

Global Request for Proposal
for
Operate, Manage and Transfer
Project
the
The Multimodal Terminal
at Varanasi, Uttar Pradesh

IWAI-20/7/2023

Inland Waterways Authority of India

19 January 2024

TABLE OF CONTENTS

TABLE OF CONTENTS	2
GLOSSARY	4
DISCLAIMER.....	6
1. INTRODUCTION	8
1.1 Background	8
1.2 Brief description of Bidding Process	9
1.3 Schedule of Bidding Process.....	11
1.4 Pre-Bid Conference	12
2. INSTRUCTIONS TO BIDDERS	13
2A. GENERAL	13
2.1 General terms of Bidding	13
2.2 Eligibility of Bidders.....	16
2.3 Change in Ownership.....	21
2.4 Cost of Bidding	22
2.5 Site visit and verification of information	22
2.6 Verification and Disqualification.....	22
2B. DOCUMENTS.....	24
2.7 Contents of the RFP	24
2.8 Clarifications	25
2.9 Amendment of RFP.....	25
2C. PREPARATION AND SUBMISSION OF BID.....	26
2.10 Language.....	26
2.11 Format and Signing of Bid	26
2.12 Sealing and Marking of Bids.....	26
2.13 Bid Due Date.....	28
2.14 Late Bids	28
2.15 Contents of the Financial Bid	28
2.16 Modifications/ substitution/ withdrawal of Bids	28
2.17 Rejection of Bids.....	28
2.18 Validity of Bids	29
2.19 Confidentiality.....	29
2.20 Correspondence with the Bidder	29
2D. BID SECURITY	29
2.21 Bid Security.....	29

3.	Eligible Projects	32
3.1	Details on Eligible Projects	32
3.2	Financial information for purposes of evaluation.....	33
4.	EVALUATION OF BIDS	34
4.1	Opening and Evaluation of Bids	34
4.2	Tests of Responsiveness	34
4.3	Selection of Bidder	35
4.4	Contacts during Bid Evaluation	36
4.5	Bid Parameter.....	36
5.	FRAUD AND CORRUPT PRACTICES	37
6.	PRE-BID CONFERENCE.....	39
7.	MISCELLANEOUS	40
	ANNEXURES	41
	Annexure I: Cover Letter for Technical Bid for Proposal	41
	Annexure II: Particulars of the Bidder	45
	Annexure III: Technical Capacity of the Bidder	47
	Annexure IV: Financial Capacity of the Bidder	51
	Annexure V: Certification of Eligible Projects	53
	Annexure VI: Statement of Legal Capacity	58
	Annexure VII: Bank Guarantee for Bid Security	59
	Annexure VIII: Power of Attorney for signing of Bid	62
	Annexure IX: Power of Attorney for Lead Member of Consortium	64
	Annexure X: Joint Bidding Agreement	66
	Annexure XI: Guidelines of the Department of Disinvestment	72
	Annexure XII: Brief Description of Multimodal Terminal at Varanasi	74
	Annexure XIII: Instructions for online submission	76
	Annexure XIV: Guidelines of the Department of Expenditure	79
	Annexure XV: Bidder Declaration of perusal of all documents/ information shared by Authority	94
	Annexure XVI: Cover Letter for Financial Bid for Proposal	95

GLOSSARY

Bidder	As defined in Article 1.1.4
Bid	As defined in the Disclaimer
Bid Due Date	As defined in Article 1.1.11
Appointed Date	As defined in Article 1.3
Associate	As defined in Article 2.1.14
Authority	As defined in Article 1.1.1
Bid Parameter	As defined in Article 1.2.6
Bid Security	As defined in Article 1.2.4
Bidding Documents	As defined in Article 1.1.10
Bidders	As defined in Article 1.1.4
Bidding Process	As defined in Article 1.2.1
Cargo Handled	As defined in Article 1.2.6
COD	As defined in Article 1.2.6
Concessionaire	As defined in Article 1.1.2
Concession Agreement	As defined in Article 1.1.5
Conflict of Interest	As defined in Article 2.1.14
Consortium	As defined in Article 2.1.2
Conditional Right of First Refusal	As defined in Article 4.3.7
Eligible Projects	As defined in Article 3
Estimated Project Cost	As defined in Article 1.1.1
Financial Bid	As defined in Article 2.1.1
Financial Capacity	As defined in Article 2.2.1(b)
Highest Bidder	As defined in Article 1.2.6(c)
INR	Indian Rupee
Joint Bidding Agreement	As defined in Article 2.2.3(f)
Lead Member	As defined in Article 2.2.3(c)
LOA	Letter of Award
Member	Member of a Consortium
MMTPA	Million metric tonnes per annum
MT	As defined in Article 1.2.6(b)
Net Worth	As defined in Article 2.2.2(d)
Non-Riverine Cargo	As defined in Article 1.2.6(b)
OMT	As defined in Article 1.1.2
O&M	As defined in Article 1.1.2
Project	As defined in Article 1.1.2
Qualified Bidder	As defined in Article 1.1.4
RFP	As defined in the Disclaimer
Riverine Cargo	As defined in Article 1.2.6(b)
Royalty	As defined in Article 1.2.6(b)
Selected Bidder	As defined in Article 1.1.4
SPV	As defined in Article 2.2.3
Subject Person	As defined in Article 2.1.14
Technical Bid	As defined in Article 2.1.12.1.14
Technical Capacity	As defined in Article 2.2.1(a)
TEUs	As defined in Article 2.2.1(a)
Terminal's Assets	As defined in Article 1.1.7

The words and expressions beginning with capital letters and defined in this document

shall, unless repugnant to the context, have the meaning ascribed thereto herein.

DISCLAIMER

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

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

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

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

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

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

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

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

1. INTRODUCTION

1.1 Background

1.1.1 The Inland Waterways Authority of India (“**Authority**”) is engaged in the development of Multimodal Terminal located at Varanasi in the state of Uttar Pradesh (the “**Terminal**”). The Authority has already invested approximately INR 200 crore (INR Two hundred crore only) and is expected to invest approximately INR 85 crore (INR Eighty five crore only) on railway connectivity. The estimated project cost (“**Estimated Project Cost**”) for the Terminal for undertaking capacity augmentation works by the Concessionaire as defined in the Draft Concession Agreement is approximately INR 67.15 crore (INR Sixty seven crore and fifteen lakh only).

1.1.2 The Authority has decided to engage an entity (“**Concessionaire**”) to operate, manage and transfer the Terminal on ‘Operate, Manage and Transfer’ (“**OMT**”) basis (“**Project**”).

1.1.3 The Authority has decided to carry out an international competitive bidding process for selection of the Concessionaire.

1.1.4 A brief description of the project may be seen in the Annexure XII of this RFP. The Authority intends to qualify and short-list eligible Bidders who have the Technical Capacity and Financial Capacity as specified in Article 2.2.1 read with Article 3 (the “**Qualified Bidders**”). The Authority intends to select a suitable private entity who shall be declared as the selected Bidder (“**Selected Bidder**”).

1.1.5 The Selected Bidder shall be required to incorporate an SPV under the Companies Act, 2013 and shall be responsible for the Project as per the provisions of all applicable laws including but not limited to the National Waterways Act, 2016 or any subsequent enactment on the subject and in accordance with the provisions of OMT agreement (“**Concession Agreement**”) to be entered into between the Authority and the Concessionaire in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

1.1.6 The details of the Terminal are set out in the Detailed Project Report (“**DPR**”) and would be provided along with the draft concession agreement (“**Draft Concession Agreement**” or “**DCA**”) to the Bidders.

1.1.7 The scope of work for the Concessionaire shall comprise responsibility of the following:

- (a) Operate, manage and maintain terminal’s assets developed by IWAI
For avoidance of doubt, terminal’s assets (“**Terminal’s Assets**”) means the assets developed and/or provided by the Concessioning Authority. Details of Terminal’s Assets may be referred to in the Draft Concession Agreement for the project.
- (b) Operate, manage and maintain the passenger pontoon jetty.
- (c) Initiate Capacity augmentation once terminal throughput reaches 80% of design capacity (i.e., 80% of 1.26 mmtpa) for two consecutive years latest by 25th

anniversary of COD, such that Concessionaire constructs at least one additional berth of 100 m in length and 35 m in width, as well as develops corresponding shore protection works. For avoidance of doubt, this Article 1.1.7(c) shall be read along with Article 2.2 of the Concession Agreement.

Concessionaire shall also be responsible to construct other associated ancillary infrastructure and equipment to support augmented terminal capacity, including but not limited to land and site development, stockyard development, warehouse, approach roads, utilities, equipment etc.

1.1.8 The estimated cost of the Project (the “**Estimated Project Cost**”) has been specified in Article 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.

1.1.9 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “**Concession**”).

1.1.10 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP and other documents to be provided by the Authority (collectively the “**Bidding Documents**”) are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.

1.1.11 The Authority shall receive Technical Bids and Financial Bids (together as “Bids”) pursuant to this RFP in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority till the Bid Due Date. All Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Article 1.3 for submission of Bids (the “**Bid Due Date**”).

1.2 Brief description of Bidding Process

1.2.1 The Authority has adopted a single-stage bidding process (referred to as the “**Bidding Process**”) for selection of the Bidder for award of the Project as given in Article 1.1.4 of this document.

The Government of India has issued guidelines (see Annexure XI of RFP) for qualification of Bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Authority shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Annexure I.

