



Guidelines for Pre-qualification of Bidders for PPP projects



**Guidelines
for
Public Private Partnership

PRE-QUALIFICATION
OF
BIDDERS**

**Planning Commission
Government of India**

Gross capital formation in infrastructure constitutes about 4.55% of GDP at present. In order to sustain an annual growth rate of 8.9% in GDP, investments in infrastructure must rise to at least 8% of GDP by the end of Eleventh Five Year Plan.

Given the constraints on public resources and the competing pressures from social sectors and rural infrastructure, it is inevitable that reliance must shift to Public Private Partnerships (PPPs) for funding large infrastructure projects that must be sustained by user charges.

It is necessary to create an enabling environment for attracting private capital in PPPs that would improve the quality of services and reduce costs. A credible selection process, as outlined in these guidelines, constitutes an important segment of the policy and regulatory framework.

“I believe that in future, PPP projects should be awarded on the basis of transparent competitive bidding with a standard concession agreement to the extent possible”

- Dr. Manmohan Singh
Prime Minister of India

“Attracting private capital through the PPP or any other route is neither easy nor automatic. A key pre-requisite is to lay down a policy framework that assures a fair return for investors provided they attain reasonable levels of efficiency. But the policy must also protect the interests of users, especially the poor. PPPs are useful only if they assure quality supply at reasonable cost.”

- Dr. Manmohan Singh
Prime Minister of India

“Investors will come in not because there is a well-designed policy but because there is an assurance that there will be transparency. From bidding to tax concessions at every stage there must be complete transparency. Projects which have succeeded are projects which have exhibited a remarkable degree of transparency, consultation, involvement and periodic monitoring. Projects which have failed are projects which are designed in secret and implemented without consultation.”

- Shri P. Chidambaram
Minister of Finance

“It is natural to look to evolve a suitable strategy for financing infrastructure development in which scarce government funds can be leveraged by bringing in resources from the private sector. This is not easy. It requires the evolution of credible policy framework which is seen to be fair to both consumer and investor interests and which receives broad public support.”

- Shri Montek Singh Ahluwalia
Deputy Chairman, Planning Commission

For ensuring competitive, efficient and economic delivery of infrastructure projects and services through Public Private Partnerships (PPPs), selection of bidders should be undertaken in a manner that is fair, transparent and inexpensive.

The selection process consists of two stages. The first stage is referred to as Request for Qualification (RFQ) and aims at pre-qualification and short-listing of applicants. The second stage relates to Request for Proposals (RFP) involving submission of financial offers by short-listed applicants. The guidelines in this volume primarily address the RFQ stage and provide a Model RFQ document.

It is expected that the administrative ministries, departments and autonomous bodies intending to procure PPP projects would observe these guidelines

Complimentary

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Guidelines

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OF

BIDDERS

Planning Commission
Government of India
New Delhi

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Preface

The justification for promoting Public Private Partnership (PPP) in infrastructure lies in its potential to improve the quality of service with lower costs, besides attracting private capital to fund public projects. This, however, is predicated on a policy and regulatory framework that provides a fair, transparent and competitive environment. Flaws in the framework can lead to unintended outcomes; a cautious and diligent approach is, therefore, necessary while formulating the rules of engagement.

One of the key factors that determines the success of a PPP project is the criteria for selection of the project sponsor, especially as such projects typically involve large capital investments for providing essential infrastructure services to users on a long-term basis. A bidder lacking in sufficient technical and financial capacity can well jeopardise the project and compromise the services that the government is committed to provide. On the other hand, selection based on negotiations or inadequate competition can deprive the public exchequer and users of the assurance that they are paying a competitive price.

There was divergence in the principles and practices followed for selection of bidders for PPP projects in different sectors. A variety of technical, financial and other criteria were being used by the project authorities, and in some cases, technical proposals/bids were also invited along with financial offers. Some of the qualification parameters appeared subjective and were, therefore, prone to disputes and controversy. In several cases, the costs of making applications accompanied by detailed technical proposals were significant, and dampened bidder participation. There were instances where inadequacies in the process attracted judicial review coupled with the attendant delays in project implementation. A comprehensive review of the ongoing practices had, therefore, become necessary.

With a view to deliberating on the guidelines to be laid

down for pre-qualification and short-listing of applicants who should be invited to make financial offers, the Committee on Infrastructure (CoI) chaired by the Prime Minister constituted an inter-ministerial group under the chairmanship of Secretary, Department of Expenditure. Following extensive consultations with stakeholders and experts, the Group submitted its recommendations that were considered and accepted by CoI. The Guidelines have since been issued by the Ministry of Finance and are contained in this volume.

The Guidelines include a Model RFQ (Request for Qualification) document that Ministries and autonomous bodies of the Central Government are expected to follow. This Model would also serve as a best practice document that State Governments may wish to adopt. It is hoped that adoption of these Guidelines would enhance the possibilities of a fair, transparent and competitive selection of bidders for delivery of successful PPP projects in infrastructure.



(Gajendra Haldea)

Adviser to Deputy Chairman,
Planning Commission

May 20, 2007

Overview of the framework

For ensuring competitive, efficient and economic delivery of services, selection of bidders for the procurement of infrastructure projects through Public Private Partnership (PPP) should be undertaken in a manner that is fair, transparent and inexpensive. In line with this objective, guidelines have been framed for pre-qualification of bidders for PPP projects. The guidelines are broad and generic in nature and are aimed at providing predictability to the entire process, allowing decisions to be made objectively and expeditiously. They address the critical minimum requirements that must be observed in conducting the selection process.

Selection must be fair and transparent

It is expected that the administrative ministries/autonomous bodies intending to procure PPP projects would observe these guidelines for short listing of bidders for the Request for Proposal (RFP) stage involving submission of financial bids. The salient features of the guidelines are as follows.

Two Stage Process

The bidding process for PPP projects is typically divided into two stages. In the first stage, eligible and prospective bidders are shortlisted. This stage is generally referred to as Request for Qualification (RFQ) or Expression of Interest (EoI). The objective is to short-list eligible bidders for stage two of the process. In the second and final stage, which is generally referred to as the Request for Proposal (RFP) or invitation of financial bids, the bidders engage in a comprehensive scrutiny of the project before submitting their financial offers.

Selection should be in two stages

Request for Qualification (RFQ)

The RFQ process should aim at short-listing and pre-qualifying applicants who will be asked to submit financial bids in the RFP stage. The objective is to identify credible bidders

Only credible bidders should be pre-qualified

who have the requisite technical and financial capacity for undertaking the project. In order to encourage greater participation from credible domestic and international investors, the RFQ document should not require respondents to incur significant expense in preparing a response. The information sought for the purposes of pre-qualification should generally be restricted to technical and financial capabilities that are relevant to the project. Such information should be precise and quantified so that the process of short-listing is fair and transparent, and does not expose the government to disputes or controversies.

Number of bidders to be pre-qualified

Bidders should be short-listed for inviting financial bids

The number of bidders to be pre-qualified and short-listed for the final stage of bidding i.e. the RFP stage needs careful consideration. On the one hand, the number of pre-qualified bidders should be adequate for ensuring real competition in bidding. On the other hand, a large number of short-listed bidders is viewed as a factor that dampens participation by serious bidders, thus diluting competition, because credible investors are normally less inclined to spend the time and money necessary for making a competitive PPP bid if the zone of consideration is unduly large.

Unlike a bid for procurement of goods and services, bids for PPP projects involve greater risks, significantly larger investments and long-term participation. Since PPP projects in infrastructure provide a critical service to the users at large, the quality and reliability of service assumes greater importance. Moreover, restricting the list to the best available bidders improves the chances of a successful PPP operation. For these reasons, about five pre-qualified bidders are favoured as an international best practice for securing high quality financial bids. In case short-listing is to be done for two or three projects at the same time, the number of short-listed bidders could be increased to 7 and 10 respectively. For this purpose, a fair and transparent system of evaluation at the RFQ stage would be necessary.

Specifying stringent pre-qualification criteria

While stringent eligibility criteria would ensure pre-qualification of bidders well suited for the RFP stage, yet the same would effectively reduce the number of qualified bidders. A balance, therefore, needs to be drawn for serving the objective of pre-qualifying a reasonable number of bidders for the RFP stage. The principles for determining the eligibility criteria such as technical and financial capacity should be formulated keeping these considerations in view.

