**” shall have the meaning as ascribed to it in Concession Agreement;
- “**Associate**” shall have the meaning as ascribed to it in Clause 2.1.15;
- “**Authority**” shall have the meaning as ascribed to it in Clause 1.1.1;
- “**Authorized Signatory**” shall have the meaning as ascribed to it in Clause 2.1.5;
- “**Availability Payment**” shall have the meaning as ascribed to it in Clause 1.2.6;
- “**Bank Guarantee**” shall have the meaning as ascribed to it in Clause 1.2.4;
- “**Bid(s)**” shall have the meaning as ascribed to it in Clause 1.2.1;
- “**Bidder(s)**” shall have the meaning as ascribed to it in Clause 1.2.1;
- “**Bidding Documents**” shall have the meaning as ascribed to it in Clause 1.1.6;
- “**Bid Due Date**” shall have the meaning as ascribed to it in Clause 1.1.6;
- “**Bidding Process**” shall have the meaning as ascribed to it in Clause 1.2.1;
- “**Bid Security**” shall have the meaning as ascribed to it in Clause 1.2.4;
- “**COD**” shall have the meaning as ascribed to it in Concession Agreement
- “**Concession**” shall have the meaning as ascribed to it in Clause 1.1.5;
- “**Concession Agreement**” shall have the meaning as ascribed to it in Clause 1.1.2;
- “**Concessionaire**” shall have the meaning as ascribed to it in Clause 1.1.2;
- “**Conflict of Interest**” shall have the meaning as ascribed to it in Clause 2.2.1(c);
- “**Damages**” shall have the meaning as ascribed to it in Clause 2.2.1(c);
- “**EDFC**” shall have the meaning as ascribed to it in Clause 1.1.1;
- “**Eligible Bidders**” shall have the meaning as ascribed to it in Clause 3.2;
- “**Eligible Experience**” shall have the meaning as ascribed to it in Clause 2.2.2.4;
- “**Eligible Projects**” shall have the meaning as ascribed to it in Clause 2.2.2.4;
- “**Estimated Project Cost**” shall have the meaning as ascribed to it in Clause 1.1.3;
- “**Feasibility Report**” shall have the meaning as ascribed to it in Clause 1.2.3;
- “**Financial Capacity**” shall have the meaning as ascribed to it in Clause 2.2.2.3;
- “**Foreign Investment Fund**” shall mean any pooled investment vehicle or investment fund which is registered or recognized with a securities market/banking regulator of a “foreign jurisdiction”;
- “**Government**” shall have the meaning Government of India;
- “**Grant**” shall have the meaning as ascribed to it in Clause 1.1.4;
- “**Hybrid- DBFOT**” shall have the meaning as ascribed to it in Clause 1.1.1;



“IREPS” shall mean [www.ireps.gov.in](http://www.ireps.gov.in);

“Consortium/Joint Venture” shall have the meaning as ascribed to it in Clause 2.2.1;

“Joint Bidding Agreement” shall have the meaning as ascribed to it in Clause 2.1.11(f);

“Lead Member” shall have the meaning as ascribed to it in Clause 2.1.11(c);

“Lowest Bidder” shall have the meaning as ascribed to it in Clause 1.2.7;

“LOA” shall have the meaning as ascribed to it in Clause 3.3.5;

“O&M” shall have the meaning as ascribed to it in Clause 2.2.2.9;

“O&M Experience” shall have the meaning as ascribed to it in Clause 2.2.2.9;

“Net Worth” shall have the meaning as ascribed to it in Clause 2.2.2.8 (ii);

“PPP” shall have the meaning as ascribed to it in Clause 1.1.1;

“Project” shall have the meaning as ascribed to it in Clause 1.1.1;

“Re. or Rs. or INR or Rupees” shall have the meaning Indian Rupee(s);

“RFP or Request for Proposals” shall have the meaning as ascribed to it in the Disclaimer;

“Selected Bidder” shall have the meaning as ascribed to it in Clause 3.3.1;

“SPV” shall have the meaning as ascribed to it in Clause 2.1.11;

“Technical Capacity” shall have the meaning as ascribed to it in Clause 2.2.2.1;

“Tie Bidders” shall have the meaning as ascribed to it in Clause 3.3.2;

“Threshold Technical Capacity” shall have the meaning as ascribed to it in Clause 2.2.2.1;

“WDFC” shall have the meaning as ascribed to it in Clause 1.1.1;

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

The words and expressions beginning with capital letters and not defined herein, but defined in the Concession Agreement, shall, unless repugnant to the context, have the meaning ascribed thereto therein.

In this RFP, unless the context otherwise requires, the words importing singular shall include plural and *vice versa*.

## SECTION 1 INTRODUCTION

### 1.1 Background

- 1.1.1 Dedicated Freight Corridor Corporation of India Limited, a Government of India Enterprise under Ministry of Railways (the “**Authority**”), having its registered office at 5<sup>th</sup> Floor, Supreme Court Metro Station Building Complex, New Delhi, 110001, India is engaged in the development of Western Dedicated Freight Corridor (the “**WDFC**”) and Eastern Dedicated Freight Corridor (the “**EDFC**”) and as part of this endeavor, the Authority has decided to undertake development, operation and maintenance of Sonnagar (New Chiraila Pauthu)-New Gomoh (approximately 262 km section) double line, electrified Rail System of EDFC (the “**Project**”) through Public-Private Partnership ( “**PPP**”) on Hybrid- Design, Build, Finance, Operate & Maintain and Transfer (“**Hybrid-DBFOT**”) basis, and has decided to carry out an open, competitive Bidding Process for selection of an entity as the Bidder to whom the Project may be awarded. A brief description of the Project may be seen in the Project Information Brochure of the Project at IREPS portal. <http://www.ireps.gov.in/> Brief particulars of the Project are as follows:

Name of the Project	Approximately route length (in km)	Estimated Project Cost (in Rs. Crores)	Stipulated Construction Period (in months)
Development, operation and maintenance of Sonnagar (New Chiraila Pauthu)- New Gomoh (approximately 262 km section) double line, electrified Rail System of EDFC on Hybrid- Design, Build, Finance, Operate & Maintain and Transfer mode.	<b>262</b>	<b>8749</b>	<b>60</b>

- 1.1.2 The Selected Bidder, who is either a company incorporated under the Companies Act, 1956/ 2013 or its substitute thereof and undertakes to incorporate an appropriate SPV under the Indian Companies Act 2013 for execution of the Concession Agreement (the “**Concessionaire**”), shall be responsible for Design, Finance, Build, Operate & Maintain and Transfer of the Project under and in accordance with the provisions of a long-term concession agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant thereto. The scope of work will broadly include survey, investigation, design, finance, construction of civil, structure and track works for double line railway, involving formation in embankments/ cuttings/ ballast on formation, track works, bridges, tunnels, structures, buildings, electrification of track, general electrical

works, signaling and telecom including testing & commissioning, operation and maintenance thereof for Sonnagar (New Chiraila Pauthu)– New Gomoh section (approximately 262 km section) of EDFC under and in accordance with the provisions of the Concession Agreement. The scope of work does not include construction of road over bridges and road under bridges in lieu of level crossings and foot over bridges.

- 1.1.3 The estimated cost of the Project (the “**Estimated Project Cost**”) has been specified in the Clause 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.4 Authority will provide Rs. 3,200 Crores (Rupees Three Thousand Two Hundred Crores) inclusive of GST as a Grant (the “**Grant**”) in 10 (ten) equal instalments during the Construction Period of the Project as per provisions of Article 25 of Concession Agreement.
- 1.1.5 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “**Concession**”).
- 1.1.6 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the “**Bidding Documents**”), and all Bids shall be prepared and submitted in accordance with such terms on or before the bid due date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).
- 1.1.7 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.

## 1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a single stage two packet system (referred to as the “**Bidding Process**”) for selection of the Bidder for award of the Project. The 1<sup>st</sup> part (the “**Technical Bid**”) of the process involves qualification of the interested firms/ companies/ limited liability partnerships (LLPs)/ parties/ Consortia/Joint Ventures who submit a Bid in accordance with the provisions of this RFP (the “**Bidder**”, which

expression shall, unless repugnant to the context, include the members of the Consortium/Joint Venture) and fulfil the eligibility and qualification requirements of Bidders laid down in Clause 2.2 of this RFP. If required, as per Clause 2.1.12, approval of the competent authority from national security and public interest perspective shall be taken for Bidders. The 2<sup>nd</sup> part of the process involves opening of Financial proposals (the “**Financial Bid**”) of the Bidders qualified in Technical Bid. The Technical Bid and Financial Bid shall collectively be referred as the “**Bid**”. The Bidder would be required to furnish all information specified in this RFP. At the qualification stage, the Technical Bids of Bidders would be evaluated and only those Bidders who are qualified by the Authority shall be eligible for the 2<sup>nd</sup> part of the Bidding Process comprising opening and evaluation of their Financial Bids. Department of Investment and Public Asset Management, Government of India has issued guidelines vide Office Memorandum no. 3/9/2016-DoD-II-B dated 28.09.2017 for qualification of Bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines or subsequent guidelines issued by the Government of India shall apply *mutatis mutandis* to this Bidding Process. The Authority shall be entitled to disqualify any Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to Bid, and should give an undertaking to this effect in the form at Appendix-IA.

- 1.2.2 Interested Bidders may submit their Bid in accordance with the terms specified in this Bidding Document. The Bid shall be valid for a period of 90 (ninety) days from the date specified in Clause 1.3 for submission of Bids.
- 1.2.3 The complete Bidding Document including the Concession Agreement for the Project is enclosed for the Bidders. The feasibility report prepared by the Authority/ consultants of the Authority (the “**Feasibility Report**”) is also enclosed for guidance purposes only. The Feasibility Report of the Project is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Feasibility Report shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Feasibility Report. The aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- 1.2.4 A Bidder is required to deposit, along with its Bid, a Bid Security of Rs. 43.75 Crores (Rupees Forty Three Crore Seventy Five Lakhs only) (the “**Bid Security**”), refundable no later than 90 (ninety) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have to provide the Bid Security through payment gateway provided on IREPS portal or in the form of a bank guarantee in favour of Dedicated Freight Corridor Corporation of India Limited and payable at New Delhi in the format at Annex-VI of Appendix IA (the “**Bank Guarantee**”). The

validity period of Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 1.2.5 Bidders are advised to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.
- 1.2.6 Bids through e-tendering are invited for the Project on the basis of the lowest Availability Payment for implementing the Project. The Bidders shall quote the amount of Availability Payment to be received from the Authority for making availability of Rail System as per provisions under Article 27 of the Concession Agreement (the “**Availability Payment**”). The Bidders shall duly consider Grant provided by the Authority as per Clause 1.1.4 of RFP while quoting the Availability Payment. The Concession Period is pre-determined, as indicated in the Article 3 of the Concession Agreement. The total time allowed for completion of construction under the Concession Agreement and the period during which the Concessionaire shall be liable for operation and maintenance of the Rail System after completion of the Construction Period shall be pre-determined and are specified in the Concession Agreement forming part of the Bidding Document.
- 1.2.7 Generally, the Lowest Bidder shall be the Selected Bidder. The term “**Lowest Bidder**” shall mean the Bidder who is quoting the lowest Availability Payment, which shall constitute the sole criteria for evaluation of Bids. Subject to the provisions of Clause 2.16, the Project will be awarded to the Lowest Bidder.
- 1.2.8 Other details of the process to be followed under this Bidding Process and the terms thereof are spelt out in this RFP.
- 1.2.9 Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/courier/special messenger or by e-mail, so as to reach the officer designated in Clause 2.11.4 by the specified date. The envelopes/ communication shall clearly bear the following identification/ title:

