

Request For Annual Pre-Qualification (RFAQ 2014)

For

**Works To Be Taken up
During 2014-15**

on

**Engineering, Procurement & Construction
(EPC) Mode**

**Ministry of Road Transport & Highways
(MoRT&H)**

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DISCLAIMER

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

This RFAQ is not an agreement and is neither an offer nor invitation by the Authority to the prospective Applicants or any other person. The purpose of this RFAQ is to provide interested parties with information that may be useful to them in the formulation of their application for qualification pursuant to this RFAQ (the “**Application**”). This RFAQ 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 Applicant may require. This RFAQ may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the objectives, financial situation and particular needs of each party who reads or uses this RFAQ. The assumptions, assessments, statements and information contained in this RFAQ may not be complete, accurate, adequate or correct. Each Applicant 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 RFAQ and obtain independent advice from appropriate sources.

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

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

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 RFAQ.

The issue of this RFAQ does not imply that the Authority is bound to select and short-list pre-qualified Applications for Bid Stage or to appoint the selected Bidder or Contractor, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Application 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 Application. All such costs and expenses will remain with the Applicant and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Application, regardless of the conduct or outcome of the Bidding Process.

GLOSSARY

Applicant(s)	As defined in Clause 1.2.1
Application	As defined in the Disclaimer
Application Due Date	As defined in Clause 1.1.5
Authority	As defined in Clause 1.1.1
Bids	As defined in Clause 1.2.3
Bid Price	As defined in Clause 1.2.8
Bid Due Date	As defined in Clause 1.2.3
Bid Security	As defined in Clause 1.2.4
Bidders	As defined in Clause 1.1.1
Bidding Documents	As defined in Clause 1.2.3
Bidding Process	As defined in Clause 1.2.1
Bid Stage	As defined in Clause 1.2.1
Construction Period	As defined in Clause 1.2.8
Contractor	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.2.1(c)
Defect Liability Period	As defined in Clause 1.2.8
Eligible Experience	As defined in Clause 3.2.1
Eligible Projects	As defined in Clause 3.2.1
EPC	Engineering, Procurement and Construction
EPC Contract	As defined in Clause 1.1.2
Estimated Project Cost	As defined in Clause 1.1.4
Experience Score	As defined in Clause 3.2.6
Financial Capacity	As defined in Clause 2.2.2 (B)
Government	Government of *****
Jt. Bidding Agreement	As defined in Clause 2.2.6 (g)
Joint Venture	As defined in Clause 2.2.1(a)
Lead Member	As defined in Clause 2.2.6 (c)
LOA	Letter of Award
Lowest Bidder	As defined in Clause 1.2.8
Member	Member of a Joint Venture
Net Worth	As defined in Clause 2.2.4 (ii)
Project	As defined in Clause 1.1.1
Qualification	As defined in Clause 1.2.1
Qualification Stage	As defined in Clause 1.2.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in Clause 1.2.1
RFAQ	As defined in the Disclaimer
Technical Capacity	As defined in Clause 2.2.2 (A)
Threshold Technical Capacity	As defined in Clause 2.2.2 (A)

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.

Ministry of Road Transport & Highways

Notice Inviting RFAQ

RFAQ - 2014

Dated 25.08.2014

Request for Annual Pre-Qualification (RFAQ) - 2014 for the works to be taken up on EPC mode during 2014-15 (Valid upto 30th November 2015)

The Ministry of Road Transport & Highways (the “**Authority**”) is engaged in the maintenance, improvement & development of National Highways and as part of this Endeavour, the Ministry has decided to undertake works for maintenance / improvement / development / rehabilitation and augmentation of the various section of National Highways to 2-lane / 2-lane with paved shoulders / four lane / Rehabilitation / Reconstruction/ Construction of Structures (the “**Project**”) through an Engineering, Procurement and Construction (the “**EPC**”) Contract, and has decided to carry out the bidding process for selection of a bidder to whom the Project may be awarded.

The Ministry of Road Transport & Highways represented by DG(RD)&SS now invites applications from eligible contractors for RFAQ – 2014.

Applicants who wish to apply in response to this Annual Pre-Qualification (the “**Applicant(s)**”) are invited to submit their Applications for pre-qualifying hereunder. The Eligibility of the applicant will be declared as on 15th September, 2014 with its validity upto 30th November, 2015 or such date as may be decided by the Ministry. The contractors to be qualified hereunder shall be eligible to submit the bid for NH works invited by the Authority directly or through its implementing agencies like NHAI, BRO and State PWDs. The Application may be submitted as single entity or Joint Venture.

The complete RFAQ 2014 document can be viewed / downloaded from official portal of MoRTH <http://www.morth.nic.in> or e-procurement portal of MoRTH & H <https://morth.eproc.in> from **25.08.2014 to 14.09.2014** (upto 17.00 Hrs. IST). Bid must be submitted online only at <https://morth.eproc.in> on or before **15.09.2014** (upto 11:00 hours IST). Applications received online shall be opened on **23.09.2014** (at 11:00 hours IST).

To participate in the bidding, it is mandatory for the Applicants to get registered their firm / Joint Venture with e-procurement portal of MoRTH & H, <https://morth.eproc.in> and to have user ID & password which has to be obtained by submitting an annual registration charges of INR 2247/- (Inclusive of all taxes) to M/s C1 India Pvt. Ltd. through e-payment gateway using Credit Card / Debit Card (Master Card and Visa Card only) or net banking. Validity of online registration is 1 year.

Applications through any other mode shall not be entertained. However, RFQ document fee, Power of Attorney and joint bidding agreement shall be submitted physically by the Applicant on or before **22.09.2014** (up to 17:00 hours IST), Please note that the Ministry reserves the right to accept or reject all or any of the applications without assigning any reason whatsoever.

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Ministry of Road Transport & Highways