Criteria must identify suitable bidders

Evaluation Criteria

The criteria for short-listing of bidders should be divided into technical and financial parameters as stated below:

Technical Capacity

The applicant should have acquired sufficient experience and capacity in building infrastructure projects. This can be measured either from the construction work undertaken/commissioned by him, or from revenues of BOT/BOLT/BOO projects, or from both, during the 5 years preceding the application date. Eligibility conditions, as necessary, may also be stipulated in respect of O&M experience.

Experience to be indicator of technical capacity

The technical capacity of a bidder can be assessed on the following parameters:

- (a) Project experience on BOT projects in the specified sector.
- (b) Project experience on BOT Projects in the core sector.
- (c) Construction experience in the specified sector.
- (d) Construction experience in the core sector.
- (e) O&M Experience: The consortium may include a member with at least twenty six percent equity participation and having relevant experience in operation

and maintenance (O&M). Alternatively, the successful bidder may be required to enter into an operations & maintenance (O&M) agreement with an entity having equivalent experience. While suggesting this arrangement, it is proposed to provide sufficient flexibility for modifying these requirements to suit the needs of individual sectors/projects.

Financial Capacity

Net worth to be indicator of financial capacity

Applicants should have a minimum net worth equivalent to 25% of the estimated capital cost of the project for which bids are to be invited. In the case of projects with an estimated cost of Rs. 1,000 (one thousand) crore or more, the requirement of net worth could be suitably reduced, but should be no less than 15%. This would ensure that pre-qualified applicants have sufficient financial strength to undertake the project.

Eligibility of Experience

Consortium members should have substantial stake

The members of the consortium, who claim experience and networth in the RFQ must hold at least 26% of the consortium's equity. This would ensure that members with small equity holdings are not included with the sole purpose of achieving pre-qualification. In other words, only the experience and networth of consortium members with a substantial stake is to be counted.

Technical evaluation to be part of pre-qualification stage

Technical evaluation to precede bid stage

Requiring a technical evaluation at the RFP stage would normally lead to an elaborate and costly evaluation of complex proposals which are, by their very nature, difficult to compare since technical proposals of different bidders would vary significantly. Apart from the difficulties in evaluating diverse proposals on a common set of parameters, such evaluation also implies that instead of the government determining the assets

and services to be provided by the selected bidder, it is the technical bid that would tend to guide the outcome. Logically, the government should set the technical parameters and ask for financial bids only, leaving sufficient flexibility for bidders to design and engineer the project in a manner that conforms to pre-determined standards and specifications, including service outputs.

In case of exceptionally complex projects where the project authority determines that the bidders must submit their technical proposals/plans, the requirements thereof should be specified in detail and such proposals/plans should be invited at the qualification stage, either along with the initial applications or at an intermediate stage preceding the bid stage. Only pre-qualified applicants should be invited to participate in the bid stage, which should only consist of an invitation to submit financial offers.

Restrict bid stage to financial bids

Conclusion

A Model RFQ document has been developed based on the principles outlined above. The model document is generic in nature and aims at lending transparency and predictability to the entire process, allowing decisions to be made expeditiously. It also provides the requisite sector-specific and project-specific flexibility by placing several provisions within square brackets, thus enabling project authorities to make necessary substitutions. To the extent possible, the concerned ministries should standardise the provisions contained in square brackets so that case by case modifications are minimised. Some flexibility has also been afforded through explanations in the footnotes. In case any further flexibility is needed for a specific project, the required modifications may be made with the approval of the PPP Appraisal Committee.

Model RFQ document should be followed

The Model RFQ document addresses the critical requirements that should be observed for conducting a fair and transparent process of pre-qualification. It is expected that the

administrative ministries and autonomous bodies of the Central Government intending to procure infrastructure projects through PPP would observe these Guidelines and adopt the Model RFQ document for short-listing of applicants for the Request for Proposal (RFP)/financial bid stage. The Model RFQ document is also commended for use by the State Governments.

GUIDELINES OF THE MINISTRY OF FINANCE

*F.No. 24(1)/PF.II/06
Government of India
Ministry of Finance
Department of Expenditure
Plan Finance II Division*

New Delhi, the 16th May 2007

OFFICE MEMORANDUM

Subject : Guidelines for Pre-Qualification of Bidders for PPP Projects

- 1.1 I am directed to state that for pre-qualification and short-listing of bidders eligible for submission of financial bids for projects to be implemented through Public Private Partnership (PPP), the following guidelines may be followed henceforth:*
- 1.2 These guidelines shall apply to all Ministries and Departments of the Central Government, all statutory entities under the control of Central Government and all Central Public Sector Undertakings (CPSUs).*

2. Two Stage Process

The bidding process for PPP projects is divided into two stages. The First stage is generally referred to as Request for Qualification (RFQ) or Expression of Interest (EoI). The objective is to short-list eligible bidders for stage two of the process. In the second and final stage, generally referred to as the Request for Proposal (RFP) or invitation of financial bids, the bidders engage in a comprehensive scrutiny of the project before submitting their financial offers.

3. Request for Qualification (RFQ)

The RFQ process should aim at short-listing and pre-qualifying applicants who will be asked to submit financial bids in the RFP stage. The objective is to identify credible

bidders who have the requisite technical and financial capacity for undertaking the project. In order to encourage greater participation from credible domestic and international investors, the RFQ document should not require respondents to incur significant expense in preparing a response. The information sought for the purposes of pre-qualification should generally be restricted to technical and financial capabilities that are relevant to the project. Such information should be precise and quantified so that the process of short-listing is fair and transparent, and does not expose the government to disputes or controversy.

4. Number of bidders to be pre-qualified

4.1 The number of bidders to be pre-qualified and short-listed for the final stage of bidding i.e. the RFP stage needs careful consideration. On the one hand, the number should be adequate for ensuring real competition in bidding. On the other hand, a large number of short-listed bidders could dampen participation by serious bidders, thus diluting competition, because credible investors are normally less inclined to spend the time and money necessary for making a competitive PPP bid, if the zone of consideration is unduly large.

4.2 It is to be recognised that unlike a bid for procurement of goods and services, bids for PPP projects involve greater risks, significantly larger investments and long-term participation. Since PPP projects in infrastructure provide a critical service to the users at large, the quality and reliability of service assumes greater importance. Moreover, restricting the list to the best available bidders improves the chances of a successful PPP operation. For these reasons, about five pre-qualified bidders are favoured as an international best practice for securing high quality bids. In case short-listing is to be done for two or three projects at the same time, the number of short-listed bidders could be increased to 7 and 10 respectively. For this purpose, a fair and transparent system of evaluation at the RFQ stage would be necessary.

5. Specifying stringent pre-qualification criteria

While stringent eligibility criteria would ensure pre-qualification of bidders well suited for the RFP stage, it would also effectively reduce the number of qualified bidders. A balance, therefore, needs to be drawn for serving the objective of pre-qualifying a reasonable number of suitable bidders for the RFP stage. The principles for determining the eligibility criteria such as technical and financial capacity should be formulated keeping these considerations in view.

6. *Evaluation Criteria*

6.1 *The criteria for short-listing of bidders should be divided into technical and financial parameters as stated below:*

Technical Capacity

6.2 *The applicant should have acquired sufficient experience and capacity in building infrastructure projects. This can be measured either from the construction work undertaken/commissioned by him, or from revenues of BOT/BOLT/BOO projects, or from both, during the 5 years preceding the application date. Eligibility conditions, as necessary, may also be stipulated in respect of O&M experience.*

6.3 *The technical capacity of bidders can be assessed on the following parameters:*

- (a) **Project/construction Experience:** *Experience on eligible projects in the specified sector or other core sectors should be considered for determining the technical capacity of the applicant.*
- (b) **O&M Experience:** *The applicant should have experience of five years or more in operation and maintenance (O&M) of projects in the specified sector. In the absence of such experience, the applicant may be required to enter into an operations & maintenance (O&M) agreement with an entity having equivalent experience, failing which the concession agreement would be liable to termination. While suggesting this arrangement, it is proposed to provide sufficient flexibility for modifying these requirements to suit the needs of individual sectors/projects.*

Financial Capacity

6.4 *Applicants should have a minimum net worth equivalent to 25% of the estimated capital cost of the project for which bids are to be invited. In the case of projects with an estimated cost of Rs. 1,000 (one thousand) crore or more, the requirement of net worth could be suitably reduced, but should be no less than 15%. This would ensure that pre-qualified applicants have sufficient financial strength to undertake the project.*

7. *Eligibility of Experience*

The members of the consortium, who claim experience or networth in the RFQ must hold at least 26% of the consortium's equity. This condition is necessary for ensuring

that only the experience of those members who have a substantial stake is counted for the purposes of pre-qualification, and members with small equity holding are not added with the sole objective of improving the ranking in pre-qualification.