1.2.2 The Bidders, including their successors, (the “**Bidders**”, which expression shall,

unless repugnant to the context, include the Members of the Consortium) are being called upon to submit their Bids in accordance with the terms specified in the Bidding Documents. The Bid shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date.

1.2.3 The Bidding Documents include the Draft Concession Agreement for the Project which is enclosed. The DPR prepared by the Authority is also annexed along with the Draft Concession Agreement (the “DPR”). Subject to the provisions of Article 2.1.3, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.

1.2.4 A Bidder is required to deposit, along with its Bid, a bid security of INR 2 crore (INR Two crore only) (the “**Bid Security**”), refundable not later than 180 (one hundred and eighty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft, RTGS or bank guarantee acceptable to the Authority. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

1.2.5 The Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.

1.2.6 (a) The Bidders would be required to furnish all the information specified in this RFP.

(b) The Selected Bidder shall pay a Royalty (“**Royalty**”) in terms of INR per metric ton (“**MT**”) of Cargo Handled at the Terminal to the Authority (“**Bid Parameter**”). For avoidance of doubt, it is clarified that, cargo handled (“**Cargo Handled**”) includes both riverine and non-riverine cargo handled at the Terminal. Riverine cargo (“**Riverine Cargo**”) shall mean cargo transported to and/or from the Terminal through waterways. Non-riverine cargo (“**Non-Riverine Cargo**”) shall mean cargo other than Riverine Cargo. Quantity of such cargo will be ascertained as per goods receipt document.

For avoidance of doubt, it may be clarified that Bidders shall quote a single amount for Royalty in terms of INR per MT as their Financial Bids. The Concessionaire shall pay Royalty on Riverine Cargo as well as Royalty on Non-Riverine Cargo.

(c) In this RFP, the term “Highest Bidder” shall mean the Bidder who is offering the highest Royalty. The Bid Parameter shall be quoted in 2 decimals, for instance, INR 100.82 per MT. The concession period and other terms are pre-determined, as indicated in the Draft Concession Agreement, and the Royalty shall constitute the sole criteria for evaluation of Bids. Subject to the provisions of Article 2.17, the Project will be awarded to the Highest Bidder.

(d) The Concession Agreement period shall be for 30 (thirty) years from the date of start of commercial operations (“COD”) extendable by 20 (twenty) years as per the conditions provided in the Draft Concession Agreement. COD shall mean the date when conditions precedent mentioned in Concession Agreement for OMT at the Terminal have either been satisfied and/or waived by the party other than the party responsible for satisfying the same. Details of timelines for meeting such conditions precedent as mentioned in the Concession Agreement shall be followed.

(e) The Concessionaire shall pay to the Authority a cargo volume-based payment commensurate to Royalty quoted for Cargo Handled as given in Article 1.2.6 (b) for the period commencing from the 6th (sixth) anniversary of COD till the end of the Agreement Period or on termination whichever is earlier.

1.2.7 Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Article 4 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.

1.2.8 The Concessionaire shall, in consideration of its investment and services, be entitled to levy and recover Tariff from the users of the Project Facilities and Services.

1.2.9 Details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP.

1.2.10 Any queries or request for additional information concerning this RFP shall be submitted in writing through speed post/ courier/ special messenger or by e-mail to the officer designated in Article 2.12.3 below by 13 February 2024 as specified in Article 1.3. The communications shall clearly bear the following title:

“RFP for Operate, Manage and Transfer of the Multimodal Terminal at Varanasi, Uttar Pradesh: Queries”

1.2.11 The pre-bid queries should be submitted in the format specified below. They should be submitted in Microsoft Excel format. Pre-bid queries not submitted in the prescribed format shall not be responded to.

Sr. No.	Page No.	Article No.	Text provided in RFP	Queries with justification (if any)
1				
2				

1.3 Schedule of Bidding Process

The schedule of the bidding process is as below. While the Authority shall endeavor to adhere to the schedule, it reserves the right to modify the schedule without providing any reasons

thereof:

S No	Event Description	Date
1.	Last date for receiving queries	13 February 2024
2.	Pre-Bid conference	19 February 2024 at 1500 hours IST
3.	Authority response to pre bid queries latest by	5 March 2024
4.	Bid Due Date	20 March 2024 at 1500 hours IST
5.	Bid opening date	21 March 2024 at 1530 hours IST
6.	Letter of Award (LOA)	6 May 2024
7.	Validity of Bids	120 (One hundred and twenty) days
8.	Signing of Concession Agreement (“Appointed Date”)	5 June 2024

1.4 Pre-Bid Conference

1.4.1 A pre-Bid conference of the interested Bidders shall be convened at the designated date, time and place. The date, time and venue of the pre-bid conference shall be:

Date: 19 February 2024

Time: 1500 hours IST

Venue: Virtual meeting (details to be shared through corrigendum on the Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app> and the Authority’s website <http://iwai.nic.in> not later than 13 February 2024 .

1.4.2 During the course of the pre-Bid conference, the Bidders shall be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavor to provide clarification and such further information as it may, at its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

1.4.3 Address for Correspondence

Any correspondence in relation to this RFP shall be addressed to:

Sh. Sunil Kumar Singh, Vice Chairman

Inland Waterways Authority of India

A-13, Sector 1, Noida, Gautam Buddha Nagar, Uttar Pradesh, - 201301

1.4.4 The queries should be sent to the Authority by 13 February 2024 as specified in Article 1.3. The queries should be sent to the following email id: **vc.iwai@nic.in**

2. INSTRUCTIONS TO BIDDERS

2A. GENERAL

2.1 General terms of Bidding

2.1.1 The Authority wishes to receive the Bids in order to examine the qualifications (the “**Technical Bid(s)**”) and financial bids (the “**Financial Bid(s)**”) of the Bidders. Every Bidder shall upload the documents pertaining to Technical Bid and the documents pertaining to Financial Bid in at least two separate folders on Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app>.

The procurement of services by the Authority is regulated by Applicable Law. The Bidders should acquaint themselves with Applicable Law governing procurement by the Authority including but not limited to OM No 6/18/2019-PPD of Department of Expenditure dated 23 July 2020.

2.1.2 No Bidder shall submit more than one Bid for the Project. The Bidder may be a single entity or a group of entities (“**Consortium**”) coming together to implement the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.

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

2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the Draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.

2.1.5 The Financial Bid should be furnished in the format at Annexure I, clearly indicating the Financial Bid amount in both figures and words, in Indian Rupees, and signed by the Bidder’s authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

2.1.6 The Financial Bid shall consist of Royalty to be quoted by the Bidder. Royalty payments shall be payable by the Concessionaire to the Authority, as per the terms and conditions of this RFP and the provisions of the Concession Agreement.

2.1.7 The Bidder shall deposit a Bid Security of INR 2 crore (INR Two crore only) in accordance with the provisions of this RFP. The Bidder shall provide the Bid Security through RTGS, demand draft or in the form of a Bank Guarantee. If Bid Security is provided through RTGS, proof of transaction shall be annexed with the Bid and the transfer shall be made to the following account.

- **Name of Bank Account:** IWAI FUND SECURITY DEPOSIT
- **Bank Name and Address:** UNION BANK OF INDIA, A-13, SECTOR -1, Gautam Buddha Nagar
- **Bank Account number:** 513202050000007
- **IFSC:** UBIN0551325

If Bid Security is provided through demand draft it shall be issued by a scheduled bank in favour of 'IWAI FUND SECURITY DEPOSIT' payable at Noida, Uttar Pradesh, India and a copy of the same shall be annexed with the Bid. If Bid Security is provided in form of Bank Guarantee acceptable to the Authority, it shall be as per format at Annexure VII.

2.1.8 The validity period of the demand draft/ Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 60 (sixty) days from the Bid Due Date except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement.

2.1.9 The Bidder should submit a Power of Attorney as per the format at Annexure VIII, authorising the signatory of the Bid to commit the Bidder.

2.1.10 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Annexure IX.

2.1.11 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

2.1.12 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.

2.1.13 The documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Article 2.1.13 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.

2.1.14 A Bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder's proposal (the "**Damages**"), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession

Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Article 2.1.14, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other’s information about, or to influence the Bid of either or each other; or
- (vi) such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Article 2.1.14, shall include each Member of such Consortium.

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

2.1.15 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

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

2.2 Eligibility of Bidders

2.2.1 To be eligible for qualification, a Bidder shall fulfil the following conditions of eligibility:

(a) **Technical Capacity:** For demonstrating the technical capacity and experience (“**Technical Capacity**”), the Bidder shall, during any 5 (five) of the past 7 (seven) financial years preceding the Bid Due Date, shall have:

(i) Paid for, or received payments for, construction of Eligible Projects as specified in Article 3.1; and/or

(ii) Paid for development of Eligible Projects as specified in Article 3.1

such that the sum total of the above is more than INR 16.79 crore (INR Sixteen crore and seventy nine lakh only) cumulatively during any 5 (five) of the past 7 (seven) financial years; and

(iii) Collected and appropriated revenues from O&M of Eligible Projects in sectors specified in Article 3.1 such that the sum total is more than INR 48.08

crore (INR Forty eight crore and eight lakh only) cumulatively during any 5 (five) of the past 7 (seven) years; and

(iv) An experience providing seaport terminal (containers, dry bulk, liquid bulk or general cargo)/ CFS/ ICD/ inland waterway terminal (containers, dry bulk, liquid bulk or general cargo)/ riverine terminal (containers, dry bulk, liquid bulk or general cargo) services and should have handled at least 1,323,000 (One million three hundred and twenty three thousand only) MT of cargo or 88,200 (Eighty eight thousand and two hundred only)¹ Twenty Foot Equivalent Units (“TEUs”) cumulatively during any 5 (five) of the past 7 (seven) financial years. For calculation purpose, the conversion rate of 1TEU=15 MT shall be used.