"Queries/ Request for additional information: RFP for Development, Operation and Maintenance of Sonnagar (New Chiraila Pauthu)- New Gomoh (approximately 262 km section) double line, electrified Rail System of EDFC on Hybrid- DBFOT mode"

### 1.3 Schedule of Bidding Process

The Authority shall endeavor to adhere to the following schedule:

S.N.	Event Description	Date
1.	Invitation of RFP (NIB)	[.....**]
2.	1 <sup>st</sup> Pre-Bid meeting at venue indicated in Clause 5.3	[25 <sup>th</sup> day from the date of NIB]
3.	Last date for receiving queries	[30 <sup>th</sup> day from the date of NIB]
4.	Authority response to queries latest by	[37 <sup>th</sup> day from the date of NIB]
5.	2 <sup>nd</sup> Pre-Bid meeting at venue indicated in Clause 5.3, if required	[45 <sup>th</sup> day from the date of NIB]
6.	Authority response to queries latest by	[60 <sup>th</sup> day from the date of NIB]
7.	Last date of Bid submission online	[120 <sup>th</sup> day from date of NIB, up to 15.00 hrs]
8.	Bid Due Date	[120 <sup>th</sup> day from date of NIB, up to 15.00 hrs]
9.	Physical Submission of all documents listed in Clause no 2.11.2	[120 <sup>th</sup> day from date of NIB, up to 15.00 hrs]
10.	Opening of Technical Bids at venue indicated in Clause 5.3	[120 <sup>th</sup> day from date of NIB after 15:30 hrs]
11.	Declaration of eligible/qualified Bidders	Will be intimated during bidding Process
12.	Opening of Financial Bid	Will be intimated during bidding Process
13.	Return of signed duplicate copy of LOA	Within 7 days of LOA issue
14.	Validity of Bid	90 days from Bid Due Date
15.	Signature of Concession Agreement	Within 30 Days of LOA issue.



## SECTION 2 INSTRUCTIONS TO BIDDERS

### A. GENERAL

#### 2.1 General terms of Bidding

- 2.1.1 No Bidder shall submit more than 1 (one) Bid for the Project. A Bidder bidding individually or as a member of a Consortium/Joint Venture shall not be entitled to submit another Bid either individually or as a member of any other Consortium/Joint Venture, as the case may be.
- 2.1.2 An international Bidder bidding individually or as a member of a Consortium/Joint Venture shall ensure that Power of Attorney is legalized/apostilled by appropriate authority notarized in the jurisdiction where the Power of Attorney is being issued and requirement of Indian Stamp Act is duly fulfilled.
- 2.1.3 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. Further, the statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the work to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.
- 2.1.4 The Bid shall be furnished in the format exactly as per Appendix-IA & IB i.e. Technical Bid as per Appendix- IA and Financial Bid as per Appendix- IB and it shall be signed by the Bidder's Authorized Signatory. The Availability Payment per day shall be quoted online at the e-procurement platform at IREPS portal. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.1.5 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorizing the signatory of the Bid to commit the Bidder (the "**Authorized Signatory**").
- 2.1.6 In case the Bidder is a Consortium/Joint Venture, the members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix-III<sup>1</sup> and Joint Bidding Agreement in the format at Appendix-IV.

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<sup>1</sup> In case of a Consortium/Joint Venture, the members should submit a Power of Attorney in favour of the any member as per the format as Appendix-III. 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-II, authorizing the signatory of the Bid. Individual members of the Consortium/ Joint Venture need not submit Power of Attorney as per the format at Appendix-II, authorizing the signatory of the Bid.

- 2.1.7 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.8 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.9 This RFP is not transferable.
- 2.1.10 Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents. The Bidding Documents including this RFP and all attached documents, provided by the Authority are and shall remain or becomes the property of Authority and are transmitted to the Bidders solely for the purpose of preparation and submission of the Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provision of this Clause 2.1.10 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, documents or any information provided along therewith.
- 2.1.11 Whether the Selected Bidder is a single entity or Consortium/Joint Venture, it shall be required to form an appropriate SPV, incorporated under the Indian Companies Act 2013 (the “SPV”) to execute the Concession Agreement and implement the Project.

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

- (a) number of members in a Consortium/Joint Venture shall not exceed 6 (six) and information sought in the Bid may be given for all the members in the order of their equity contribution;
- (b) subject to the provisions of Clause (a) above, the Bid should contain the information required for each member of the Consortium/Joint Venture;
- (c) members of the Consortium/Joint Venture shall nominate 1 (one) member as the Lead Member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination of Lead Member shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium/Joint Venture;
- (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and/or operation and maintenance obligations;
- (e) an individual Bidder cannot at the same time be member of a Consortium/Joint Venture submitting a Bid. Further, a member of one Consortium/Joint Venture cannot be member of any other Consortium/Joint Venture submitting a Bid;
- (f) members of the Consortium/ Joint Venture shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Joint Bidding Agreement**”), for the purpose of submitting a Bid. The Joint Bidding



Agreement, to be submitted along with the Bid, shall, inter alia:

- (i) convey the intent to form an SPV, solely for the purpose of doing the Project and no other purpose, with shareholding / ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the Concession to undertake the Project is awarded to the Consortium/ Joint Venture;
- (ii) commit that each of the party, whose experience/credentials has been considered/factored in for the purposes of this RFP, shall continue to subscribe to 10% (ten per cent) or more of the paid up and subscribed equity of the SPV till the 06 (six) months from the COD;
- (iii) members of the Consortium/ Joint Venture undertake that they shall collectively hold (i) 100% (hundred per cent) of the subscribed and paid up equity of the SPV at all times till the completion of Project Milestone-III as certified by the Independent Engineer, (ii) 51% (fifty one per cent) thereof until the COD, and (iii) 26% (twenty six per cent) thereof until 06 (six) months from the COD subject to the Clause 2.1.17 of this RFP;
- (iv) include a statement to the effect that all members of the Consortium/Joint Venture whose Technical Capacity/ Financial Capacity has been considered/ factored for deciding the qualification shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until 06 (six) months from the COD; and
- (v) clearly outline the proposed roles and responsibilities, if any, of each member; and
- (g) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Authority. Approval for change of constitution of Consortium/Joint Venture shall be at sole discretion of the Authority.

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

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

then the qualification of such Bidder or in the event described in sub-Clause (b) above, the continued qualification of the Bidder shall be subject to approval of the

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

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

- (c) In case the Bidder(s) under sub-Clause (a) above is ~~denied~~ the security clearance, for whatsoever reasons, then their Bid shall be considered ~~non-responsive~~ Bid;
  - (d) Any Bidder from such countries sharing a ~~land~~ border with India ~~will~~ be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the Bidder is registered with the competent authority. The competent authority for registration will be the registration committee constituted by the Department for Promotion of Industry and ~~Internal~~ Trade, Government of India. Political and security clearance from the Ministry of ~~External Affairs~~ and Ministry of Home Affairs respectively will be mandatory ~~for this purpose~~. For interpretation of this Clause, Department of Expenditure, Ministry of Finance, Government of India letter F.No.6/18/2019-PPD letter dated 23/07/2020 or subsequent guidelines issued by the Government of India shall be referred.
- 2.1.13 Notwithstanding ~~anything to the contrary~~ contained herein, in the event that the Bid Due Date falls within 3 (~~three~~) months of the closing of the latest financial year of a Bidder, it shall ~~ignore~~ such financial year for the purposes of its Bid and furnish all its information and ~~certification~~ with reference to the 7 (seven) financial years or 1 (one) ~~financial~~ year, as the case may be, preceding its latest financial year. For the avoidance of ~~doubt~~, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.
- 2.1.14 Any entity ~~which~~ has been barred by the Central Government/State Government or any entity controlled by it for which, a debarment order for specified period for Government of India as a whole has been issued by the competent authority, from participating in any project, and the bar subsists as on the Bid Due Date, would not be eligible to submit a Bid, either individually or as member of a Consortium/ Joint Venture.

A Bidder including any Consortium/ Joint Venture member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or a judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium/Joint Venture member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium/ Joint Venture member or Associate.

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

- 2.1.15 In computing the Technical Capacity and Financial Capacity of the Bidder/Consortium/Joint Venture members under Clauses 2.2.2, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder.

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

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

**2.1.16 Changes in composition of the Consortium/Joint Venture:**

Where the Bidder is a Consortium/ Joint Venture, no change in the composition of the Consortium/ Joint Venture is permitted after the Bid opening date and upto the date of issue of LOA except when such a change becomes inevitable due to merger/amalgamation/dissolution etc. In such cases change in the Consortium/ Joint Venture may be permitted by the Authority only if:

- (a) the Lead Member continues to be the Lead Member of the Consortium/ Joint Venture;
- (b) the substitute is at least equal, in terms of Technical Capacity or Financial Capacity, to the Consortium/ Joint Venture member who is sought to be substituted and the modified Consortium/Joint Venture shall continue to meet the pre-qualification and short-listing criteria for Bidders;
- (c) the new member(s) expressly adopt(s) the Bid already made on behalf of the Consortium/ Joint Venture as if it were a party to it originally, and is not a Bidder/ member/ Associate of any other Consortium/ Joint Venture bidding for this Project;
- (d) The modified/ reconstituted Consortium/ Joint Venture shall submit a revised Joint Bidding Agreement and a Power of Attorney; and
- (e) Approval for change in the composition of a Consortium/ Joint Venture shall be at the sole discretion of the Authority.

### 2.1.17 Change in Ownership

2.1.17.1 By submitting the Bid, the Bidder acknowledges that it was qualified on the basis of Technical Capacity and Financial Capacity of those of its Consortium/ Joint Venture members who shall continue to subscribe to 10% (ten per cent) or more of the paid up and subscribed equity of the SPV till 06 (six) months from COD and shall collectively hold at least (i) 100% (hundred per cent) of the subscribed and paid up equity of the SPV at all times till the completion of Project Milestone-III as certified by the Independent Engineer, (ii) 51% (fifty one per cent) thereof until the COD, and (iii) 26% (twenty six per cent) thereof until 06 (six) months from COD, provided that any material variation (as compared to the representations made by the Concessionaire during the Bidding Process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its Bid) in the proportion of the equity holding of the Selected Bidder/ any Consortium / Joint Venture member to the total equity, if it occurs prior to COD, shall constitute Change in Ownership. The Bidder further acknowledges and agrees that the aforesaid obligations shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be breach of the Concession Agreement and dealt with as there under. For the avoidance of doubt, the provisions of this Clause 2.1.17.1 shall apply only when the Bidder is a Consortium/Joint Venture.

