

**Request For Proposal For Substitution**  
Of  
**Strengthening, Widening, Maintaining & Operating**  
of  
**FOUR LANING OF SIDHI-SINGRAULI (NH-75-E)**  
ON  
BOT BASIS



**May 2019**



**Large Corporate Branch**  
Maker Tower E-Wing, Ground Floor,  
Cuffe Parade, Mumbai-400 005



## GLOSSARY

<b>Associate</b>	As defined in Clause 2.2.9
<b>Authority</b>	As defined in Clause 1.1.1
<b>Bank Guarantee</b>	As defined in Clause 1.2.4
<b>Bids</b>	As defined in Clause 1.2.3
<b>Bidders</b>	As defined in Clause 1.1.1
<b>Bidding Documents</b>	As defined in Clause 1.2.3
<b>Bid Due Date</b>	As defined in Clause 1.1.5
<b>Bidding Process</b>	As defined in Clause 1.2.1
<b>Bid Security</b>	As defined in Clause 1.2.4
<b>Concession</b>	As defined in Clause 1.1.4
<b>Concessionaire</b>	As defined in Clause 1.1.2
<b>Concession Agreement</b>	As defined in Clause 1.1.2
<b>Conflict of Interest</b>	As defined in Clause 2.2.1(c)
<b>Consortium</b>	As defined in Clause 2.2.1(a)
<b>Government</b>	Government of India
<b>Lender's Representative</b>	As defined in Clause 1.1.1
<b>LOA</b>	As defined in Clause 3.7.4
<b>Nominated Company</b>	As defined in Clause 1.1.2
<b>Project</b>	As defined in Clause 1.1.1
<b>Re. or Rs. or INR</b>	Indian Rupee
<b>RFP or Request for Proposals</b>	As defined in Clause 1.2.1
<b>Selected Bidder</b>	As defined in Clause 3.7.1

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



## DISCLAIMER

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

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

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

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

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



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

The issue of this RFP does not imply that the Lender's Representative is bound to select a Bidder or to appoint the selected Bidder or Nominated Company, as the case may be, for the Project and the Lender's Representative reserves the right to reject all or any of the Bidders or Bids without assigning any reasons whatsoever.

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



## 1. INTRODUCTION

### 1.1 Background

1.1.1 The Punjab National Bank (the “Lender’s Representative”) is one of the India’s leading financial institutions and has part financed the **Sidhi-Singrauli (NH-75-E)** Road Project (the “**Project**”) to Four Lane standards, through Public-Private Partnership (the “**PPP**”) on Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis awarded to Sidhi Singrauli Road Project Limited (the “**Concessionaire**”). The Senior Lenders, in exercise of their rights under the Substitution Agreement executed among the Authority, Concessionaire & Lenders’ Representative has decided to carry out the bidding process for selection of a private entity to substitute the Concessionaire.

The Punjab National Bank on behalf of the Senior Lenders, has mandated Resurgent India Limited to manage the substitution process.

**Brief particulars of the Project are as follows:**

S. No.	Particulars	Description
1.	Project Name	Strengthening, Widening, Maintaining & Operating of four Laning of SIDHI-SINGRAULI (NH-75-E) on BOT Basis
2.	Project Cost as per RFQ issued by Authority	Rs. 871.15 crore
3.	Project Cost envisaged at Financial Closure	Rs. 1094.16 crore
4.	Length of Project	102.60 Km
5.	Authority	M.P Road Development Corporation Ltd. (MPRDC)
6.	Concession Period	30 Years
7.	Original Construction period	730 Days
8.	Appointed Date	19.09.2013
9.	Original SCOD	19.09.2015, COD extended upto 30.06.2019 by Senior Lenders
10.	Physical Progress	78.21% as per Lender’s Engineer Report
11.	Equity Support due from MPRDC	Rs. 76.45 Crore
12.	Outstanding Principal component of the Debt (Senior Lenders) as on 31.05.2019	Rs. 542.91Crore
13.	Outstanding interest component of the Debt (Senior Lenders) as on 31.05.2019	Rs. 20.59 Crore



- 1.1.2 The Selected Bidder, who is either a company incorporated under the Companies Act, 1956/2013 or undertakes to incorporate as such prior to substitution of Concessionaire by the Authority, (the “**Nominated Company**”) shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of a long - term concession agreement entered into between the Concessionaire and the Authority on 14<sup>th</sup> May 2012 (the “Concession Agreement”), as provided by the Lender’s Representative as part of the Bidding Documents pursuant thereto.
- 1.1.3 The scope of work will broadly include completion of the balance works related to the construction of the Project Highway on the Site set forth in the Concession Agreement and its Schedules and the operation and maintenance thereof.
- 1.1.4 The Concession Agreement and its Schedules sets forth the detailed terms and conditions for transfer of the concession to the Nominated Company, including the scope of the Nominated Company’s services and obligation (the “**Concession**”).
- 1.1.5 The Lender’s Representative shall receive Bids pursuant to and in accordance with the terms set forth in this RFP to be provided by the Lender’s Representative pursuant to this RFP (collectively the “Bidding Documents”), and all Bids shall be prepared and submitted in accordance with such terms on or before the bid due date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).

## **1.2 Brief description of bidding Process**

- 1.2.1 The Lender’s Representative has adopted a single stage two-envelope process (collectively referred to as the “**Bidding Process**”) for selection of the bidder for transfer of the Concession. Under this process, the Bid shall be invited under two envelopes.. Along with the Bid, the Bidder shall submit a Demand Draft of INR 40000 (Rupees forty thousand only) in favour of Punjab National Bank payable at LCB Mumbai branch (insert the name of Account) to the Lender’s Representative as the cost of the RFP process which shall be non- refundable. Eligibility and qualification of the Bidder will be first examined based on the details submitted under first envelope (“Technical Bid”) with respect to eligibility and qualifications criteria prescribed in this RFP. (the “Bidder” which expression shall, unless repugnant to the context, include the members of the Consortium). The Financial Bid under the second envelope shall be opened of only those Bidders whose Technical Bids are responsive to eligibility and qualifications requirements as per this RFP.