8. Technical evaluation at the RFP stage

8.1 *Requiring a technical evaluation at the RFP stage would normally lead to an elaborate and costly evaluation of complex proposals which are, by their very nature, difficult to compare since technical proposals of different bidders could vary significantly. Apart from the difficulties in evaluating diverse proposals on a common set of parameters, such evaluation also implies that instead of the government determining the assets and services to be provided by the selected bidder, it is the technical bid that would tend to guide the outcome. Logically, the government should set the technical parameters and ask for financial bids only, leaving sufficient flexibility for bidders to design and engineer the project in a manner that conforms to pre-determined standards and specifications, including service outputs.*

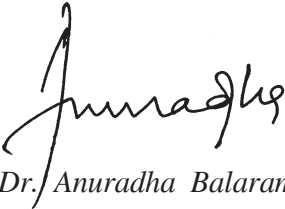
8.2 *In case of exceptionally complex projects where the project authority determines that the bidders must submit their technical proposals/ plans, the requirements thereof should be specified in detail and such proposals / plans should be invited at the qualification stage, either along with the initial applications or at an intermediate stage preceding the bid stage. Only pre-qualified applicants should be invited to participate in the bid stage, which shall only consist of an invitation to submit financial offers.*

9. Model RFQ Document

9.1 *A model RFQ document has been developed based on the principles outline above. The model document is generic in nature and aims at lending transparency and predictability to the entire process, allowing decisions to be made expeditiously. It also provides the requisite sector-specific and project-specific flexibility by placing several provisions within square brackets, thus enabling project authorities to make necessary substitutions. To the extent possible, the concerned Ministries should standardise the provisions contained in square brackets so that case by case modifications are minimised. Some flexibility has also been afforded through explanations in the footnotes and project-specific/ sector-specific modifications may be undertaken to the extent enabled by the footnotes. In case any further flexibility*

is needed for a specific sector or project, the required modifications may be made with prior approval of the PPP Appraisal Committee.

- 9.2 *The model RFQ document addresses the critical requirements that should be observed for conducting a fair and transparent process of pre-qualification. The administrative ministries/autonomous bodies intending to procure infrastructure projects through PPP should observe these guidelines for short-listing of bidders for the Request for Proposal (RFP)/Financial Bid stage.*
10. *These instructions shall come into force with immediate effect and will apply to all cases where bids are invited after April 18, 2007.*



(Dr.) Anuradha Balaram

Director/PF II

Tel.No. 23092668

1. *Chairman, Railway Board, Rail Bhawan, New Delhi.*
2. *Secretary, Department of Economic Affairs, North Block, New Delhi.*
3. *Secretary, Ministry of Civil Aviation, Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi.*
4. *Secretary, Department of Road Transport & Highways, Transport Bhawan, New Delhi.*
5. *Secretary, Department of Shipping, Transport Bhawan, New Delhi.*
6. *Secretary, Ministry of Power, Shram Shakti Bhawan, Rafi Marg, New Delhi.*
7. *Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi.*
8. *Secretary, Department of Telecommunication, Sanchar Bhawan, New Delhi.*
9. *Secretary, Ministry of New and Renewable Energy, CGO Complex, New Delhi.*

10. *Secretary, Ministry of Law and Justice, Department of Legal Affairs, Shastri Bhawan, New Delhi.*
11. *Adviser to Deputy Chairman, Planning Commission, Yojana Bhawan, New Delhi.*

Copy to: PS to JS(PF.II) / PS to AS(E) / PPS to Secretary(E)

Model
Request for Qualification (RFQ)

Disclaimer

The information contained in this Request for Qualification document ("RFQ") or subsequently provided to Applicant(s), whether verbally or in documentary form or otherwise, by or on behalf of *** (collectively referred to as the "Authority") or any of its employees or advisors, is provided to Applicant(s) on the terms and conditions set out in this RFQ and such other terms and conditions subject to which such information is provided.

This RFQ is not an agreement and is neither an offer nor invitation by the Authority to the prospective Applicants or any other person. The purpose of this RFQ is to provide interested parties with information to assist in the formulation of their application for qualification pursuant to this RFQ (the "Application"). This RFQ includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project[s]. Such assumptions and statements do not purport to contain all the information that each Applicant may require. This RFQ may not be appropriate for all persons, and it is not possible for the Authority, their employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFQ. The assumptions, assessments, statements and information contained in this RFQ may not be complete, accurate, adequate or correct and each Applicant should conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this RFQ and obtain independent advice from appropriate sources.

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

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 RFQ.

The issue of this RFQ does not imply that the Authority is bound to select and short-list pre-qualified Applications for Bid Stage or to appoint preferred bidder/sponsor or concessionaire, as the case may be, for the Project[s] and reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

Glossary

Applicant(s)	As defined in Clause 1.2.1
Application	As defined in the Disclaimer
Application Due Date	As defined in Clause 2.14.1
Associate	As defined in Clause 2.2.9
Authority	As defined in Clause 1.1.1
Bid	As defined in Clause 1.2.3
Bid Due Date	As defined in Clause 1.2.4
Bid Security	As defined in Clause 1.2.4
Bidders	As defined in Clause 1.2.3
Bidding Documents	As defined in Clause 1.2.3
Bidding Process	As defined in Clause 1.2.1
Bid Stage	As defined in Clause 1.2.1
[BOT]	As defined in Clause 1.1.1
Concessionaire	As defined in Clause 1.1.2
Consortium	As defined in Clause 2.2.1
Eligible Experience	As defined in Clause 3.2.1
Experience Score	As defined in Clause 3.2.6
Eligible Project	As defined in Clause 3.2
Estimated Project Cost	As defined in Clause 1.1.4
Financial Capacity	As defined in Clause 2.2.2 (B)
INR	Indian Rupee
Lead Member	As defined in Clause 2.2.6 (c)
MoU	Memorandum of Understanding
Net Worth	As defined in Clause 2.2.4(ii)
Project	As defined in Clause 1.1.1
Qualification	As defined in Clause 1.2.1
Qualification Stage	As defined in Clause 1.2.1
RFP or Request for Bids/Proposals	As defined in Clause 1.2.1
RFQ	As defined in the Disclaimer
SPV	As defined in Clause 2.2.6(f)
Technical Capacity	As defined in Clause 2.2.2 (A)
Threshold Technical Capability	As defined in Clause 2.2.2 (A)

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

Invitation for Qualification

[Name of Authority]

1. INTRODUCTION

1.1 Background

1.1.1 The [National Highway Authority of India]¹ (the “Authority”) is engaged in the development of [highways] and as part of this endeavour, the Authority has decided to undertake development of [2 highways] Project[s] (the “Project”) through private² participation on [Build, Operate and Transfer (the “BOT”)] basis, and has decided to carry out the bidding process for selection of the preferred bidder/sponsor. The project[s] [are] as follows:

S. No.	Name of the [Highway]	[Length in Km]	Indicative Project Cost ³ (In Rs. cr.)
1			
2			

[(collectively the “Projects” and singly the “Project”).]

The Authority intends to pre-qualify suitable Applicants who will be eligible for participation in the Bid Stage, for awarding the Project[s] through an open competitive bidding process in accordance with the procedure set out herein.

1.1.2 The successful Bidder, who is either a company incorporated under the Companies Act, 1956 or undertakes to incorporate itself as such prior to execution of the concession agreement (the “Concessionaire”), shall be responsible for [designing, engineering], financing, procurement, construction, operation and maintenance of these Project[s] under and in accordance with the Concession Agreement to be entered into between the Concessionaire and the Authority.

1.1.3 The scope of work may broadly include [rehabilitation, upgradation and widening of the existing carriageway to four-lane standards with construction of new pavement,

¹ All provisions within parenthesis may be suitably modified based on project-specific requirements.

² If public sector companies are to be allowed to bid, this Clause may be modified accordingly.

³ If the project agreements do not provide for any obligations or liabilities that arise from or are related to capital costs of the project, this column may be omitted.

rehabilitation of existing pavement, construction of major and minor bridges, culverts, road intersections, interchanges, drains, etc.]