SECTION -1

INTRODUCTION

1.1 Background

- 1.1.1 The Ministry of Road Transport & Highways (the “**Authority**”) is engaged in the maintenance, improvement & development of National Highways and as part of this Endeavour, the Ministry has decided to undertake works for maintenance / improvement / development / rehabilitation and augmentation of the various section of National Highways to 2-lane / 2-lane with paved shoulders / four lane / Rehabilitation / Reconstruction/ Construction of Structures (the “**Project**”) through an Engineering, Procurement and Construction (the “**EPC**”) Contract, and has decided to carry out the bidding process for selection of a bidder to whom the Project may be awarded.
- (a) For this purpose, the Ministry has decided to stream-line and ease the process of pre-qualification of Applicants for participating in the Bid Process of individual projects by qualifying the Applicants with respect to their eligibility limit under Annual Prequalification process of RFAQ. The contractors to be qualified hereunder shall be eligible to submit the bid for NH works invited by the Authority directly or through its implementing agencies like National Highways Authority of India (NHAI)/Border Road Organisation (BRO)/State Public Works Department (PWD).
 - (b) Applicants who wish to apply in response to this Annual Pre-Qualification (the “**Applicant(s)**”) are invited to submit their Applications for pre-qualification hereunder. The Eligibility of the applicant will be declared as on 15th September, 2014 with its validity upto 30th November, 2015 or such date as may be decided by the Ministry. The Application may be submitted as single entity or Joint Venture. The successful applicants, who have declared qualified for their respective eligibility limit in the list published on 10.03.2014 in response to their application for RFAQ 2013 (Part-I II & III) shall no longer be valid beyond 30.11.2014.
 - (c) This Annual Pre-Qualification is aimed at evaluating the limit for Technical and Financial Capacity of Applicants as indicated by themselves and deciding their eligibility of qualification for a specific Estimated Project Cost.
 - (d) The Applicants pre-qualified at this RFAQ stage need not submit detailed Application for project specific Qualification Stage. While applying the Applicant is required to indicate the Eligibility limit for Estimated Project Cost for which he wishes to get pre-qualified. At the end of RFAQ process, the Ministry intends to announce a list of pre-qualified Applicants for (“**Pre-qualified RFAQ Applicants**”) in term of Eligible limit (Rs. in crores) so that that applicant can participate at RFP stage for those specific project whose Estimated Project Cost is well within their assessed eligibility limit.

- 1.1.2 The selected Bidder (the “**Contractor**”) shall be responsible for designing, engineering, procurement and construction of the Project under and in accordance with the provisions of an engineering, procurement and construction contract (the “**EPC Contract**”) to be entered into between the Contractor and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto. The Contractor shall also be responsible for the maintenance of the project during the Defect Liability Period, which is expected to be as per clause 1.1.3.
- 1.1.3 The scope of work will broadly include rehabilitation, upgradation and augmentation of the existing carriageway to [two-lane] standards with construction of new pavement, rehabilitation of existing pavement, construction and/or rehabilitation of major and minor bridges, culverts, road intersections, interchanges, drains, etc and maintenance of the Project during the Defect Liability Period, which is expected to be 4 (years) years.
- 1.1.4 Indicative capital cost of the Project (the “**Estimated Project Cost**”) will be revised and specified in the Bidding Documents of the Project. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.5 The Authority shall receive Applications pursuant to this RFQ in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the “**Application Due Date**”).

1.2 Brief description of Bidding Process

- 1.2.1 This Annual Prequalification (RFAQ-2014) is intended to determine eligibility limit of applicants (single entity / joint venture) to enable them to participate in bidding process for National Highway (NH) works on EPC mode of contracts. Pursuant to this RFAQ – 2014, Authority (MoRTH or its implementing agency like National Highways Authority of India (NHAI)/Border Road Organisation (BRO)/State Public Works Department (PWD), may either adopt two-stage bidding process (RFQ and RFP collectively referred to as the “**Bidding Process**”) or single stage two part system/process (Evaluation for Qualification part and RFP collectively referred to as the “**Bidding Process**”) for selection of the bidder to award of the Project under EPC mode of contract. In either case, a prospective applicant who has been qualified under this RFAQ – 2014 will have to submit the eligibility limit determined by MoRTH herein under along with other documents stated in the said RFP/Bidding document. Prior to making an Application, the Applicant shall pay to the Ministry a sum of Rs. 10,000 (Rupees Ten thousand) as the cost of the RFAQ process.

Government of India has issued guidelines (see Appendix-V) 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 an Applicant in accordance with the aforesaid guidelines at any stage of the Bidding Process. Applicants must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.

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

- 1.2.3 In the Bid Stage, the Bidders will be called upon to submit their financial offers (the "**Bids**") in accordance with the RFP and other documents to be provided by the Authority (collectively the "**Bidding Documents**"). The Bidding Documents for the Project will be provided to every Bidder on payment of {Rs. 50,000 (Rs. fifty thousand only)}^{\$}. The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of bids (the "**Bid Due Date**").
- 1.2.4 In terms of the RFP, a Bidder at the RFP stage will be required to deposit, along with its Bid, a bid security equivalent to 1% (one per cent) of the Estimated Project Cost (the "**Bid Security**"), refundable no later than 150 (One hundred and fifty) 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 EPC Contract. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority and in such event, the validity period of the demand draft or bank guarantee, as the case may be, 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 Generally, the Lowest Bidder shall be the selected Bidder. In case such Lowest Bidder withdraws or is not selected for whatsoever reason, the Authority shall annul the Bidding Process and invite fresh bids.
- 1.2.6 During the Bid Stage, Bidders are invited to examine the Project in detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the EPC Contract including implementation of the Project.
- 1.2.7 As part of the Bidding Documents, the Authority will provide a draft EPC Contract and feasibility report prepared by the Authority/ its consultants and other information pertaining/ relevant to the Project available with it.
- 1.2.8 Bids will be invited for the Project on the basis of the lowest cost required by a Bidder for implementing the Project (the "**Bid Price**"). The total time allowed for completion of construction under the EPC Contract (the "**Construction Period**") and the period during which the Contractor shall be liable for rectification of any defect or deficiency in the Project after completion of the Construction Period (the "**Defect Liability Period**") shall be pre-determined, and will be indicated in the draft EPC Contract forming part of the Bidding Documents. The Bid Price shall constitute the sole criteria for evaluation of Bids. The Project shall be awarded to the Bidder quoting the lowest Bid Price.
In this RFQ, the term "**Lowest Bidder**" shall mean the Bidder who is offering the lowest Bid Price.
- 1.2.9 Upon the completion of construction, the Authority may levy and charge user fee from users of the Project, in accordance with the National Highways Fee (Determination of Rates and Collection) Rules, 2008.
- 1.2.10 Further and other details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.

- 1.2.11 Any queries or request for additional information concerning this RFAQ shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.13.3. The envelopes / communications shall clearly bear the following identification/ title:
"Queries/ Request for Additional Information: RFAQ - 2014".

1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

1.	Start of downloading of RFAQ document	25.08.2014
2.	Last date of receiving queries	03.09.2014
3.	Pre-Application Conference at conference room (Ground floor) Transport Bhawan New Delhi at 15:00 Hrs IST	04.09.2014
4.	Ministry response to queries latest by	09.09.2014
5.	Last date of Downloading the application (upto 17:00 Hrs IST)	14.09.2014
5.	Application due date for online submission (upto 11:00 Hrs IST)	15.09.2014
6.	Physical submission of DDs/ PoA etc. (upto 15:00 Hrs IST)	22.09.2014
7.	Date of opening (11:00 Hrs IST)	23.09.2014
8.	Declaration of eligibility limit of pre-qualified Applicants	15.11.2014

SECTION-2
INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Application

- 2.1.1 The Authority wishes to receive Applications for Qualification in order to pre-qualify experienced and capable Applicants for the Bid Stage.
- 2.1.2 Pre-qualified Applicants may be subsequently invited to submit the Bids for the Project.