Government of India has issued guidelines (see Appendix-VI) of RFP) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this



Bidding Process. The Lender's Representative shall be entitled to disqualify any Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidder must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-1A.

- 1.2.2 Interested bidders (the "Bidders") are being called upon to submit their bid in accordance with the terms specified in this Bidding Document. The Bid shall be valid for a period of not less than 180 days from the date specified in Clause 1.3 for submission of bids (the "**Bid Due Date**").
- 1.2.3 The complete Bidding Documents including the Concession Agreement for the Project is enclosed for the Bidders. The aforesaid documents and any addenda issued subsequent to this RFP Document and uploaded on the websites of Punjab National Bank, will be deemed to form part of the Bidding Documents.
- 1.2.4 A Bidder will be required to deposit, along with its Bid, a bid security of INR 3.50 crores (Rupees three crore and fifty lakh only) (the "**Bid Security**"), refundable no later than 90 (ninety) days from the Bid Due Date. The Bidders will have an option to provide Bid Security in the form of a demand draft in favour of Punjab National Bank payable at LCB Mumbai branch or a bank guarantee acceptable to the Lender's Representative as per format at Appendix 2 and the validity period of the bank guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, with a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Lender's Representative 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 During the Bid Stage, Bidders are advised to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the concession.
- 1.2.6 Other details of the process to be followed under this Bidding Process and the terms thereof are spelt out in this RFP.
- 1.2.7 Any queries or request for additional information concerning this RFP shall be submitted by e-mail to the officer designated in Clause 2.13.3 below with identification/title.

**"Queries/ Request for Additional Information: RFP for Substitution of Concessionaire in the Project of Four Laning of Sidhi-Singrauli (NH-75-E) Road Project".**

### **1.3 Schedule of Bidding Process**

The Lender's Representative shall endeavour to adhere to the following schedule:



S. No	Event Description	Date
1.	Invitation of RFP	31.05.2019
2.	Bid Due Date	07.06.2019 upto 1500 hours IST
3.	Opening of technical bids at venue provided in clause 2.13.3	07.06.2019 at 1600 hours on Bid Due Date
4.	Declaration of eligible bidders	To be intimated later
5.	Opening of Financial Bids	To be intimated later
6.	Letter of Award (LOA)	To be intimated later
7.	Validity of Bid	180 days from Bid Due Date
8.	Substitution of Concessionaire with the Nominated Company	Within 15 days of LOA subject to approval of MPRDC

The project related documents such as Plan & Profile, Drawings, Feasibility, etc. shall be provided to interested bidders upon request in writing @ [akhilesh.raina@resurgentindia.com](mailto:akhilesh.raina@resurgentindia.com).



## 2. INSTRUCTIONS TO BIDDERS

### A. GENERAL

#### 2.1 Scope of Bid

- 2.1.1 The Lenders' Representative wishes to receive Bids for Qualification in order to qualify experienced and capable Bidders for the opening their financial bids.
- 2.1.2 Financial Bids of the Qualified Bidders shall be subsequently opened and evaluated for the Substitution of Concessionaire.

#### 2.2 Eligibility of Bidders

- 2.2.1 For determining the eligibility of Bidder, the following shall apply:
- (a) The Bidder may be a single entity or a group of entities (the "**Consortium**"), coming together to implement the Project. The term Bidder used herein would apply to both a single entity and a Consortium.
  - (b) Bidder may be a natural person, private entity, or any combination of them with a formal intent to enter into a Joint Bidding Agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.
  - (c) Bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Lenders' Representative shall be entitled to forfeit and appropriate 5% of the value of Bid Security, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Lenders' Representative and not by way of penalty for, inter alia, the time, cost and effort of the Lenders' Representative, including consideration of such Bidder's proposal (the "Damages"), without prejudice to any other right or remedy that may be available to the Lenders' Representative under the Bidding Documents. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
    - (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent hereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 25% (twenty five per cent) of the paid up and subscribed capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate is not more than 25% (twenty five 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



1956/2013;or. 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 Bidder is also a constituent of another Bidder; or
  - (iii) such Bidder, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
  - (iv) such Bidder or its constituent is an Associate of the Concessionaire and / or of the shareholders of the Concessionaire. Such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
  - (v) such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others’ information about, or to influence the Bid of either or each other; or
  - (vi) such Bidder, or any Associate thereof has participated as a consultant to the Lenders’ Representative in the preparation of any documents, related to the Project.
- (d) A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Lender’s Representative or the Authority in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project during the Bidding Process or subsequent to the (i) issue of LOA or (ii) substitution of Concessionaire. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. 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.
- (e) The Bidder or the promoters / directors of the Bidder should neither have been classified as defaulter by any Banks / Financial Institutions nor any legal proceedings be pending against them by any statutory bodies. Further, the Bidder’s name should not be there in the defaulter list of RBI/ CIBIL/ ECGC.



*Explanation:* In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1, shall include each Member of such Consortium.

2.2.2 To be eligible for this RFP, a Bidder shall fulfil the following conditions of eligibility:

- (A) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall, over the past 5 (five) financial years preceding the Bid Due Date, have:
- (i) paid for, or received payments for, construction of Eligible Project(s); and/ or
  - (ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1; and/ or
  - (iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1, such that the sum total of the above as further adjusted in accordance with clause 3.2.6 is more than **Rs. 871.00 crores (Rupees eight hundred seventy one crores)** (the “**Threshold Technical Capability**”).

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

- (B) **Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) of **218.00 crores (Rupees two hundred eighteen crores)** at the close of the preceding financial year.

In case of a Consortium, the combined technical capability and net worth of the Members should satisfy the above conditions of eligibility; provided that each such Member shall comply with all equity lock in requirements set forth in the Concession Agreement.

