



Government of Tamil Nadu, Highways and Minor Ports Department



REQUEST FOR PROPOSAL (International Competitive Bidding) Volume-I : Instructions To Bidders

PROJECT

Development of Chennai Outer Ring Road Phase II, from Nemilicheri in NH 205 to Minjur in Thiruvottiyur- Ponneri-Panchetti (TPP) Road on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity basis at Chennai, in the state of Tamil Nadu, India

Tamil Nadu Road Development Company Ltd.
Sindhur Panthion Plaza, 2nd Floor,
346, Pantheon Road, Egmore
Chennai - 600 008, Tamil Nadu

Phone: 91-44-2819 4800 /4900
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Web: www.tnrdc.com

Managing Associate

TNRDC

Tamil Nadu Road Development Company Ltd.

**Highways and Minor Ports Department
(Government of Tamil Nadu)**

INVITATION FOR PROPOSAL

Dated [●]

To,
[●]
[●]
[●]

Sub: RFP for “**Development of Chennai Outer Ring Road Phase II from Nemilicheri in NH 205 To Minjur in Thiruvottiyur – Ponneri – Panchetti (TPP) Road on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity basis at Chennai, in the State of Tamil Nadu, India**” (“Project”).

Dear Sir,

Pursuant to your interest shown to participate in the Bidding Process for the Selection of the Concessionaire for the aforesaid project in accordance with the RFP, we acknowledge your remittance of **₹ 20, 00, 000 (Rupees Twenty Lakh only)** in the form of demand draft from any nationalized/ scheduled bank in favour of ‘**Tamil Nadu Road Development Company Ltd.**’ payable at Chennai, which is irrevocable and non-refundable, as the cost of procuring the RFP documents.

Please note that the The Government of Tamil Nadu, Highways and Minor Ports Department (“**GOTN, HD**”) represented by Tamil Nadu Road Development Company Ltd. (**TNRDC**) reserves the right to accept or reject all or any of the bids without assigning any reason whatsoever.

Thanking you,

Yours faithfully,
(Signature, name and designation of the Signatory)

General Manager (Projects)
Tamil Nadu Road Development Company Ltd

Regd Office:
Sindhur Panthion Plaza, 2nd Floor
346, Pantheon Road, Egmore
Chennai - 600 008, Tamil Nadu, India
Phone: 91-44-2819 4800 / 4900
Fax: 91-44-2819 5800

Request for Proposal Document

Contents of the Document

Volume I	:	Instructions to Bidders
Volume II	:	Draft Concession Agreement
Volume III	:	Schedules of the Draft Concession Agreement
Volume IV	:	Drawings

PROJECT SUMMARY

1)	Name	Development of Chennai Outer Ring Road Phase II from Nemilicheri in NH 205 To Minjur in Thiruvottiyur – Ponneri – Panchetti (TPP) Road on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity
2)	Location	Chennai, Tamil Nadu, India
3)	Nodal Agency	Tamil Nadu Road Development Company Ltd (TNRDC)
4)	Number of lanes	Six (6) Lanes with service roads - Greenfield
5)	Estimated Project Cost	₹ 985.54 crore
6)	Project Support Fund	₹ 197 crore to be disbursed as per Article 30 of DCA
7)	Concession Period	20 Years
8)	Construction Period	30 Months
9)	Bid Process	Two Envelop System 1) Qualification Stage 2) Financial Stage
10)	Date of Site Visit	06 th November 2012
11)	Last Date of Receiving Queries	12 th November 2012
12)	Pre-bid Conference	19 th November 2012
13)	Last Date of Purchase of RFP	03 rd December 2012
14)	Bid Due Date	05 th December 2012 by IST 1500 Hrs
15)	Bid Validity	180 (One hundred and Eighty) Days
16)	Cost of Bid Document	₹ 20,00,000 (Rupees Twenty Lakh only)
17)	Bid Security	₹ 9,86,00,000 (Rupees Nine Crore and Eighty Six Lakh only)
18)	Performance Security	1) ₹ 49, 30, 00, 000/- (Rupees Forty Nine Crore Thirty Lakhs only) valid for a period of not less 45 days beyond the Appointed Date 2) ₹ 28, 98, 00, 000 (Rupees Twenty Eight Crores Ninety Eight Lakhs only) valid for a period not less 45 days beyond the date of issue of “Completion Certificate”

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DISCLAIMER

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

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

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

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

The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP. The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