(b) **Financial Capacity:** The Bidder shall have a minimum Net Worth (“Financial Capacity”) of INR 16.79 crore (INR Sixteen crore and seventy nine lakh only) at the close of the financial year immediately preceding the Bid Due Date.

In case of a Consortium, the combined technical capacity and net worth of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility, provided that each such Member shall, till 7th (seventh) anniversary of Commercial Operations Date, hold equity share of not less than 26% (twenty six per cent) of the subscribed and paid up equity of the SPV and 5% (five per cent) of the Estimated Project Cost specified in the Concession Agreement.

The Consortium may include a member with at least ten per cent equity participation and having relevant experience in operation and maintenance (O&M). Alternatively, the successful bidder may be required to enter into an operation & maintenance (O&M) agreement with an entity having equivalent experience.

2.2.2 The Bidders shall enclose with its Bid, to be submitted as per the formats set out in Annexures I - VI, the following:

(a) Certificates from its statutory auditors² or the concerned clients stating the payments made/ received or works commissioned, as the case may be, during the past 7 (seven) years in respect of the Eligible Projects specified in Article 2.2.1(a) (i) and (ii) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and

(b) Certificates from its statutory auditors specifying the revenue of the Bidder in respect of the Eligible Projects specified in Article 2.2.1(a)(ii) above.

¹ Estimated considering 1 TEU = 15 MT

² In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Article 2.2.2(a). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFP.

(c) Certificates from its statutory auditors specifying the volume requirements specified in Article 2.2.1(a) (iii) above

(d) Certificates from its statutory auditors specifying the net worth of the Bidder 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 Article 2.2.2(d). For the purpose of this RFP, net worth (“**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

2.2.3 The Selected Bidder shall form an appropriate Special Purpose Vehicle, incorporated under the Companies Act, 2013 (“**SPV**”), within 30 (thirty) days from the issue of LOA by the Authority or such extended time as may be permitted by the Authority to incorporate the SPV, under or in accordance with the provisions of the Draft Concession Agreement, to be entered into between the Concessionaire and the Authority in the form provided by the Authority. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

(a) Number of members in a consortium shall not exceed 3 (three);

(b) Subject to the provisions of sub-article 2.2.3(a) above, the Bid should contain the information required for each member of the Consortium;

(c) Members of the Consortium shall nominate one member as the lead member (“**Lead Member**”), who shall have an equity share holding of at least 51% (fifty one per cent) of the paid up and subscribed equity of the SPV till 7th (seventh) anniversary of Commercial Operations Date. The nominations shall be supported by a Power of Attorney, as per the format at Annexure IX, signed by all the other members of the Consortium. For avoidance of doubt, it is clarified that after the till 7th (seventh) anniversary of Commercial Operations Date the Lead Member may be permitted to reduce its equity shareholding to less than 51% but the Lead Member shall continue to hold the highest equity shareholding amongst the other members. Moreover, the Lead Member’s equity shareholding cannot be less than 26% of the paid up and subscribed equity of the SPV;

(d) The Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;

(e) An individual Bidder cannot at the same time be member of a Consortium applying for qualification. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for qualification;

(f) Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Annexure X (“**Joint Bidding Agreement**”), for the purpose of making the Bid and submitting a Bid in the event of being short-listed. The Joint Bidding Agreement, to be submitted along with the Bid, shall, inter alia:

- (i) Convey the intent to form an SPV with shareholding/ ownership equity commitments in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the Project is awarded to the Consortium;
 - (ii) Clearly outline the proposed roles and responsibilities, if any, of each member;
 - (iii) Commit the minimum equity stake to be held by each member;
 - (iv) Include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the commencement of operations of the Project is achieved in accordance with the Concession Agreement; and
- (g) Except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Authority.

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

2.2.5 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Article 2.2.5 is such that it does not reflect

- (a) Any malfeasance on its part in relation to such cause or event;
- (b) Any willful default or patent breach of the material terms of the relevant contract;
- (c) Any fraud, deceit or misrepresentation in relation to such contract; or
- (d) Any rescinding or abandoning of such contract;

it may make representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project. In the event a Bidder fails to disclose any disqualification and such disqualification becomes known at a later date (even after the execution of Concession Agreement) the Authority shall in its

discretion take such steps including termination of the Concession Agreement as it may deem appropriate.

2.2.6 In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members under Articles 2.2.1, 2.2.2 and 3.1, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

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

2.2.7 The following conditions shall be adhered to while submitting a Bid:

(a) The Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient.

(b) Information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms.

(c) In responding to the qualification submissions, the Bidders should demonstrate their capabilities in accordance with Article 3.1 below; and

(d) In case the Bidder is a Consortium, each Member should substantially satisfy the qualification requirements to the extent specified herein.

2.2.8 The following provisions shall apply in case of foreign Bidders:

(a) Where, on the date of the Bid, 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital of a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or

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

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

The holding or acquisition of equity or control, as above, shall include direct or

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

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

2.2.9 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 6 (six) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to 7 (seven) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.3 Change in Ownership

2.3.1 By submitting the Bid, the Bidder acknowledges that its Consortium Members shall till 7th (seventh) anniversary of Commercial Operations Date, hold equity share capital representing not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Estimated Project Cost specified in the Draft Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Draft Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Article 2.3.1 shall apply only when the Bidder is a Consortium.

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

2.4 Cost of Bidding

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

2.5 Site visit and verification of information

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

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

- (a) Made a complete and careful examination of the Bidding Documents;
- (b) Received all relevant information requested from the Authority;
- (c) Accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Article 2.5.1 above;
- (d) Satisfied itself about all matters, things and information including matters referred to in Article 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (e) Acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Article 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
- (f) Acknowledged that it does not have a Conflict of Interest; and
- (g) Agreed to be bound by the undertakings provided by it under and in terms hereof.

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

2.6 Verification and Disqualification

2.6.1 The Authority reserves the right to verify all statements, information and documents

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

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

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

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

- (a) Invite the remaining Bidders to submit their Bids in accordance with Articles 4.3.3 and 4.3.4; or
- (b) Take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

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

2B. DOCUMENTS

2.7 Contents of the RFP

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

Invitation for Bids

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Eligible Projects
- Section 4. Evaluation of Bids
- Section 5. Fraud & Corrupt Practices
- Section 6. Pre-bid Conference
- Section 7. Miscellaneous

Annexures

- I. Cover letter for technical bid for proposal
- II. Particulars of the Bidder
- III. Technical Capacity of the Bidder
- IV. Financial Capacity of the Bidder
- V. Certification of Eligible Projects
- VI. Statement of Legal capacity
- VII. Bank Guarantee for Bid Security
- VIII. Power of Attorney for signing of Bid
- IX. Power of Attorney for Lead Member of Consortium
- X. Joint Bidding Agreement for Consortium
- XI. Guidelines of the Department of Disinvestment
- XII. Project Brief on Multimodal Terminal at Varanasi
- XIII. Instructions for online submission
- XIV. Guidelines of the Department of Expenditure
- XV. Bidder Declaration of perusal of all documents/ information shared by Authority

XVI. Cover letter for financial bid for proposal

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

2.8 Clarifications

2.8.1 Bidders requiring any clarification on the RFP may notify the Authority in writing by speed post/ courier/ special messenger or by e-mail in accordance with Article 1.2.9. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Article 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be sent by e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries

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

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

2.9 Amendment of RFP

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

2.9.2 Any Addendum thus issued will be put up on the Authority's website <http://iwai.nic.in> and on the Central Public Procurement Portal on <https://eprocure.gov.in/eprocure/app>.

2.9.3 The Bidder shall be responsible to keep account of any such addendum, information, or corrigendum that the Authority provides/ issues. At the time of submission of Bid, the Bidder shall also submit a declaration of perusal of all documents/ information shared by Authority as per the format provided in Annexure XV.

2.9.4 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date³.

³ While extending the Bid Due Date on account of an addendum, the Authority shall have due regard for the time required by Bidders to address the amendments specified therein.

2C. PREPARATION AND SUBMISSION OF BID

2.10 Language

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

2.11 Format and Signing of Bid

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

2.11.2 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.

2.12 Sealing and Marking of Bids

2.12.1 The Bidder shall upload the Technical Bid on Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app>, in the formats specified at Annexures I - VI, together with the documents specified in Article 2.12.2, and mark it as "BID". The Bidder shall also upload the Financial Bid on Central Public Procurement Portal, <https://eprocure.gov.in/eprocure/app>, both as per the format specified in Annexure XVI and as per any other format given on the Central Public Procurement Portal.

The Bidder shall upload the documents on Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app> as specified in Article 2.12.5. The documents required to be submitted in hard copy must be submitted at the address provided in Article 2.12.3.

The Bidder shall provide only those documents mentioned in Articles 2.12.2(b), 2.12.2(c), 2.12.2(d), 2.12.2(e) in original to the address provided in Article 2.12.3. The envelope shall then be sealed in an outer envelope which shall also be marked in accordance with Articles 2.12.2 and 2.12.3. All documents listed in Article 2.12.2 shall be uploaded as soft copy over Central Public Procurement Portal (CPP) as specified in Article 2.12.5.