2.2 Eligibility of Applicants

- 2.2.1 For determining the eligibility of Applicants for their pre-qualification hereunder, the following shall apply:
- (a) The Applicant for pre-qualification may be a single entity or a group of entities (the “**Joint Venture**”), coming together to implement the Project. Applicants are free to submit applications as a single entity or in Joint Venture with any other entity(s) in this RFAQ 2014. A Joint Venture can comprise of maximum 3 members. An entity may apply and get qualified at this RFAQ 2014 as a member of JV with different combination of other entities. However, no entity applying individually or as a member of a Joint Venture, as the case may be, can be member of another Applicant at the stage of RFP or otherwise all such applications will be liable to rejected. The term Applicant used herein would apply to both a single entity and a Joint Venture.
 - (b) An Applicant may be may be a natural person, private entity or any combination of them with a formal intent to enter into a Joint Venture agreement or under an existing agreement to form a Joint Venture. A Joint Venture shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.
 - (c) An Applicant shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified. An Applicant shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - (i) the Applicant, its Member or any constituent thereof and any other Applicant, its Member 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 an Applicant, its Member thereof (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member, as the case may be), in the other Applicant, its Member is less than 5 per cent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in

the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Applicant is also a constituent of another Applicant; or
 - (iii) such Applicant receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant, its Member thereof; or
 - (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - (v) such Applicant has a relationship with another Applicant, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Application of either or each other; or
 - (vi) such Applicant has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- (d) An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Applicant, or any of its Members, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Applicant, its Member in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFQ. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Explanation: In case an Applicant is a Joint Venture, then the term Applicant as used in this Clause 2.2.1, shall include each Member of such Joint Venture.

- (e) Other eligibility conditions shall include:
The available Bid capacity under this clause will be assessed at the time of RFP stage. It is not applicable for this RFAQ process. The related documents for assessment of updated available Bid capacity under this clause may be provided at the RFP stage.

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

(A) Technical Capacity

- (i) For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall, over the past 5 (five) financial years preceding the Application Due Date, have received payments for construction of Eligible Project(s), or has undertaken construction works by itself in a PPP project, such that the sum total thereof is more than [Rs. 500 crore (Rs. Five hundred crore)] (the “**Threshold Technical Capacity**”).¹

¹ This amount should be equivalent to two & half times of estimated cost of project for which bids are being invited.

(ii) Provided that at least one similar work of 50% of Estimated Project Cost [Rs. 100 crore (Rs. One hundred crore)] shall have been completed from the Eligible Projects in Category 1 and/or Category 3 specified in Clause 3.2.1. For this purpose, a project shall be considered to be completed, if more than 90% of the value of work has been completed and such completed value of work is equal to or more than 50% of the estimated project cost.

(B) **Financial Capacity:** The Applicant shall have a minimum Net Worth² (the “**Financial Capacity**”) of [Rs. 20 crore (Rs. Twenty crore)]³ at the close of the preceding financial year.

2.2.3 In case of a Joint Venture:

- (i) The Threshold Technical Capacity and Financial Capacity of all the Members of Joint Venture would be taken into account for satisfying the above conditions of eligibility. Further, Lead Member shall meet at least 60% requirement of Technical and Financial Capacity required as per Clause 2.2.2 (A) (i) and 2.2.2 (B) and each of other JV members shall meet at least 30% requirement of Technical and Financial capacity as per Clause 2.2.2 (A) (i) and 2.2.2 (B). For avoidance of doubt it is further clarified that the Joint Venture must collectively and individually satisfy the above qualification criteria.
- (ii) For requirement of 2.2.2 (A) (ii), one similar work of 50% of Estimated Project Cost should have been completed from the Eligible Projects in Category 1 and/or Category 3 specified in Clause 3.2.1 individually by any of the JV members as a single work.

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

- (i) Certificate(s) from its statutory auditors[§] or the concerned client(s) stating the payments received or in case of a PPP project, the construction carried out by itself, during the past 5 years, in respect of the Eligible Projects. In case a particular job/ contract has been jointly executed by the Applicant (as part of a Joint Venture), it should further support its claim for the payments received or construction carried out by itself in PPP Projects as applicable the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
- (ii) certificate(s) from its statutory auditors specifying the net worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFQ, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders.

² Net worth has been adopted as the criterion for assessing financial capacity since it is a comprehensive indication of the financial strength of the Applicant.

³ This amount should be 10% (Ten percent) of the Estimated Cost of the Project for which bids are being invited.

[§] In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ.

- 2.2.5 The Applicant should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Application to commit the Applicant. In the case of a Joint Venture, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.
- 2.2.6 In case the Applicant is a Joint Venture, it shall comply with the following additional requirements:
- (a) Number of members in a Joint Venture shall not exceed 3 (three);
 - (b) subject to the provisions of clause (a) above, the Application should contain the information required for each Member of the Joint Venture;
 - (c) Members of the Joint Venture shall nominate one member as the lead member (the “**Lead Member**”). Lead Member shall meet at least 60% requirement of Technical and Financial Capacity required as per Clause 2.2.2 (A) & (B). The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other Members of the Joint Venture;
 - (d) the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and defect liability obligations;
 - (e) an individual Applicant cannot at the same time be member of a Joint Venture applying for pre-qualification. Further, a member of a particular Applicant Joint Venture cannot be member of any other Applicant Joint Venture applying for pre-qualification;
 - (f) the Lead Member shall itself undertake and perform at least 30 (thirty) per cent of the total length of the Project Highway.
 - (g) members of the Joint Venture shall have entered into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Jt. Bidding Agreement**”), for the purpose of making the Application and submitting a Bid in the event of being pre-qualified. The Jt. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:
 - (i) convey the commitment(s) of the Lead Member in accordance with this RFQ, in case the contract to undertake the Project is awarded to the Joint Venture;
 - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (iii) commit the approximate share of work to be undertaken by each member;
 - (iv) include a statement to the effect that all members of the Joint Venture shall be liable jointly and severally for all obligations of the Contractor in relation to the Project until the completion of the Project (the “Defects Liability Period”) is achieved in accordance with the EPC Contract; and
 - (h) except as provided under this RFQ and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement.
- 2.2.7 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the date of Application, would not be eligible to submit an Application, either individually or as member of a Joint Venture.