- 1.1.4 Indicative capital costs of [each/the] Project (the “Estimated Project Cost”) will be revised and specified in the [respective] Bidding Documents of [each/the] Project. The assessment of actual costs, however, will have to be made by the Bidders.

1.2 Brief description of Bidding Process

- 1.2.1 The Authority intends to follow a two-stage process (collectively referred to as the “Bidding Process”) for selection of the preferred bidder[s] for the Project[s]. The first stage (the “Qualification Stage”) of the process involves qualification (the “Qualification”) of interested parties/consortia (the “Applicants”). At the end of this stage, the Authority expects to announce a short-list of suitable pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the “Bid Stage”) comprising Request for Bids/Proposals (the “Request for Bids/Proposals” or “RFP”).

[GOI has issued guidelines (see Appendix-4) for disqualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Authority shall be entitled to disqualify an Applicant in accordance with the aforesaid guidelines at any stage of the Bidding Process. Applicants must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-1.]

- 1.2.2 During the Qualification Stage, Applicants would be required to furnish the information specified in this RFQ. Only those companies or consortia that are pre-qualified by the Authority shall be invited to submit their Bids for the Project[s]. The Authority is likely to provide a comparatively short time span for submission of the Bids for the Project[s]. The Applicants are, therefore, advised to visit the site(s) and familiarise themselves with the Project[s].

[An Applicant shall be entitled to apply for pre-qualification to undertake either one or more Projects.]

- 1.2.3 In the Bid Stage, the short-listed pre-qualified Applicants (the “Bidders”) will be called upon to submit their financial offers (the “Bids”) in respect of [any or all the Project(s)], in accordance with the bidding documents comprising the Request for Bids/ Proposals (the “Bidding Documents”), [which shall be separate for each Project].

The Bidding Documents for [each/the] Project will be provided to every Bidder on payment of [Rs. 10,000 (Rs. ten thousand only)]. The Bid shall be valid for a period of not less than 120 days from the Bid Due Date.

- 1.2.4 A Bidder will be required to deposit, alongwith its Bid, a bid security equivalent to 1% (one per cent)⁴ of the Estimated Project Cost (the “Bid Security”), refundable not later than 30 days from the last date for submission of Bids (the “Bid Due Date”) except in the case of the two [lowest/ highest] Bidders. The Bidders will have an option to provide Bid Security in the form of a bank guarantee acceptable to the Authority⁵ and in such event, the validity period of the bank guarantee shall be not less than [150 days] from the Bid Due Date, as may be extended by the Applicant from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5 Generally, the successful Bidder shall be the [lowest/highest] Bidder. The second [lowest/highest] Bidder shall be kept in reserve and may be invited to match the Bid submitted by the [lowest/highest] Bidder in case such [lowest/highest] Bidder withdraws or is not selected for any reason. In the event that the Concession is awarded to the [lowest/highest] Bidder, the second [lowest/highest] Bidder who has been kept in reserve shall be refunded the Bid security not later than 120 days from the date of submission of the Bid.
- 1.2.6 During the Bid Stage, Bidders are invited to examine the Project[s] in greater detail, and to carry out, at their cost, such studies as may be required for submitting the Bids for implementation of the Project[s].
- 1.2.7 As part of the Bidding Documents, the Authority would provide for [each/the] Project a draft Concession Agreement and project report/feasibility report prepared by the Authority/its consultants and other information pertaining/relevant to the Project[s] available with it.
- 1.2.8 Bids will be invited for award of the Project[s] to the Bidder[s] quoting [the lowest amount of grant sought from the Authority or the highest premium/ revenue share offered, as the case may be]. All other project parameters shall be determined prior to inviting the Bids.
- 1.2.9 The Concessionaire would be entitled to [levy and charge a pre-determined user fee/ toll from users] of the Project.

⁴ The Authority may, if deemed necessary, prescribe a higher bid security not exceeding 2% of the Estimated Project Cost. In case of a project having an Estimated Project Cost of Rs. 2,000 cr. or above, the Authority may reduce the bid security, but not less than 0.5% in any case.

⁵ The Authority may prescribe a format for the bank guarantee as part of the RFP document.

1.2.10 All details of the process to be followed at the Bid Stage and the terms thereof would be spelt out in the Bidding Documents.

1.2.11 Any queries or request for additional information concerning this RFQ shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.13.3 below. The envelopes and the communications shall clearly bear the following identification:

“Queries/Request for Additional Information concerning RFQ”.

1.3 Schedule of Bidding Process

The Authority would endeavour to adhere to the following schedule:

Event Description	Estimated Date
Qualification Stage	
1. Last date for receiving queries	[15 days from date of RFQ]
2. Pre-Application Conference	[20 days from date of RFQ]
3. Authority response to queries latest by	[25 days from date of RFQ]
4. Application Due Date	[35 days from date of RFQ]
5. Announcement of short-list	Within 15 days of Application Due Date
Bid Stage	
1. Sale of Bid Documents	[To be specified]
2. Pre-Bid meeting - 1	[To be specified]
3. Pre-Bid meeting - 2	[To be specified] ⁶
4. Bid Due Date(s)	[To be specified]
5. Opening of Bids	On Bid Due Date
6. Letter of Acceptance (LOA)	Within 30 days of Bid Due Date
7. Validity of Bids	120 days of Bid Due Date
8. Signing of Concession Agreement	Within 30 days of award of LOA

⁶ In case of complex projects, the number of pre-bid meetings could be more than two.

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Application

2.1.1 The Authority wishes to receive Applications for Qualification to short-list experienced and capable Applicants for the Bidding Stage.

2.1.2 Short-listed Applicants would be subsequently invited to submit the Bids for [the/all or any of the] Project[s].

2.2 Eligibility of Applicants

2.2.1 (a) The Applicant for pre-qualification may be a single entity or a group of entities (the “Consortium”), coming together to implement the Project. However, no Applicant applying individually can be member of any Applicant Consortium. The term Applicant used herein would apply to both a single entity and a Consortium.

(b) An Applicant may be a natural person, private entity, [government-owned entity] or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.

(c) An Applicant shall not have a conflict of interest. All Applicants found to have a conflict of interest shall be disqualified. Without limiting the generality of the above, an Applicant may be considered to have a conflict of interest with one or more parties in this Bid Process, if:

(i) such Applicant (or any constituent thereof) and any other Applicant (or any constituent thereof) have common controlling shareholders or other ownership interest; or

(ii) a constituent of such Applicant is also a constituent of another Applicant; or

(iii) such Applicant receives or has received any direct or indirect subsidy from any other Applicant, or has provided any such subsidy to any other Applicant; or

- (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - (v) such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each others' information about, or to influence the Application of either or each of the other Applicant; or
 - (vi) such Applicant has participated as a consultant to the Authority in the preparation of the design or technical specifications of the Project.
- (d) An Applicant shall be liable to disqualification if the legal, financial or technical advisers of the Authority in relation to the Project[s] are engaged by the Applicant in any manner for matters related to or incidental to such Project[s].

[(e) Other eligibility conditions shall include:***]⁷

2.2.2 To be eligible for pre-qualification and short-listing, an Applicant shall fulfil the following conditions of eligibility:

(A) **Technical Capacity:** For demonstrating technical capacity and experience (the "Technical Capacity"), the Applicant shall, over the past 5 (five) financial years preceding the Application Due Date, have:

- (i) received payments for construction of Eligible Project[s]; and/or
- (ii) commissioned and paid for execution of BOT (Build-Operate-Transfer), BOLT (Build-Own-Lease-Transfer), BOO (Build-Own-Operate), BOOT (Build-Own-Operate-Transfer) or other similar projects that qualify as Eligible Projects; and/or
- (iii) collected and appropriated revenues of BOT/BOLT/BOO/BOOT or other similar projects that qualify as Eligible Projects,

such that the sum total of the above is more than Rs. [500 (Rs. Five hundred)] crore (the "Threshold Technical Capability").⁸

[Provided that at least one fourth of the Threshold Technical Capability shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 3.2.1.]

⁷ Other sector-specific conditions of eligibility or restrictions, if any, may be stated here, such as limit on FDI.

⁸ This amount should be equivalent to the Estimated Project Cost of the Project for which bids are being invited. Where deemed necessary, the Authority may increase/decrease this amount by one half of the Estimated Project Cost. In case the RFQ is for more than one Project, this amount may be suitably modified.