2.12.2 The Bid shall contain:

Technical Bid

- (a) Technical Bid in the prescribed format (Annexures I – VI) along with supporting documents;
- (b) Bid Security of INR 2 crore (INR Two crore only) in the format at Annexure VII;
- (c) Power of Attorney for signing the Bid as per the format at Annexure VIII;
- (d) If applicable, the Power of Attorney for Lead Member of Consortium as per the format at Annexure IX;
- (e) Copy of the Joint Bidding Agreement, in case of a Consortium, substantially in the format at Annexure X;
- (f) Copy of Bidder Declaration of perusal of all documents/ information shared by Authority in the format at Annexure XV;
- (g) Copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
- (h) Copies of Bidder’s duly audited balance sheet and profit and loss account for the preceding 7 (seven) years; and

Financial Bid

- (a) Financial Bid as per format mentioned in Annexure XVI

The envelope comprising only the documents mentioned in Articles 2.12.2 (b), (c), (d), (e) in original shall clearly bear the following identification:

“Bid for Proposal: Multimodal Terminal Project at Varanasi”

and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right-hand corner of the envelope.

2.12.3 The envelope shall be addressed to:

ATTN. OF	:	Sh. Sunil Kumar Singh
DESIGNATION	:	Vice Chairman Inland Waterways Authority of India
ADDRESS	:	A-13, Sector – 1, Noida, Gautam Buddha Nagar, Uttar Pradesh, India – 201301
FAX NO	:	0120 – 2544036
E-MAIL ADDRESS	:	vc.iwai@nic.in

2.12.4 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 Bid

and consequent losses, if any, suffered by the Bidder.

2.12.5 The Bid shall be submitted online on the Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app>, in accordance with the Instructions for online submission as specified in Annexure XIII, Bids submitted by fax, telex, telegram or e-mail shall not be entertained.

2.13 Bid Due Date

2.13.1 Bids should be submitted before 1500 hours IST on the Bid Due Date as given in Article 1.3 on the Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app> in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the office of the person specified in Article 2.12.3.

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

2.14 Late Bids

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

2.15 Contents of the Financial Bid

2.15.1 The Financial Bid shall be furnished in the format at Annexure XVI and shall consist of a Royalty payment to be quoted by the Bidder. The Bidder shall specify (in Indian Rupees) the Royalty, to undertake the Project in accordance with the RFP and the provisions of the Concession Agreement.

2.15.2 Generally, the Project will be awarded to the Highest Bidder.

2.15.3 The opening of Financial Bids and acceptance thereof shall be substantially in accordance with this RFP.

2.15.4 The proposed Concession Agreement shall be deemed to be part of the Bid.

2.16 Modifications/ substitution/ withdrawal of Bids

2.16.1 No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

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

2.17 Rejection of Bids

2.17.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning

any reasons therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder

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

2.18 Validity of Bids

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

2.19 Confidentiality

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

2.20 Correspondence with the Bidder

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

2D. BID SECURITY

2.21 Bid Security

2.21.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Articles 2.1.7 and 2.1.8 hereinabove in the form of a bank guarantee issued by a nationalised bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. one thousand crore), in favour of the Authority in the format at Annexure VII (the “**Bank Guarantee**”) and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.

Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of ‘IWAI FUND SECURITY DEPOSIT ’ and payable at Noida, Uttar Pradesh, India (the “Demand Draft”). Bid Security referred to in Article 2.1.7 and 2.1.8 can also be deposited through RTGS in the below account. The demand draft and RTGS should have a

validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time.

- Name of Bank Account: IWAI FUND SECURITY DEPOSIT
- Bank Name and Address: UNION BANK OF INDIA, A-13, SECTOR -1, Gautam Buddha Nagar
- Bank Account number: 513202050000007
- IFSC: UBIN0551325

2.21.2 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.

2.21.3 Save and except as provided in Articles 1.2.4 and 1.2.5 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bid process is cancelled by the Authority, and in any case within 60 (sixty) days from the Bid Due Date. Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said demand draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

2.21.4 The Selected Bidder's Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.

2.21.5 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages *inter alia* in any of the events specified in Article 2.21.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.

2.21.6 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Concession Agreement, or otherwise, if

- (a) A Bidder submits a substantially non-responsive Bid;
- (b) A Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Article 5 of this RFP;
- (c) A Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
- (d) the Selected Bidder fails within the specified time limit -

- (i) to sign and return the duplicate copy of LOA; or
 - (ii) to sign the Concession Agreement; or
 - (iii) to furnish the Performance Security within the period prescribed therefor in the Concession Agreement.
- (e) the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security

3. Eligible Projects

3.1 Details on Eligible Projects

3.1.1 O&M, development and construction projects in the following sectors would be considered as Eligible Projects

(a) Inland waterway terminal (handling containers, dry bulk, break-bulk, liquid bulk or general cargo), seaport cargo terminal (handling containers, dry bulk, break-bulk, liquid bulk or general cargo), riverine terminal (handling containers, dry bulk, break-bulk, liquid bulk or general cargo), logistics parks, free trade warehousing zones, ICDs, CFS, rail freight terminals (including Private Freight Terminals (PFT)), airports, railways, industrial parks/estates, tank terminals, roads/ highways, expressways and special economic zones (SEZs)

3.1.2 For a project to qualify as an Eligible Project, following are the conditions:

(a) A development project should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;

(b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed;

(c) the capital cost of the project should be more than INR 13.43 crore (INR Thirteen crore and forty three lakh only)

(d) The entity claiming O&M experience shall, during the last 7 (seven) financial years preceding the Bid Due Date, have collected and appropriated O&M revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from users of airports, ports and railway infrastructure. This shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products, telecommunications or fare/freight revenues; and other incomes of the company owning the Project.

(e) The entity claiming construction/development experience should have (i) paid for development of the project; or (ii) paid for execution of its construction works or received payments from its clients for construction works executed, fully or partially, during the 7 (seven) financial years immediately preceding the Bid Due Date. For the avoidance of doubt, the cost of land shall also not be included here under.

3.1.3 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.

3.1.4 The Bidder should furnish the details of Eligible Projects for any 5 (five) of the last 7 (seven) financial years immediately preceding the Bid Due Date.

3.1.5 The Bidders must provide the necessary information relating to Technical Capacity as per format in Annexure III.

3.1.6 The Bidder should furnish evidence in support of its claim of Technical Capacity, as per format in Annexure V.

3.1.7 In the event that details of Technical and Financial Capacity furnished by the Bidder are found to be incorrect then the Authority shall be entitled to take such action as it may deem appropriate inter alia including but not limited to

- (a) Termination of the Concession Agreement
- (b) Recovery of damages which shall include cost of undertaking the bidding process and any other cost incurred or likely to be reasonably incurred by the Authority

3.2 Financial information for purposes of evaluation

3.2.1 The Bid must be accompanied by the audited annual reports of the Bidder (of each Member in case of a Consortium) for the last 7 (seven) financial years, preceding the year in which the Bid is made.

3.2.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the audited annual reports for 7 (seven) years preceding the year for which the audited annual report is not being provided.

3.2.3 The Bidder must establish the minimum Net Worth specified in Article 2.2.1(b), and provide details as per format at Annexure IV.

4. EVALUATION OF BIDS

4.1 Opening and Evaluation of Bids

4.1.1 The Authority shall open the Technical Bids at 1530 hours IST on the Bid opening date as given in Article 1.3, at the place specified in Article 2.12.3 and in the presence of the Bidders who choose to attend.

4.1.2 The Authority will subsequently examine and evaluate the Technical Bids in accordance with the provisions set out in Article 8 and in this Section 4 of this document.

4.1.3 Financial Bids of only Qualified Bidders shall be opened in the presence of Qualified Bidders at a date communicated to Qualified Bidders by the Authority.

4.1.4 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

4.2 Tests of Responsiveness

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

- a) It is received as per formats in Annexures I- VI.
- b) It is received by the Bid Due Date including any extension thereof pursuant to Article 2.13.2;
- c) It is uploaded on the Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app> in accordance with the Instructions for online submission specified in Annexure XIII and original thereof are signed and sealed and marked as stipulated in Articles 2.11 and 2.12.
- d) It is accompanied by the Bid Security as specified in Article 2.1.7;
- e) It is accompanied by the Power of Attorney as specified in Article 2.1.9, and in the case of a Consortium, the Power of Attorney as specified in Article 2.1.10;
- f) It contains all the information and documents (complete in all respects) as requested in this RFP;
- g) It contains information in formats same as those specified in this RFP;
- h) It contains certificates from its statutory auditors in the formats specified at Annexures-I - VI of the RFP for each Eligible Project;
- i) It is accompanied by the Joint Bidding Agreement (for Consortium), specific to the Project, as stipulated in Article 2.2.3(f);

- j) Bidder Declaration of perusal of all documents/ information shared by Authority in the format at Annexure XV;
- k) It does not contain any condition or qualification; and
- l) It is not non-responsive in terms hereof.

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

4.3 Selection of Bidder

4.3.1 Subject to the provisions of Article 2.17, the Bidder whose Bid is adjudged as responsive in terms of Article 4.2.1 and who quotes the highest Royalty offered to the Authority shall ordinarily be declared as the selected Bidder (the “**Selected Bidder**”). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all Bidders to submit fresh Bids hereunder.

4.3.2 In the event that two or more Bidders quote the same amount of Royalty (the “**Tie Bidders**”), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.

4.3.3 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “**first round of bidding**”), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.