- 2.2.8 An Applicant including any Member 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 Applicant or Member, 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 Applicant or Member.
- 2.2.8.1 The Applicant including any Member may provide details of all their on-going projects alongwith stage of litigation, if so, against the Authority / Governments.
- 2.2.8.2 The Applicant including any member may also provide details of on-going process of blacklisting if so, under any contract with Authority / Government.
- 2.2.8.3 The Authority reserves the right to reject an otherwise eligible bidder on the basis of the information provided under clause 2.2.8. The decision of the Authority in this case shall be final.
- 2.2.9 The Technical Capacity and Net Worth of the Applicant/ Members in case of Joint Venture shall be computed under Clauses 2.2.2, 2.2.4 and 3.2.
- 2.2.10 The following conditions shall be adhered to while submitting an Application:
- (a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
 - (b) information supplied by an Applicant (or other constituent Member if the Applicant is a Joint Venture) must apply to the Applicant, Member named in the Application. Invitation to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification;
 - (c) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and
 - (d) in case the Applicant is a Joint Venture, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.
- 2.2.11 While Qualification is open to persons from any country, the following provisions shall apply:
- (a) Where, on the date of the Application, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in an Applicant or its Member is held by persons resident outside India or where an Applicant or its Member is controlled by persons resident outside India; or
 - (b) if at any subsequent stage after the date of the Application, there is an acquisition of not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Applicant or its Member;

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

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

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

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

2.3 Change in composition of the Joint Venture

- 2.3.1 Change in the composition of a Joint Venture will not be permitted by the Authority during the Qualification Stage.
- 2.3.2 Where the Bidder is a Joint Venture, change in the composition of a Joint Venture may be permitted by the Authority during the Bid Stage, only where:
- (a) the application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date;
 - (b) the Lead Member continues to be the Lead Member of the Joint Venture;
 - (c) the substitute is at least equal, in terms of Technical Capacity, to the Member who is sought to be substituted and the modified Joint Venture shall continue to meet the pre-qualification criteria for Applicants; and
 - (d) the new Member(s) expressly adopt(s) the Application already made on behalf of the Joint Venture as if it were a party to it originally, and is not an Applicant of any other Joint Venture bidding for this Project.
- 2.3.3 Approval for change in the composition of a Joint Venture shall be at the sole discretion of the Authority and must be approved by the Authority in writing.
- 2.3.4 The modified/ reconstituted Joint Venture shall submit a revised Jt. Bidding Agreement before the Bid Due Date.

2.3.5 Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, an Applicant may, within 10 (ten) days after the Application Due Date, remove from its Joint Venture any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

2.3.6 The modified / reconstituted joint venture shall submit a Power of Attorney, substantially in the form at Appendix-IV, prior to the Bid Due Date.

2.4 Number of Applications and costs thereof

2.4.1 No Applicant shall submit more than one Application for the Project at RFP / Bidding stage. However, Applicants are free to submit applications as a single entity or in Joint Venture with any other entity(s) in this RFAQ 2014. A Joint Venture can comprise of maximum 3 members. An entity may apply and get qualified at this RFAQ 2014 as a member of JV with different combination of other entities. However, no entity applying individually or as a member of a Joint Venture, as the case may be, can be member of another Applicant at the stage of RFP or otherwise all such applications will be liable to rejected. The term Applicant used herein would apply to both a single entity and a Joint Venture.

2.4.2 The Applicants shall be responsible for all of the costs associated with the preparation of their Applications 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

Applicants are encouraged to submit their respective Applications 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.

2.6 Acknowledgement by Applicant

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

- (a) made a complete and careful examination of the RFAQ;
- (b) received all relevant information requested from the Ministry;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFAQ or furnished by or on behalf of the Ministry relating to any of the matters referred to in Clause 2.5 above; and
- (d) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.6.2 The Ministry 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 RFAQ or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

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

2.7.1 Notwithstanding anything contained in this RFAQ, the Authority reserves the right to accept or reject any Application and to annul the Bidding Process and reject all Applications/ Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore. In the

event that the Ministry rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

- 2.7.2 The Authority reserves the right to reject any Application and/ or Bid if:
- (a) at any time, a material misrepresentation is made or uncovered, or
 - (b) the Applicant does not provide, within the time specified by the Ministry, the supplemental information sought by the Ministry for evaluation of the Application.

If the Applicant/Bidder is a Joint Venture, then the entire Joint Venture may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Lowest Bidder gets disqualified/ rejected, then the Authority reserves the right to annul the Bidding Process and invite fresh bids.

- 2.7.3 In case it is found during the evaluation or at any time before signing of the EPC Contract or after its execution and during the period of subsistence thereof, including the Defect Liability Period, that one or more of the pre-qualification conditions have not been met by the Applicant, or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Contractor either by issue of the LOA or entering into the EPC Contract, and if the Applicant has already been issued the LOA or has entered into the EPC Contract, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ, be liable to be terminated, by a communication in writing by the Authority to the Applicant, without the Authority being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Authority may have under this RFQ, the Bidding Documents, the EPC Contract or under applicable law.
- 2.7.4 The Ministry reserves the right to verify all statements, information and documents submitted by the Applicant in response to the RFAQ. Any such verification or lack of such verification by the Authority shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority there under.

B. DOCUMENTS

2.8 Contents of the RFQ

This RFQ comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

Invitation for Qualification

- Section 1. Introduction
- Section 2. Instructions to Applicants
- Section 3. Criteria for Evaluation
- Section 4. Fraud & Corrupt Practices
- Section 5. Pre Application Conference
- Section 6. Miscellaneous

Appendices

- I. Letter comprising the Application
- II. Power of Attorney for signing of Application
- III. Power of Attorney for Lead Member of Joint Venture
- IV. Joint Bidding Agreement for Joint Venture
- V. Guidelines of the Department of Disinvestment

2.9 Clarifications

- 2.9.1 Applicants requiring any clarification on the RFAQ may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.11. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 7 (seven) days prior to the Application Due Date. The responses will be sent by fax and/or e-mail. The Authority will forward all the queries and its responses thereto, to all purchasers of the RFAQ without identifying the source of queries.
- 2.9.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Applicants. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.9.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicants. All clarifications and interpretations issued by the Authority shall be deemed to be part of the RFAQ. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.10 Amendment of RFAQ

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

^{\$} While extending the Application 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. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Application Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

C. PREPARATION AND SUBMISSION OF APPLICATION

2.11 Language

The Application 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 Applicant with the Application 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 Applicant. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Application, the English language translation shall prevail.

2.12 Format and signing of Application

2.12.1 The Application shall be submitted online only. RFQ document fee in the form of demand draft, Power of Attorney (POA) and Joint Bidding Agreement for Joint Venture, Power of Attorney for lead member of Joint Venture, etc shall be furnished in hard copies as physical submission.

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

2.13 Documents comprising Pre – qualification application

2.13.1 The Applicant shall submit the Proposal online through e-procurement portal [<https://morth.eproc.in>] comprising of the following documents along with supporting documents as appropriate:

- (a) Appendix-I (Letter comprising the Application for Pre-Qualification) including Annexure I to V and supporting certificates / documents;
- (b) Power of Attorney for signing the Application as per the format at Appendix-II;
- (c) if applicable, Power of Attorney for Lead Member of Joint Venture as per the format at Appendix-III;
- (d) if applicable, Joint Bidding Agreement for Joint Venture as per the format at Appendix-IV
- (e) Copy of Memorandum and Articles of Association
- (f) Copies of Applicant's duly audited balance sheet and profit and loss statement for preceding 5 years
- (g) Copy of DD for Rs. 10,000/- in favour of "Pay & Accounts Officer, Ministry of Road Transport and Highway New Delhi" payable at New Delhi towards cost of RFAQ document
- (h) Checklist and Self Assessment Eligibility Excel Sheets (SAEES).