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

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

- (i) Certificate(s) from its statutory auditors or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 years in respect of the projects specified in paragraph 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the



share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and

- (ii) certificate(s) from its statutory auditors specifying the net worth of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the aggregated value of paid up share capital and all reserves created out of the profits, and securities premium account after deducting aggregate value of the accumulated losses, deferred expenditure and , miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.

2.2.5 The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorising the signatory of the Bid to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-IV.

2.2.6 Where the Bidder is a single entity, it shall substitute the Concessionaire as per the provisions of Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to substituting the Concessionaire, comply with the following additional requirements:

- (a) Number of members in a consortium shall not exceed 6 (six), but information sought in the Bid may be restricted to 4 (four) members in the order of their equity contribution;
- (b) subject to the provisions of clause (a) above, the Bid should contain the information required for each member of the Consortium;
- (c) members of the Consortium shall nominate one member as the lead member (the “Lead Member”), who shall acquire share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the Concessionaire. 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 Consortium;
- (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) an individual Bidder cannot at the same time be member of a Consortium applying for qualification. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for qualification;



- (f) the members of a Consortium shall substitute the Concessionaire to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-V (the "Jt. Bidding Agreement"), for the purpose of making the Bid and submitting a Bid in the event of being qualified. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, inter alia:
  - (i) convey the intent to substitute the Concessionaire and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
  - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
  - (iii) commit the minimum equity stake to be held by each member;
  - (iv) commit that each of the members, whose experience will be evaluated for the purposes of this RFQ, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the Concessionaire and shall further commit that each such member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;
  - (v) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the Concessionaire at all times until the second anniversary of the commercial operation date of the Project; and

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 (BOT or otherwise), and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as member of a Consortium.

2.2.8 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Bidder, Consortium Member or Associate. Lenders' Representative would place sole reliance on the certification provided by the Bidder in this regard in its letter comprising the Technical Bid.



2.2.9 In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

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

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

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

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms.;
- (c) in responding to the RFP submissions, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (d) in case the Bidder is a Consortium, each Member should substantially satisfy the RFP requirements to the extent specified herein.

2.2.11 While Qualification is open to persons from any country, the following provisions shall apply:

- (a) Where, on the date of the Bid, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in an Bidder or its Member is held by persons resident outside India or where an Bidder or its Member is controlled by persons resident outside India; or



- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of 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 Bidder or its Member;

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

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

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

- 2.2.12 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest financial year of an Bidder, it shall ignore such financial year for the purposes of its Bid 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 the Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

### **2.3 Deleted**

### **2.4 Number of Bids and costs thereof**

- 2.4.1 No Bidder shall submit more than one Bid for the Project. A bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.

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

### **2.5 Site visit and verification of information**



Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water 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. Bidders are advised to visit the site and familiarise themselves with the Project within the stipulated time of submission of the Bid. No extension of time is likely to be considered for submission of Bids.

## **2.6 Acknowledgement by Bidder**

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

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Lenders' Representative;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Lenders' Representative relating to any of the matters referred to in Clause 2.5 above; and
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Lenders' Representative, or a ground for termination of the Concession Agreement by the Nominated Company;
- (f) acknowledged that it does not have a Conflict of Interest;
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

## **2.7 Right to accept or reject any or all Bids**



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

2.7.2 The Lender's Representative reserves the right to reject any and/or Bid if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by the Lender's Representative, the supplemental information sought by the Lender's Representative for evaluation of the Bid.

If the Bidder is a Consortium, then the entire Consortium may be disqualified/rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Selected Bidder gets disqualified/ rejected, then the Lender's Representative reserves the right to:

- (i) invite the remaining Bidders to match the Selected Bidder/ submit their Bids in accordance with the RFP; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Lender's Representative, including annulment of the Bidding Process.

2.7.3 In case it is found during the evaluation or at any time before transfer of the Concession or after the transfer and during the period of subsistence thereof, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith by a communication in writing by the Lender's Representative to the Bidder, without the Lender's Representative being liable in any manner whatsoever to the Bidder and without prejudice to any other right or remedy which the Lender's Representative may have under this RFP, the Bidding Documents, the Concession Agreement or under applicable law.

2.7.4 The Lender's Representative reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by the Lender's Representative shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Lender's Representative thereunder.

## **B. DOCUMENTS**



## 2.8 Contents of the RFP

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

### Invitation for BIDs

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

### Appendices

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

## 2.9 Clarifications

- 2.9.1 Bidders requiring any clarification on the RFP may notify the Lenders' Representative in writing by e-mail in accordance with Clause 1.2.7. They should send in their queries before the Bid Due Date mentioned in the schedule of Bidding Process specified in Clause 1.3. The Lenders' Representative will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.
- 2.9.2 The Lenders' Representative shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Lenders' Representative reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Lender's Representative to respond to any question or to provide any clarification.
- 2.9.3 The Lender's Representative may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Lender's Representative shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Lender's Representative



or its employees or representatives shall not in any way or manner be binding on the Lender's Representative.

## **2.10 Amendment of RFP**

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

2.10.2 Any Addendum thus issued will be sent in writing to all Bidders.

2.10.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Lender's Representative may, in its sole discretion, extend the Bid Due Date.

## **C. PREPARATION AND SUBMISSION OF BIDS**

### **2.11 Language**

The Bid and all related correspondence and documents in relation to the Bidding Documents shall be in English language..

### **2.12 Format and signing of Bids**

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

2.12.2 The Bidder shall prepare the Financial Bid in the format specified at Appendix-IB. The Bidder shall prepare 1 (one) original set of the Technical Bid and clearly marked "ORIGINAL". In addition, the Bidder shall submit 1 (one) copy of the Technical Bid, marked "COPY". The Bidder shall also provide 1 (one) soft copy of the technical Bid on Compact Disc (CD)/pen drive. In the event of any discrepancy between the original and the copy, the original shall prevail.