4.3.4 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Article 4.3.2, the Authority may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.

4.3.5 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for

submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.

4.3.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Article 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement

4.3.7 The Concessionaire of the Varanasi MMT Project shall have the Conditional Right of First Refusal (“**CROFR**”) for the bid process of the project to Operate, Maintain and Transfer the MMT at Sahibganj. Projects to Operate, Maintain and Transfer (OMT) MMTs at Sahibganj and Varanasi will be de novo transactions which will be published and executed simultaneously but the bids received for the Varanasi MMT OMT project would be evaluated first to identify the selected bidder. In case the selected bidder for Varanasi MMT OMT project participates in Sahibganj MMT OMT bid but is not the highest bidder, and its bid is within the range of 10 (ten) percent of the highest ranked, the selected bidder can enforce the CROFR by matching the highest ranked bid.

4.4 Contacts during Bid Evaluation

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

4.5 Bid Parameter

4.5.1 The Bid shall comprise a “Royalty” in terms of INR per metric ton (“MT”) of Cargo Handled at the Terminal to be quoted by the Bidder in accordance with the provisions of the Concession Agreement. The Bidder offering the highest Royalty shall be the Selected Bidder.

4.5.2 The Bid Parameter shall be quoted in 2 decimals, for instance, INR 100.82 per MT. The concession period and other terms are pre-determined, as indicated in the Draft Concession Agreement, and the Royalty shall constitute the sole criteria for evaluation of Bids. Subject to the provisions of Article 2.17, the Project will be awarded to the Highest Bidder.

4.5.3 The Concessionaire shall pay Royalty on Cargo Handled to the Authority for the period commencing from the 6th (sixth) anniversary of COD till the end of Agreement Period or on termination whichever is earlier.

4.5.4 The Concessionaire shall be offered a progressive discount on royalty payable for riverine cargo upon meeting thresholds of annual Recommended Minimum Riverine Cargo (RMRC) as defined in the Concession Agreement. For every 10% of actual riverine cargo handled over and above the RMRC slab of the respective year, an additional 5% discount up to a maximum of 25% discount cumulatively shall be provided on the royalty payable by the Concessionaire for riverine cargo.

5. FRAUD AND CORRUPT PRACTICES

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

5.2 Without prejudice to the rights of the Authority under Article 5.1 hereinabove, and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.

5.3 For the purposes of this Article 5, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) **“Corrupt practice”** includes (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under Article 2.1.15 of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical advisor of the Authority in relation to any matter concerning the Project;

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

6. PRE-BID CONFERENCE

6.1 A Pre-Bid Conference of the interested parties shall be convened at the designated date, time and place. A maximum of five representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.

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

7. MISCELLANEOUS

7.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Noida (Uttar Pradesh) shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

7.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

- (a) Suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- (b) Consult with any Bidder in order to receive clarification or further information;
- (c) Retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
- (d) Independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

7.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisors, 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 and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

ANNEXURES

Annexure I: Cover Letter for Technical Bid for Proposal

(Refer Article 1.2.1 of the RFP)

To,

Vice Chairman
Inland Waterways Authority of India
A-13, Sector - 1, Noida-
201301, Gautam Buddha
Nagar,
Uttar Pradesh, India

Sub: Bid for proposal for Multimodal Terminal at Varanasi

Dear Sir,

1. With reference to your RFP document No. IWAI-20/7/2023 dated 19 January 2024 , I/we, having examined the Bidding Documents and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Concessionaire for the aforesaid project, and we certify that all information provided in the Bid and in Annexures I to VI is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.

3. This statement is made for the express purpose of our selection as Concessionaire for operate, manage and transfer the aforesaid Project.

4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.

5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:

(a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and

(b) I/ We do not have any conflict of interest in accordance with Articles 2.1.4 and 2.1.5 of the RFP document; and

(c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Article 5.2 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and

(d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 5 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and

(e) I/We hereby certify that all the information furnished by us in the Bid are true and correct. In the event that any information is found to be untrue or misleading then the same shall result in immediate disqualification from the bidding process and other actions as deemed appropriate by the Authority.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Article 2.17 of the RFP document.

9. I/ We believe that we/ our Consortium satisfy(s) the Net Worth criteria and meet(s) the requirements as specified in the RFP document and are/ is qualified to submit a Bid.

10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.

14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Annexure XI thereof.

15. I/ We undertake that in case due to any change in facts or circumstances during

the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.

16. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/ 2013, or shall incorporate as such prior to execution of the Concession Agreement.

17. The Statement of Legal Capacity as per format provided at Annexure VI of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of consortium, as per format provided at Annexure VIII and IX respectively of the RFP, are also enclosed.

18. I/ We hereby confirm that we are in compliance of/ shall comply with the OMT requirements specified in Article 2.2.1.

19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Bidders, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same

21. I/ We have studied all the Bidding Documents carefully and also surveyed the Project site. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.

22. I/ We offer a Bid Security of INR 2 crore (INR Two crore only) to the Authority in accordance with the RFP Document.

23. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.

24. The documents accompanying the Bid, as specified in Article 2.12.2 of the RFP have been submitted in a separate envelope and marked as "Enclosures of the Bid"

25. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.

26. The Royalty has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Draft Concession Agreement, our own estimates of costs and traffic and after a careful assessment of the site and all conditions that may affect the project cost and implementation of the Project.

27. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.

28. {We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement}.⁴

29. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.

30. I/We hereby acknowledge that Bids of only the Qualified Bidders will be evaluated in accordance with the RFP and Applicable Law.

31. I/We hereby acknowledge that we are aware of registration requirements with Department of Promotion of Industry and Internal Trade for procurement of goods and services by the Authority. I/We also acknowledge that we are registered/exempt with respect to such requirements as per Applicable Law.

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

Yours faithfully,

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

Place: Name and seal of the Bidder/ Lead

Member Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.

⁴ Omit if the Bidder is not a Consortium

Annexure II: Particulars of the Bidder

(Refer Article 2.12.2(a) of the RFP)

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

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

3. Details of individuals 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 Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:

5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) A copy of the Joint Bidding Agreement, as envisaged in Article 2.2.3(g) should be attached to the Bid.
 - (c) Information regarding the role of each Member should be provided as per table below:

S No.	Name of Member	Role* {Refer Article 2.2.3(d)} ⁵	Percentage of equity in the Consortium {Refer Articles 2.2.3(a), 2.2.3(c), & 2.2.3(g)}
1.			
2.			
3.			
4.			

* The role of each Member, as may be determined by the Bidder, should be indicated in accordance with notes provided at Annexure III.

6. The following information shall also be provided for each Member of the Consortium

Name of Bidder/ member of Consortium:

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

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

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

Annexure III: Technical Capacity of the Bidder

(Refer to Articles 2.2.1(a), 2.12.2(a) and 3.1 of the RFP)

For construction works of eligible projects

(Refer to Articles 2.2.1(a) (ii), (i) and 3.1 of the RFP)

S N o	Bidder type #	Memb er Code*	Project Code* *	Projec t Name	From year	To year	Experience ^z (Equivalent INR Crore) ^{ss}		Total Experi ence (Equiv alent INR Crore)
							Payments made/ received for constructio n of Eligible Projects	Payments made for developm ent of Eligible Projects	
1	Single entity Bidder		A						
			B						
			C						
			D						
2	Consortium Member 1		1a						
			1b						
			1c						
			1d						
3	Consortium Member 2		2a						
			2b						
			2c						
			2d						
4	Consortium Member 3		3a						
			3b						
			3c						
			3d						

For O&M of eligible projects

(Refer to Articles 2.2.1(a) and 3.1 of the RFP)

For Year**:**

S No.	Bidder type #	Member Code*	Project Code**	Project Name	Experience [‡] (Equivalent INR Crore) ^{§§} Revenues appropriated from O&M of Eligible Projects
1	Single entity Bidder		a		
			b		
			c		
			d		
2	Consortium Member 1		1a		
			1b		
			1c		
			1d		
3	Consortium Member 2		2a		
			2b		
			2c		
			2d		
4	Consortium Member 3		3a		
			3b		
			3c		
			3d		

For volume requirements

(Refer to Articles 2.2.1(a)(iv)(iii) and 3.1 of the RFP)

For Year**:**

S No.	Bidder type #	Member Code*	Project Code**	Project Name	Type of Cargo handled***	Volume of Cargo handled (In MT or TEUs)
1	Single entity Bidder		A			
			B			
			C			
			D			
2	Consortium Member 1		1a			
			1b			
			1c			
			1d			
3	Consortium Member 2		2a			
			2b			
			2c			
			2d			
4	Consortium Member 3		3a			
			3b			
			3c			
			3d			

Note: Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Article 2.2.6 and/ or by a project company eligible under Article 3.1.2. In case the Bid Due Date falls within 6 (six) months of the close of the latest financial year, refer to Article 2.2.9.

A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Article 2.2., shall be provided.

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

*** For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.*

**** Specify cargo type in terms of Bulk, Break bulk, Liquid, General or Container Cargo*

*****Mention the year for which the eligibility of the project is claimed*

¥ In no case shall the cost of land be included for an Eligible Project.