2.13.2 The Applicant shall submit the following documents physically:

- (a) Original Power of Attorney for signing the Application as per format at Appendix-II;
- (b) if applicable, Original Power of Attorney for Lead Member of Joint Venture as per the format at Appendix-III;
- (c) if applicable, Original Joint Bidding Agreement for Joint Venture as per the format at Appendix-IV
- (d) Original DD for Rs. 10,000/- in favour of "Pay & Accounts Officer, Ministry of Road Transport and Highway New Delhi" payable at New Delhi towards cost of RFQ document.

Above documents shall be submitted in an envelope which shall clearly bear the following identification: "Application for RFAQ-2014" and shall clearly indicate the

name and address of the Applicant. In addition, the Application Due Date should be indicated on the right hand corner of the envelope.

2.13.3 Envelope containing hard copies shall be addressed to:

ATTN. OF:	Vivek Jaiswal
DESIGNATION:	Superintending Engineer (EAP)-I
ADDRESS:	Ministry of Road Transport & Highways, Externally Aided Project zone, Ground floor, Jeevan Tara Building, 5, Parliament street, New Delhi-110001
PHONE NO.:	011-23748315
FAX NO.:	011-23748315
E-MAIL ADDRESS:	vivek.rth@nic.in

2.13.4 If the envelope are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Application and consequent losses, if any, suffered by the Applicant.

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

2.14 Application Due Date

2.14.1 Applications should be submitted online through e-tendering portal <https://morth.eproc.in> and hard copies as stated in Clause 2.13.2 at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFQ before stipulated time on the Application Due Date. A receipt thereof should be obtained from the person specified in Clause 2.13.3.

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

2.15 Late Applications

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

2.16 Procedure for e-tendering

2.16.1 Accessing/ Purchasing of RFAQ documents

2.16.1.1 It is mandatory for all the Applicants to have class-III Digital Signature Certificate (DSC) (in the name of Authorized Signatory / Firm or Organisation / Owner of the Firm or Organisation) from any of the licensed Certifying Agency (Applicants can see the list of licensed CAs from the link www.cca.gov.in) to participate in e-tendering of MoRT&H.

2.16.1.2 To participate in the bidding, it is mandatory for the Applicants to get registered their firm / Joint Venture with e-procurement portal of MoRT&H, <https://morth.eproc.in> to have user ID & password which has to be obtained by submitting an annual registration charges of INR 2247/- (Inclusive of all taxes) to M/s C1 India Pvt. Ltd. through e-payment gateway using Credit Card / Debit Card (Master Card and Visa Card only) or net banking. Validity of online registration is 1 year.

Following may kindly be noted:

(a) Registration with e-procurement portal of MoRTH should be valid at least up to the date of submission of Application.

(b) Applications can be submitted only during the validity of registration.

2.16.1.3 If the firm / Joint Venture is already registered with e-tendering service provider of MoRTH, and validity of registration is not expired the firm / Joint Venture is not required a fresh registration.

2.16.1.4 The complete RFAQ document can be viewed / downloaded by the Applicant from e-procurement portal of MoRTH ie <https://morth.eproc.in> or official portal of MoRTH ie <http://www.morth.nic.in> from **25.08.2014 to 14.09.2014 (upto 17.00 Hrs. IST)**.

2.16.1.5 To participate in e-bidding, Applicants have to pay Rs 405/- (Rupees four hundred and five only) towards non-refundable to M/s C1 India Pvt. Ltd. through e-payment gateway using Credit Card / Debit Card (Master Card and Visa Card only) or net banking.

2.16.2 Preparation & Submission of Application

2.16.2.1 The Application may be submitted online following the instruction appearing on the screen. A buyer manual containing the detailed guidelines for e-procurement is also available on e-procurement portal of MoRTH.

2.16.2.2 The documents listed at clause 2.13.1 shall be prepared and scanned in different files [in PDF or JPEG format such that file size is not more than 10 MB] and uploaded during the on-line submission of application. Applicants are requested to follow the instruction as mentioned in the SAEES excel sheets. All sheets are mandatory to upload. The applicants are advised to fill the data in the sheets pertaining to them and other sheets shall be uploaded blank.

2.16.2.3 Application must be submitted online only through e-procurement portal of MoRTH ie. <https://morth.eproc.in> using the digital signature of Authorisd Representative of the Applicant on or before 15.09.2014 (upto 11:00 hours IST).

2.16.3 Modifications/ Substitution/ withdrawal of Application

2.16.3.1 An Applicant may modify, substitute or withdraw its e- application after submission prior to the Application Due Date. No Application can be modified, substituted or withdrawn by the Applicant on or after the Application Due Date & Time.

2.16.3.2 For modification of e-application, an Applicant has to detach its old Application from e-procurement portal and upload / resubmit digitally signed modified Application. For withdrawal of Application, Applicant has to click on withdrawal icon at e-procurement portal and can withdraw its e-application. Before withdrawal of an Application, it may specifically be noted that after withdrawal of an Application for any reason, Applicant cannot re-submit e-application again.

2.16.4 Online Opening of Applications

2.16.4.1 Opening of Applications will be done through online process.

2.16.4.2 The Ministry shall on-line open RFAQ Applications on 23.09.2014 at 11.00 hours IST, in the presence of the Authorized Representatives of the Applicants who choose to attend. RFAQ Applications of only those Applicants shall be opened online whose documents listed at clause 2.13.2 of the RFAQ have been physically received. The MoRTH will subsequently examine and evaluate the Applications in accordance with the provisions of Section 3 of RFAQ.

D. EVALUATION PROCESS

2.17 Opening and Evaluation of Applications

- 2.17.1 The Authority shall open the Applications at specified time on the Application Due Date, at the place specified in Clause 2.13.3 and in the presence of the Applicants who choose to attend.
- 2.17.2 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.
- 2.17.3 The Authority will subsequently examine and evaluate Applications in accordance with the provisions set out in Section 3.
- 2.17.4 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the Authority. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.17.5 Any information contained in the Application shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Project is subsequently awarded to it on the basis of such information.
- 2.17.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s) without assigning any reasons.
- 2.17.7 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant project from computation of the Eligible Score of the Applicant.
- 2.17.8 In the event that an Applicant claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from computation of the Eligible Score, and may also, while computing the aggregate Experience Score of the Applicant, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material representation, the Authority reserves the right to reject the Application and/ or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

2.18 Confidentiality

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

2.19 Tests of responsiveness

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

- (a) it is received as per format at Appendix-I.
- (b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.14.2;
- (c) it is signed, and submitted as stipulated in Clauses 2.12 and 2.13;
- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Joint Venture, the Power of Attorney as specified in Clause 2.2.6 (c);
- (e) it contains all the information and documents (complete in all respects) as requested in this RFAQ;
- (f) it contains information in formats same as those specified in this RFAQ;
- (g) it contains certificates from its statutory auditors^{\$} in the formats specified at Appendix-I of the RFaQ for each Eligible Project;
- (h) it contains the payment of [Rs. 20,000 (Rupees twenty thousand only)] to Authority towards the cost of the RFQ document;
- (i) it is accompanied by the Jt. Bidding Agreement (for Joint Venture), specific to the Project, as stipulated in Clause 2.2.6(g);
- (j) it does not contain any condition or qualification; and
- (k) it is not non-responsive in terms hereof.