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

INVITATION FOR PROPOSAL

**Highways and Minor Ports Department
(Government of Tamil Nadu)**

1. INTRODUCTION

1.1 Project Background

- 1.1.1 The Government of Tamil Nadu, Highways and Minor Ports Department (GOTN, HD) represented by Tamil Nadu Road Development Company Ltd. (TNRDC) (the “**Authority**”) is engaged in the development of highways in the state of Tamil Nadu and as part of this endeavour, the Authority has decided to undertake development and operation/maintenance of the “**Development of Chennai Outer Ring Road Phase II from Nemilicheri in NH 205 To Minjur in Thiruvottiyur – Ponneri – Panchetti (TPP) Road on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity basis at Chennai, in the State of Tamil Nadu, India**” (the “**Project**”) through Public-Private Partnership (the “**PPP**”) vide G.O (Ms) No. 10, Highways & Minor Ports (HN2) Department dated 23-01-2012, and has decided to carry out the bidding process for selection of a private entity as the bidder to whom the Project may be awarded. Brief particulars of the Project are as follows:

Name of the Highway	Project Length	Estimated Project Cost (INR)
Development of Chennai Outer Ring Road Phase II from Nemilicheri in NH 205 To Minjur in Thiruvottiyur – Ponneri – Panchetti (TPP) Road on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity basis at Chennai, in the State of Tamil Nadu, India	Approximately 30.50 km	985.54.00 Crore

- 1.1.2 The Selected Bidder undertakes to incorporate a Special Purpose Vehicle (“**SPV**”) prior to execution of the Concession Agreement (the “**Concessionaire**”) and shall be responsible for designing, development, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of the Concession Agreement (the “**Concession Agreement**”) to be entered into between the Authority and the Concessionaire in the form provided by the Authority as part of the Bidding Documents pursuant hereto.
- 1.1.3 The scope of work will broadly include development of six-lanes (plus two service lanes) Chennai Outer Ring Road Phase II of six lane standards with construction of new pavement, construction of major and minor bridges, culverts, road intersections, interchanges, drains, etc. and the operation and maintenance thereof as per the Draft Concession Agreement.
- 1.1.4 The total estimated cost of the Project (the “**Estimated Project Cost**”) has been specified in Clause 1.1.1. The Estimated Project Cost is indicative and therefore the assessment of actual costs, however, will have to be made by the Bidders.

- 1.1.5 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire's services and obligations (the "**Concession**").
- 1.1.6 The statements and explanations contained in this Request For Proposal (the "RFP") document are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.
- 1.1.7 The Authority shall receive bids pursuant to this RFP in accordance with the terms set forth in this RFP (the "**Bid**") and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the "**Bidding Documents**"), and all Bid shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bid (the "**Bid Due Date**").
- 1.1.8 Government of Tamil Nadu (GOTN) will provide project support fund not exceeding **Rs 197 crores (Rupees One Hundred and Ninety Seven Crores)** to the Concessionaire during the construction period (the "**Project Support Fund**"). The disbursement of Project Support Fund will be based on the progress of the Project as per the Article 30 of the Draft Concession Agreement.

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a Two Envelop bidding process for selection of the Bidder for award of the Project (the "**Bidding Process**"). The first stage of the Bidding Process involves pre-qualification of interested parties/consortium on the basis of their Technical Capacity and Financial Capacity in accordance with the provisions of Clause 3A (the "**Qualification/ Qualification Stage**"). At the end of the Qualification Stage, the Authority shall short list Bidders whose Financial Bids are eligible for opening during the financial stage (the "**Financial Stage/Proposal Stage**") in accordance with the provisions of Clause 3B. The Bid shall be valid for a period of not less than 180 days (one hundred and eighty days) from the Bid Due Date as specified in Clause 1.3.

Interested parties may obtain the Request for Proposal documents from the address given below from 30th October, 2012 on all working days between IST 1000 hrs and IST 1700 hrs up to 03rd December, 2012 by paying a non-refundable fee of Indian Rupees 20,00,000/- (Rupees Twenty Lakh only) by way of a crossed demand draft drawn in favour of '**Tamil Nadu Road Development Company Ltd**', payable at any scheduled bank in Chennai ("**RFP Document Cost**"). Alternatively the Request for Proposal can also be downloaded from www.tnrdc.com or any other portal/s. This RFP contains information about the Project, bidding process, Bid submission, qualification and Financial Proposal requirements.