§§ For conversion of US Dollars to Rupees, the rate of conversion shall be INR [80 (INR Eighty)] to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Application Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

Annexure IV: Financial Capacity of the Bidder

(Refer to Articles 2.2.1(b), 2.2.2(d), 2.12.2(a) and 3.1.3 of the RFP)

(In INR crore^{\$\$})

S No.	Bidder type \$	Member Code [£]	Proposed Equity Shareholding in Consortium (%)			Net Worth [€] Year 1 (4)
	(1)	(2)	(3)			
1	Single entity					
2	Consortium Member 1					
3	Consortium Member 2					
4	Consortium Member 3					
5	TOTAL					

Name & address of Bidder's Bankers:

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

[£]For Member Code, see notes at Annexure III.

[€]The Bidder should provide details of its own Financial Capacity or of an Associate specified in Article 2.2.6.

^{\$\$} For conversion of other currencies into INR, see note in Annexure III.

Certificate from the Statutory Auditor

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation
of the authorised signatory)

Date:

Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 7 (seven) years preceding the Bid Due Date. The financial statements shall:
 - (a) Reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
 - (b) Be audited by a statutory auditor;
 - (c) Be complete, including all notes to the financial statements; and
 - (d) Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
3. In case the Bid Due Date falls within 6 (six) months of the close of the latest financial year, refer to Article 2.2.9.
4. In the case of a Consortium, a copy of the Joint Bidding Agreement shall be submitted in accordance with Article 2.2.3(f) of the RFP document.
5. The Bidder shall provide the name and address of the Bankers to the Bidder.
6. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Article 2.2.2(b) of the RFP document.

Annexure V: Certification of Eligible Projects

(Refer to Articles 2.2, 2.12.2(a) and 3.1 of the RFP)

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

Certificate from the Statutory Auditor regarding O&M projects^Φ

Based on its books of accounts and other published information authenticated by it, this is to certify that (*name of the Bidder/Member/Associate*) is/ was an equity shareholder in (title of the project company) and holds/ held Rs. cr. (Rupees crore) of equity (which constitutes%[€] of the total paid up and subscribed equity capital) for (*name of project*) has eligible annual revenues collected and appropriated in terms of Article 3.1.2 of the RFP were INR. cr. from (*date*) to (*date*)

We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which the Bidder/Member/Associate received/paid Rs. cr. (Rupees crore), in terms of Articles 3.1.3 and 3.1.4 of the RFP, duringfinancial years, i.e., any 5 (five) of the past 7 (seven) financial years as per year- wise details noted below:

.....
.....

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation
of the authorised signatory)

Date:

[§] Refer Article 2.2.1 of the RFP.

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

[€] 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.

4. If the Bidder is claiming Technical capacity for Construction based Projects*, it should provide a certificate from its statutory auditor in the format below:

<p>Certificate from the Statutory Auditor/ Client regarding construction works Φ Based on its books of accounts and other published information authenticated by it, this is to certify that (name of the Bidder/Member/Associate) was engaged by (title of the project company) to execute (name of project) for (nature of project). The construction of the project commenced on (date) and the project was/ is likely to be commissioned on (date, if any). It is certified that (name of the Bidder/ Member/ Associate) received/paid INR. cr. (INR crore) by way of payment/receipt for the aforesaid construction works from (date) to (date).</p> <p><i>{It is further certified that the payments receipts indicated above are restricted to the share of the Bidder who undertook these works as a partner or a member of joint venture/ consortium.}♣</i></p> <p>Name of the audit firm: Seal of the audit firm: Date:</p> <p>(Signature, name and designation of the authorised signatory).</p>

♣ Refer Article 2.2.1 of the RFP.

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

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

5. If the Bidder is claiming Technical capacity for development based projects *, it should provide a statutory auditor certificate in the format below:

Certificate from the Statutory Auditor regarding development projects^Φ

Based on its books of accounts and other published information authenticated by it, this is to certify that (*name of the Bidder/Member/Associate*) is/ was an equity shareholder in (*title of the project company*) and holds/ held INR. cr. (INR crore) of equity (which constitutes% of the total paid up and subscribed equity capital) of the project company from (*date*) to (*date*)[‡]. The project was/is likely to be commissioned on (*date of commissioning of the project*).

We further certify that the total estimated capital cost of the project is INR. cr. (INRcrore), of which INR. cr. (INR crore) of capital expenditure was incurred during financial years, i.e., any 5 (five) of the past 7 (seven) financial years as per year-wise details noted below:

.....
.....

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation
of the authorised signatory)

Date:

* Refer Article 2.2.1 of the RFP

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

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

6. In the event that credit is being taken for the Eligible Project of an Associate, as defined in Article 2.2.6, the Bidder should also provide a certificate in the format below:

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

Based on the authenticated record of the company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of (name of the Bidder/ Consortium Member/ Associate) is held, directly or indirectly[£], by (name of Associate/ Bidder/ Consortium Member). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Article 2.2.6 of the RFP.

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

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

Name of the audit firm:

Seal of the audit firm:

Date:

(Signature, name and designation of the authorised signatory)

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

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

7. If the Bidder is claiming Technical capacity for Volume requirements[£], it should provide a statutory auditor certificate in the format below:

Certificate from statutory auditor regarding volume requirements ^Φ	
Based on the authenticated record of the company, this is to certify that (<i>name of the Bidder/ Consortium Member/ Associate</i>) has handled (MT of cargo and/or TEUs) for (<i>name of project</i>) from (<i>date</i>) to (<i>date</i>) as per Article 2.2.1(a) (iii) of this RFP.	
Name of the audit firm:	(Signature, name and designation of the authorised signatory)
Seal of the firm:	
Date:	

[£] Refer Article 2.2.1(a)(iii) of the RFP.

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

8. 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 requirements of the Technical Capacity⁶.

⁶ Refer Article 2.2.1 of the RFP

Annexure VI: Statement of Legal Capacity

*(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)
(Refer to Article 2.12.2 of the RFP)*

Ref. Date:

To,
Vice Chairman
Inland Waterways Authority of India
A-13, Sector – 1
Noida-201301, Uttar Pradesh,
India

Dear Sir,

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

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

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

Thanking you,

Yours faithfully, (Signature, name and designation of the authorised signatory) For and on behalf of.....

**Please strike out whichever is not applicable.*

Annexure VII: Bank Guarantee for Bid Security

(Refer Articles 2.1.7, 2.1.8 and 2.21.1 of the RFP)

B.G. No. Dated:

1. In consideration of you, Inland Waterways Authority of India, having its office at Inland Waterways Authority of India, A-13, Sector - 1, Noida-201301, Uttar Pradesh, India (hereinafter referred to as the "Authority", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of (a company registered under the Companies Act, 1956/ 2013) and having its registered office at (and acting on behalf of its Consortium) (hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for operate, manage and transfer of the Multimodal Terminal located at Varanasi on "Operate, Manage and Transfer" (OMT) basis (hereinafter referred to as "the Project") pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the Draft Concession Agreement (hereinafter collectively referred to as "Bidding Documents"), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of Article 2.1.7 read with Article 2.1.8 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of INR 2 crore (INR Two crore only) (hereinafter referred to as the "Guarantee") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.

2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.

3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding INR..... (INR only).

4. This Guarantee shall be irrevocable and remain in full force for a period of

180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, *inter alia*, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.

6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.

7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.

10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the

time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.

12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to INR. (INR only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [..... (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered byBank

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

(Signature of the Authorised Signatory)

(Official Seal)

Annexure VIII: Power of Attorney for signing of Bid⁷

(Refer Articles 2.1.9 and 2.12.2(b) of the RFP)

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

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

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

For
.....

(Signature, name, designation and address)

Witnesses: 1.
2.

Accepted

Notarised

⁷ To be submitted in original.

..... (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.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

Annexure IX: Power of Attorney for Lead Member of Consortium

(Refer to Articles 2.1.10, 2.2.3 and 2.12.2(d) of the RFP)

Whereas Inland Waterways Authority of India (“the Authority”) has invited Bids from interested parties for the Multimodal Terminal at Varanasi Project (the “Project”).

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

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

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

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

For
(Signature)

..... (Name & Title)

For
(Signature)

..... (Name & Title)

For
(Signature)

..... (Name & Title)

(Executants)

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

Witnesses: 1.
2.

Notes:

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

Annexure X: Joint Bidding Agreement

(Refer to Articles 2.2.3 and 2.12.2(e) of the RFP)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

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

AND

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

AND

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

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

WHEREAS,

(a) The Inland Waterways Authority of India, A-13, Sector – 1, Noida – 201301, Uttar Pradesh, India (hereinafter referred to as the **“Authority”** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids by its Request for Proposal No. IWAI-20/7/2023 dated 19.01.2024 for selection of Bidder for operation and maintenance of Multimodal Terminal Project through operate, manage and transfer

(b) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and

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

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. Consortium

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

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

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act, 1956 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

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

(a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;

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

(c) Party of the Third Part shall be {the Financial Member of the Consortium.}

5. Joint and Several Liability

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

6. Shareholding in the SPV

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

First Party:

Second Party:

{Third Party :}

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till 7th (seventh) anniversary of Commercial Operations Date, be held by the Parties of the First, {Second} Party whose experience and net worth have been reckoned for the purposes of selection of Bidders for the Project in terms of the RFP.