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

2.20 Clarifications

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

2.20.2 If an Applicant does not provide clarifications sought under Clause 2.20.1 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Authority may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Authority.

^{\$} In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.19.1 (g). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ.

E. QUALIFICATION AND BIDDING

2.21 Pre-qualification and notification

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

2.22 Submission of Bids

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

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

2.23 Proprietary data

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

2.24 Correspondence with the Applicant

Save and except as provided in this RFQ, the Authority shall not entertain any correspondence with any Applicant in relation to the acceptance or rejection of any Application.

Section-3

CRITERIA FOR EVALUATION

3.1 Evaluation parameters

Only those Applicants who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Section 3. Applications of firms/ Joint Venture who do not meet these criteria shall be rejected. Applicant can assess their eligibility through an evaluation tool Self Assessment Eligibility Excel Sheets (SAEES). For this purpose Annexure VI of Appendix I may be referred.

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

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

3.2 Technical Capacity for purposes of evaluation

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

- Category 1: Project experience on Eligible Projects in highways sector that qualify under Clause 3.2.3
- Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 3.2.3
- Category 3: Construction experience on Eligible Projects in highways sector that qualify under Clause 3.2.4
- Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 3.2.4

For the purpose of this RFQ:

- (i) highways sector would be deemed to include highways, expressways, bridges, tunnels and airfields; and
- (ii) core sector would be deemed to include ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation, water supply, sewerage and real estate development.^{\$}

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

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

- (a) It should have been 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;

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

- (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 10% of the amount specified as the Estimated Project Cost; and
 - (d) the entity claiming experience shall, during the last 5 (five) financial years preceding the Application Due Date, have itself undertaken the construction of the project for an amount equal to at least one half of the Project Cost of eligible projects, excluding any part of the project for which any contractor, sub-contractor or other agent was appointed for the purposes of construction.
- 3.2.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Applicant should have received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Application Due Date, and only the amounts (gross) actually received, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, receipts of less than [Rs. 20 crore (Rs. Twenty crore)]⁴ shall not be reckoned as receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract / EPC contract for the project. Further, the cost of land shall not be included hereunder.
- 3.2.5 The Applicant shall quote experience in respect of a particular Eligible Project under any one category only, even though the Applicant (either individually or along with a member of the Joint Venture) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.
- 3.2.6 For the purpose of assigning scores to the Applicant, its experience shall be measured and stated in terms of a score (the "**Experience Score**"). The Experience Score for an Eligible Project in a given category would be the eligible receipts specified in Clause 2.2.2 (A), divided by one crore and then multiplied by the applicable factor in Table 3.2.6 below. In case the Applicant has experience across different categories, the score for each category would be computed as above and then aggregated to arrive at its Experience Score.

Table 3.2.6: Factors for Experience across categories

	Factor
Category 1	1
Category 2	0.50
Category 3	1
Category 4	0.50

- 3.2.7 The Experience Score determined in accordance with Clause 3.2.6 in respect of an Eligible Project situated in a developed country which is a member of OECD shall be further multiplied by a factor of 0.5 (zero point five) and the product thereof shall be the Experience Score for such Eligible Project.
- 3.2.8 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Joint Venture. In other words, no double counting by a Joint Venture in respect of the same experience shall be permitted in any manner whatsoever.

⁴ This amount should not be less than 10% of the Estimated Project Cost.

3.3 Details of Experience

- 3.3.1 The Applicant should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Application Due Date.
- 3.3.2 The Applicants must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.
- 3.3.3 The Applicant should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.

3.4 Financial information for purposes of evaluation

- 3.4.1 The Application must be accompanied by the Audited Annual Reports of the Applicant (of each Member in case of a Joint Venture) for the last 5 (five) financial years, preceding the year in which the Application is made.
- 3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 3.4.3 The Applicant must establish the minimum Net Worth specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of Appendix-I.

3.5 Pre-qualification of Applicants

- 3.5.1 The credentials of eligible Applicants shall be measured in terms of their Technical experience/capacity. The sum total of the Technical experience/capacity for all Eligible Projects shall be the 'Aggregate Technical experience/capacity' of a particular Applicant. In case of a Joint Venture, the Aggregate Technical experience/capacity of the Lead Member including other members shall be the Aggregate Technical experience/capacity of the Joint Venture. All Applicants who fulfill the conditions of eligibility specified in Clause 2.2.2 and meet the other conditions specified in this RFQ shall be pre-qualified.
- 3.5.2 The Applicants meeting the pre-qualification criteria shall be eligible for participation in the Bid Stage.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant 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.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove, if an Applicant 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, such Applicant shall not be eligible to participate in any tender or RFQ issued by the Authority during a period of 2 (two) years from the date such Applicant 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.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the EPC Contract 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 sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the EPC Contract, as the case may be, any person in respect of any matter relating to the Project or the LOA or the EPC Contract, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;
 - (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;
 - (c) **“coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
 - (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
 - (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-APPLICATION CONFERENCE

- 5.1 A Pre-Application conference of the interested parties shall be convened at the designated date, time and place. A maximum of two representatives of each prospective Applicant shall be allowed to participate on production of authority letter from the Applicant.
- 5.2 During the course of Pre-Application conference, the Applicants 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.

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at [Delhi] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Applicant in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Applicant; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, 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.

APPENDIX I

Letter Comprising the Application for Annual Pre-Qualification (RFAQ-2014)

(Refer Clause 2.13.2)

Dated:

To,

The Chief Engineer (EAP)
Ministry of Road Transport & Highways
Ground Floor, JeevanTara building
5, Parliament Street
New Delhi - 110001

Sub: Application for Annual Pre-qualification (RFAQ-2014) for the works to be taken up on the EPC mode with Eligibility as on 15th September, 2014 and its validity upto 30th November, 2014.

Dear Sir,

With reference to your RFAQ-2014 document dated 25.08.2014 we, having examined the RFAQ document and understood its contents, hereby submit our Application for Annual Pre-Qualification for the eligible project. The Application is unconditional and unqualified.