(B) Financial Capacity: The Applicant shall have a minimum Net Worth⁹ (the “Financial Capacity”) of [Rs. 125 (one hundred and twenty five) crore]¹⁰.

In case of a Consortium, the combined technical capability and net worth of those members, who have an equity share of at least 26% each in such Consortium, should satisfy the above conditions of eligibility.

2.2.3 O&M Experience: The Applicant shall, [in the case of a Consortium, include a member, having at least 26% (twenty six percent) equity participation in the Project company/SPV, who has experience of five years or more in operation and maintenance (O&M) of Category I projects specified in Clause 3.2.1, with an aggregate capital cost equal to the Estimated Project Cost¹¹. In case the Applicant is not a Consortium, it shall be eligible only if it has equivalent experience on its own. In the absence of such experience, the Applicant shall, for a period of at least 5 (five) years from the date of commercial operation of the Project, undertake to enter into an operations & maintenance (O&M) agreement with an entity having equivalent experience, failing which the Concession Agreement shall be liable to termination].

2.2.4 The Applicants shall enclose with its application, to be submitted as per the format at Appendix-I, complete with its Annexures, the following:

- (i) Certificate(s) from its statutory auditors¹² or the concerned client(s) stating the payments received or works commissioned, as the case may be, during the past 5 years in respect of the projects specified in paragraph 2.2.2(A) above. In case a particular job/ contract has been jointly executed by the Applicant (as part of a consortium), he should further support his claim for the share in work done for that particular job/contract by producing a certificate from its statutory auditor or the client; and
- (ii) certificate(s) from its statutory auditors specifying the net worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.4(ii). For the purposes of this RFQ, net worth (the “Net Worth”) shall mean the sum of subscribed and paid up equity and reserves

⁹ Net worth has been adopted as the criterion for assessing financial capacity since it is a comprehensive indication of the financial strength of the Applicant. In exceptional cases, however, the Authority may also prescribe a minimum annual turnover and/ or net cash accruals as an indication of the Applicant's cash flows and financial health.

¹⁰ This amount should be 25% (twenty five percent) of the estimated capital cost of the project for which bids are being invited. In the case of Projects with an Estimated Project Cost of Rs. 1,000 cr. or above, this amount may be suitably reduced, but not below 15% in any case.

¹¹ Where deemed necessary, the Authority may increase/decrease this amount by one-half of the Estimated Project Cost.

¹² In case duly certified audited annual financial statements are provided, a separate certification by statutory auditors would not be necessary in respect of Clauses 2.2.4 (i) and 2.2.4 (ii).

from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and accrued liabilities.

2.2.5 The Applicant should submit a Power of Attorney as per the format at Appendix 2, authorising the signatory of the Application to commit the Applicant.

2.2.6 Where the Applicant is a Consortium, it should comply with the following additional requirements:

- (a) Number of members in a consortium would be limited to 6 (six), but information sought in the Application may be restricted to 4 (four) members in the order of their equity contribution;
- (b) subject to the provisions of clause (a) above, the Application should contain the information required for each member of the Consortium;
- (c) members of the Consortium shall nominate one member as the lead member (the “Lead Member”), who shall have an equity share of at least 26% in the Consortium. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix 3, signed by all the other members of the Consortium;
- (d) the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) an individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;
- (f) the parties to a Consortium shall be entitled to form an appropriate Special Purpose Vehicle (the “SPV”), incorporated under the Indian Companies Act, 1956, to submit Bids in due course and/or execute the Project[s] if awarded to the Consortium; and
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement (the “Jt. Bidding Agreement”) for the purpose of making the Application and submitting Bid in the event of being short-listed. The Jt. Bidding Agreement shall, inter alia:
 - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFQ, which would enter into the

Concession Agreement and subsequently carry out all the responsibilities as Concessionaire in terms of the Concession Agreement, in case the Concession to undertake the Project[s] is awarded to the Consortium;

- (ii) clearly outline the proposed roles and responsibilities of each member at each stage;
- (iii) commit the minimum equity stake to be held by each member; and
- (iv) include a statement to the effect that all members of the Consortium shall, till such time they incorporate an SPV and provide the specified performance security or bond, be liable jointly and severally for execution of the Project[s] in accordance with the terms of the Concession Agreement.

(Note: A copy of the Jt. Bidding Agreement should be submitted along with the Application. The Jt. Bidding Agreement entered into between the members of the Consortium should be specific to [each/ the] Project and should fulfil the above requirements, failing which the Application shall be considered non-responsive).

- 2.2.7 Any entity which has been barred by the [Central/State Government, or any entity controlled by them,] from participating in any project (BOT or otherwise), and the bar subsists as on the date of Application, would not be eligible to submit an Application, either individually or as member of a Consortium.
- 2.2.8 An Applicant/Consortium member should, in the last three years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract nor have had any contract terminated for breach by such Applicant/ Consortium member.
- 2.2.9 In computing the Technical Capacity and Net Worth of the Applicant/Consortium members under Clauses 2.2.2 and 2.2.3, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

For purposes hereof, Associate means, in relation to the Applicant/Consortium member, a person who controls, is controlled by, or is under the common control with such Applicant/ Consortium member. 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, whether by operation of law or by contract or otherwise.

2.2.10 The following conditions shall be adhered to while submitting an Application:

- (i) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexures is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
- (ii) information supplied by an Applicant (or other constituent member if the Applicant is a Consortium) must apply to the Applicant or constituent member named in the application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification;
- (iii) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (iv) in case the Applicant is a consortium, each member of the Consortium should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.11 [While Qualification is open to persons from any country, the following provisions shall be applicable:]

- [(a) Where, on the date of the Application, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in an Applicant or any of the constituents of a Consortium is held by persons resident outside India or where an Applicant or any of the constituents of a Consortium is controlled by persons resident outside India; or]
- [(b) if at any subsequent stage after the date of the Application, there is an acquisition of not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital or control (by persons resident outside India) in or of the Applicant or any of the constituents of a Consortium;]

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

[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, 1997, or any substitute thereof, as in force on the date of such acquisition.]

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

2.3 Change in composition of the Consortium

2.3.1 Change in the composition of a Consortium will not be permitted by the Authority during the Qualification Stage.

2.3.2 Change in the composition of a Consortium may be permitted by the Authority during the Bid Stage, only where:

- (a) the modified Consortium would continue to meet the Qualification criteria for Applicants;
- (b) the new member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not a member of any other Consortium/ Applicant bidding for the Project[s]; and
- (c) there is no change of Lead Member or in his role and responsibilities.

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

2.3.4 The modified/reconstituted Consortium shall be required to submit a revised MoU before the Bid Due Date.

2.4 Number of Applications

Each Applicant shall submit only 1 (one) Application in response to this RFQ. Any Applicant, who submits or participates in more than one Application, will be disqualified and will also cause the disqualification of each of the Consortia of which it is a member.

2.5 Application and other costs

The Applicant shall be responsible for all of the costs associated with the preparation of its Application and its participation in either the Qualification Stage or the Bid Stage. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.6 Project inspection and site visit

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

2.6.2 It shall be deemed that by submitting the Application, the Applicant has:

- (a) made a complete and careful examination of the RFQ;
- (b) received all relevant information requested from the Authority; and
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFQ or furnished by or on behalf of the Authority or relating to any of the matters referred to in Clause 2.6.1 above.

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

2.7 Right to accept or reject any or all Applications/Bids

2.7.1 Notwithstanding anything contained in this RFQ, the Authority reserves the right to accept or reject any Application and to annul the bidding process and reject all Applications/Bids, at any time without any liability whatsoever or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

2.7.2 The Authority reserves the right to reject any Application and/or Bid if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Applicant does not provide, within the time specified by the Authority, the

supplemental information sought by the Authority for evaluation of the Application.

Such misrepresentation/improper response would lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium would be disqualified/rejected. If such disqualification/rejection occurs after the Bids have been opened and the [lowest/highest] bidder gets disqualified/rejected, then the Authority reserves the right to:

- (i) invite the next [lowest/highest] Bidder to match the Bid submitted by the [lowest/highest] Bidder; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

B. DOCUMENTS

2.8 Contents of the RFQ

This RFQ comprises the contents as listed below, and would additionally include any Addenda issued in accordance with Clause 2.10.

Invitation for Qualification

- Section 1. Introduction
- Section 2. Instructions to Applicants
- Section 3. Criteria for Evaluation

Appendices

1. Application
2. Power of Attorney for signing of Application
3. Power of Attorney for Lead Member of Consortium
4. Guidelines of the Department of Disinvestment.