Bidders who have downloaded the RFP from the website shall submit a non-refundable fee of Indian National Rupees 20,00,000/- (Rupees Twenty Lakh only) by way of a crossed demand draft drawn in favour of '**Tamil Nadu Road Development Company Ltd**', payable at any scheduled bank in Chennai along with their Bid. Bids not accompanied by the RFP Document Cost shall be considered as non-responsive and shall be summarily rejected.

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

- 1.2.2 For the purpose of Qualification, Bidders would be required to furnish all the information as specified in this RFP and any other documents provided by the Authority. Only those Bidders declared as qualified and short-listed by the Authority at the Qualification Stage shall be eligible to participate in the Financial/Proposal Stage.
- 1.2.3 During the Financial/Proposal Stage, the financial offer (the "**Financial Offer**") submitted by the Bidders as hard copy (Appendix-V) as specified in Clause 2.13.2 shall be evaluated.
- 1.2.4 A Bidder is required to deposit, along with its Bid, a bid security of **Rs. 9.86 Crore (Rupees Nine Crore and Eighty Six Lakh only)** (the "**Bid Security**"), refundable no later than 60 (sixty) days from the Bid Validity Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 240 (two hundred and forty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5 Bids are invited on the basis of the fixed semi-annual annuity (the "**Annuity**") sought by a Bidder for implementing the Project. The concession period is pre-determined and fixed as 20 (twenty) years. After Qualification Stage and subject to requirements of the RFP, the Annuity amount shall constitute the sole criteria for evaluation of Bids and the selection of the Successful Bidder. Subject to Clause 2.7.1, the Project will be awarded to the Bidder seeking the lowest Annuity.

In this RFP, the term "**Highest Bidder**" shall mean the Bidder who is seeking the lowest Annuity.
- 1.2.6 The Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3B of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected or is disqualified for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the

Authority may, in its discretion, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be.

- 1.2.7 As part of the Bidding Documents, the Authority will provide a Draft Concession Agreement and any other information pertaining/ relevant to the Project available with it.
- 1.2.8 Deleted.
- 1.2.9 Further and other details of the Bidding Process to be followed and the terms thereof are spelt out in the subsequent sections of this RFP.
- 1.2.10 Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax or e-mail to the officer designated in Clause 2.13.3. The envelopes/communications shall clearly bear the following identification/title:

Queries/ Request for Additional Information: RFP for “**Development of Chennai Outer Ring Road Phase II from Nemilicheri in NH 205 To Minjur in Thiruvottiyur – Ponneri – Panchetti (TPP) Road on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity basis at Chennai, in the State of Tamil Nadu, India**”.

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

1.3 Schedule of Bidding Process

S. NO.	EVENT DESCRIPTION	DATE
1	ISSUE OF RFP TO APPLICANTS	30TH OCTOBER, 2012
2	SITE VISIT	06 TH NOVEMBER 2012
3	LAST DATE OF RECEIVING QUERIES	12 TH NOVEMBER 2012
4	PRE-BID CONFERENCE	19 TH NOVEMBER 2012
5	LAST DATE OF PURCHASE OF RFP	03 RD DECEMBER 2012
6	LAST DATE FOR SUBMISSION OF BID(BID DUE DATE)	05 TH DECEMBER 2012, 15:00 HRS
7	DATE FOR OPENING OF BIDS AT QUALIFICATION STAGE	05 TH DECEMBER 2012, 15:30 HRS
8	INFORMING THE QUALIFIED BIDDERS	19 TH DECEMBER 2012
9	DATE OF OPENING OF FINANCIAL OFFER	03 RD JANUARY 2013
10	ISSUE OF LETTER OF AWARD	WITHIN 3 WEEKS OF THE DATE OF OPENING OF FINANCIAL OFFER
11	ACCEPTANCE BY THE SUCCESSFUL BIDDER OF THE LETTER OF AWARD	WITHIN 7 DAYS FROM THE ISSUE OF LOA
12	SIGNING OF CONCESSION AGREEMENT	WITHIN 45 DAYS FROM THE ISSUE OF LOA

Authority will endeavour to adhere to the dates indicated above. However, it reserves the right to effect changes to the above dates, if the need arises. Such change, if any, would be uploaded at Authority's website (www.tnrdc.com) from time to time.