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

### **2.13 Sealing and Marking of Bids**

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



accompanying the Technical Bid shall be placed in a separate envelope and marked as “TECHNICAL BID”. The Bidder shall submit the Technical Bid in the format specified at Appendix-I, together with the documents specified in Clause 2.13.2, and seal it in an envelope. The Bidder shall also submit a true copy of documents specified in Clause 2.13.2. The Bidder shall seal the original and the copy of the Technical Bid in separate envelopes and place all the 3 sealed envelopes along with soft copy i.e. Financial Bid, original Technical Bid, copy of Technical Bid & CD/pen drive in an outer envelope which shall be marked in accordance with Clauses 2.13.2 and 2.13.3.

2.13.2 Each envelope shall contain:

- (i) Technical Bid in the prescribed format (Appendix-IA) along with Annexes and supporting documents;
- (ii) Power of Attorney for signing the Bid as per the format at Appendix-III;
- (iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;
- (iv) copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-V;
- (v) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed; and
- (vi) copies of Bidder’s duly audited balance sheet and profit and loss account for the preceding five year.
- (vii) BID Security of INR 3.50 crore (Rupees three crore and fifty lakh only) in the form of a Demand Draft or a Bank Guarantee in the format at Appendix-II from a Scheduled Bank.
- (viii) Demand Draft of INR 40000 (Rupees forty thousand only) in favour of Punjab National Bank payable at LCB Mumbai branch towards the cost of RFP.

Each of the envelopes shall clearly bear the following identification:

“Bid for Substitution of Concessionaire in the Project of **Four Laning of Sidhi-Singraulir (NH-75-E) Road Project**”and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand corner of each of the envelopes.

2.13.3 Each of the envelopes shall be addressed to:

ATTN. OF:	Mr Akhilesh Raina
DESIGNATION:	Sr. Manager
ADDRESS:	Resurgent India Limited, 903-906, 9 <sup>th</sup> Floor, Unitech Business Zone, Nirvana Country, Sector-50, Gurugram- 122018
Phone:	8745050509



Email	Akhilesh.raina@resurgentindia.com
-------	-----------------------------------

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

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

#### **2.14 Bid Due Date**

2.14.1 Bids should be submitted before 1500 hours IST on **07.06.2019** (the Bid Due Date), at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified in Clause 2.13.3.

2.14.2 The Lender's Representative may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Bidders.

#### **2.15 Late Bids**

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

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

2.16.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Lender's Representative prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

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

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

### **D. EVALUATION PROCESS**

#### **2.17 Opening and Evaluation of Bids**



- 2.17.1 The Lender's Representative shall open the Technical Bids at 1600 hours IST on **07.06.2019** (the Bid Due Date), at the place specified in Clause 2.13.3 and in the presence of the bidders who choose to attend.
- 2.17.2 Deleted
- 2.17.3 The Lender's Representative will subsequently examine and evaluate Bids in accordance with the provisions set out in Section 3.
- 2.17.4 Bidders are advised that qualification of Bidders will be entirely at the discretion of the Lender's Representative. Bidders 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 Bid shall not in any way be construed as binding on the Lender's Representative, its agents, successors or assigns, but shall be binding against the Bidder if the Concession is subsequently transferred to it on the basis of such information.
- 2.17.6 The Lender's Representative reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 2.17.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Lender's Representative may, in its sole discretion, exclude the relevant project from computation of the Eligible Score of the Bidder.
- 2.17.8 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the Lender's Representative as incorrect or erroneous, the Lender's Representative 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 Bidder, 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 Lender's Representative reserves the right to reject the 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 Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Lender's Representative in relation to, or matters arising out of, or concerning the Bidding Process. The Lender's Representative will treat all information, submitted as part of Bid, in confidence and will require all those who



have access to such material to treat the same in confidence. The Lender's Representative may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Lender's Representative 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 Bids, the Lender's Representative shall determine whether each Technical Bid is responsive to the requirements of the RFP. A Technical Bid shall be considered responsive only if:

- (a) it is received as per format at Appendix-IA including Annexure I to V
- (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.14.2;
- (c) it is signed, sealed, bound together in hard cover, and marked 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;
- (e) it contains all the information and documents (complete in all respects) as requested in this RFP;
- (f) it contains information in formats same as those specified in this RFP;
- (g) it contains certificates from its statutory auditors in the formats specified at Appendix-IA of the RFP for each Eligible Project;
- (h) it contains Demand Draft of **Rs. 40000 (Rupees forty thousand only)** to Lender's Representative towards the cost of the RFP document;
- (i) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6
- (j) it does not contain any condition or qualification; and
- (k) it is not non-responsive in terms hereof.
- (l) Technical Bid is accompanied by the Bid Security as specified in Clause 1.2.4.

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

## **2.20 Clarifications**

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



2.20.2 If a bidder does not provide clarifications sought under Clause 2.20.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Lender's Representative may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Lender's Representative.

## **E. QUALIFICATION AND BIDDING**

### **2.21 Qualification and notification**

After the evaluation of Technical Bids, the Lender's Representative would announce a list of qualified Bidders whose Financial Bids shall be opened. At the same time, the Lender's Representative would notify the other Bidders that they have not been qualified. The Lender's Representative will not entertain any query or clarification from Bidders who fail to qualify.

### **2.22 Deleted**

### **2.23 Proprietary data**

The Bidding Documents including this RFP and all attached documents, supplied by the Lender's Representative shall remain or become the property of the Lender's Representative. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provision of this clause shall also apply mutatis mutandis to bids and all other documents submitted by the Bidders, and The Lender's Representative will not return any Bid or any information provided along therewith.

### **2.24 Correspondence with the Bidder**

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



### 3. CRITERIA FOR EVALUATION

#### 3.1 Evaluation parameters

3.1.1 Only those Bidders who meet the eligibility criteria specified in Clause 2.2.2 & 2.2.3 above shall qualify for evaluation under this Section 3. Bids of firms/consortia who do not meet these criteria shall be rejected.