2.1.17.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of change in control of a Consortium member/ Joint Venture or an Associate whose Technical Capacity and/or Financial Capacity was taken into consideration for the purpose of qualification, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be breach of the Concession Agreement and same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement or otherwise.

## 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 (which may be a natural person, private entity, AIF, Foreign Investment Fund, government-owned entity, etc.) or a group of entities (the “Consortium” or the “Joint Venture”) coming together to implement the Project. The term Bidder used herein would apply to both a single entity and a Consortium/ Joint Venture.

- (b) No Bidder applying individually or as a member of a Consortium/Joint Venture, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium/ Joint Venture. A Consortium/ Joint Venture shall be eligible for consideration subject to the conditions set out in Clause 2.1.11 above.
- (c) A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal (the “**Damages**”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (i) the Bidder, its member or Associate (or any constituent thereof) and any other Bidder, its member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, or its member or Associate thereof (or any shareholder thereof having a shareholding of more than 20% (twenty per cent) of the paid up and subscribed share capital of such Bidder, or its Consortium/Joint Venture member, as the case may be), in the other Bidder, its Consortium/Joint Venture member is less than 20% (twenty per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 2013.

For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows:

- (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and
- (bb) subject always to sub-Clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-Clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or



- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
  - (iii) such Bidder, or any of its Consortium/Joint Venture member or Associate thereof, receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any of its Consortium/Joint Venture member thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its member or any of its Consortium/Joint Venture member thereof; or
  - (iv) such Bidder has the same legal representative for purposes of this RFP as any other Bidder; or
  - (v) such Bidder, or any of its Consortium/ Joint Venture member or Associates thereof has a relationship with another Bidder, or any of its Consortium/ Joint Venture member or Associates thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or
  - (vi) such Bidder, or any of its Consortium/ Joint Venture members thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- (d) a Bidder shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be: (i) in any manner for matters related to or incidental to preparation or submission of Bids for the Project; and/or (ii) representation or advice in connection with any dispute or legal proceedings relating to the Project against the Authority. For the avoidance of doubt, this disqualification shall not apply where such adviser is engaged after a period of 6 (six) months from the COD.

*Explanation:*

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1 shall include each Member of such Consortium and the term Associate with respect to a Bidder shall include an Associate of each Member of that Consortium.

**2.2.2 Qualification requirements of Bidders:** To be eligible for consideration for this Project, a Bidder shall fulfill the following conditions of eligibility:

**2.2.2.1 Technical Capacity-** For demonstrating Technical Capacity and experience (the "Technical Capacity"), the Bidder should have, over the past 7 (seven) financial years preceding the Bid Due Date,

- (i) paid for, or received payments for the construction of Eligible Project(s) in Category 3 and/or Category 4 specified in Clause 2.2.2.4; and/or
- (ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 2.2.2.4; and/ or

(iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 2.2.2.4.

such that the sum total thereof, as further adjusted in accordance with Clause 2.2.2.4 (i) & (ii), is more than 0.75 (zero point seven five) time the Estimated Project Cost (the “**Threshold Technical Capacity**”).

Provided further that at least one fourth of the Threshold Technical Capacity shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 2.2.2.4.

2.2.2.2 For Technical Capacity calculation purpose, the account of Eligible Experience of particular project either as per Clause 2.2.2.1 (ii) or 2.2.2.1 (iii) only shall be taken.

2.2.2.3 **Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) of 10% (ten per cent) of the Estimated Project Cost at the close of the preceding financial year.

In case the Bidder is an AIF or Foreign Investment Fund, it should have a minimum ACI of 10% (ten per cent) of the Estimated Project Cost at the close of the preceding financial year<sup>2</sup>.

The Technical Capacity & Financial Capacity of Consortium/ Joint Venture shall be worked out as per Appendix-IA (Annex-II & III). For this purpose, the credential/ past experience of only those members of Consortium/ Joint Venture shall be considered who have a shareholding of at least 10% (ten per cent) in SPV as committed in the Joint Bidding Agreement.

2.2.2.4 Categories and factors for evaluation of Technical Capacity:

Subject to the provisions of Clause 2.2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the “**Eligible Experience**”) in relation to eligible projects as stipulated in Clauses 2.2.2.5 (i) and 2.2.2.5 (ii) (the “**Eligible Projects**”):

Category 1: Project experience on Eligible Projects in Railways sector that qualify under Clause 2.2.2.5 (i)

Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 2.2.2.5 (i)

Category 3: Construction experience on Eligible Projects in Railways sector that qualify under Clause 2.2.2.5 (ii)

Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 2.2.2.5 (ii)

(i) In case the Bidder has experience across different categories, the experience for each

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<sup>2</sup> In case a Bidder has issued any fresh equity capital during the current financial year, the same shall be permitted to be added to the Bidder’s Net Worth subject to the statutory auditor of the Bidder certifying to this effect. In case a Bidder has received any fresh capital commitment available for the immediate deployment during the current financial year, the same shall be permitted to be added to the Bidder’s ACI subject to the statutory auditor of the Bidder certifying to this effect.

category would be computed as per weight of following factors to arrive at its aggregated Eligible Experience:

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

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

(iii) For the purpose of this RFP:

- (a) Railways sector would be deemed to include railways, metro rails, light rail transit, monorail, high speed rail, highways, expressways, bridges (road/railways) and tunnels (road/railways); and
- (b) Core sector would be deemed to include hydroelectric dams, barrage, ports, airports, renewable energy, healthcare, urban development, thermal/steel/cement plants, oil and gas pipelines, irrigation canals, water supply (pipelines/ treatment plants), sewerage (pipelines/ treatment plants), power transmission lines, civil works in power sector/ commercial set ups (SEZs etc)/ industrial parks/logistics parks and real estate development.<sup>3</sup>

**Note:**

- (i) Maintenance works are not considered as Eligible Project for evaluation.
- (ii) Cost of land shall not be included while computing the experience of an Eligible Project.
- (iii) In case both the cost of project and revised cost of project are provided, the revised cost of project shall be considered for evaluation.

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

- (i) For a project to qualify as an Eligible Project under Categories 1 and 2:
  - (a) It should have been undertaken as a PPP project for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be.

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



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 5% (five per cent) of the Estimated Project Cost; and
  - (d) the entity claiming experience shall, during the last 7 (seven) financial years preceding the Bid Due Date, have (i) paid for development of the project (excluding the cost of land), and/or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from highways, airports, ports and railway infrastructure, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products, telecommunications or fare/ freight revenues and other incomes of the company owning the project.
- (ii) For a project to qualify as an Eligible Project under Categories 3 and 4: -
- the entity claiming experience 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 7 (seven) financial years immediately preceding the Bid Due Date, and only the amounts (gross) actually received, during such 7 (seven) financial years shall qualify for purposes of computing the Technical Capacity. However, total payments/ receipts of less than 5% (five per cent) of the Estimated Project Cost 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.

#### 2.2.2.6 Submission in support of Technical Capacity:

- (i) The Bidder should furnish the details of Eligible Experience for the last 7 (seven) financial years immediately preceding the Bid Due Date.
- (ii) The Bidder must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-IA.
- (iii) The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex -IV of Appendix-IA.

#### 2.2.2.7 Submission in support of Financial Capacity:

- (i) The Technical Bid must be accompanied by the audited annual reports of the Bidder (of each member in case of a Consortium/ Joint Venture and also of associates if any) for the last 7 (seven) financial years, preceding the year in which the Bid is

made.

- (ii) In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the audited annual reports for 7 (seven) financial years preceding the year for which the audited annual report is not being provided.
- (iii) The Bidder must establish the minimum Net Worth/ACI specified in Clause 2.2.2.3, and provide details as per format at Annex-III of Appendix-IA.
- (iv) 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.

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

- (i) Technical Capacity: Certificate(s) from its statutory auditors<sup>4</sup> or the concerned client(s) stating the payments made/received or works commissioned, as the case may be, during the past 7 (seven) financial years, in respect of the Eligible Projects specified in Clause 2.2.2.1 above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium/ Joint Venture), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
- (ii) Financial Capacity: Certificate(s) from its statutory auditors specifying the Net Worth of the Bidder (including associates, if any), as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 2.2.2.8 (ii).

For the purposes of this RFP, net worth (the “Net Worth”) shall mean the capital/aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

In addition to Net Worth as set out under this Clause 2.2.2.8 (ii), an AIF or Foreign Investment Fund may also qualify on the basis of minimum investible funds (i.e. immediately available funds for investment and callable capital) subject to the limits of investment in a single investee entity (in the relevant jurisdiction for a Foreign Investment Fund, or the maximum permissible investment limit for an AIF) (as per the Securities and Exchange Board of India (Alternative Investment Funds) Regulations,

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<sup>4</sup> In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.2.8 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder provide the certificates required under this RFP.

2012, as may be amended from time to time), as applicable (“ACI”).

In case of an AIF or Foreign Investment Fund using ACI, ACI would be considered as per the certificate issued by statutory auditor (or such other certificate as filed with the regulator in the relevant jurisdiction) not older than 3 (three) months prior to the Bid Due Date.

#### 2.2.2.9 O&M Experience:

The requisite O&M experience (“**O&M Experience**”) shall mean the Bidder shall, have either by itself or through its Associate, experience of 5 (five) years or more in operation and maintenance (the “**O&M**”) of:

- (i) Category 1 projects specified in Clause 2.2.2.4; or
- (ii) Port/ Airport of Category 2 projects specified in Clause 2.2.2.4.

For avoidance of doubt, O&M Experiences of 2 (two) or more entities cannot be combined for meeting the requirement under 1 (one) category of O&M Experience. However, 2 (two) different entities can fulfil the requirement under the 2 (two) categories.

In the event that the Bidder does not have the requisite O&M Experience, as detailed above, it shall enter into a suitable agreement, no later than the date which is 365 (three hundred and sixty five) days prior to the Scheduled Completion Date (as defined in the Concession Agreement), with entity(ies) having such O&M Experience relating to the performance of its O&M obligations, failing which the Concession Agreement shall be liable to termination.

### 2.3 Proprietary data

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

### 2.4 Cost of bidding

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

### 2.5 Site visit and verification of information

2.5.1 Bidders are advised to submit their respective Bids after visiting the Project site and

ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water & other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them. Bidders are advised to visit the site and familiarize 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 Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above. No claim shall be admissible at any stage on this account;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

## 2.6 Verification and Disqualification

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

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

- (a) at any time, a material misrepresentation is made or uncovered; or
  - (b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.
- Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium/ Joint Venture, then the entire Consortium/ Joint Venture and each member of the Consortium/ Joint Venture may be disqualified/ rejected. If such disqualification/rejection occurs after the Bids have been opened and the Lowest Bidder gets disqualified / rejected, then the Authority reserves the right to annul the Bidding Process and invites fresh Bids.