2. INSTRUCTIONS TO BIDDERS

2A. GENERAL

2.1 Scope of Bids

2.1.1 The Authority wishes and invites Bids from experienced and capable Bidders in the format and within the specified date and time as described in this RFP.

2.1.2 Deleted

2.2 Eligibility of Bidders

2.2.1 For determining the eligibility of Bidders for their qualification hereunder, the following shall apply:

- (a) The Bidder to qualify may be a single entity or a group of entities (the “**Consortium**”), coming together to develop the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
- (b) A Bidder may be a private entity, government-owned entity or any combination of them with a formal intent to enter into an 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) A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate 5 (five) % of the value of Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damage payable to the Authority for, *inter alia*, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of not more than 25% (twenty five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is 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. For the purposes of this Clause 2.2.1, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa)

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

- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each 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 Authority in the preparation of any documents, design or technical specifications of the Project.

Notwithstanding anything stated herein a Conflict of Interest situation arising at the Qualification stage will be considered to subsist only, as between such Applicants attracting Conflict of Interest provisions on account of shareholdings, who submit bids under this document.

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.

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.

- (d) A Bidder shall be liable for disqualification and forfeiture of Bid Security, if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its 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 the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have there under or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 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 signing of the Concession Agreement.
- (e) Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- (f) The bid should be furnished in the format provided clearly indicating the bid amount in both figures and words, in Indian Rupees, and signed by bidders authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- (g) This RFP is not transferable.

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.

2.2.1 (A) O&M Experience and EPC Works

- (a) The Bidder, in case, does not have the O&M experience specified in Clause 2.2.3 of the RFP, by submitting its Bid, shall be deemed to acknowledge and agree that for a period of at least 5 (five) years from the date of commercial operation of the Project, it shall enter into an operation & maintenance (O&M) agreement with an entity having the specified experience, failing which the Concession Agreement shall be liable to termination.
- (b) The Bidder would provide an undertaking to Authority that EPC works of the project would be executed only by such EPC who have completed atleast one single package of more than 20% of TPC or ` 500 cr., whichever is less. An undertaking to this effect shall be provided by the Bidder.

2.2.2 To be eligible for qualification and short-listing, a Bidder shall fulfill 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 when computed as per clause 3.2.6 is more than ₹ 986.00 Crore (Rupees Nine Hundred and Eighty Six crores) (**the “Threshold Technical Capacity”**).

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

(B) **Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) of ₹ 247.00 Crore (Rupees Two Hundred and Fourty Seven Crore) at the close of the preceding financial year[§].

In case of a Consortium, the combined capacity and net worth of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of full 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 of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement[£].

Provided further that each member of the Consortium shall have a minimum Net Worth of 12.5% of Estimated Project Cost in the immediately preceding financial year.

2.2.3 **O&M Experience:** The Applicant 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-I, complete with its Annexes, the following:

[§] In case an Applicant has issued any fresh Equity Capital during the current financial year, the same shall be permitted to be added to the Applicants assessed Net-Worth subject to the Statutory Auditor of the Applicant certifying to this effect

[£] The Authority may, in its discretion, impose further obligations in the Concession Agreement, but such obligations should provide sufficient mobility for partial divestment of equity without compromising the interests of the Project.

- (i) Certificate(s) from its statutory auditors^s or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 (five) 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 years, 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 sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders.
- 2.2.5 The Bidder should submit a Power of Attorney as per the format at Appendix-II, 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-III.
- 2.2.6 Where the Bidder is a single entity, it shall form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 1956 (the “**SPV**”), to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:
- (a) Number of members in a consortium shall not exceed 3 (three);
 - (b) subject to the provisions of sub 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 have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV; shall have Technical Capacity of atleast 26% (twenty six per cent) of the Threshold Technical Capacity 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 and technical obligations;
 - (e) an individual Bidder cannot at the same time be member of a Consortium applying for the Bid. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for the Bid;

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

- (f) the members of a Consortium shall form an appropriate SPV 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-IV (the “**Jt. Bidding Agreement**”), for the purpose of making the Bid. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:
 - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
 - (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 RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of commercial operational 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 SPV; 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 SPV at all times until the second anniversary of the commercial operation date of the Project; and
 - (vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and
 - (h) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.
- 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 by any public entity for breach by such Bidder, Consortium Member or Associate.

- 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.

It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Applicant or the Consortium Member shall be provided to demonstrate that a person is an Associate of the Applicant 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 qualification phase, Bidders should demonstrate their capabilities in accordance with Clause 3.1; and
- (d) in case the Bidder is a Consortium, each Member should substantially satisfy the qualification requirements to the extent specified herein.