3.1.2 The Bidder'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 RFP:

- (i) highways sector would be deemed to include highways, expressways, bridges, tunnels and airfields; and
- (ii) core sector would be deemed to include power, telecom, ports, airports, railways, 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;
- (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 **Rs. 87.00 crore (Rupees eighty seven crores)**; and
- (d) the entity claiming experience shall, during the last 5 (five) financial years preceding the Bid Due Date, have (i) paid for development of the project (excluding the cost of land), and/ or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from highways, airports, ports and railway infrastructure, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products telecommunications or fare/freight revenues and other incomes of the company owning the Project.

3.2.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Bidder should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Bid Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, payments/receipts of less than **Rs. 87.00 crore (Rupees eighty seven crores)** shall not be reckoned as payments/receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder.

3.2.5 The Bidder shall quote experience in respect of a particular Eligible Project under any one category only, even though the Bidder (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.

3.2.6 Bidder's experience shall be measured and stated in terms of a score (the "**Experience Score**"). The Experience Score for an Eligible Project in a given category would be the eligible payments and/or receipts specified in Clause 2.2.2 (A), divided



by one crore and then multiplied by the applicable factor in Table 3.2.6 below. In case the Bidder has experience across different categories, the score for each category would be computed as above and then aggregated to arrive at its Experience Score.

**Table 3.2.6: Factors for Experience across categories**

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

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 Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

### **3.3 Details of Experience**

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

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

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

### **3.4 Financial information for purposes of evaluation**

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

3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the



Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.

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

### **3.5 Qualification of Bidders**

The credentials of eligible Bidders shall be measured in terms of their Experience Score. The sum total of the Experience Scores for all Eligible Projects shall be the 'Aggregate Experience Score' of a particular Bidder. In case of a Consortium, the Aggregate Experience Score of each of its Members, who have an equity share of at least 26% in such Consortium, shall be summed up for arriving at the combined Aggregate Experience Score of the Consortium. All Bidders who fulfil the conditions of eligibility specified in Clause 2.2.2 and meet the other conditions specified in this RFP shall be qualified for opening of Financial Bids.

### **3.6 Opening and Evaluation of Financial Bids**

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

### **3.7 Selection of Bidder**

- 3.7.1 Subject to the provisions of Clause 2.7.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 2.19 and whose Financial Bid as evaluated by the Lenders' Representative is found acceptable, shall be declared as the selected Bidder (the "Selected Bidder").

- 3.7.2 In the event that, the Financial Bids of two or more Bidders is the same (the "Tie Bids"), the Lenders' Representative shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.

- 3.7.3 In the event that the Financial Bids are not found to be acceptable for any reason, the Lenders' Representative shall annul the Bidding Process and invite fresh Bids. In the event that the Lenders' Representative rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.



3.7.4 After selection, a Letter of Award (the “LOA”) shall be issued, in duplicate, by the Lenders’ Representative to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Lenders’ Representative may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA.

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

- (i) accede to transfer to the Selected Bidder the right to construct, operate and maintain the Project Highway in accordance with the provisions of the Concession Agreement;
- (ii) endorse and transfer the Concession to the Selected Bidder, on the same terms and conditions, for the residual Concession Period; and
- (iii) enter into a substitution agreement with the Lenders’ Representative and the Selected Bidder on the same terms as are contained in the Substitution Agreement dated 19<sup>th</sup> December 2012.

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

### **3.8 Contacts during Bid Evaluation**

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



#### 4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of LOA. Notwithstanding anything to the contrary contained herein or in LOA, the Lender's Representative may reject a Bid without being liable in any manner whatsoever to the Bidder if it determines that the Bidder 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 Deleted
- 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 Lender's Representative who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Lender's Representative, 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 substitution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Lender's Representative in relation to any matter concerning the Project;
  - (b) **"fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;
  - (c) **"coercive practice"** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;
  - (d) **"undesirable practice"** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective



of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.



5 .DELETED



## 6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Maharashtra shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Lender's Representative, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/or cancel the Bidding Process and/or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Bidder in order to receive clarification or further information;
  - (c) qualify or not to qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
  - (d) retain any information and/ or evidence submitted to the Lender's Representative by, on behalf of, and/ or in relation to any Bidder; 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 Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Lender's Representative, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder 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 IA  
**Letter Comprising the Technical Bid**  
(Refer Clause 2.13.2)

Dated:

To,

Branch Head,  
Punjab National Bank,  
Large Corporate Branch,  
Maker Tower E-Wing,  
Ground Floor, Cuffe Parade,  
Mumbai-400 005

**Sub: Bid for substitution of the Concessionaire in the Project of Four Laning of  
Sidhi-Singrauli (NH-75-E) Road Project**

Dear Sir,

1. With reference to your RFP document dated .....<sup>§</sup>, I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Lenders' Representative will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Nominated Company for the aforesaid project, and we certify that all information provided in the Bid and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as a Nominated Company for the substitution of Concessionaire by the Lenders' Representative to carry out the development, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Lenders' Representative any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Lenders' Representative to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public

---

<sup>§</sup> All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.  
***RFP for Substitution of Concessionaire in the Project for four Laning of Sidhi-Singrauli (NH-75-E) Road Project  
DBFOT basis.***



authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:
  - (a) I/ We have examined and have no reservations to the RFP document, including any Addendum issued by the Lenders' Representative.
  - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFP document; and
  - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Lenders' Representative or the Authority or any other public sector enterprise or any government, Central or State; and
  - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.17.6 of the RFP document.
9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFP document and are/ is qualified to submit a Bid.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for this Project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community. I/ We further certify that my/ our name is not there in the defaulter list of RBI/ CIBIL/ ECGC.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.