2.9 Clarifications

- 2.9.1 A prospective Applicant requiring any clarification on the RFQ may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.11. The Applicants should send in their queries before the date mentioned in the Schedule of Bidding Process. The Authority would endeavour to respond to the queries within the specified period. The responses will be sent by fax or e-mail. The Authority will

forward all the queries and its responses thereto, to all purchasers of the RFQ without identifying the source of queries.

- 2.9.2 The Authority reserves the right not to respond to questions raised or provide clarifications sought, in its sole discretion. 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.

2.10 Amendment of RFQ

- 2.10.1 At any time prior to the deadline for submission of Application, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ by the issuance of Addenda.
- 2.10.2 Any Addendum thus issued will be sent in writing to all those who have purchased the RFQ.
- 2.10.3 In order to afford the Applicants a reasonable time in which to take an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Application Due Date.¹³

C. PREPARATION AND SUBMISSION OF APPLICATION

2.11 Language

The Application and all related correspondence and documents should be written in the English language. Supporting documents and printed literature furnished by the Applicant with the Application may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Application, the English language translation shall prevail.

2.12 Format and signing of Application

- 2.12.1 The Applicant shall provide all the information sought under this RFQ. The Authority would evaluate only those Applications that are received in the required format and complete in all respects. Incomplete and / or conditional Applications shall be liable to rejection.

¹³ While extending the Application Due Date, the Authority would have due regard for the time required by bidders to address such amendment.

- 2.12.2 The Applicant shall prepare one original set of the documents comprising the Application (together with originals/copies of documents required to be submitted along therewith pursuant to this RFQ) and clearly marked “ORIGINAL”. In addition, the Applicant shall submit 2 (two) copies of the Application, marked “COPY”. In the event of any discrepancy between the original and the copies, the original shall prevail.
- 2.12.3 The Application and its copies shall be typed or written in indelible ink and the Applicant shall initial each page in blue ink. All the alterations, omissions, additions or any other amendments made to the Application shall be initialled by the person(s) signing the Application. The Application shall contain page numbers and shall be hard bound.

2.13 Sealing and marking of Applications

2.13.1 The Applicant shall seal the original and each copy of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL” and “COPIES”. The envelopes shall then be sealed in an outer envelope.

2.13.2 Each envelope shall contain:

- (i) Application in the prescribed format (Appendix-1) along with Annexures and supporting documents;
- (ii) Power of Attorney as per the format at Appendix 2;
- (iii) Power of Attorney as per the format at Appendix 3, in case of Consortium;
- (iv) copy of the MoU, in case of a Consortium;
- (v) copy of Memorandum and Articles of Association, if the Applicant/Consortium member is a body corporate, and if a partnership then a copy of its partnership deed;
- (vi) copies of Applicant’s/each Consortium member’s duly audited balance sheet and profit and loss account for the preceding five years; and
- [(vii) Any other sector or project-specific requirement that may be specified by the Authority].

The envelopes shall clearly bear the following identification:

“Application for Qualification: BOT [highways] Project[s]: [name of Project(s)]”

2.13.3 The envelope shall be addressed to:

ATTN. OF: Mr ***
 [Secretary] of the Authority

ADDRESS: ***

2.13.4 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 Application submitted.

2.14 Application Due Date

2.14.1 Applications should reach the Authority before 1600 hours IST on *** (the “Application Due Date”), at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFQ. Applications submitted by either facsimile transmission or telex will not be acceptable.

2.14.2 The Authority may, in exceptional circumstances and at its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Applicants.

2.15 Late Applications

Applications received by the Authority after the Application Due Date shall not be eligible for consideration and shall be summarily rejected.

2.16 Modification/substitution/withdrawal of Applications

2.16.1 The Applicant may modify, substitute or withdraw its Application after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority by the Application Due Date. No Application shall be modified, substituted or withdrawn by the Applicant after the Application Due Date.

2.16.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.13, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.

2.16.3 Any alteration/modification in the Application or additional information material supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

D. EVALUATION PROCESS**2.17 Evaluation of Applications**

- 2.17.1 The Authority would open the Applications on the Application Due Date, or on any working day thereafter, for the purposes of evaluation.
- 2.17.2 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.
- 2.17.3 The Authority would subsequently examine and evaluate Applications in accordance with the criteria set out in Section 3.
- 2.17.4 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the Authority. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.17.5 Any information contained in the Application shall not in anyway be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if any Project is subsequently awarded to it under the Bidding Process on the basis of such information.
- 2.17.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any Application without assigning any reasons.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Applicants 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 Application, in confidence and would require all those who have access to such material to treat the same in confidence. The Authority will 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.

2.19 Tests of responsiveness

2.19.1 Prior to evaluation of Applications, the Authority will determine whether each Application is responsive to the requirements of the RFQ. An Application shall be considered responsive if the Application:

- (a) is received by the Application Due Date including any extension thereof pursuant to Clause 2.14.2;
- (b) is signed, sealed and marked as stipulated in Clause 2.13;
- (c) is accompanied by the Power(s) of Attorney as specified in Clause 2.2.5;
- (d) contains all the information (complete in all respects) as requested in the RFQ;
- (e) contains information in formats same as those specified in this RFQ; and
- (f) is accompanied by the MoU (for Consortium), specific to the Project[s], as stipulated in Clause 2.2.6(g).

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

2.20 Clarifications

- (i) To facilitate evaluation of Applications, the Authority may, at its sole discretion, seek clarifications from any Applicant regarding its Application. 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) shall be in writing.
- (ii) If an Applicant does not provide clarifications sought under Sub-Clause (i) above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Authority may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Authority.

E. QUALIFICATION AND BIDDING

2.21 Short-listing and notification¹⁴

After the evaluation of Applications, the Authority would announce a list of short-listed pre-qualified Applicants (Bidders) who will be eligible for participation in the Bid Stage. At the same time, the Authority would notify the other Applicants that they have not been short-listed. The Authority will not entertain any query or clarification from Applicants who fail to qualify.

2.22 Submission of Bids

The Bidders would be requested to submit a Bid in the form and manner to be set out in the Bidding Documents.

Only pre-qualified Applicants shall be invited by the Authority to submit their Bids for the Project[s]. [The Authority is likely to provide a comparatively short time span for submission of the Bids for the Project(s). The Applicants are therefore advised to visit the site(s) and familiarise themselves with the Project(s) by the time of submission of the Application.] No extension of time is likely to be considered for submission of Bids pursuant to invitation that may be issued by the Authority.

2.23 Proprietary data

All documents and other information supplied by the Authority or submitted by an Applicant to the Authority shall remain or become the property of the Authority. Applicants are to treat all information as strictly confidential. The Authority will not return any Application or any information provided along therewith.

¹⁴ In case of exceptionally complex projects where the Authority is of the opinion that the Bidders must submit their technical proposal/plan, the requirements thereof shall be specified in detail and such proposal / plan shall be invited at the Qualification Stage, either along with the initial applications or at an intermediate stage. This shall form part of the pre-qualification process and only the Applicants who have been pre-qualified shall be invited to participate in the Bid Stage for submission of Bids. The Bid Stage shall only consist of invitation to submit financial offers.

3. CRITERIA FOR EVALUATION

3.1 Evaluation parameters

3.1.1 Only those Applicants who meet the eligibility criteria specified in Clause[s] 2.2.2 [and 2.2.3] above shall qualify for evaluation under this Section 3. Applications of firms/ consortia who do not meet these criteria shall be rejected.

3.1.2 The Applicant's competence and capability is proposed to be established by the following parameters:

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

3.2 Technical Capacity for purposes of evaluation

3.2.1 Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the "Eligible Experience") in relation to eligible projects as stipulated in Clauses 3.2.3 and 3.2.4 (the "Eligible Projects"):

Category 1: Project experience on Eligible Projects in [highways] sector that qualify under Clause 3.2.3

Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 3.2.3

Category 3: Construction experience on Eligible Projects in [highways] sector that qualify under Clause 3.2.4

Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 3.2.4

For the purpose of this RFQ:

- (i) [highways sector would be deemed to include highways, expressways, bridges, tunnels and airfields;] and
- (ii) core sector would be deemed to include power, telecom, ports, airports, railways, industrial parks, petroleum and natural gas, pipelines, irrigation, water supply, sewerage and real estate development.¹⁵

¹⁵ In case the RFQ is not for a highway project, include highways in sub-clause (ii) and exclude the sector which has been included in sub-clause (i).