6.3 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

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

(a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

(i) Require any consent or approval not already obtained;

(ii) Violate any Applicable Law presently in effect and having applicability to it;

(iii) Violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;

(iv) Violate any clearance, permit, contract, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

(v) Create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) This Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) There is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

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

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of India.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SECOND PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THIRD PART

(Signature)

(Name)

(Designation)

(Address)

Notes:

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

Annexure XI: Guidelines of the Department of Disinvestment

(Refer to Article 1.2.1 of the RFP)

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

Block 14, CGO Complex
New Delhi
Dated 13 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.
- (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

Annexure XII: Brief Description of Multimodal Terminal at Varanasi

(Refer to Article 1.1.4 of the RFP)

1. River Ganga from Haldia to Allahabad (1620 Km) has been declared as National Waterway Number 1 (NW-1). Currently, IWAI is undertaking development activities for facilitating navigation by dredging and bandalling for fairway development of 2.5 m/ 2.2 m/ 3 m depth and 25 m to 45 m width; maintenance of navigational aids, DGPS (Differential Global Positioning System), terminals etc.

2. The implementation of the Jal Marg Vikas Project (JMVP) for capacity augmentation of navigation from Haldia to Varanasi on NW-1 (1,390 km), at an estimated cost of INR 5,369 crores, was approved by the Union Cabinet on 3 Mar 2018. The duration of the project is six years from 2016-17 to 2021-22. JMVP receives technical and financial assistance from the World Bank.

3. Under JMVP, three Multimodal terminals are being constructed at Varanasi, Sahibganj and Haldia. The details of the Multimodal Terminal at Varanasi are as following:

S No.	Terminal specification (Initial phase)	Unit	Value
Infrastructure			
1	Envisaged terminal capacity (Total)	mmtpa	1.26
2	Berth length	metre	200
3	No. of berths	no.	2 (100 m length each)
Equipment			
4	Mobile harbour crane	no.	2
5	Model of crane	-	LHM-180 (Liebherr)
6	Truck loading hopper	no.	2
7	Road weigh bridge	no.	1
8	Semi-automatic spreader	no.	1
Connectivity and other details			
9	Road connectivity	metre	650 m from National Highway 7
10	Rail connectivity	km	5.5 km from Jeonathpur Railway Station
11	Envisaged total area	hectares	5.586 hectares
12	Inauguration date	-	November 2018

4. The Least Available Depth (LAD) along stretches of NW-1 are as follows:

Section	LAD(m)
Haldia- Barh	3.0
Barh- Ghazipur	2.5
Ghazipur-Varanasi	2.2

Annexure XIII: Instructions for online submission

(Refer to Article 2.12.5 of the RFP)

Instructions to the Bidders for the e-submission of the Bid online through the Central Public Procurement Portal for eProcurement <https://eprocure.gov.in/eprocure/app>

1. Possession of valid Digital Signature Certificate (DSC) and enrolment/registration of the Concessionaires/bidders on the e-procurement/e-tender portal is a prerequisite for e-tendering.
2. Bidders should do the enrolment in the e-Procurement site using the <https://eprocure.gov.in/eprocure/app> option available on the home page. Portal enrolment is generally free of charge. During enrolment/registration, the bidders should provide the correct/true information including valid email id. All the correspondence shall be made directly with the Concessionaires/bidders through email id provided.
3. Bidder need to login to the site through their user ID/ password chosen during enrolment/registration.
4. Then the Digital Signature Certificate (Class II or Class III Certificates with signing key usage) issued by SIFY/TCS/n-Code/e-Mudra or any Certifying Authority recognized by CCA India on e-Token/Smart Card, should be registered.
5. The DSC that is registered only, should be used by the bidder and should ensure safety of the same.
6. Concessionaire/Bidder may go through the tenders published on the site and download the required tender documents/schedules for the tenders he/she is interested.
7. After downloading / getting the tender document/schedules, the Bidder should go through them carefully and then submit the documents as asked.
8. If there are any clarifications, this may be obtained online through the tender site, or thro' the contact details. Bidder should take into account of the corrigendum published before submitting the bids online.
9. Bidder then logs in to the site through the secured log in by giving the user id/ password chosen during enrolment/registration and then by giving the password of the e-Token/Smart Card to access DSC.
10. Bidder selects the tender which he/she is interested in by using the search option & then moves it to the 'my favourites' folder.
11. From the My favourites' folder, he selects the tender to view all the details indicated.
12. It is construed that the bidder has read all the terms and conditions before submitting their offer. Bidder should go through the tender schedules carefully and upload the documents as asked, otherwise, the bid will be rejected.

13. Bidder, in advance, should get ready the bid documents to be submitted as indicated in the tender document/schedule and generally, they can be in PDF/xls/rar/jpg/ formats. If there is more than one document, they can be clubbed together and can be provided in the requested format. Each document to be uploaded through online for the tenders should be less than 2MB. If any document is more than 2MB, it can be reduced through zip/rar and the same can be uploaded, if permitted.
14. If there are any clarifications, this may be obtained through the site, or during the pre- Bid meeting if any. Bidder should take into account the corrigendum published from time to time before submitting the online bids.
15. The Bidders can update well in advance, the documents such as certificates, annual report details etc., under My Space option and these can be selected as per tender requirements and then send along with bid documents during bid submission. This will facilitate the bid submission process faster by reducing upload time of bids.
16. Bidder should submit the Tender Fee/ EMD as specified in the tender. The original payment instruments should be posted/couriered/given in person to the Tender Inviting Authority within the due date as mentioned in this tender document. Scanned copy of the instrument should be uploaded as part of the offer, if asked for.
17. While submitting the bids online, the bidder reads the terms & conditions and accepts the same to proceed further to submit the bid packets.
18. The details of the DD/any other accepted instrument, physically sent, should tally with the details available in the scanned copy and the data entered during bid submission time. Otherwise submitted bid will not be acceptable.
19. The bidder has to digitally sign and upload the required bid documents one by one as indicated. Bidders to note that the very act of using DSC for downloading the bids and uploading their offers shall be deemed to be a confirmation that they have read all sections and pages of the bid document including General conditions of contract without any exception and have understood the entire document and are clear about the requirements of the tender requirements.
20. The bidder has to upload the relevant files required as indicated in the cover content. In case of any irrelevant files, the bid will be rejected.
21. The bidders are requested to submit the bids through online e-tendering system to the Tender Inviting Authority (TIA) well before the bid submission end date & time (as per Server `System Clock). The TIA will not be held responsible for any sort of delay or the difficulties faced during the submission of bids online by the bidders at the eleventh hour.
22. After the bid submission, the acknowledgement number, given by the e-tendering system should be printed by the bidder and kept as a record of evidence for online submission of bid for the particular tender and will also act as an entry pass to participate in the bid opening date.
23. The bidder should ensure/see that the bid documents submitted should be free from virus and if the documents could not be opened, due to virus, during tender opening, the bid is likely/liable to be rejected.

24. The time settings fixed in the server side & displayed at the top of the tender site, will be valid for all actions of requesting, bid submission, bid opening etc., in the e-tender system. The bidders should follow this time during bid submission.

25. All the data being entered by the bidders would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered will not be viewable by unauthorized persons during bid submission & not be viewable by any one until the time of bid opening.

26. Any bid document that is uploaded to the server is subjected to symmetric encryption using a system generated symmetric key. Further this key is subjected to asymmetric encryption using buyers/bid openers public keys. Overall, the uploaded tender documents become readable only after the tender opening by the authorized bid openers.

27. The confidentiality of the bids is maintained since the secured Socket Layer 128 bit encryption technology is used. Data storage encryption of sensitive fields is done.

28. The bidder should logout of the tendering system using the normal logout option available at the top right hand corner and not by selecting the (X) exit option in the browser.

29. For any queries regarding e-tendering process, the bidders are requested to contact through the modes given below:

E-mail: _____

Contact Telephone Numbers: 1800-3070-2232

Fax No.: _____

In person: _____.



Annexure XIV: Guidelines of the Department of Expenditure

(Refer to Article 2.1.12.12.5 of the RFP)

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
23rd July, 2020

Office Memorandum

Subject: Insertion of Rule 144 (xi) in the General Financial Rules (GFRs), 2017

Rule 144 of the General Financial Rules 2017 entitled 'Fundamental principles of public buying, has been amended by inserting sub-rule (xi) as under:

Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India , or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.

(Sanjay Prasad)
Joint Secretary (PPD)
Email ID: js.pfc2.doe@gov.in
Telephone: 011-23093882

To,

- (1) Secretaries of All Ministries/ Departments of Government of India
- (2) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
23rd July, 2020

Order (Public Procurement No. 1)

Subject: Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017

Attention is invited to this office OM no. 6/18/2019-PPD dated 23rd July 2020 inserting Rule **144 (xi)** in GFRs 2017. In this regard, the following is hereby ordered under Rule 144 **(xi)** on the grounds stated therein:

Requirement of registration

1. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in **Appendix I**.
2. This Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or before the date of this order; and (ii) cases falling under **Appendix II**.

Transitional cases

3. Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -
 - a) *In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed:* No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.
 - b) *If the tendering process has crossed the first exclusionary qualificatory stage:* If the qualified bidders include bidders from such countries, the

entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in this Order.

- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph 1, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 8, 9 and 10 read with para 1 of this Order.

Incorporation in tender conditions

4. In tenders to be issued after the date of this order, the provisions of paragraph 1 and of other relevant provisions of this Order shall be incorporated in the tender conditions.

Applicability

5. Apart from Ministries / Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, this Order shall also be applicable
 - a. to all Autonomous Bodies;
 - b. to public sector banks and public sector financial institutions; and
 - c. subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
 - d. to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
 - e. Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

Definitions

6. "Bidder" for the purpose of this Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
7. "Tender" for the purpose of this Order will include other forms of procurement, except where the context requires otherwise.
8. "Bidder from a country which shares a land border with India" for the purpose of this Order means

- a) An entity incorporated, established or registered in such a country; or
- b) A subsidiary of an entity incorporated, established or registered in such a country; or
- c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d) An entity whose *beneficial owner* is situated in such a country; or
- e) An Indian (or other) agent of such an entity; or
- f) A natural person who is a citizen of such a country; or
- g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

9. "Beneficial owner" for the purpose of paragraph 8 above will be as under:

- (i) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.