13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.
14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines form part of the RFQ at Appendix-VI thereof.
15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFQ, we shall intimate the Lenders' Representative of the same immediately
16. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFQ, are also enclosed.
17. I/ We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to substitution of Concessionaire.
18. I/We hereby confirm that we [are in compliance of/shall comply with] the O&M requirements specified in Clause 2.2.3.
19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Lenders' Representative in connection with the selection of Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
21. I/ We certify that in terms of the RFP, my/our Network is ` ..... (Rupees in words) and Experience Score is ..... (number in words).
22. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.}§

---

§ Omit if the Bidder is not a Consortium.



23. I/We agree and acknowledge that we shall comply with all equity lock-in requirements set forth in the Concession Agreement.
24. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity shall be taken into consideration for the purposes of selection as Nominated Company under and in accordance with the RFP, I/We shall inform the Lenders' Representative forthwith along with all relevant particulars and the Lenders' Representative may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be.
25. In the event of my/ our being declared as the Selected Bidder, I/We agree to assume the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement. I/We further agree to execute relevant agreements to assume the liabilities and obligations of the Concessionaire towards the Senior Lenders under the Financing Agreements, in accordance with the Financial Bid submitted by me/us.
26. I/We have studied all the Bidding Documents carefully and also surveyed the project highway and the traffic. We understand that we shall have no claim, right or title arising out of any documents or information provided to us by the Lenders' Representative or in respect of any matter arising out of or relating to the Bidding Process including the substitution of Concessionaire.
27. I/We offer a Bid Security of INR 3.50 crore (Rupees three crore and fifty lakh only) to the Lenders' Representative in accordance with the RFP Document.
28. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strikeout whichever is not applicable) is attached.
29. The documents accompanying the Technical Bid, as specified in Clause 2.13.2 of the RFP, have been submitted in a separate envelope and marked as "TECHNICAL BID".
30. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Concession is not transferred to me/us or our Bid is not opened or rejected.
31. The Financial Bid has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Concession Agreement, our own estimates of balance costs and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project.
32. I/We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
33. I/ We hereby submit our Bid as indicated in Financial Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement



In witness thereof, I/ we submit this 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 Bidder/ Lead Member



## APPENDIX-IB

Letter comprising the Financial BID  
(Refer Clauses 2.13.1 and 2.13.2)

(NOT TO BE SUBMITTED IN THE TECHNICAL BID)

Dated:

To,  
Branch Head,  
Punjab National Bank,  
Large Corporate Branch,  
Maker Tower E-Wing,  
Ground Floor, Cuffe Parade,  
Mumbai-400 005

Sub: BID or Substitution of Concessionaire in the Project of four Laning of SIDHI-SINGRAULI (NH-75-E) on BOT Basis

Dear Sir,

1. With reference to your RFP document dated \*\*\*\* \*\*, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Lenders' Representative will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Nominated Company for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. The Bid has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Concession Agreement and its Schedules, our own estimates of balance costs and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project
4. I/ We acknowledge the right of the Lenders' Representative to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. In the event of my/ our being declared as the Selected Bidder, I/We agree to assume the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement. I/We further agree to execute relevant agreements to assume the liabilities and obligations of the Concessionaire towards the Senior Lenders under the Financing Agreements, in accordance with the Financial Bid submitted by me/us.



I/We agree not to seek any changes in the Concession Agreement and agree to abide by the same.

6. I/ We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
7. I/ We hereby submit a Financial Bid\* of Rs.\_\_\_\_\_ (Rupees\_\_\_\_\_) along with detailed financial model as a part of our Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

Place:

Date:

Yours faithfully,

(Signature, name and designation of the Authorised Signatory)

**Name & seal of Bidder/Lead Member: .....**

---

\* The Financial Bid amount must indicate the total liability to be taken over and the amount to be paid.  
***RFP for Substitution of Concessionaire in the Project for four Laning of Sidhi-Singrauli (NH-75-E) Road Project DBFOT basis.***



**ANNEX-I**  
**Details of Bidder**

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

<b>Sl. No.</b>	<b>Name of Member</b>	<b>Role*</b> {Refer Clause 2.2.6(d)} <sup>§</sup>	<b>Percentage of equity in the Consortium</b> {Refer Clauses 2.2.6(a), (c) & (g)}
1.			
2.			

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



3.			
4.			

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

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

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

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

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



ANNEX-II

**Technical Capacity of the Bidder @**

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

Bidder type #	Member Code*	Project Code**	Category <sup>§</sup>	Experience <sup>¥</sup> (Equivalent ` crore) <sup>§§</sup>			Experience Score <sup>£</sup>	
				Payments made/ received for construction of Eligible Projects in Categories 3 and 4 (5)	Payments made for development of Eligible Projects in Categories 1 and 2 (6)	Revenues appropriate from Eligible Projects in Categories 1 and 2 (7)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
Single entity Bidder		a						
		b						
		c						
		d						
Consortium Member 1		1a						
		1b						
		1c						
		1d						
Consortium Member 2		2a						
		2b						
		2c						
		2d						
		4b						
		4c						
		4d						
<b>Aggregate Experience Score =</b>								

@ Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.2.9 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 made/received exceed the amount specified in Clause 3.2.4. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

# A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.9, shall be provided.



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

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

§ Refer Clause 3.2.1.

¥ In the case of Eligible Projects in Categories 1 and 2, the figures in columns 6 and 7 may be added for computing the Experience Score of the respective projects. In the case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included while computing the Experience Score of an Eligible Project.

§§ For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 46.00 (forty six) to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

£ Divide the amount in the Experience column by one crore and then multiply the result thereof by the applicable factor set out in Table 3.2.6 to arrive at the Experience Score for each Eligible Project. In the case of an Eligible Project situated in an OECD country, the Experience Score so arrived at shall be further multiplied by 0.5, in accordance with the provisions of Clause 3.2.7, and the product thereof shall be the Experience Score for such Eligible Projects. [Above all, the sum total of columns 5, 6 and 7, as the case may be, in respect of each Eligible Project shall be restricted to a ceiling equivalent to twice the Estimated Project Cost, as specified in Clause 3.2.8.]