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

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## B. DOCUMENTS

### 2.7 Contents of the RFP

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

#### Part –I

##### Invitation for BIDs

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

##### Appendices

- I A Letter comprising the Technical Bid including Annex- I to V and Annex- VI (if applicable)
- I B Letter comprising the Financial Bid
- II. Format for Power of Attorney for signing of Bid
- III. Format for Power of Attorney for Lead Member of Consortium/ Joint Venture
- IV. Format for Joint Bidding Agreement for Consortium/ Joint Venture
- V. Integrity pact

#### Part –II

Draft Concession Agreement with schedules.

#### Part – III

Feasibility Report.

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

### 2.8 Clarifications

- 2.8.1 Bidders requiring any clarification on the RFP may notify the Authority in writing in accordance with Clause 1.2.9. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be sent by fax or e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.
- 2.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

- 2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations & clarifications to all Bidders. All interpretations & clarifications issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.
- 2.8.4 The Authority has appointed 2 (two) independent external monitors for the purpose of monitoring the Bidding Process and execution of the Concession Agreement for compliance with the principles specified in the integrity pact. The co-ordinates of the independent external monitors are as under:
- (a) Shri V Kannan,  
(Ex- CMD, Vijaya Bank)  
email: Kannan.venkata@gmail.com  
Mobile No.: +91-8105305555
  - (b) Ms. Rashmi Verma,  
IAS (Retd.)  
email: verma.rashmi@rediffmail.com  
mobile No.: +91-9810735544

## **2.9 Amendment of RFP**

- 2.9.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of addenda.
- 2.9.2 Any addendum issued hereunder will be hosted on the IREPS portal.
- 2.9.3 In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.



## C. PREPARATION AND SUBMISSION OF BIDS

### 2.10 Format and signing of Bid

- 2.10.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received online in the required formats and complete in all respects and original copy of all documents as listed in Clause 2.11.2 are received in hard copies within time mentioned in Clause 1.3 of this RFP.
- 2.10.2 The Bid shall be typed and signed by the Authorized Signatory of the Bidder. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.

### 2.11 Documents comprising Technical and Financial Bid

- 2.11.1 The Bidder shall upload/submit on the IREPS portal the documents mentioned below along with the supporting documents which shall comprise of the Technical Bid and Financial Bid on or before 15.00 hrs IST on Bid Due Date:

**(A) Technical Bid:**

- (a) Appendix-IA (Letter comprising the Technical Bid) including Annex I-V and Annex- VI (if applicable) and supporting certificates/documents;
- (b) Power of Attorney for signing the Bid as per the format at Appendix-II;
- (c) if applicable, Power of Attorney for Lead Member of Consortium/ Joint Venture as per the format at Appendix-III;
- (d) if applicable, Joint Bidding Agreement for Consortium/ Joint Venture as per the format at Appendix-IV;
- (e) an undertaking from the person having Power of Attorney referred to in sub-Clause-(b) above that they agree and abide by the Bidding Documents uploaded by Authority and amendments uploaded, if any;
- (f) copy of memorandum and articles of association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
- (g) copies of duly audited complete annual accounts of the Bidder or of each member (in case of Consortium/ Joint Venture) for preceding 7 (seven) financial years; and
- (h) Integrity pact in the format at Appendix-V (on a stamp paper of adequate value).

**(B) Financial Bid:**

- (a) Appendix-IB (Letter comprising the Financial Bid).
- 2.11.2 The Bidder shall submit the following documents physically within time as mentioned in Clause 1.3:
- (a) original Power of Attorney for signing the Bid as per format at Appendix-II;
  - (b) if applicable, original Power of Attorney for Lead Member of Consortium/ Joint Venture as per the format at Appendix-III;



- (c) if applicable, original Joint Bidding Agreement for Consortium/ Joint Venture as per the format at Appendix-IV;
- (d) an undertaking from the person having Power of Attorney referred to in sub-Clause-(a) above that they agree and abide by the Bidding Documents uploaded by Authority and amendments uploaded, if any;
- (e) original statement of legal capacity as per format at Annex-V of Appendix- 1A;
- (f) Bid Security in the format at Annex-VI of Appendix- 1A (if applicable); and
- (g) Integrity pact in the format at Appendix-V (on a stamp paper of adequate value).

2.11.3 The documents listed at Clause 2.11.2 shall be placed in an envelope, which shall be sealed. The envelope shall clearly bear the identification **“Bid for the Development, operation and maintenance of Sonnagar (New Chiraila Pauthu)- New Gomoh (approximately 262 km section) double line, electrified Rail System of EDFC on Hybrid-DBFOT 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 envelope.

2.11.4 In case of any discrepancy in the original documents submitted under Clause 2.11.2 and the complete and legible scanned documents submitted under Clauses 2.11.1, the original documents shall prevail over such scanned copies. The envelope shall be addressed to the following officer and shall be submitted at the respective address:

ATTN. OF : Mr. Pawan Kumar  
DESIGNATION : General Manager/PPP  
ADDRESS : 3<sup>rd</sup> Floor, Dedicated Freight Corridor Corporation of India Limited, Supreme Court Metro Station Building Complex, New Delhi-01.  
PHONE NO : 011-23454-970  
FAX NO : 011-23454701  
E-MAIL ADDRESS : kumarp@dfcc.co.in

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

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

2.11.7 The following conditions shall be adhered to while submitting the 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/ Joint Venture) 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 2.2.

## 2.12 Bid Due Date

Bid comprising of the documents listed at Clause 2.11.1 of the RFP shall be submitted online through IREPS portal on or before 15.00 hrs IST on Bid Due Date. Documents listed at Clause 2.11.2 of this RFP shall be physically submitted on or before 15.00 hrs IST at the address provided in Clause 2.11.4 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.4. The Authority may, in its sole discretion, extend the Bid Due Date by issuing an addendum in accordance with Clause 2.9 uniformly for all Bidders.

## 2.13 Late Bids

IREPS portal shall not allow submission of any Bid after the prescribed date and time at Clause 2.12. Physical receipt of documents listed at Clause 2.11.2 of the RFP after the prescribed date as mentioned in Clause 1.3 shall not be considered and the Bid shall be summarily rejected.

## 2.14 Procedure for e-tendering

### 2.14.1 Accessing/ purchasing of Bidding Documents.

- 2.14.1.1 It is mandatory for all the Bidders to have class-III Digital Signature Certificate (DSC) from any of the licensed certifying agency (Bidders can see the list of licensed certifying agencies from the link [www.cca.gov.in](http://www.cca.gov.in)) to participate in e-tendering.

The Authorized Signatory holding Power of Attorney (POA) as per Appendix-II of this RFP or the person executing/ delegating such POA shall only be the digital signatory. In other cases, the Bid shall be considered non-responsive. It should be in corporate capacity (that is in Bidder capacity / in case of Consortium/ Joint Venture in the Lead Member capacity, as applicable). The Bidder shall submit document in support of the class III DSC.

- 2.14.1.2 To participate in the Bidding, it is mandatory for the Bidders to register with IREPS portal to have user ID & password. IREPS portal is the only website for submission of Bid. Vender manual containing the detailed guidelines for e-tendering is available on IREPS portal. Following may kindly be noted:

- (a) Registration with IREPS portal should be valid at least up to the Bid Due Date.
- (b) Bids can be submitted only during the validity of registration.

It is also mandatory for the Bidders to get their firms registered with e-tendering portal.

- 2.14.1.3 If the firm/ Consortium/ Joint Venture is already registered with e-tendering service

provider, and validity of registration is not expired, then the firm/Consortium/Joint Venture is not required a fresh registration.

2.14.1.4 The complete Bidding Documents can be viewed / downloaded by the Bidder from IREPS portal from.... to... (upto ... Hrs. IST)

#### **2.14.2 Preparation & submission of Bids:**

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

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

2.14.2.3 Bid must be submitted online only through IREPS portal using the digital signature of authorized representative of the Bidder on or before Bid Due Date and time.

#### **2.14.3 Modifications/ substitution/ withdrawal of Bids**

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

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

#### **2.15 Online opening of Bids**

2.15.1 Opening of Bids will be done through online process.

#### **2.16 Rejection of Bids**

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

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

#### **2.17 Validity of Bids**

The Bids shall be valid for a period of not less than 90 (ninety) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

## **2.18 Confidentiality**

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

## **2.19 Correspondence with the Bidder**

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

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## 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 Clauses 1.2.4 hereinabove through payment gateway provided on IREPS portal or in the form of a bank guarantee issued by nationalized bank, or a scheduled bank in India having a net worth of at least Rs. 1,000 Crores (Rs. One Thousand Crores), in favour of Dedicated Freight Corridor Corporation of India Limited and payable at New Delhi in the format at Annex-VI of Appendix-IA and having a validity period of not less than 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India is required. For the avoidance of doubt, scheduled bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934. The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free. Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.20.2 Save and except as provided in Clauses 2.20.5, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding Process is cancelled by the Authority.
- 2.20.3 The Selected Bidder's Bid Security will be returned, without any interest, upon the Bidder signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.
- 2.20.4 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages *inter alia* in any of the events specified in Clause 2.20.5 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.20.5 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or under the Concession Agreement, or otherwise, under the following conditions:
- (a) if a Bidder submits a non-responsive Bid;
  - (b) if a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section- 4 of this RFP;
  - (c) if a Bidder withdraws its Bid after the Bid Due Date, during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective

Bidder(s) and the Authority;

- (d) 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 Concession Agreement; or
  - (iii) to furnish the Performance Security within the period prescribed in the Concession Agreement; or
- (e) in case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

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## SECTION 3

### OPENING AND EVALUATION OF TECHNICAL AND FINANCIAL BIDS

#### 3.1 Opening and Evaluation of Technical Bids

- 3.1.1 The Authority shall open the Bids received online at 15:30 hrs IST on date of Bid opening as specified in Clause 1.3, at the place specified in Clause 5.3; and in the presence of the Bidders who choose to attend. Technical Bid of only those Bidders shall be opened online whose documents listed at Clause 2.11.2 of the RFP have been received physically within time mentioned in Clause 1.3. The Authority shall prepare minutes of the Bid opening, including information disclosed to those present at the time of Bid opening.
- 3.1.2 Technical Bids of those Bidders, who have not submitted their Bid online, shall not be considered for opening and evaluation.
- 3.1.3 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant information for consideration of eligibility and qualification of the Bidder.
- 3.1.4 To facilitate evaluation of Technical Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Technical Bid. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing. The Bids will be examined and evaluated in accordance with the provisions set out in this Section-3. The Authority will subsequently flag issues, if any with the data updated by the Bidders.
- 3.1.5 If a Bidder does not provide clarifications sought under Clause 3.1.4 above within the prescribed time, its Bid may be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.
- 3.1.6 **Tests of responsiveness**
- 3.1.6.1 As a first step towards evaluation of Technical Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFP. A Technical Bid shall be considered responsive only if:
- (a) Technical Bid is received online as per the format at Appendix-IA including Annex I, II, III, IV, V and VI (if applicable) by Bid Due Date including any extension thereof pursuant to Clause 2.12;
  - (b) all documents listed at Clause 2.11.2 are received physically within time as mentioned in Clause 1.3;
  - (c) Technical Bid is accompanied by the Bid Security as specified in Clause 1.2.4 and 2.20;
  - (d) the Power of Attorney is uploaded on IREPS portal as specified in Clause 2.1.5;



- (e) Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium/ Joint Venture and the Joint Bidding Agreement as specified in Clause 2.1.6, if so required;
- (f) Technical Bid contains all the required information under this RFP (complete in all respects);
- (g) security clearance as per Clause 2.1.12 granted, if applicable;
- (h) Technical Bid does not contain any condition or qualification;
- (i) it is accompanied with the integrity pact as provided at Appendix-V;
- (j) registration of Bidder as per Clause 2.1.12 and 2.14, if applicable; and
- (k) it is not non-responsive in terms hereof.