Explanation-

- a. "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;
- b. "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
- (ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
- (iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals ;
- (iv) Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

(v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

10. "Agent " for the purpose of this Order is a person employed to do any act for another, or to represent another in dealings with third persons.

Sub-contracting in works contracts

11. In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in paragraph 8 above. This shall not apply to sub-contracts already awarded on or before the date of this Order.

Certificate regarding compliance

12. A certificate shall be taken from bidders in the tender documents regarding their compliance with this Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

Validity of registration

13. In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance/placement of order, registration shall not be a relevant consideration during contract execution.

Government E-Marketplace

14. The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with this Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

Model Clauses/ Certificates

15. Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are enclosed as **Appendix III**. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to this Department.

(Sanjay Prasad)

Joint Secretary (PPD)

Email ID: js.pfc.2.doe@gov.in

Telephone: 011-23093882

To

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Secretary DPIIT with a request to initiate action as provided under Annex I
- (4) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

Appendix I: Competent Authority and Procedure for Registration

- A. The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)*.
- B. The Registration Committee shall have the following members*:
- i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- C. DPIIT shall lay down the method of application, format etc. for such bidders as stated in para 1 of this Order.
- D. On receipt of an application seeking registration from a bidder from a country covered by para 1 of this Order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- E. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- F. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- G. Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur*.
- H. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but **also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.**

- I. The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
- J. For national security reasons, the Competent Authority shall not be required to give reasons for rejection / cancellation of registration of a bidder.
- K. In transitional cases falling under para 3 of this Order, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.
- L. Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

[*Note:

- i. In respect of application of this Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of **political and security clearance as per para D shall remain and no registration shall be granted without such clearance.**
- ii. Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.]

Appendix II: Special Cases

- A. Till 31st December 2020, procurement of medical supplies directly related to containment of the Covid-19 pandemic shall be exempt from the provisions of this Order.
- B. *Bona fide* procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by this Order.
- C. *Bona fide* small procurements, made without knowing the country of the bidder, shall not be invalidated by this Order.
- D. In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance , the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in this Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA
- E. This Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

Appendix III

Model Clause /Certificate to be inserted in tenders etc.

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder from a country which shares a land border with India" for the purpose of this Order means: -
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose *beneficial owner* is situated in such a country; or
 - e. An Indian (or other) agent of such an entity; or
 - f. A natural person who is a citizen of such a country; or
 - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The *beneficial owner* for the purpose of (iii) above will be as under:
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation-

 - a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company;

- b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership

An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

V.

[To be inserted in tenders for Works contracts, including Turnkey contracts]

VI.

The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."

Model Certificate for Tenders

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the

Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable evidence of valid registration by the Competent Authority shall be attached.]"

*** ** *

F.No .6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block
New Delhi
23rd July, 2020

Order (Public Procurement No. 2)

Subject: Exclusion from restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017 -regarding.

In Order (Public Procurement No. 1) dated 23rd July 2020, orders have been issued requiring registration of bidders from a country sharing a land border with India in order to be eligible to bid in public procurement.

2. Notwithstanding anything contained therein, it is hereby clarified that the said Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects.

3. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs.

(Sanjay Prasad)
Joint Secretary (PPD)
Email ID: js.pfc2.doe@gov.in
Telephone: 011-23093882

To,

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

F.No.6/18/2019-PPD
Ministry of Finance
Department of Expenditure
Public Procurement Division

161, North Block,
New Delhi
24th July, 2020

Order (Public Procurement No. 3)

Subject: Clarification to Order (Public Procurement No.1) dated 23rd July 2020

Attention is invited to paragraph 3(b) of the Order (Public Procurement No.1), under the heading "Transitional provisions" which reads as follows:

*b) If the tendering process has crossed the first exclusionary qualificatory stage: If the qualified bidders include bidders from such countries, the entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in this Order.*

It is hereby clarified that for the purpose of paragraph 3 (b), "qualified bidders" means only those bidders who would otherwise have been qualified for award of the tender after considering all factors including price, if Order (Public Procurement No. 1) dated 23rd July 2020 had not been issued.

2. If bidders from such countries would not have qualified for award for reasons unconnected with the said Order (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender I start the process de nova.

3. The following examples are given to assist in implementation of the Order.

Example 1: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23rd July. In this case, the tender should be scrapped and fresh tender initiated.

Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be

qualified for award of the tender irrespective of the Order (Public Procurement No.

1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.

Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.

Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.

(Sanjay Prasad)

Joint Secretary (PPD)

Email ID: js.pfc2.doe@gov.in

Telephone: 011-23093882

To,

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform the clarification to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately circulate this clarification among Public Enterprises.
- (3) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

Annexure XV: Bidder Declaration of perusal of all documents/ information shared by Authority

(Refer Article 2.9.3 of the RFP)

To,
Vice Chairman,
Inland Waterways Authority of India
A-13, Sector-1, Noida – 201301,
Uttar Pradesh, India

Date.....

Respected Sir,

Sub: Global Request for Proposal for Operate, Manage and Transfer Project of the Multimodal Terminal at Varanasi, Uttar Pradesh.

Ref: RFP No. IWAI-20/7/2023 dated 19 January 2024

We{name of the bidder(s)} hereby declare and confirm that all documents shared by the Authority for the Operate, Manage and Transfer Project of the Multimodal Terminal at Varanasi, Uttar Pradesh, not limited to the below mentioned documents are received, read and understood by us and we hereby also confirm that we understand the implication/consequences /uses/ facts & figures of the documents shared.:

- a) All the corrigendum from [1 to xx].
- b) Environmental Management Plan
- c) All the Reply to Queries during the entire bidding process
- d) Detail Project Report for Construction of IWT Terminal at Varanasi in Uttar Pradesh dated September 2018.

We hereby also understand that the above-mentioned documents are part of the bid against the subject RFP. The purpose of this deceleration is only to avoid the technical problem (large file related) which we may face during uploading of such large file at Central Public Procurement Portal <https://eprocure.gov.in/eprocure/app>.

Authorized Signatory of Bidders/Lead Member

Annexure XVI: Cover Letter for Financial Bid for Proposal

(Refer Article 2.15.1 of the RFP)

To,

Vice Chairman
Inland Waterways Authority of India
A-13, Sector - 1, Noida-
201301, Gautam Buddha
Nagar,
Uttar Pradesh, India

Sub: Bid for proposal for Multimodal Terminal at Varanasi

Dear Sir,

1. With reference to your RFP document No. IWAI-20/7/2023 dated 19 January 2024 , I/we, having examined the Bidding Documents and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Concessionaire for the aforesaid project, and we certify that all information provided in the Bid and in Annexures I to VI is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.

3. This statement is made for the express purpose of our selection as Concessionaire for operate, manage and transfer of the aforesaid Project.

4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.

5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:

(a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and

(b) I/ We do not have any conflict of interest in accordance with Articles 2.1.4 and 2.1.5 of the RFP document; and

(c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Article 5.2 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and

(d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 5 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and

(e) I/We hereby certify that all the information furnished by us in the Bid are true and correct. In the event that any information is found to be untrue or misleading then the same shall result in immediate disqualification from the bidding process and other actions as deemed appropriate by the Authority.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Article 2.17 of the RFP document.

9. I/ We believe that we/ our Consortium satisfy(s) the Net Worth criteria and meet(s) the requirements as specified in the RFP document and are/ is qualified to submit a Bid.

10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.

14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Annexure XI thereof.

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.

16. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/ 2013, or shall incorporate as such prior to execution of the Concession Agreement.

17. The Statement of Legal Capacity as per format provided at Annexure VI of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of consortium, as per format provided at Annexure VIII and IX respectively of the RFP, are also enclosed.

18. I/ We hereby confirm that we are in compliance of/ shall comply with the OMT requirements specified in Article 2.2.1.

19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Bidders, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same

21. I/ We have studied all the Bidding Documents carefully and also surveyed the Project site. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.

22. I/ We offer a Bid Security of INR 2 crore (INR Two crore only) to the Authority in accordance with the RFP Document.

23. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.

24. The documents accompanying the Bid, as specified in Article 2.12.2 of the RFP have been submitted in a separate envelope and marked as "Enclosures of the Bid"

25. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.

26. The Royalty has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Draft Concession Agreement, our own estimates of costs and traffic and after a careful assessment of the site and all conditions that may affect the project cost and implementation of the Project.

27. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.

28. {We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement}.⁸

29. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.

30. I/ We hereby submit the following Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement: I/ We offer a Royalty of INR(INR.....) in terms of INR per metric ton (“MT”) of Cargo Handled at the Terminal.

31. I/We hereby acknowledge that Bids of only the Qualified Bidders will be evaluated in accordance with the RFP and Applicable Law.

32. I/We hereby acknowledge that we are aware of registration requirements with Department of Promotion of Industry and Internal Trade for procurement of goods and services by the Authority. I/We also acknowledge that we are registered/exempt with respect to such requirements as per Applicable Law.

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

Yours faithfully,

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

Place: Name and seal of the Bidder/ Lead

Member Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.

⁸ Omit if the Bidder is not a Consortium