- 3.2.2 Eligible Experience in respect of each category shall be measured only for Eligible Projects.
- 3.2.3 For a project to qualify as an Eligible Project under Categories 1 and 2:
- (a) It should have been implemented on BOT, BOLT, BOO, BOOT or other similar basis;
 - (b) the entity claiming experience should have held, in the company owing the Eligible Project, a minimum of 26% equity during the period for which Eligible Experience is being claimed;
 - (c) the capital cost of the project should be more than [Rs. 50 (fifty) crore]¹⁶; and
 - (d) the entity claiming experience shall, during the past 5 (five) financial years preceding the Application Due Date, have (i) commissioned the construction work of the project and paid for it, and/ or (ii) collected and appropriated the revenues of such project after commencement of commercial operation.
- 3.2.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Applicant should have received payments from its client(s) during the 5 (five) financial years immediately preceding the Application Due Date for works executed, fully or partially, and only the payments (gross) actually received during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, payments received in respect of projects having a capital cost of less than [Rs. 50 (fifty) crore]¹⁷ shall not be reckoned as payments for Eligible Projects.
- 3.2.5 The Applicant shall quote experience in respect of a particular Eligible Project under any one category only, even though the Applicant (either individually or alongwith a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.
- 3.2.6 Applicant's experience shall be measured and stated in terms of a score (the "Experience Score"). The Experience Score for a given category would be the project costs or certified payments/ receipts, as the case may be, divided by one crore and then multiplied by the applicable factor in Table 3.2.6 below. In case the Applicant has experience across different categories, the score for each category would be computed as above and then aggregated to arrive at his Experience Score.

¹⁶ This amount should not be less than 10% of the amount specified in Clause 2.2.2 (A). In case of Projects with an Estimated Project Cost of Rs. 1,000 cr. or above, this amount may be suitably reduced but not less than 5% in any case.

¹⁷ This amount should be determined as per footnote 16 above.

Table 3.2.6: Factors for Experience across categories¹⁸

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

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

3.3 Details of Experience

3.3.1 The Applicant should furnish the details of Eligible Experience for the past 5 (five) years preceding the Application Due date.

3.3.2 The Applicants must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-1.

3.3.3 The Applicant should furnish the required information and evidence in support its claim of Technical Capacity, as per format at Annex-IV of Appendix-1.

3.4 Financial information for purposes of evaluation

3.4.1 The Application must be accompanied by the Audited Annual Reports of the Applicant (of each member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Application is made.

3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Applicant could not make it available, the Applicant shall give an undertaking to the same effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for four years preceding the year for which the Audited Annual Report is not being provided.

3.4.3 The Applicant must establish a minimum Net Worth of [Rs. 125 (one hundred and twenty five) crore], as specified in Clause 2.2.2 (B).

¹⁸ These factors may be modified by the Authority by upto one-third thereof in each category.

3.5 Short-listing of Applicants

- 3.5.1 The credentials of eligible Applicants shall be measured in terms of their Experience Score. The sum total of the Experience Scores for all Eligible Projects shall be the 'Aggregate Experience Score' of a particular Applicant. In case of a Consortium, the Aggregate Experience Score of each of its members, who have an equity share of at least 26% in such Consortium, shall be summed up for arriving at the combined Aggregate Experience Score of the Consortium.
- 3.5.2 The Applicants shall then be ranked on the basis of their respective Aggregate Experience Scores and short-listed for submission of Bids. The Authority expects to short-list upto [5 (five)]¹⁹ pre-qualified Applicants for participation in the Bid Stage. The Authority, however, reserves the right to extend the number of short-listed pre-qualified Applicants ("Bidders") upto [6 (six)].

¹⁹ For each Project, the number of short-listed bidders should not normally exceed 5 (five). In case shortlisting is to be done for two or three Projects at the same time, the short-listed bidders could be increased to 7 and 10 respectively. In case of power projects to be awarded on the basis of statutory guidelines for tariff-based bidding and having no obligations or liabilities for buy-out of project assets or any similar obligations, the Authority may suitably increase the number of short-listed bidders.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. The Authority shall reject an Application if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt, fraudulent, coercive, undesirable or restrictive practices in the Bidding Process.
- 4.2 For the purposes of this provision, the terms set forth are defined as follows:
- (a) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the Bidding Process;
 - (b) “fraudulent practice” means a misrepresentation or omission of facts in order to influence the Bidding Process ;
 - (c) “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the Bidding Process;
 - (d) “undesirable practice” means establishing contact with any person connected with or employed by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; and
 - (e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-APPLICATION CONFERENCE

- 5.1 A pre-Application conference of the interested parties shall be convened at the designated date and time. Only those persons who have purchased the RFQ document shall be allowed to participate in the Bidding Process. Applicants who have downloaded the RFQ document from the Authority's website should submit a Demand Draft of [Rs. 10,000 (Rs. ten thousand only)] towards the cost of document, through their representative attending the conference. A maximum of two representatives of each Applicant shall be allowed to participate on production of authority letter from the Applicant.

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at [Delhi] shall have 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 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) pre-qualify or not to pre-qualify any Applicant and/or to consult with any Applicant 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 Applicant; 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 Applicant.
- 6.3 It shall be deemed that by submitting the Application, the Applicant 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 herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.4 Any change in ownership of the Bidder/Concessionaire, including any material change in the equity holding thereof, shall be subject to the provisions of Bid Documents.

Appendices

APPENDIX 1
APPLICATION

Dated:

To,

[Name and Address]

Dear Sir,

I/ We, _____ (Name of Applicant/
Consortium) having examined the RFQ document and understood its contents, hereby submit
our Application for Qualification in respect of the BOT [highways] Project[s] viz. *** and
state that:

1. All information provided in the Application and in the Appendices and Annexures is true and correct and all documents accompanying such Application are true copies of their respective originals.
2. This statement is made for the express purpose of qualifying as a Bidder for the development, construction, operation and maintenance of the aforesaid BOT Project[s].
3. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
4. I/ We acknowledge the right of the Authority to reject our Application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. We certify that in the last three years, we/any of the consortium members have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
6. I/We declare that:
 - (a) I/we have examined and have no reservations to the RFQ Documents, including the Addendum(s) issued by the Authority.

- (b) I/ we do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFQ document; and
 - (c) I/ we hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt, fraudulent, coercive, undesirable or restrictive practices to influence the Bidding process.
7. I/We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project[s], without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the RFQ document.
 8. I/We believe that we/ our consortium/ proposed consortium satisfy(ies) the Net Worth criteria and meet(s) the requirements as specified in the RFQ document and are/ is qualified to submit a Bid in accordance with the guidelines for qualification of bidders [seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process].
 9. I/We declare that we/ any member of the Consortium, are/ is not a member of a/ any other Consortium applying for pre-qualification.
 10. I/We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of law or indicted or adverse orders passed by a regulatory authority which would 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 have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our sister concerns.
 12. I/We further certify that no investigation by a regulatory authority is pending either against us or against our sister concerns or against our CEO or any of our Directors/Managers/employees.
 13. 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 would intimate the Authority of the same immediately.

14. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-1 of the RFQ document, and duly signed, is enclosed.
15. I/ We understand that the successful Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate itself as such prior to execution of the concession agreement.
16. _____ (Name of Applicant) hereby irrevocably waives any right it has 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 Applicants, selection of the Bidder, or in connection with the selection/ bidding process itself in respect of the above mentioned [highways] Project[s] and the terms and implementation thereof.

Thanking you,

Yours faithfully,

(Signature of the Authorised Signatory)

(Name and designation of the Authorised Signatory)

(Name of the Applicant/ Lead Firm)

ANNEX-I

DETAILS OF APPLICANT

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project[s]:
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 Authorised Signatory of the Applicant:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:
5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the members of the Consortium.
 - (b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Application.

Annex-I

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

Sl. No.	Name of Member	Role* {Refer Clause 2.2.6(d)}	Percentage of equity to be held in the Consortium {Refer Clauses 2.2.6 (a) & (c)}
1.			
2.			
3.			
4.			