ANNEX-III  
**Financial Capacity of the Bidder**  
 (Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.4 of the RFP)

(In Rs. in crore<sup>\$\$</sup>)

Bidder type §	Member Code <sup>€</sup>	Net Cash Accruals					Net Worth <sup>€</sup>
		Year 1 (3)	Year 2 (4)	Year 3 (5)	Year 4 (6)	Year 5 (7)	Year 1 (8)
(1)	(2)						
Single entity Bidder							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
Consortium Member 4							
TOTAL							

**Name & address of Bidder Bankers:**

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

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

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

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

**Instructions:**

1. The **Bidder** / its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
  - (a) reflect the financial situation of the **Bidder** or Consortium Members and its/ their Associates where the **Bidder** is relying on its Associate's financials;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and



- (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
  3. Net Worth shall mean aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.
  4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.
  5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.6 of the RFP document.
  6. The **Bidder** shall also provide the name and address of the Bankers to the **Bidder**.
  7. The **Bidder** shall provide an Auditor's Certificate specifying the net worth of the **Bidder** and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.4 (ii) of the RFP document.



ANNEX-IV  
**Details of Eligible Projects**  
*(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFP)*

**Project Code:**

**Member Code:**

Item (1)	Refer Instruction (2)	Particulars of the Project (3)
Title & nature of the project		
Category	5	
Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or (c) revenues appropriated	6	
Entity for which the project was constructed/ developed	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	16	

**Instructions:**

1. 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 3.2.4 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 Bid. **Bidder** should also refer to the Instructions below.
2. For a single entity **Bidder**, the Project Codes would be a, b, c, d etc. In case the **Bidder** is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each Eligible Project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the

*RFP for Substitution of Concessionaire in the Project for four Laning of Sidhi-Singrauli (NH-75-E) Road Project DBFOT basis.*



- Eligible Project relates to an Associate of the **Bidder** or its Member, write “Associate” along with Member Code.
5. Refer to Clause 3.2.1 of the RFP for category number.
  6. The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Annex-II of this Appendix-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 Due 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 development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.2.3(c). In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 3.2.4. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
  7. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
  8. Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.2.3 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 **Bidder**, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.2.3).
  11. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
  12. Certificate from the **Bidder’s** statutory auditor<sup>§</sup> or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the **Bidder / Member/Associate** may provide the requisite certification.
  13. If the **Bidder** is claiming experience under Categories 1 & 2<sup>£</sup>, it should provide a certificate from its statutory auditor in the format below:

---

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

<sup>£</sup> Refer Clause 3.2.1 of the RFP.



**Certificate from the Statutory Auditor regarding PPP projects<sup>Φ</sup>**

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

We further certify that the total estimated capital cost of the project is ` ..... cr. (Rupees .....crore), of which ` ..... cr. (Rupees ..... crore) of capital expenditure was incurred during the past five financial years as per year-wise details noted below:

.....  
.....

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 3.2.1 and 3.2.3 (d) of the RFP during the past five financial years were ` ..... cr. 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)

Appendix I

Annex-IV

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

**Certificate from the Statutory Auditor/ Client regarding construction works<sup>Φ</sup>**

Based on its books of accounts and other published information authenticated by it, {this is to certify that ..... (name of the Bidder /Member/Associate) was engaged by ..... (title of the project company) to execute ..... (name of project) for ..... (nature of project)}<sup>ψ</sup>. The construction of the project commenced on .....

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

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

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

\* Refer Clauses 3.2.1 and 3.2.4 of the RFP.

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

<sup>ψ</sup> In case the Bidder owned the Eligible Project and engaged a contractor for undertaking the construction works, this language may be modified to read: “ this is to certify that ..... (name of Bidder/ Member/ Associate) held 26% or more of the paid up and subscribed share capital in the..... (name of Project RFP for Substitution of Concessionaire in the Project for four Laning of Sidhi-Singrauli (NH-75-E) Road Project DBFOT basis.



(date) and the project was/ is likely to be commissioned on ..... (date, if any). It is certified that ..... (name of the **Bidder** / Member/ Associate) received/paid ` ..... cr. (Rupees ..... crore) by way of payment for the aforesaid construction works. We further certify that the total estimated capital cost of the project is ` ..... cr. (Rupees .....crore), of which the **Bidder** /Member/Associate received/paid ` ..... cr. (Rupees ..... crore), in terms of Clauses 3.2.1 and 3.2.4 of the RFP, during the past five financial years as per year-wise details noted below:

.....  
.....

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

Name of the audit firm:

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

Date: ..... authorised signatory).

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.9, the **Bidder** should also provide a certificate in the format below:

---

company) when it undertook construction of the ..... (name of Project) through ..... (name of the contractor).

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



**Certificate from Statutory Auditor/ Company Secretary regarding Associate<sup>§</sup>**

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of ..... (*name of the Associate*) is held, directly or indirectly<sup>£</sup>, by ..... (*name of Bidder / Consortium Member*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.9 of the RFP.

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

*{Describe the share-holding of the Bidder / Consortium Member in the Associate}*

Name of the audit firm:

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

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

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

16. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score<sup>©</sup>.

---

<sup>©</sup> Refer Clause 3.2.6 of the RFQ.



ANNEX-V  
**Statement of Legal Capacity**

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

Ref. Date:

To,

Branch Head,  
Punjab National Bank,  
Large Corporate Branch,  
Maker Tower E-Wing,  
Ground Floor, Cuffe Parade,  
Mumbai-400 005\_

Dear Sir,

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

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

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

Thanking you,

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

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



APPENDIX II  
Bank Guarantee for Bid Security  
(Refer Clauses 1.2.4)

B.G. No. .... Date .....