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

- (a) Where, on the date of the Bid, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of 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, 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 a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 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 a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.3 Change in composition of the Consortium

- 2.3.1 Change in the composition of a Consortium will not be permitted by the Authority during the Bidding Process.

2.3A Change in Ownership

- 2.3A.1 By submitting the Bid, the Bidder acknowledges that incase it is selected, on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members they shall, until the 2nd (second) anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.3A.1 shall apply only when the Bidder is a Consortium.

- 2.3A.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority at its sole discretion, shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as compensation and damages payable to the Authority for inter alia, the time, cost and effort of the Authority including consideration of such Bidder's proposal, without prejudice to any other right or remedy that may be

available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise.

2.4 Number of Bids and costs thereof

- 2.4.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying 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 Bid Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

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

2.6 Acknowledgement by 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 Authority;
 - (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5 above;
 - (d) agreed to be bound by the undertakings provided by it under and in terms hereof;
 - (e) 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;
 - (f) 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 Authority, or a ground for termination of the Concession Agreement by the Concessionaire; and
 - (g) Acknowledged that it does not have a Conflict of Interest.
- 2.6.2 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or

relating to the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

2.7 Right to accept or reject any or all Bids

- 2.7.1 Notwithstanding anything contained in this RFP, the Authority 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 therefore. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

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

- 2.7.2 The Authority reserves the right to reject any 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 Authority, the supplemental information sought by the Authority 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 Highest Bidder gets disqualified/ rejected, then the Authority reserves the right to:

- (i) invite the remaining Bidders to match the Highest Bidder; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

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

- 2.7.4 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the Bidding Documents. Any such verification or lack of such verification by the Authority shall not relieve the Bidder of its

obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

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

2.7.6 The documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.7.6 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.

2B. DOCUMENTS

2.8 Contents of the RFP

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

Invitation for Bids

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

Appendices

I.	Letter comprising the Bid
II.	Power of Attorney for signing of Bid
III.	Power of Attorney for Lead Member of Consortium
IV.	Joint Bidding Agreement for Consortium
V.	Financial Offer
VI.	Bank Guarantee for Bid Security
VII.	Guidelines of the Department of Disinvestment

2.8.2 The draft Concession Agreement and Schedules provided by the Authority as part of the Bid Documents shall be deemed to be part of this RFP.

2.9 Clarifications

2.9.1 Bidders requiring any clarification on the RFP may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.10. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. The responses will be sent by fax and/or e-mail. The Authority will forward all the queries and its responses thereto, to all purchasers of the RFP and /or upload on the Authority's website without identifying the source of queries.

- 2.9.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.9.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by the Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.10 Amendment of RFP

- 2.10.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.10.2 Any Addendum thus issued will be sent in writing to all those who have purchased the RFP. Bidders are advised to keep watch on TNRDC website (www.tnrdc.com) for any modification in RFP and other updates about the Project.
- 2.10.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

2C PREPARATION AND SUBMISSION OF BID

2.11 Language

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

2.12 Format and signing of Bid

- 2.12.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable to rejection.
- 2.12.2 The Bidder shall prepare 1 (one) original set of the Bid (together with originals/ copies of documents required to be submitted along therewith pursuant to this RFP) and clearly marked "ORIGINAL". In addition, the Bidder shall submit 1 (one) copy of the Bid, along with documents required to be submitted along therewith pursuant to this RFP, marked "COPY". The Bidder shall also provide 2 (two) soft copies on Compact Disc (CD). In the event of any discrepancy between the original and the copy, the original shall prevail.

2.12.3 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid. The Bid shall contain page numbers and shall be submitted in a hard bound form (hard bound implies binding between two covers through stitching whereby it may not be possible to replace any paper without disturbing the document - spiral bound form, loose form, etc. will be not accepted).

2.13 Sealing and Marking of Bids

2.13.1 The Bidder shall submit the Bid in the format specified at Appendix-I, together with the documents specified in Clause 2.13.2A and seal it in an envelope and mark the envelope as “**Technical Bid**”. The Bidder shall submit the Financial Offer in the format specified at Appendix-V and seal it in another envelope and mark the envelope as “**Financial Bid**”. Both the envelopes of the Technical Bid and the Financial Bid shall then be sealed in an outer envelope and mark the envelope as “**Bid**”. The Bidder shall seal the original and the copy of the Bid, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL” and “COPY”. The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.13.1 and 2.13.3.