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

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

Name of Applicant/ member of Consortium

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

6. A statement by the Applicant and each of the members of its consortium (where applicable) disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

ANNEX-II

TECHNICAL CAPACITY OF THE APPLICANT ®

(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ)

Applicant type #	Member Code*	Project Code**	Category [§]	Experience (Equivalent Rs. crore)			Experience Score [£]
				Payment received for construction of Eligible Projects	Payment made for construction of BOT/ BOLT/BOO/ BOOT Projects	Revenues appropriated from BOT/BO LT/BOO/ BOOT Projects	
Single entity Applicant		a					
		b					
		c					
		d					
Consortium Member 1		1a					
		1b					
		1c					
		1d					
Consortium Member 2		2a					
		2b					
		2c					
		2d					
Consortium Member 3		3a					
		3b					
		3c					
		3d					
Consortium Member 4		4a					
		4b					
		4c					
		4d					
Aggregate Experience Score =							

® Provide details of only those projects that have been undertaken by the Applicant under its own name and/ or by an Associate specified in Clause 2.2.9 and/ or by a project company eligible under Clause 3.2.3(b).

Annex-II

An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Applicant may be ignored.

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

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

§ Refer Clause 3.2.1.

£ Divide the amount in the Experience column by one crore and then multiply the product by applicable factor set out in Table 3.2.6.

ANNEX-III

FINANCIAL CAPACITY OF THE APPLICANT

(Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.4 of the RFQ)

(In Rs. crore)

Applicant type *	Member Code**	Net Cash Accruals					Net Worth***
		Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
Single entity Applicant							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
Consortium Member 4							
TOTAL							

Name & address of Applicant's Bankers:

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

** For Member Code, see instruction 4 at Annex-IV of this Appendix-I.

*** The Applicant should provide details of its own Financial Capability or of an Associate specified in Clause 2.2.9.

Annex-III

Instructions:

1. The Applicant/ its constituent consortium members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Application Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Applicant and its Associates where the Applicant is relying on its Associate's financials;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + accrued liabilities).
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on.
5. In the case of a Consortium, a copy of the Joint Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFQ document.
6. The applicant shall also provide the name and address of the Bankers to the Applicant.
7. The Applicant shall provide an Auditor's Certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.4 (ii) of the RFQ document.

ANNEX-IV

DETAILS OF ELIGIBLE PROJECTS

(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ)

Project Code:**Member Code:**

Item	Refer Instruction	Particulars of the Project
Title & nature of the project		
Category	5	
Year-wise payments received/ made or revenues appropriated	6	
Entity for which the project was constructed/ developed	7	
Location		
Project cost/ revenues/ payments	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	

Instructions:

1. Applicants are expected to provide information in respect of Eligible Projects in this Annexure. The projects cited must comply with the eligibility criteria specified in Clause 3.2.3 and 3.2.4 of the RFQ, as the case may be. Information provided in this section is intended to serve as a back up for information provided in the Application. Applicants should also refer to the Instructions below.
2. For a single entity Applicant, the Project Codes would be a, b, c, d etc. In case the Applicant 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 of the Eligible Project[s].

Annex-IV

4. Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member.
5. Refer Clause 3.2.1 of the RFQ for category number.
6. The total payments received/ made or revenues appropriated for each Eligible Project are stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Application Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on.
7. In case of Categories I and II projects, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided. In case of Categories III and IV projects, similar particulars of the client need to be provided.
8. For Categories 1 and 2, project costs incurred or revenues appropriated, as the case may be, should be provided. In case of Categories 3 and 4, payments received should be provided.
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.
10. For Categories 1 and 2, the equity shareholding of the Applicant, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.2.3).
11. Experience for any activity relating to an Eligible Project shall not be claimed by two or more members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
12. Certificate from the client or the Applicant's statutory auditor²⁰ must be furnished as per format below.

²⁰ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

13. If the Applicant is claiming experience under Categories 1 & 2²¹, it should provide a certificate from its statutory auditor in the format below:

Certificate from the Statutory Auditor regarding BOT projects	
<p>This is to certify that _____(name of the Applicant) is/ was an equity shareholder in _____(title of the project company) and holds/ held Rs. **** cr. of equity (which constitutes ____%²² of the total paid up and subscribed equity capital) of the project company from _____ (date) to _____ (date)^f. The project was completed and commissioned on _____ (date of commissioning of the project).</p>	
<p>We further certify that the total estimated cost of the project as on the date of commissioning was Rs. ***** cr., of which Rs. ***** cr. of capital expenditure was incurred during the past five financial years as per year-wise details noted below:</p>	
*	* *
<p>We also certify that the annual revenues collected and appropriated by the Applicant during the past five financial years were Rs. ***** cr. as per year-wise details noted below:</p>	
*	* *
<p>Authorised Signatory</p>	
<p>Name:</p>	
<p>Designation:</p>	<p>Signature of the Authorised Signatory and date</p>

£ In case the project is owned by the Applicant company, this language may be suitably modified to read: “It is certified that _____ (name of Applicant) constructed and/ or owned the _____ (name of project) from _____ (date) to _____ (date).”

²¹ Refer Clause 3.2.1 of the RFQ.

²² Refer instruction no. 10 in this Annex-IV.

Annex-IV

14. If the Applicant is claiming experience under Category 3 & 4²³, it should provide a certificate from its statutory auditors or the client in the format given below:

Certificate from the Statutory Auditor/ Client regarding construction works	
<p>This is to certify that _____ (<i>name of the Applicant</i>) was engaged by _____ (<i>title of the project company</i>) to execute _____ (<i>name of project</i>) for _____ (<i>nature of project</i>). The construction of the project commenced on _____ (<i>date</i>) and the project was commissioned on _____ (<i>date</i>). It is certified that _____ (<i>name of the Applicant</i>) received Rs. *** cr. by way of payment for the aforesaid construction.</p>	
<p>We further certify that the total estimated cost of construction of the project is Rs. **** cr., of which Rs. **** cr. was paid to the Applicant by the project company during the past five financial years as per year-wise details noted below:</p>	
<p>* * *</p>	
<p><i>[It is further certified that the payments indicated above are restricted to the share of the Applicant who undertook these works as a partner or a member of joint venture/ consortium.]²⁴</i></p>	
<p>Authorised Signatory</p>	
<p>Name:</p>	
<p>Designation:</p>	<p>Signature of the Authorised Signatory and date.</p>

15. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score²⁵.

²³ Refer Clause 3.2.1 of the RFQ.

²⁴ This certification should 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 Applicant in such partnership/joint venture/consortium. This portion may be omitted if the contract did not involve a partnership/joint venture/consortium.

²⁵ Refer Clause 3.2.6 of the RFQ.

ANNEX-V

STATEMENT OF LEGAL CAPACITY

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

Ref. Date:

To,

[Name and Address]

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

Authorised Signatory
For and on behalf of

**Please strike out whichever is not applicable.*

APPENDIX 2

POWER OF ATTORNEY FOR SIGNING OF APPLICATION

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

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

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

For

(Signature)
(Name, Title and
Address)

Witnesses:

1.

[Notarised]

2.

Accepted

.....

(Signature)

(Name, Title and Address
of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.*

APPENDIX 3

POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM

Whereas the ***("the Authority") has invited applications from interested parties for BOT [highways] Project[s] ("the Project[s]").

Whereas, and (collectively the "Consortium") being members of the Consortium are interested in bidding for the Project[s] in accordance with the terms and conditions of the Request for Qualification document (RFQ), Request for Bid/ Proposal (Bid Documents) and other connected documents in respect of the Project[s], and

Whereas, it is necessary under the RFQ document for the members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Project[s] 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....., [the respective names and addresses of the registered office] (hereinafter collectively referred to as the "Principals") do hereby designate, nominate, constitute, appoint and authorise
..... having its registered office at, being one of the members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney"). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Contract, during the execution of the Projects, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid(s) for the Project(s), including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings



PRE-QUALIFICATION OF BIDDERS FOR PPP PROJECTS
 consequent to acceptance of bid[s] of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid[s] for the Project[s] 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 lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF20**

For
 (Signature)

.....
 (Name & Title)

For
 (Signature)

.....
 (Name & Title)

For
 (Signature)

.....
 (Name & Title)

Witnesses:

- 1.
- 2.

.....
 (Executants)

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

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 Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.*

APPENDIX 4

GUIDELINES OF THE DEPARTMENT OF DISINVESTMENT²⁶

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment

Block 14, CGO Complex
New Delhi.
Dated 13th July, 2001.

OFFICE MEMORANDUM

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

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

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

²⁶ These guidelines may be modified or substituted by the Government from time to time.

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

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