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

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

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

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

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

### 3.2 Opening and Evaluation of Financial Bids

The Authority shall inform the venue and time of online opening of the Financial Bids to the Bidders who meet the eligibility criteria for pre-qualification as per Clause 2.2.2 (**Eligible Bidders**) through IREPS portal and e-mail. The Authority shall open the online Financial Bids of the Eligible Bidders only on scheduled date and time in the presence of the authorized representatives of the Bidders who may choose to attend. The Authority shall publicly announce the Availability Payment quoted by the technically responsive Bidder. Thereafter, the Authority shall prepare a record of opening of Financial Bids.

### 3.3 Selection of Bidder

3.3.1 Subject to the provisions of Clause 2.16, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.1.6 and who is the Lowest Bidder shall ordinarily be declared as the selected Bidder (the "**Selected Bidder**").



- 3.3.2 In the event that 2 (two) or more Bidders quote the same Availability Payment (the "**Tie Bidders**"), the Authority shall identify the Selected Bidder amongst the Tie Bidders by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 3.3.3 Deleted.
- 3.3.4 In the event that the Lowest Bidder is not selected for any reason, then the Bidders emerging as second lowest, third lowest Eligible Bidders (in that order) may be given a counter-offer (one by one sequentially) to match the Bid of Lowest Bidder. In the event of acceptance of the counter-offer by another Eligible Bidder, the Project may be awarded to such Bidder and shall be treated as Selected Bidder. In case no Bidder matches the Bid of the Lowest Bidder, the Bid Process shall be annulled and fresh Bids invited. In the event of withdrawal of offer by the Lowest Bidder, the Authority shall annul the Bidding Process and invite fresh bids.
- 3.3.5 After selection, a letter of acceptance (the "**LOA**") shall be issued in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA.
- 3.3.6 The Bid Security of other than Selected Bidders shall be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder. The Authority shall be responsible to return the Bid Security, as above, and the Bidders shall not be required to ask for the same.
- 3.3.7 The Selected Bidder shall form an appropriate SPV, to be incorporated under the Indian Companies Act 2013, to execute the Concession Agreement and implement the Project. The Selected Bidder have to deposit the original copy of SPV registration along with SPV agreement (as per prevailing law) within 30 (thirty) days of the receipt of the LOA to Authority.
- 3.3.8 After acknowledgement of the LOA as aforesaid by the Selected Bidder, the SPV shall execute the Concession Agreement within the period prescribed in Clause 1.3. Then it shall submit Performance Security within the period prescribed/extended by Authority. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

### 3.4 Contacts during Bid Evaluation

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

## SECTION 4 FRAUD AND CORRUPT PRACTICES

- 4.1** The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 4.2** Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder, or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3** For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub-Clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

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

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## SECTION 5 PRE-BID CONFERENCE

- 5.1** Pre-Bid conference of the Bidders shall be convened at the designated date, time and place as mentioned in Clause 5.3. A maximum of two representatives of prospective Bidders shall be allowed to participate on production of authority letter from the Bidder.
- 5.2** During the course of Pre-Bid Conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.
- 5.3** The date, time and venue of the Pre-Bid Conference shall be:  
Date: \*\*\*\*\*  
Time: \*\*\*\*\*  
Venue: Conference Room, 4<sup>th</sup> Floor,  
DFCCIL, Corporate Office,  
Supreme Court Metro Station Building Complex,  
New Delhi-110001

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## SECTION 6 MISCELLANEOUS

- 6.1** The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2** The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Bidder in order to receive clarification or further information;
  - (c) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
  - (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3** It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 6.4** This RFP and the legal relationship between the parties shall be governed construed and interpreted in accordance with the applicable laws of India. The applicable laws shall mean all laws, bye-laws, statutes, rules, regulations, orders, ordinances, codes, guidelines, notices, directions, judgments, decrees or other requirements or official directives and/or of any statutory authority in the Republic of India.

**APPENDIX –IA**  
**LETTER COMPRISING THE TECHNICAL BID**  
*(Refer Clause 2.1.4, 2.11.1 and 3.1.6)*

To,  
Managing Director,  
Dedicated Freight Corridor Corporation of India Limited,  
5<sup>th</sup> Floor, Supreme Court Metro Station Building  
Complex, New Delhi-110001

Sub: Bid for “Development, operation and maintenance of Sonnagar (New Chiraila Pauthu)-  
New Gomoh (approximately 262 km section) double line, electrified Rail System of  
EDFC on Hybrid- DBFOT mode”.

Dear Sir,

With reference to your RFP 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.

1. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided in the Bid and it's Annex- I to V and Annex-VI (if applicable) along with the supporting documents are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
2. This statement is made for the express purpose of our selection as Concessionaire for the development, operation and maintenance of the aforesaid Project.
3. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
4. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. I/ We certify that in the last 3 (three) years, we/ any of the Consortium/ Joint Venture members or our/their Associate have neither failed to perform for the works of Central /State Government, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against us, nor been expelled from any project or contract Central/State Government or its implementing agencies for breach on our part.
6. I/ We declare that:
  - (a) I/ We have examined and have no reservations to the Bidding Documents, including any addendum issued by the Authority;
  - (b) I/We do not have any Conflict of Interest in accordance with Clauses 2.2.1 (c) of

the RFP;

- (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP, in respect of any tender or request for proposal issued by or any Agreement entered into with the Authority or any other public sector enterprise or any government, Central or State;
  - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
  - (e) the undertakings given by us along with the Bid in response to the RFP for the Project were true and correct as on the date of making the Bid and are also true and correct as on the Bid Due Date and I/we shall continue to abide by them.
7. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16.2 of the RFP.
  8. I/We believe that we/our {Consortium/ Joint Venture} satisfy(s) the Technical Capacity, Financial Capacity criteria and meet(s) the requirements as specified in the RFP.
  9. I/ We declare that we/ any member of the {Consortium/ Joint Venture} or our/ {Consortium/ Joint Venture member}, are not a member of any other Consortium/ Joint Venture submitting a Bid for the Project.
  10. I/ We certify that in regard to matters other than security and integrity of the country, we/ any member of the {Consortium/ Joint Venture} or any of our/their {Consortium/ Joint Venture} member have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
  11. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any member of the {Consortium/ Joint Venture} or any of our/their {Consortium/ Joint Venture} member have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
  12. I/ We further certify that no investigation by a regulatory authority is pending either against us/any member of {Consortium/ Joint Venture} or against our CEO or any of our directors/ managers/ employees.
  13. I/ We further certify that we are not disqualified in terms of the additional criteria specified Department of Investment & Public Asset Management in their OM No. 3/9/2016-DoD-II-B dated 28/09/2017 or subsequent guidelines issued by the Government of India shall be referred.
  14. I/We have read the Clause regarding restriction on procurement from a bidder of a country which shares a land border with India and certify that I/We am/are not from such a country or, if from such a country, has been registered with the competent authority. I/We hereby certify that I/we fulfills all requirements in this regard and is eligible to be considered



(where applicable, evidence of valid registration by the competent authority).

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
16. I/We acknowledge and undertake that our Consortium/Joint Venture is qualified on the basis of Technical Capacity and Financial Capacity of those of its members Whose experience/credentials has been considered/ factored in for the purposes of this RFP, shall continue to subscribe to 10% (ten per cent) or more of the paid up and subscribed equity of the SPV till the 06 (six) months from the date of COD. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.
17. I/We further acknowledge and agree that in the event such ~~change~~ in control occurs after signing of the Concession Agreement up to its validity, it ~~would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.~~
18. I/We understand that the Selected Bidder will ~~form SPV~~ under the Indian Companies Act, 2013 prior to execution of the Concession Agreement.
19. I/ We hereby irrevocably waive any ~~right or remedy which~~ we may have at any stage at law or howsoever otherwise arising to ~~challenge or question~~ any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of ~~the above mentioned~~ Project and the terms and implementation thereof.
20. In the event of my/ ~~our~~ being declared as the Selected Bidder, I/we agree to enter into an Agreement in accordance with the Concession Agreement that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid Concession Agreement ~~and agree to abide by the same.~~
21. I/ We ~~have~~ studied all the Bidding Documents carefully and also surveyed the project. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall ~~have~~ no claim, ~~right~~ or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including ~~the~~ award of Concession Agreement.
22. I/ We offer a Bid Security of Rs. 43.75 Crores (Rupees Forty Three Crore Seventy Five Lakhs only) to the Authority in accordance with the RFP.
23. The documents accompanying the Technical Bid, as specified in Clause 2.11.1 of the RFP, have been submitted in separate files.
24. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
25. The Availability Payment 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

costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.

26. I/ We agree and undertake to abide by all the terms and conditions of the RFP.
27. I/We, the {Consortium/Joint Venture} agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement}.
28. I/ We have the required O&M Experience in accordance with the Clause 2.2.2.9 of the RFP.

OR

I/We agree and undertake to enter into a suitable agreement with entity(ies) having the required O&M Experience in accordance with Clause 2.2.2.9 of the RFP.

29. I/We certify that in terms of the RFP, my/our Net Worth/ACI is Rs.....  
(Rs..... in words) and Technical Capacity is ..... (value in words).
30. I/ We shall keep this offer valid for 90 (ninety) days from the Bid Due Date specified in the RFP.
31. I/ We hereby submit our 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.

Yours faithfully,

Date:

Place:

(Signature, name and designation  
of the Authorized signatory)

Name & seal of Bidder/Lead Member

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

Annex-I of 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 Bidder including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:  
(a) Name:  
(b) Designation:  
(c) Company:  
(d) Address:  
(e) Telephone Number:  
(f) E-Mail Address:  
(g) Fax Number:
4. Particulars of the Authorized Signatory of the Bidder:  
(a) Name:  
(b) Designation:  
(c) Address:  
(d) Phone Number:  
(e) Fax Number:  
(f) Class III Digital Signature Certificate ID number:
5. In case of a {Consortium/Joint Venture}:  
(a) The information above (1-4) should be provided for all the members of the {Consortium/ Joint Venture}  
(b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.1.11(f) should be attached to the Bid.  
(c) Information regarding the role of each member should be provided as per table below:

S.N.	Name of Member	Role {Refer Clause 2.1.11(d)} <sup>5</sup>	Shareholding of members in Consortium/Joint Venture {Refer Clauses 2.1.11(a), (f)}
1.			
2.			
3.			

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

S.N.	Name of Member	Role {Refer Clause 2.1.11(d)} <sup>5</sup>	Shareholding of members in Consortium/Joint Venture {Refer Clauses 2.1.11(a), (f)}
4.			
5.			
6.			