2.13.2 (A) Each Technical Bid envelope shall contain:

- (i) Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- (ii) Power of Attorney for signing the Bid as per the format at Appendix-II;
- (iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
- (iv) copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;
- (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;
- (vi) copies of Bidder’s duly audited balance sheet and profit and loss account for the preceding five years;
- (vii) Demand Draft or Payment Receipt towards the cost of the Bidding Documents as specified in Clause 1.2.1;
- (viii) Bid Security as specified in Clause 1.2.4; and
- (ix) A copy of the Instruction to Bidders, Draft Concession Agreement and Schedules of the Draft Concession Agreement with each page stamped and initialled by the person signing the Bid in pursuance of the Power of Attorney referred to in sub-clause (ii) hereinabove.

(B) Each Financial Bid envelope shall contain:

- (i) Financial Offer in the prescribed format (Appendix-V);

The final outer envelope having the Original and Copy shall clearly bear the following identification:

Bid for: “Development of Chennai Outer Ring Road Phase II from Nemilicheri in NH 205 To Minjur in Thiruvottiur – Ponneri – Panchetti (TPP) Road on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity basis at Chennai, in the State of Tamil Nadu, India”

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. TO:	General Manager (Projects)
AUTHORITY:	Tamil Nadu Road Development Company Ltd.
ADDRESS:	Sindhur Panthion Plaza, 2nd Floor 346, Pantheon Road, Egmore Chennai - 600 008, Tamil Nadu, India
FAX NO.:	+91 44 2819 5800
E-MAIL ADDRESS:	tenders@tnrdc.com
PHONE NO.:	+91 44 2819 4800 / 4900
WEBSITE	www.tnrdc.com

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

2.13.5 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 Applications should be submitted before 1500 hours IST (As per Office Clock) on the Application 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 or his authorised representatives.

2.14.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.10.

2.15 Late Bids

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

2.16 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 Authority 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 Authority, shall be disregarded.

2D. EVALUATION PROCESS

2.17 Opening and Evaluation of Bids

- 2.17.1 The Authority shall open the Technical Bids at 1530 hours IST (As per TNRDC’s Office Clock) on 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 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.
- 2.17.3 The Authority will subsequently examine and evaluate 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 Authority. 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 Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 2.17.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all 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 Authority 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 Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from computation of the Eligible Score, and may also, while computing the aggregate Experience Score of the 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 misrepresentation, the Authority 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 short-listed qualified Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

2.19 Tests of Responsiveness

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

- (a) it is received as per format at Appendix-I.
- (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, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);
- (e) it contains all the information and documents (complete in all respects) as requested in this RFP;
- (f) it contains information in formats same as those specified in this RFP;
- (g) it contains certificates from its statutory auditors^Π in the formats specified at Appendix-I of the RFP for each Eligible Project;
- (h) it is accompanied by the Demand Draft or Payment Receipt towards the cost of the Bidding Documents as specified in Clause 1.2.1;
- (i) it is accompanied by the Bid Security as specified in Clause 1.2.4; and clause 2.26;
- (j) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);
- (k) it does not contain any condition or qualification; and
- (l) it is not non-responsive in terms hereof;

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

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

2.20 Clarifications

- 2.20.1 To facilitate evaluation of Bids, the Authority 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 Authority 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 Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

2E. QUALIFICATION AND BIDDING

2.21 Short-Listing and Notification

After the evaluation of Bids for Qualification, the Authority would announce a list of short-listed bidders as qualified Bidders who will be eligible for participation in the Financial Proposal Stage. The Authority will not entertain any query or clarification from Bidders who fail to qualify.

2.22 Deleted.

2.23 Proprietary Data

All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority. 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 Authority 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 Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

2.25 Validity of Bids

The Bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

2F. BID SECURITY

2.26 Bid Security

- 2.26.1 The Bidder shall deposit a Bid Security of **₹ 9.86 crore (Rupees Nine Crore and Eighty Six Lakh only)** in accordance with the provisions of this RFP. The Bidder has

the option to provide the Bid Security either as a Demand Draft drawn in favour of '**Tamil Nadu Road Development Company Ltd**', payable at any scheduled bank in Chennai or in the form of a Bank Guarantee acceptable to the Authority, as per format at Appendix-VI

The validity period of the Bank Guarantee or Demand Draft, as the case may be, shall not be less than 240 (two hundred and forty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 60 (sixty) days from the Bid Validity Date except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement.