2. We acknowledge that the Authority will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Applicants for the aforesaid project, and we certify that all information provided in the Application and in Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the rehabilitation, up-gradation and augmentation of the aforesaid Project and maintenance of the Project during the Defect Liability Period.
4. We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
5. We acknowledge the right of the Authority to reject our Application 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. We certify that in the last three years, we/ any of the Joint Venture Members 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. We declare that:
 - (a) We have examined and have no reservations to the RFAQ document, including any Addendum issued by the Authority.
 - (b) We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFAQ document; and

- (c) We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFAQ 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) We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFAQ document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the RFAQ document.
 9. We believe that we/ our Joint Venture/ proposed Joint Venture satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFAQ document and are qualified to submit a Bid.
 10. We declare that we/ any Member of the Joint Venture are not a Member of a/ any other Joint Venture applying for pre-qualification.
 11. We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Joint Venture 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. We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Joint Venture have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
 13. We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Joint Venture or against our CEO or any of our directors/ managers/ employees.
 14. We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines form part of the RFQ at Appendix-V thereof.

15. We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFAQ, we shall intimate the Authority of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFAQ document, and duly signed, is enclosed. The power of attorney for signing of application and the power of attorney for Lead Member of Joint Venture, as per format provided at Appendix II and III respectively of the RFQ, are also enclosed.
17. Deleted
18. 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 Applicants, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
19. We agree and undertake to abide by all the terms and conditions of the RFAQ document.
20. We certify that in terms of the RFAQ, our Networth is Rs. (INR in words) and Technical Experience / capacity is (INR in words).
- {21. We agree and undertake to be jointly and severally liable for all the obligations of the Contractor under the EPC Contract.}\$

In witness thereof, we submit this application under and in accordance with the terms of the RFQ document.

Yours faithfully,

Date:	(Signature, name and designation of the Authorised Signatory)
Place:	Name and seal of the Applicant/ Lead Member

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

\$ Omit if the Applicant is not a Joint Venture.

ANNEX-I

Details of Applicant

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Applicant:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:
5. In case of a Joint Venture:
 - (a) The information above (1-4) should be provided for all the Members of the Joint Venture.
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Application.
 - (c) Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role* {Refer Clause 2.2.6(d)} ^{\$}	Share of work in the Project{Refer Clauses 2.2.6(a), & (f) & (h)}
1.			
2.			
3.			

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

^{\$} All provisions contained in curly parenthesis shall be suitably modified by the Applicant to reflect the particulars relating to such Applicant.

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

Name of Applicant/ member of Joint Venture:

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

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

ANNEX-II

Technical Capacity of the Applicant @

(Refer to Clauses 2.2.2(A), 2.3, 3.2 and 3.3 of the RFAQ)

Applicant type	Project Code*	Category ^{\$}	Experience ^{**} (Equivalent Rs. crore) ^{\$\$}		Technical Experience / Capacity [£]
			Payments received for construction of Eligible Projects in Categories 3 & 4	Value of self-construction in Eligible Projects in Categories 1 and 2	
(1)	(2)	(3)	(4)	(5)	(6)
Single entity Applicant or Lead Member including other members of the Joint Venture	a				
	b				
	c				
	d				
	e				
	f				
Aggregate Technical Experience / capacity =					

@ Provide details of only those projects that have been undertaken by the Applicant, or its Lead member including members in case of joint venture, under its own name separately and/ or by a project company eligible under Clause 3.2.3(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.2.3(c) and for Categories 3 and 4, include only those projects where the payments received exceed the amount specified in Clause 3.2.4. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

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

^{\$} Refer Clause 3.2.1.

^{**} Construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of maintenance and repair, operation of Highways and land be included while computing the Experience Score of an Eligible Project.

^{\$\$} For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 50 (fifty) 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.

[£] In the case of an Eligible Project situated in an OECD country, the Experience capacity so arrived at shall be further multiplied by 0.5, in accordance with the provisions of Clause 3.2.7, and the product thereof shall be the Experience Score for such Eligible Projects.

NOTE:

In case of a Joint Venture, information in Annex-II and Annex-IV of Appendix-I shall be provided separately for other Members so as to establish that each such Member has 30 percent or more of the Threshold Technical Capacity. Such information may be provided as Annex-IIA, Annex-IIB, Annex-IVA and Annex-IVB respectively. (Refer Clause 2.2.3).

ANNEX-III

Financial Capacity of the Applicant

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

(In Rs. crore^{\$})

Applicant type	Net Cash Accruals					Net Worth [£]
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
Single entity Applicant or Lead Member including other members of the Joint Venture						
TOTAL						

Name & address of Applicant's Bankers:

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

[£]The Applicant should provide details of its own Financial Capacity.

Instructions:

- The Applicant shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Application Due Date. The financial statements shall:
 - reflect the financial situation of the Applicant;
 - be audited by a statutory auditor;
 - be complete, including all notes to the financial statements; and
 - correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
- Net Cash Accruals shall mean Profit After Tax + Depreciation.
- 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).
- Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.
- In the case of a Joint Venture, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFQ document.
- The applicant shall also provide the name and address of the Bankers to the Applicant.
- The Applicant shall provide an Auditor's Certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.4 (ii) of the RFQ document.

ANNEX-IV

Details of Eligible Projects

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

Project Code:

Entity: Self/Members:

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

Instructions:

- Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.2.3 and 3.24 of the RFP, as the case may be. Information provided in this section is intended to serve as a back up for information provided in the Application. Applicants should also refer to the Instructions below.
- The Project Codes would be a, b, c, d etc.
- A separate sheet should be filled for each Eligible Project.
- In case the Eligible Project relates to other Members, write "Member".
- Refer to Clause 3.2.1 of the RFP for category number.
- The total payments received and/or revenues appropriated for self construction for each Eligible Project are to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Application Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.2.12). For Categories 1 and 2, expenditure on construction of the project by the Applicant itself should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.2.3(c). In case of Categories 3 and 4, payments received only in respect of construction should be provided, but only if the amount received exceeds the minimum specified in Clause 3.2.4. Receipts for construction works should only include capital expenditure, and should not include expenditure on maintenance & repair and operation of Highways.
- In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to concession, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
- Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.2.3 and 3.2.4

9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
10. For Categories 1 and 2, the equity shareholding of the Applicant, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.2.3).
11. Experience for any activity relating to an Eligible Project shall not be claimed twice. In other words, no double counting in respect of the same experience shall be permitted in any manner whatsoever.
12. Certificate from the Applicant'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 Applicant may provide the requisite certification.
13. If the Applicant is claiming experience under Categories 1 & 2[£], it should provide a certificate from its statutory auditor in the format below:

Certificate from the Statutory Auditor regarding PPP projects^Φ

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

We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which the applicant has itself undertaken the construction of project of Rs.(Rupees Crores) excluding any part of the project for which any contractor, sub-contractor or other agent was appointed for the purpose of construction as per Clause 3.2.3(d) by the aforesaid Applicant itself, during the past five financial years as per year-wise details noted below:

.....
.....