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

**Name of Bidder/ member of Consortium/Joint Venture:**

S. N.	Criteria	Yes/No
1.	Has the Bidder/ constituent of the {Consortium/Joint Venture} been barred by the Central/State Government or its implementing agencies for the works of government, from participating in Bidding.	
2.	If the answer to 1 is yes, does the bar subsist as on Bid Due Date.	

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

(b) I/ We certify that we/ any of the Consortium/ Joint Venture members do not fall in any of the categories of being a non-performing entity given at Clause 2.1.14 of Instructions to Bidders in the projects of Central/State Government or its implementing agencies and furnished the complete details.

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

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

8 I/We hereby undertake that, in the event we are declared the Selected Bidder and awarded the Project, we shall incorporate an SPV under the Indian Companies Act 2013 and this SPV shall enter in to a Concession Agreement with the Authority for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

(Signature, name and designation of the Authorized Signatory)  
For and on behalf of.....

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

Annex-II of Appendix IA

**ANNEX-II**  
**TECHNICAL CAPACITY EVALUATION OF THE BIDDER**  
*(Refer to Clauses 2.2.2.1, 2.2.2.4, 2.2.2.5, 2.2.2.6 and 2.2.2.8 of the RFP)*

Bidder Type <sup>#</sup>		Proposed Equity Shareholding in Consortium/ Joint Venture (%)	Member Code <sup>*</sup>	Project Code <sup>**</sup>	Category Factor <sup>\$</sup> (MF)	Experience (Equivalent Rs. Crore) <sup>\$\$</sup>			Technical Capacity <sup>£</sup> (10) = (5) * (6) * [7 or 8 or 9)* 0.5 (for OECD)/1(non OECD)	
						% share holding in Eligible Project	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)	(10)
Single entity Bidder				a						
				b						
				c						
				d						
Aggregate Technical Capacity=										
Consortium / Joint Venture	member 1			1a						
				1b						
				1c						
				1d						
	member 2			2a						
				2b						
				2c						
				2d						
	member 3			3a						
				3b						
				3c						
				3d						

	member 4			4a						
				4b						
				4c						
				4d						
Add more row for 5 <sup>th</sup> and 6 <sup>th</sup> member if required										
Aggregate Technical Capacity=										

#A Bidder consisting of a single entity should fill in details only as per the first row titled “single entity Bidder” and ignore the rows titled “Consortium/Joint Venture member”. In case of a Consortium/Joint Venture and the row titled single entity Bidder may be ignored, member wise information should be filled in the rows of Consortium/Joint Venture. In case credits claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.1.15, shall be provided.

\* Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other members, the following abbreviations are suggested viz. LM means Lead Member, OM means Other member.

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

\$ Refer Clause 2.2.2.4.

\$\$ The conversion rate of USD into Indian Rupees shall be the daily representative exchange rates published by the Reserve Bank of India for the relevant date. Where relevant date should be as on the date 60 (Sixty) days prior to the Bid Due Date. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Indian 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.

Annex-III of Appendix IA

**ANNEX-III**  
**FINANCIAL CAPACITY OF THE BIDDER**  
*(Refer to Clauses 2.2.2.3, 2.2.2.7, 2.2.2.8 of the RFP)*

(In Rs. Crore<sup>\$</sup>)

Bidder type <sup>\$\$</sup>	Net Cash Accruals							Net Worth <sup>£</sup>
	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 1
Single entity Bidder								
Consortium/ Joint Venture member 1								
Consortium/ Joint Venture member 2								
Consortium/ Joint Venture member 3								
Consortium/ Joint Venture member 4								
Add more row for 5 <sup>th</sup> and 6 <sup>th</sup> member if required								
TOTAL								

**Name & address of Bidder's bankers:**

<sup>\$</sup> For conversion of other currencies into Indian Rupees, see note below Annex-II of Appendix-IA.

<sup>\$\$</sup> In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.1.15, shall be provided.

<sup>£</sup> The Bidder should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.2.7 and 2.2.2.8.

**Instructions:**

1. The Bidder shall attach copies of the balance sheets, financial statements and Annual Reports for 7 (seven) financial years preceding the Bid Due Date. The financial statements shall:



- (a) reflect the financial situation of the Bidder and its Associates where the Bidder is relying on its Associate's financials;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation. In case the Applicant is an AIF or Foreign Investment Fund, Net Cash Accruals shall mean Net Income – (Unrealised Revenue + Unrealised Expenses).
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
4. In case of ACI, the Bidder shall provide certificate (specifying methodology adopted) issued by statutory auditor (or such other certificate as filed with the regulator in the relevant jurisdiction) not older than 3 (three) months prior to the Bid Due Date.
5. Year 1 will be the latest completed financial year, preceding the Bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.13.
6. In the case of a {Consortium/ Joint Venture}, a copy of the Joint Bidding Agreement shall be submitted in accordance with Clause 2.1.11(f) of the RFP.
7. The Bidder shall also provide the name and address of the bankers to the Bidder.
8. The Bidder shall provide an auditor's certificate specifying the Net Worth/ACI of the Bidder and also specifying the methodology adopted for calculating such Net Worth/ACI in accordance with Clause 2.2.2.8 (ii) of the RFP.

Annex-IV of Appendix IA

**ANNEX-IV**  
**DETAILS OF ELIGIBLE PROJECTS**

*(Refer to Clauses 2.2.2.1, 2.2.2.4, 2.2.2.5, 2.2.2.6 and 2.2.2.8 of the RFP)*

**Project Code:**

**Entity: Bidder/member (including Associates if any) of Consortium/Joint Venture**

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

Note: In case of a Consortium/ Joint Venture, information in Annex-IV of Appendix IA shall be provided separately for all members so as to establish the Threshold Technical Capacity. (Refer Clause 2.2.2.1).

**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 of the RFP. 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. The 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, 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 2.2.2.4 of the RFP for category number.
6. The total payments received/ made and/or revenues collected and 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 7 (seven) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.1.13). For Categories 1 and 2, expenditure on development of the Project and/or revenues collected and appropriated, as the case may be, should be provided, but only in respect of projects having a capital cost exceeding the amount specified in Clause 2.2.2.5(i)(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 2.2.2.5(ii). Receipts for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
7. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ authority/ agency (i.e. concession grantor, counter party to concession, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
8. Provide the capital cost of Eligible Project. Refer to Clauses 2.2.2.5.
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
10. For Categories 1 and 2, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 2.2.2.5(i)). For Categories 3 and 4, the equity

shareholding of the Bidder, in the company being paid for execution of its construction work or received payments from its client(s) for the construction works executed for the Eligible Project needs to be given.

11. Experience for any activity relating to an Eligible Project shall not be claimed by 2 (two) or more members of the Consortium/Joint Venture. In other words, no double counting by a Consortium/Joint Venture in respect of the same experience shall be permitted in any manner whatsoever.
12. Certificate from the Bidder's statutory auditor or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Associate may provide the requisite certification.
13. If the Bidder is claiming experience under Categories 1&2<sup>£</sup>, it should provide a certificate from its statutory auditor in the format below:

**Certificate from the statutory auditor regarding PPP projects<sup>Φ</sup>**

Based on its books of accounts and other published information authenticated by it, this is to certify that..... (name of the Bidder/ Consortium/Joint Venture member /Associate) is/was an equity shareholder in..... (title of the project company) and holds/held Rs. .... Crore (Rupees ..... Crore) of equity (which constitutes ..... %<sup>£</sup> of the total paid up and subscribed equity capital) of the project company from ..... (date) to..... (date)<sup>¥</sup>. The project was / is likely to be commissioned on..... (date of commissioning of the project).

We further certify that the total capital cost of the project is Rs.....Crore (Rupees.....Crore), of which Rs.....Crore (Rupees.....Crore) of capital expenditure was incurred during the past 7 (seven) 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 2.2.2.4 and 2.2.2.5(i)(d) of the RFP during the past 7 (seven) financial years were Rs..... Crore (Rupees.....Crore) as per year-wise details noted below:

.....  
 .....

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation of the Authorized Signatory)

Date:

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

<sup>‡</sup>Refer Clause 2.2.2.4 and 2.2.2.5(i) of the RFP.

<sup>Φ</sup>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.

<sup>€</sup>Refer instruction no.10 in this Annex-IV.

<sup>¥</sup>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&4\*, it should provide a certificate from its statutory auditors or the client in the format below:

**Certificate from the statutory auditor/ client regarding construction works<sup>Φ</sup>**

Based on its books of accounts and other published information authenticated by it, {this is to certify that.....(name of the Bidder/Consortium/Joint Venture member/Associate) was engaged by.....(title of the project company) to execute.....(name of project) for.....(nature of project)}<sup>Ψ</sup>. The construction of the project commenced on.....(date) and the project was/ is likely to be commissioned on..... (date, if any). It is certified that ..... (name of the Bidder/ member/ Associate) received / paid Rs..... Crore (Rupee.....Crore) by way of payment for the aforesaid construction works.

We further certify that the total capital cost of the project is Rs..... Crore (Rupees.....Crore), of which the Bidder / Consortium/Joint Venture member / Associate received/paid Rs..... Crore (Rupees..... Crore), in terms of Clauses 2.2.2.4 and 2.2.2.5(ii) of the RFP, during the past 7 (seven) 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.} <sup>▲</sup>

Name of the audit firm:

Seal of the audit firm

Date:

(Signature, name and designation of the Authorized Signatory)

\*Refer Clauses 2.2.2.4 and 2.2.2.5(ii) of RFP.

<sup>Φ</sup>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.

<sup>Ψ</sup>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% (twenty six per cent) 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).

<sup>▲</sup>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 2.1.15, the Bidder should also provide a certificate in the format below:

Certificate from statutory auditor/ Company Secretary regarding Associate <sup>\$</sup>	
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 <sup>£</sup> , by ..... (name of Bidder / Consortium/ Joint Venture member). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.1.15 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/ Joint Venture member in the Associate}	
Name of the audit firm: Seal of the audit firm: Date:	(Signature, name and designation of the Authorized Signatory)

<sup>\$</sup> In the event that the Bidder/Consortium/Joint Venture 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.

<sup>£</sup> In the case of indirect shareholding, the intervening companies in the chain of ownership should also be Associates i.e. the shareholding in each such company should be more than 50% (fifty per cent) 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 Technical and Financial Capacity.

Annex-V of Appendix IA

**ANNEX-V**  
**STATEMENT OF LEGAL CAPACITY**

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

Ref.....

Date:.....

To,

\*\*\*\*\*

\*\*\*\*\*

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the Authorized Signatory)

For and on behalf of.....

*\*Please strike out whichever is not applicable.*

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



Annex-VI of Appendix-IA

**ANNEX-VI**  
**BANK GUARANTEE FOR BID SECURITY**  
(Refer Clauses 1.2.4 and 2.20.1)

B.G. No.....

Dated:.....