- 2.26.2 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.26.1 hereinabove in the form of a bank guarantee issued by a Nationalised Bank, or a Scheduled Bank in India having a net worth of at least ₹ 1,000 Crore (Rupees One Thousand Crore), in favour of the Authority in the format at Appendix–VI (the “Bank Guarantee”) and having a validity period of not less than 240 (two hundred forty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any Nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 2.26.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive
- 2.26.4 Save and except as provided in Clauses 2.26.1 and 2.26.2 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority, and in any case within 60 (sixty) days from the Bid Validity Date. The refund of Bid Security thereof shall be in the form of an account payee cheque/demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said cheque/demand draft shall be made/drawn by the Authority for refund, failing which it shall be made/drawn in the name of the Bidder and shall be mailed to the address given on the Bid.
- 2.26.5 The Selected Bidder's Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.
- 2.26.6 The Authority shall at its sole discretion be entitled to forfeit and appropriate the Bid Security as compensation and damages payable to the Authority for inter alia, the time, cost and effort of the Authority including consideration of such Bidder's proposal inter alia in any of the events specified in Clause 2.26.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the

period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.

2.26.7 The Bid Security shall be forfeited as compensation and damages payable to the Authority for inter alia, the time, cost and effort of the Authority including consideration of such Bidder's proposal without prejudice to any other right or remedy that may be available to the Authority at its sole discretion, under the Bidding Documents and/ or under the Concession Agreement, or otherwise, under the following conditions:

- a) Deleted;
- b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
- c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
- d) In the case of Selected Bidder, if it fails within the specified time limit:
 - (i) to sign and return the duplicate copy of LOA;
 - (ii) to sign the Concession Agreement; or
 - (iii) to furnish the Performance Security within the period prescribed therefore in the Concession Agreement; or
- e) In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

3. CRITERIA FOR EVALUATION

3A. QUALIFICATION STAGE

3.1 Evaluation Parameters

3.1.1 Bidders have to meet the eligibility criteria specified in Clause 2.2.2 above and the evaluation would be as per 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.^s

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

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

- 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 Category 1 project should be more than **₹ 98.55 crore (Rupees Ninety Eight Crores Fifty Five Lakhs)**; 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 Applicant 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 Application 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 **₹ 98.55 crore (Rupees Ninety Eight Crores Fifty Five Lakhs)**; 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 A 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:

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 Organisation for Economic Co-operation and Development (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.
- 3.2.9 (a) The Experience Score of the Applicant shall be computed as a weighted average of the Experience Score of a member and its proposed equity stake (%) in the Consortium,
- (b) Similarly, the Financial Score of the Applicant shall be computed as a weighted average of the Financial Score of a member and its proposed equity stake (%) in the Consortium

Provided that the financial strength or the experience score taken into assessment will be only of those who contribute a minimum 26% share to the Consortium.

Illustration:

For illustration and avoidance of any doubts, the following method is placed in clarification:

If Company A (Net-Worth: Rs 1000 crores) & Company B (Net-Worth: Rs 500 crores) in a Consortium with shareholding of A as 60% and B as 40% then the Weighted Financial Score of the Consortium shall be:

For Weighted Financial Score

$$1000 \times 60\% + 500 \times 40\% = 800 \text{ Crores}$$

For Weighted Experience Score

If Company A has been assessed to have an Experience Score of 1000 and Company B has been assessed to have an Experience Score of 500, in a Consortium with shareholding of A as 60% and B as 40%, then the Weighted Experience Score of the Consortium shall be

$$1000 \times 60\% + 500 \times 40\% = 800$$

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 Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.
- 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-I.

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-I.
- 3.4.4 In case of foreign companies, a certificate from a qualified external auditor who audits the book of accounts of the Applicant or the Consortium Member in the formats provided in the country where the project has been executed shall be accepted, provided it contains all the information as required in the prescribed format of the RFP.

3.5 Short-listing of Bidders

- 3.5.1 The credentials of eligible Applicants shall be measured in terms of their Experience Score. The sum total of the Experience Scores for all Eligible Projects shall be the 'Aggregate Experience Score' of a particular Applicant. In case of a Consortium, the Aggregate Experience Score of each of its Members, who have an equity share of at least 26% in such Consortium, shall be summed up[¥] for arriving at the combined Aggregate Experience Score of the Consortium. All Applicants who fulfill the conditions of eligibility specified in Clause 2.2.2 and meet the other conditions specified in this RFP shall be qualified.
- 3.5.2. The Bidders who meet the eligibility criteria set forth in clause 2.2.2 will be shortlisted and eligible for the Financial Proposal Phase.