Name of the audit firm:

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

Date: of the authorised signatory)

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

[£] Refer Clause 3.2.1 of the RFQ.

^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.

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

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

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

Certificate from the Statutory Auditor/ Client regarding construction works^Φ

Based on its books of accounts and other published information authenticated by it, {this is to certify that (*name of the Applicant*) 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 Applicant received payments from its Clients for Construction Works executed by them, in the aforesaid construction works.

We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which the Applicant received Rs. cr. (Rupees crore), in terms of Clauses 3.2.1 and 3.2.4 of the RFQ, during the past five financial years as per year-wise details noted below:

.....
.....

It is further certified that the receipts indicated above are restricted to the share of the Applicant who undertook these works as a partner or a member of joint venture/consortium.[▲]

We further certify that applicant has a share of ____% in the Joint Venture/Consortium.

Name of the audit firm:

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

Date: _____ authorised signatory).

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

* Refer Clauses 3.2.1 and 3.2.4 of the RFQ.

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.

▲ This certification should be strike out in case of jobs/ contracts, which are executed a sole firm. The payments indicated in the certificate should be restricted to the share of Applicant in such partnership/ joint venture. This portion may be omitted if the contract did not involve a partnership/ joint venture. In case where work is not executed by partnership/ joint venture, this paragraph may be deleted.

Θ Refer Clause 3.2.6 of the RFQ.

ANNEX-V

Statement of Legal Capacity

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

Ref. Date:

To,

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

**Please strike out whichever is not applicable.*

ANNEX-VI

Self Assessment Eligibility Excel Sheet (SAEES)

The applicant shall upload its application along with **Checklist** and **Self Assessment Eligibility Excel Sheets (SAEES)**.

- The SAEES is an evaluation tool. Applicants are requested to follow the instruction as mentioned in the excel sheets for Single applicant/ Joint Venture (Lead and one Member) / Joint Venture (lead and two Members).
- All the sheets are mandatory to upload. The applicants are advised to fill the data in the sheets pertaining to them and other sheets shall be uploaded blank. Scenarios for ready reference are as follows:
 - a) Single applicant shall fill the data in Single applicant sheet. After filling the data the bidder must upload the sheet. The other two sheets i.e Joint Venture (Lead and one Member) and Joint Venture (lead and two Members) shall be uploaded blank.
 - b) Lead and one Member as Joint venture, shall fill and upload the Joint Venture (Lead and one Member) excel sheet. Other two excel sheets Single applicant and Joint Venture (lead and two Members) shall be uploaded blank.
 - c) Lead and two Members as Joint venture, shall fill and upload the Joint Venture (Lead and two Members) excel sheet. Other two excel sheets Single applicant and Joint Venture (lead and one Member) shall be uploaded blank

Appendix II Format for Power of Attorney for signing of Application

(Refer Clause 2.2.5)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Joint Venture and holding the position of, as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the ***** Project proposed or being developed by the ***** (the “Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications 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 EPC Contract 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 EPC Contract with the Authority.

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

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

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

Witnesses:

1.

2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

(Notarised)
Person identified by me/ personally appeared before me/
Attested/ Authenticated*
(*Notary to specify as applicable)
(Signature Name and Address of the Notary)

Seal of the Notary
Registration No. of the Notary
Date:.....

Notes:

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

APPENDIX III

Format for Power of Attorney for Lead Member of Joint Venture

(Refer Clause 2.2.5)

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

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

Whereas, it is necessary for the Members of the Joint Venture to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Joint Venture, all acts, deeds and things as may be necessary in connection with the Joint Venture’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 Joint Venture, as the Lead Member and true and lawful attorney of the Joint Venture (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Joint Venture and any one of us during the bidding process and, in the event the Joint Venture is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Joint Venture, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Joint Venture and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Joint Venture and generally to represent the Joint Venture in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Joint Venture’s bid for the Project and/ or upon award thereof till the EPC Contract 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/ Joint Venture.

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

For (Signature) (Name & Title)	For (Signature) (Name & Title)	For (Signature) (Name & Title)
---	---	---

(Executants)

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

Witnesses:

- 1.
- 2.

Notes:

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

APPENDIX IV
Format for Joint Bidding Agreement for Joint Venture

(Refer Clause 2.13.2)
(To be executed on Stamp paper of appropriate value)

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

AMONGST

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

AND

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

AND

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

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

WHEREAS,

- (A) [THE NATIONAL HIGHWAYS AUTHORITY OF INDIA, established under the National Highways Authority of India Act 1988, represented by its Chairman and having its principal offices at G-5 & 6, Sector 10, Dwarka, New Delhi-110075] (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 applications (the “**Applications**”) by its Request for Qualification No. dated (the “**RFQ**”) for pre-qualification of bidders for rehabilitation and augmentation of ***** Project (the “**Project**”) through an EPC Contract.
- (B) The Parties are interested in jointly bidding for the Project as members of a Joint Venture and in accordance with the terms and conditions of the RFQ document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFQ document that the members of the Joint Venture shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

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 RFQ.

2. Joint Venture

- 2.1 The Parties do hereby irrevocably constitute a Joint Venture (the “**Joint Venture**”) 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 Joint Venture and not individually and/ or through any other Joint Venture constituted for this Project, either directly or indirectly.

3. Covenants

The Parties hereby undertake that in the event the Joint Venture is declared the selected Bidder and awarded the Project, it shall enter into an EPC Contract with the Authority for performing all its obligations as the Contractor in terms of the EPC Contract 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 Joint Venture and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Joint Venture during the Bidding Process and until the Appointed Date under the EPC Contract;
- (b) Party of the Second Part shall be {the Member of the Joint Venture; and}
- {(c) Party of the Third Part shall be the Member of the Joint Venture.}

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 RFQ, RFP and the EPC Contract, till such time as the completion of the Project is achieved under and in accordance with the EPC Contract.

6. Share of work in the Project

The Parties agree that the proportion of construction in the EPC Contract to be allocated among the members shall be as follows:

First Party:

Second Party:

{Third Party:}

Further, the Lead Member shall itself undertake and perform at least 30 (thirty) per cent of the total length of the project highway if the Contract is allocated to the Joint Venture.

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 Joint Venture Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the 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 Project completion (the “Defects Liability Period”) is achieved under and in accordance with the EPC Contract, in case the Project is awarded to the Joint Venture. However, in case the Joint Venture is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the 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

THIRD PART

(Signature)

(Name)

(Designation)

(Address)

(Signature)

(Name)

(Designation)

(Address)

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.....

2.....

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Joint Venture 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.

Guidelines of the Department of Disinvestment

(Refer Clause 1.2.1)

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

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

OFFICE MEMORANDUM

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

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

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

⁵ These guidelines may be modified or substituted by the Government from time to time.

- (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