1. In consideration of you, Dedicated Freight Corridor Corporation of India Limited a Government of India Enterprise under Ministry of Railways having its registered office at 5<sup>th</sup> Floor, Supreme Court Metro Station Building Complex, New Delhi, 110001 (hereinafter referred to as the “**Authority**”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of (a company registered under the Companies Act, 1956/ 2013) and having its registered office at ..... (and acting on behalf of its Consortium/ Joint Venture) (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the development, operation and maintenance of the Sonnagar (New Chiraila Pauthu)- New Gomoh section of EDFC (approximately 262 kms) on Hybrid- Design, Build, Finance, Operate & Maintain and Transfer (Hybrid-DBFOT) mode (hereinafter referred to as the “**Project**”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft Concession Agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at ..... and one of its branches at (hereinafter referred to as the “**Bank**”), at the request of the Bidder, do hereby in terms of Clause 1.2.4 of the RFP, 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) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. 43.75 Crore (Rupees Forty Three Crore Seventy Five Lakhs only) (hereinafter referred to as the “**Guarantee**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding

Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. 43.75 Crore (Rupees Forty Three Crore Seventy Five Lakhs only).

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

or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorized to receive the said notice of claim.
10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. 43.75 Crore (Rupees Forty Three Crore Seventy Five Lakhs only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [\*\*\* (indicate date falling 180 (one hundred and eighty) days after the Bid Due Date)].
14. This Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

Signed and Delivered by ..... Bank

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

(Signature of the Authorized Signatory)

(Official Seal)

**APPENDIX – IB**  
**LETTER COMPRISING THE FINANCIAL BID**  
*(Refer Clauses 2.1.4, 2.11.1)*

Date:.....

To,  
Managing Director,  
Dedicated Freight Corridor Corporation of India Limited,  
5<sup>th</sup> Floor, Supreme Court Metro Station Building  
Complex, New Delhi-110001

Sub: Bid for “Development, operation and maintenance of Sonnagar (New Chiraila Pauthu)-  
New Gomoh (approximately 262 km section) double line, electrified Rail System of  
EDFC on Hybrid- DBFOT mode”.

Dear Sir,

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

1. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided 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.
2. The Availability Payment 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 costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.
3. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
4. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
5. I/ We shall keep this offer valid for 90 (ninety) days from the Bid Due Date specified in the RFP.
6. I/We hereby submit our Bid and Availability Payment of Rs..... (in words) per day exclusive of Goods and Service Tax for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

Yours faithfully,

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

Place: Name & seal of Bidder/Lead Member

Class III DSC ID of Authorized Signatory

**APPENDIX-II**  
**FORMAT FOR POWER OF ATTORNEY FOR SIGNING OF BID**  
*(Refer Clause 2.1.5)*

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr./ Ms (name), ..... son/daughter/wife of ..... and presently residing at ....., who is presently employed with us/ the Lead Member of our { Consortium/Joint Venture } and holding the position of....., as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the Project proposed or being developed by the Dedicated Freight Corridor Corporation of India Limited, India having its registered office at 5<sup>th</sup> Floor, Supreme Court Metro Station Building Complex, New Delhi, 110001, India (the "**Authority**") including but not limited to signing and submission of all Bids and other documents and writings, participate in Pre-Bid and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Bid for the said Project and/ or upon award thereof to us and/or until the entering into of the Concession Agreement with the Authority.

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

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

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

Witnesses:

- 1.
- 2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

(Notarized)

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

(\*Notary to specify as applicable) (Signature Name and Address of the Notary)

Seal of the Notary

Registration No. of the Notary

Date:.....

*Notes:*

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

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



**APPENDIX-III**  
**FORMAT FOR POWER OF ATTORNEY FOR LEAD MEMBER OF**  
**{CONSORTIUM/JOINT VENTURE}**  
*(Refer Clause 2.1.6)*

Whereas the Dedicated Freight Corridor Corporation of India Limited, a Government of India Enterprise under Ministry of Railways having its registered office at 5<sup>th</sup> Floor, Supreme Court Metro Station Building Complex, New Delhi, 110001, India (the “**Authority**”) has invited Bids for selection of Bidder for development, operation and maintenance of Sonnagar (New Chiraila Pauthu)-New Gomoh (approximately 262 km section) double line, electrified Rail System of EDFC (the “**Project**”) on Hybrid- DBFOT mode.

Whereas, ....., and (collectively the “{**Consortium/Joint Venture**}”) being members of the {**Consortium/Joint Venture**} are interested in bidding for the Project in accordance with the terms and conditions of the RFP and other Bidding Documents including agreement in respect of the Project, and

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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



Authority.

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

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

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

(Executants)

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

Witnesses:

- 1.
- 2.

Notes:

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

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

**APPENDIX- IV**  
**FORMAT FOR JOINT BIDDING AGREEMENT FOR {CONSORTIUM/JOINT VENTURE}**

(Refer Clause 2.1.6 and 2.1.11(f))

(To be executed on Stamp paper of appropriate value)

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

**AMONGST**

1. {....., a ..... [incorporated/registered] under.....} 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. {....., a ..... [incorporated/registered] under.....} and having its registered office at..... (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

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

**AND**

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

-----

-----

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

**WHEREAS,**

- (A) The Dedicated Freight Corridor Corporation of India Limited, a Government of India Enterprise under Ministry of Railways (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) having its registered office at 5<sup>th</sup> Floor, Supreme Court Metro Station Building Complex, New Delhi, 110001, India is engaged in the development of Western Dedicated Freight Corridor and Eastern Dedicated Freight

Corridor and as part of this endeavor, has invited bids (the “**Bids**”) by its Request for Proposal No.....dated.....(the “**RFP**”) for selection of Bidder for development, operation and maintenance of Sonnagar (New Chiraila Pauthu)-New Gomoh (approximately 262 km section) double line, electrified Rail System of EDFC (the “**Project**”) on Hybrid- DBFOT mode through a Concession Agreement.

- (B) The Parties are interested in jointly bidding for the Project as members of a {Consortium/ Joint Venture} and in accordance with the terms and conditions of the RFP and other Bidding documents in respect of the Project, and
- (C) It is a necessary condition under the RFP that the members of the {Consortium/ Joint Venture} 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 capitalized terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

**2. {Consortium/Joint Venture}**

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

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

**3. Covenants**

The Parties hereby undertake that in the event the Consortium/Joint Venture is declared the Selected Bidder and awarded the Project, it shall incorporate an SPV under the Indian Companies Act, 2013 and this SPV shall enter into a Concession Agreement with the Authority for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

**4. Role of the Parties**

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

- (a) Party of the First Part shall be the Lead member of the {Consortium/Joint Venture}

and shall have the power of attorney from all Parties for conducting all business for and on behalf of the {Consortium/Joint Venture} during the Bidding Process and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project;

- (b) Party of the Second Part shall be {the member of the Consortium/Joint Venture};
- (c) Party of the Third Part shall be {the member of the Consortium/Joint Venture.};
- (d) Party of the 4th Part shall be {the member of the Consortium/Joint Venture.};
- (e) {Party of the 5th Part shall be {the member of the Consortium/Joint Venture. -Delete if not needed}}; and
- (f) {Party of the 6th Part shall be {the member of the Consortium/Joint Venture. -Delete if not needed}}

## 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 completion of the Project is achieved under and in accordance with the Concession Agreement.

## 6. Share holding

The Parties agree that they shall comply with the following additional requirements:

- (i) The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:  
First Party (Lead Member):  
Second Party:  
{Third, Fourth, Fifth, Sixth}
- (ii) convey the intent to form an SPV through a shareholding agreement, solely for the purpose of construction and commissioning the Project and no other purpose, with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the Concession to undertake the Project is awarded to the {Consortium/Joint Venture};
- (iii) commit that each of the party, whose experience/credentials has been considered/factored in for the purposes of this RFP, shall continue to subscribe to 10%

(ten per cent) or more of the paid up and subscribed equity of the SPV till the 06 (six) months from the COD;

- (iv) commit that they shall collectively hold at least (i) 100% (hundred per cent) of the subscribed and paid up equity of the SPV at all times till the completion of Project Milestone-III as certified by the Independent Engineer ii) 51% (fifty one per cent) thereof until the COD, and (iii) 26% (twenty six per cent) thereof until 06 (six) months from the COD.

## 7. Representation of the Parties

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

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

- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

## 8. Termination

This Agreement shall be effective from the date hereof and shall continue to be in force until the Financial Close of the Project and Concession Agreement is signed, in case the Project is awarded to the {Consortium/Joint Venture}. However, in case the Consortium/Joint Venture} is does not get selected for award of the Project or upon return of the Bid Security by the Authority to the Bidder, as the case may be, the Agreement will stand terminated.

## 9. Miscellaneous

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SECOND PART by:

(Signature)

(Name)

(Designation)

(Address)

THIRD PART by:

(Signature)

(Name)

(Designation)

(Address)

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

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## APPENDIX- V INTEGRITY PACT

This Integrity Pact (the “**Pact**”) made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between the Dedicated Freight Corridor Corporation of India Limited, a Government of India Enterprise under Ministry of Railways and a company incorporated under the provisions of the Companies Act, 1956/ 2013 having its registered office at 5<sup>th</sup> Floor, Supreme Court Metro Station Building Complex, New Delhi 110001, India with corporate identity number U60232DL2006GOI155068 represented through its Managing Director (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context, or meaning thereof, include its administrators, successors and assigns) of one part;

AND

\_\_\_\_\_, of the other part, hereinafter called the (“**Bidder**”) which term shall unless excluded by or is repugnant to the context be deemed to include its heirs, representatives, successors and permitted assigns of the Bidder.

WHEREAS the Authority intends to award, under laid down organizational procedures, tenders/ contracts for the Authority, while discharging its functions on business principles, values proper compliance with all relevant laws and regulations, and the principles of natural justice, ethics, equity, fairness and transparency in its relations with the Bidders.

WHEREAS the Authority is desirous to make its business mechanism more transparent, thus to ensure strict adherence of the aforesaid objectives/goals, the Authority hereby adopts the instrument developed by the renowned international non-governmental organization “Transparency International” headquartered in Berlin (Germany). The Authority will appoint an Independent External Monitor (“IEM”), as detailed in the RFP, who will monitor the Bidding Process and the execution of the Agreement for compliance with the principles mentioned above.

AND WHEREAS the Bidder is submitting a Bid to the Authority for and in response to the RFP for the development, operation and maintenance of Sonnagar (New Chiraila Pauthu)-New Gomoh (approximately 262 km section) double line, electrified Rail System of EDFC on Hybrid- DBFOT mode.

NOW, therefore,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the Concession Agreement to be entered into with a view to enabling the Authority to obtain the desired execution of works at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on the Bidding Process, and Enabling the Authority to abstain from bribing or indulging in any

corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the Authority will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

### **1. Commitments of the Authority**

- 1.1 The Authority undertakes that no official of the Authority, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the Bidding Process, Bid evaluation, contracting or implementation process related to the Concession Agreement.
  - 1.2 The Authority will, during the pre-contact stage, treat all Bidders alike, and will provide to all Bidders the same information and will not provide any such information to any particular Bidder which could afford an advantage to that particular Bidder in comparison to other Bidders.
  - 1.3 All the officials of the Authority will report to the appropriate authority office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
2. In case any such preceding misconduct on the part of such official(s) is reported by the Bidder to the Authority with full and verifiable facts and the same is prima facie found to be correct by the Authority, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Authority and such a person shall be debarred from further dealings related to the Bidding Process. In such a case while an enquiry is being conducted by the Authority the proceedings under the Bidding Process would not be stalled.