1. In consideration of you, **Punjab National Bank**, having its office at **LCB, Make Tower E-Wing, Ground Floor, Cuffe Parade, Mumbai-400005**, (hereinafter referred to as the "Lenders' Representative", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of ..... (a Company registered under Companies Act, 1956/2013) and having its registered office at ..... (and acting on behalf of its Consortium) (hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for Substitution of the Concessionaire in the Project of **four Laning of SIDHI-SINGRAULI (NH-75-E) on BOT Basis** pursuant to the RFP Document dated ..... issued in respect of the Project and other related documents including without limitation the Concession Agreement (hereinafter collectively referred to as "Bidding Documents"), we (Name of the Bank) having our registered office at ..... and one of its branches at ..... (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of Clause 1.2.4 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Lenders' Representative an amount of INR 3.50 crore (Rupees three crore and fifty lakh only (hereinafter referred to as the "Guarantee") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Lenders' Representative stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Lenders' Representative is disputed by the Bidder or not, merely on the first demand from the Lenders' Representative stating that the amount claimed is due to the Lenders' Representative by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee.



However, our liability under this Guarantee shall be restricted to an amount not exceeding INR 3.50 crore (Rupees three crore and fifty lakh only).

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



9. We undertake to make the payment on receipt of your notice of claim on us addressed to name of Bank along with branch address and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Lenders' Representative to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Lenders' Representative may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Lenders' Representative in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to INR 3.50 crore (Rupees three crore and fifty lakh only). The Bank shall be liable to pay the said amount or any part thereof only if the Lenders' Representative serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before \*\*\* (indicate date falling 180 days after the Bid Due Date).
14. This guarantee shall also be operational at our branch at Mumbai, from whom, confirmation regarding the issue of this guarantee or extension/renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.

Signed and Delivered by .....  
Bank

By the hand of Mr./Ms .....,  
its..... and authorised official.  
(Signature of the Authorised Signatory)  
(Official Seal)



APPENDIX III  
**Power of Attorney for signing of Bid**  
*(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 Consortium and holding the position of ..... , as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for qualification and submission of our bid for the four laning of Sidhi-Singrauli (NH-75-E) Road Project proposed or being developed by MP Road Development Corporation Ltd., (the “Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Bids and other conferences and providing information/ responses to the Lenders’ Representative, representing us in all matters before the Lenders’ Representative, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Lenders’ Representative in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Lenders’ Representative.

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

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

For .....

(Signature, name, designation and address)

Witnesses:

1.

(Notarised)

2.

Accepted

.....



(Signature)

(Name, Title and Address of the Attorney)

Notes:

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



APPENDIX IV  
**Power of Attorney for Lead Member of Consortium**  
*(Refer Clause 2.2.5)*

Whereas the MP Road Development Corporation (**“the Authority”**) has invited Bids from interested parties for four laning of Sidhi-Singrauli (NH-75-E) Road Project (the **“Project”**).

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

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, ..... having our registered office at ....., M/s. .... having our registered office at ....., M/s. .... having our registered office at ....., and ..... having our registered office at ....., (hereinafter collectively referred to as the **“Principals”**) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s ..... having its registered office at ....., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the **“Attorney”**). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all 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 Consortium and generally to represent the Consortium in all its dealings with the Lenders’ Representative, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Lenders’ Representative.

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



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

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

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

Notes:

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



*countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*



## APPENDIX V

### Joint Bidding Agreement

(Refer Clause 2.2.6)

(To be executed on Stamp paper of appropriate value)

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

#### AMONGST

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

#### AND

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

#### AND

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

#### AND

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

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

#### WHEREAS,

- (A) MP Road Development Corporation Ltd., , established under the companies Act, 1956 and having its registered offices at 16-A, Arera Hills Bhopal, hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the “**Bids**”) by its Request for Proposal No.\*\*\*\*\* dated \*\*\*\*\* (the “**RFP**”) for qualification and short-listing of bidders for development and operation/ maintenance of four o laning of Sidhi-Singruli (NH-75-E) Road Project (the “**Project**”) through public private partnership.
- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bids.

<sup>§</sup> The number of Parties will be shown here, as applicable, subject however to a maximum of 6 (six).



**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

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

**2. Consortium**

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

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

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall substitute the Concessionaire as per the provisions of Concession Agreement and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

**4. Role of the Parties**

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

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the substitution of Concessionaire shall become effective;
- (b) Party of the Second Part shall be {the Technical Member of the Consortium;}
- {(c) Party of the Third Part shall be the Financial Member of the Consortium; and}
- {(d) Party of the Fourth Part shall be Other Member of the Consortium.

**5. Joint and Several Liability**

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

**6. Shareholding in the Concessionaire**

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

First Party:

Second Party:

{Third Party:}

{Fourth Party:}

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the Concessionaire shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and networth have been reckoned for the purposes of qualification and short-listing of Bidders for the Project in terms of the RFP.

6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second



anniversary thereof, hold subscribed and paid up equity share capital of Concessionaire equivalent to at least 5% (five per cent) of the Total Project Cost.

- 6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the Concessionaire at all times until the second anniversary of the commercial operation date of the Project.
- 6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.
- 6.6 The Parties undertake that the O&M Member shall subscribe and hold at least 10% (ten per cent) of the subscribed and paid up equity shares in the Concessionaire in terms of the Concession Agreement.}

## **7. Representation of the Parties**

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

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and Lenders' Representative to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
- (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or



prospects or business of such Party in the 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 the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

**9. Miscellaneous**

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

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of  
LEAD MEMBER by:

SECOND PART

(Signature)  
(Name)  
(Designation)  
(Address)

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of  
THIRD PART

For and on behalf of  
FOURTH PART

(Signature)  
(Name)  
(Designation)  
(Address)

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
FIFTH PART

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
SIX PART



(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 Lenders' Representative to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.



APPENDIX VI<sup>1</sup>  
**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 13<sup>th</sup> 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.

---

<sup>1</sup> 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