### **3. Commitments of Bidders.**

The Bidder commits itself to take all measures necessary to prevent corrupt practice, unfair means and illegal activities during any stage of its Bid or during any pre-contract or post- contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:

- 3.1 The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Authority, connected

directly or indirectly with the Bidding Process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.

- (i) The Bidder further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Authority or otherwise in procuring the Concession Agreement or forbearing to do or having done any act in relation to the obtaining or execution of the Concession Agreement or any other contract with the Authority for showing or forbearing to show favour or disfavour to any person in relation to the Concession Agreement or any other contract with the Authority.
  - (ii) The Bidder has not entered and will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specification, certifications, subsidiary contracts, submission or non-submission of Bids or any actions to restrict competitiveness or to introduce cartelization in the Bidding Process.
- 3.2 The Bidder shall, when presenting his Bid, disclose the name and address of agents and representatives and Indian Bidders shall disclose their foreign principals or associates.
- 3.3 The Bidder shall when presenting his Bid disclose any and all the payments he has made or, is committed to or intends to make to agents/ brokers or any other intermediary, in connection with this Bid.
- 3.4 The Bidder, either while presenting the Bid or during pre-contract negotiations or before signing the Concession Agreement, shall disclose any payments he has made, is committed to or intends to make to officials of the Authority or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- 3.5 The Bidder will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the Bidding Process, Bid evaluation, contracting and implementation of the Concession Agreement.
- 3.6 The Bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.7 The Bidder shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Authority as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The Bidder also undertake to exercise due and adequate care lest any such information is divulged.

- 3.8 The Bidder will inform the Independent External Monitor:
- (i) if he receives demand for an illegal/undue payment/benefit;
  - (ii) if he comes to know of any unethical or illegal payment/benefit; and/or
  - (iii) if he makes any payment to any Authority's associate(s).
- 3.9 The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.10 The Bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.11 If the Bidder or any employee of the Bidder or any person acting on behalf of the Bidder, either directly or indirectly, is a relative of any of the officers of the Authority, or alternatively, if any relative of an officer of the Authority has financial interest/stake in the Bidder's firm, the same shall be disclosed by the Bidder at the time filing of the Bid.
- The term 'relative' for this purpose would be as defined in Section 2(77) of the Companies Act, 2013.
- 3.12 The Bidder shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Authority.
- 3.13 That if the Bidder, during the Bidding Process or before the award of the Concession Agreement or during execution of the contract/work has committed a transgression in violation of Section 2 or in any other form such as to put his reliability or credibility as Bidder into question, the Authority is entitled to disqualify him from the Bidding Process or to terminate the contract for such reason and to debar the Bidder from participating in future bidding processes.

#### **4. Previous Transgression**

- 4.1 The Bidder declares that no previous transgression occurred in the last 3 (three) years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify Bidders' exclusion from the Bidding Process.
- 4.2 The Bidder agrees that if it makes an incorrect statement on this subject, he can be disqualified from the Bidding Process or the Concession Agreement, if already awarded, can be terminated for such reason and he may be considered for debarment for future tender/contract processes.

- 4.3 That sub-contractor(s)/sub-concessionaire(s) engaged by the selected Bidder, after signing of the Concession Agreement, and whose value of the work contribution exceeds Rs. 25 Crores (Rupees Twenty Five Crores only) will be required to sign this Pact, and the same will be submitted to the Authority before doing/performing any act/function by such sub-contractor(s)/ sub- concessionaire(s) in relation to the contract/work.
- 4.4 That the Authority will disqualify from the Bidding Process all Bidder(s) who do not sign this Pact or violate its provisions.
- 4.5 That if the selected Bidder fails to get this Pact signed in terms of Section 4.3, the Authority will terminate the Concession Agreement and initiate appropriate action against such selected Bidder.

## **5. Bid Security**

While submitting the Bid, the Bidder shall deposit an amount of Rs. 43.75 Crores (Rupees Forty Three Crore Seventy Five Lakhs only) as Bid Security with the Authority, as per terms and conditions and details given in RFP.

## **6. Sanctions for Violations/ Disqualification from Bidding Process and exclusion from future Contacts.**

- 6.1 Any breach of the aforesaid provisions by the Bidder or any one employed by it or acting on its behalf (whether with or without the knowledge of the Bidder) shall entitle the Authority to take all or any one of the following actions, wherever required:
- (i) to immediately call off the pre contract negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder(s) would continue;
  - (ii) to immediately cancel the Concession Agreement, if already signed, without giving any compensation to the Bidder;
  - (iii) if the Authority has disqualified/debarred the Bidder from the Bidding Process prior to the award under Sections 2 or 3 or 4, the Authority is entitled to forfeit the Bid Security;
  - (iv) to recover all sums already paid by the Authority, and in case of an Indian Bidder with interest there on at 2% (two per cent) higher than the prevailing Repo Rate, while in case of a Bidder from a country other than India with interest thereon at 2% (two per cent) higher than the EURIBOR (Euro Inter Bank Offer Rate). If any outstanding payment is due to the Bidder from the Authority in connection with any other contract or any other stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest;

- (v) to encash the Bid Security and Performance Security, if furnished by the Bidder, in order to recover the payments, already made by the Bidder, along with interest;
  - (vi) to cancel all or any other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the Authority resulting from such cancellation/rescission and the Authority shall be entitled to deduct the amount so payable from the money(s) due to the Bidder;
  - (vii) to debar the Bidder from participating in future bidding processes of the Government of India for a minimum period of 5 (five) years, which may be further extended at the discretion of the Authority;
  - (viii) to recover all sums paid in violation of this Pact by Bidder(s) to any middleman or agent or broker with a view to securing the Concession Agreement;
  - (ix) in case where irrevocable Letters of Credit have been received in respect of any contract signed by the Authority with the Bidder, the same shall not be opened; and
  - (x) forfeiture of Performance Security in case of a decision by the Bidder to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.
- 6.2 The Authority will be entitled to take all or any of the actions mentioned at para 6.1(i) to (x) of this Pact also on the commission by the Bidder or any one employed by it or acting on its behalf (whether with or without the knowledge of the Bidder), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 6.3 That if the Bidder applies to the Authority for premature revocation of the debarment and proves to the satisfaction of the Authority that he has installed a suitable and effective corruption prevention system and also restored/recouped the damage, if any, caused by him, the Authority may, if it thinks fit, revoke the debarment prematurely considering the facts and circumstances of the case, and the documents/ evidence adduced by the Bidder for first time default.
- 6.4 That a transgression is considered to have occurred if the Authority is fully satisfied with the available documents and evidence submitted along with Independent External Monitor's recommendations/suggestions that no reasonable doubt is possible in the matter.
- 6.5 The decision of the Authority to the effect that a breach of the provisions of this Pact has been committed by the Bidder shall be final and conclusive on the Bidder. However, the Bidder can approach the Independent External Monitor(s) appointed for the purpose of this Pact.



**7. Allegations against Bidders/Contractors/Sub-Contractors/Affiliates:**

That if the Authority receives any information of conduct of a Bidder or sub-contractor or of an employee or a representative or an Affiliate of a Bidder, or sub-contractor which constitute corruption, or if the Authority has substantive suspicion in this regard, the Authority will inform the Vigilance Department for appropriate action.

**8. Independent External Monitor(s)**

- 8.1 That the Authority has appointed competent and credible Independent External Monitor(s) for this Pact, and shall, from time to time, appoint replacement(s) for such Independent External Monitor(s).
- 8.2 The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact. He will also enquire into any complaint alleging transgression of any provision of this Pact made by the Bidder or Authority.
- 8.3 That the Monitor is not subject to any instructions by the representatives of the parties and would perform his functions neutrally and independently. He will report to the Managing Director of the Authority.
- 8.4 That the Bidder accepts that the Monitor has the right to access without restriction to all project documentation of the Authority including that provided by the Bidder. The Bidder will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation including minutes of meeting. The same is applicable to sub -contractors and Affiliates. The Monitor is under obligation to treat the information and documents of the Authority and Bidder /sub-contractors/Affiliates with confidentiality.
- 8.5 That as soon as the Monitor notices, or believes to notice, a violation of this Pact, he will so inform the management of the Authority and request the management to discontinue or heal the violation, or to take other relevant action. The Monitor can in this regard submit his recommendations/suggestions. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- 8.6 That the Authority will provide to the Monitor sufficient information about all meetings among the parties related to the project provided such meetings could have an impact on the contractual relations between the Authority and the Bidder. The parties offer to the Monitor the option to participate in such meetings.
- 8.7 That the Monitor will submit a written report to the Managing Director of the Authority within 2 (two) weeks from the date of reference or intimation to him by the Authority and, should the occasion arise, submit proposals for correcting problematic situations.



8.8 That if the Monitor has reported to the Managing Director of the Authority a substantiated suspicion of an offence under relevant Anti-Corruption Laws of India and the Managing Director has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Vigilance Department, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.

8.9 The word 'Monitor' would include singular and plural.

## **9. Facilitation of Investigation.**

In case of any allegation of violation of any provisions of this Pact or payment of commission, the Authority or its agencies shall be entitled to examine all the documents including the Books of Accounts of the Bidder and the Bidder shall provide necessary information and documents in English and shall extend all possible help for the purpose of such Examination.

## **10. Law and Place of Jurisdiction.**

That this Pact is subject to the laws of India. The place of performance and jurisdiction is the corporate office of the Authority.

## **11. Other Legal Actions**

11.1 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

11.2 That the changes and supplements as well as termination notices need to be made in writing.

11.3 That if the Bidder is a partnership or a consortium, this Pact must be signed by all the partners and Members or their authorized representatives.

## **12. Pact duration (Validity)**

12.1 That this Pact comes into force when both the parties have signed it. It expires for the Selected Bidder 12 (twelve) months after the Transfer Date (as defined in Concession Agreement) and for all other Bidders 3 (three) months after the Concession Agreement is signed.

12.2 That if any claim is made/lodged during this period, the same shall be binding and continue to be valid despite the lapse of this Pact as specified herein before, unless it is discharged/determined by Managing Director of the Authority.

- 12.3 That should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

### 13. Company Code of Conduct

Bidders are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behavior) and a compliance program for the implementation of the code of conduct throughout the company.

14. This Integrity Pact is being submitted by the Bidders as a part of the documents comprising the Bid. The Authority reserves the right to execute this Pact at any time after the submission of the Bid, and this Pact shall be deemed to have been validly executed by the Parties. The Bidders shall continue to be bound by the provisions of this Pact during the Bidding Process.

15. The parties hereby sign this Integrity Pact at \_\_\_\_\_ on \_\_\_\_\_

Bidder  _____ Name: Designation:	Authority  _____ Name: Designation:
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Witness 1:

Witness 2:

**\*\*\*\*\* End of Document \*\*\*\*\***

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