3B. FINANCIAL STAGE

3.6 Opening and Evaluation of Financial Proposal

- 3.6.1 The Bidders who are shortlisted as per Clause 3.5 will be informed about the opening date of the Financial Proposal in writing and on the following website i.e. www.tnrdc.com and the Financial Offer shall be opened in the presence of the shortlisted Bidders who choose to attend.
- 3.6.2 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.7 Selection of Bidder

- 3.7.1 The Bidder adjudged as shortlisted in terms of Clause 3.5 and seeking the least Annuity to be paid by the Authority shall be declared as the selected bidder (the "Selected Bidder").

[¥] To be summed up as per Clause 3.2.9 of RFP document

- 3.7.2 In the event that two or more Bidders quote the same amount of Annuity (the “**Tie Bidders**”), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 3.7.3 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “**first round of bidding**”), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.
- 3.7.4 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.7.3, the Authority may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.7.5 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, at its sole discretion, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as compensation and damages payable to the Authority for inter alia, the time, cost and effort of the Authority including consideration of such Bidder’s proposal on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 3.7.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3. 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 Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority, at its sole discretion, shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as compensation and damages payable to the Authority for inter alia, the time, cost and effort of the Authority including consideration of such Bidder's proposal, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement and till the period of 1 (one) years from the date of signing of the

Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

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

5. PRE-BID CONFERENCE

- 5.1 A Pre-Bid conference of the interested parties shall be convened at the designated date, time as per Clause 1.3 at Chennai. Venue of Pre-bid conference shall be intimated later through TNRDC's website (www.tnrdc.com). Only those parties who have purchased the RFP document shall be allowed to participate in the Pre-Bid conference. Applicants who have downloaded the RFP document from the Authority's website (www.tnrdc.com) should submit a non-refundable Demand Draft of ₹20, 00, 000 (Rupees Twenty Lakhs Only) drawn in favour of '**Tamil Nadu Road Development Company Ltd**', payable at any scheduled bank in Chennai, towards the cost of document, through their representative attending the conference. A maximum of two representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.2 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions in writing for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Chennai shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) 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 Authority 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 Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

6.4 Empowered Committee

An Empowered Committee has been constituted by the Government of Tamil Nadu vide GO (RT) No.32, Highways and Minor Ports (HF 2) Department, dated 25th February 2009, under the Chairmanship of the Chief Secretary to the Government of Tamil Nadu.

The Committee consists of the following members:

- Principal Secretary, Finance Department, Government of Tamil Nadu
- Secretary, Highways and Minor Ports Department, Government of Tamil Nadu
- Chairman & Managing Director, Tamil Nadu Industrial Development Corporation (TIDCO)
- Managing Director, Tamil Nadu Urban Infrastructure Financial Services Ltd (TNUIFSL)
- Member Secretary, Chennai Metropolitan Development Authority (CMDA)

Chief Engineer (C&M), Highways Department would convene the meeting of Empowered Committee as and when required.

The committee's decision shall be final and binding for the following:

- a) Finalisation of Successful Bidder;
- b) Approval/Modification of Draft Concession Agreement; and
- c) Execution of Concession Agreement;

6.5 Appointment of TNRDC

Government of Tamil Nadu has appointed M/s.Tamil Nadu Road Development Company Limited, (TNRDC), Chennai as its Managing Associate to assist and function on behalf of the Authority to perform its roles and responsibilities during the bid process, Development Period, Construction Period etc. The roles and responsibilities during bid process are stated below.

6.5.1 Roles before the Bid evaluation

- (i) bid document finalization
- (ii) call for bidding
- (iii) issue of bid documents
- (iv) organizing for site visit for the interested bidders
- (v) organizing pre- bid conference meeting
- (vi) review queries on bid documents
- (vii) reply to bid related queries
- (viii) providing all necessary and possible information to the bidders
- (ix) organizing Bid submission
- (x) obtain GOTN approval as and when required.

6.5.2 Roles during Bid evaluation process

- (i) opening of Bids;
- (ii) evaluation of responsiveness of bidders;
- (iii) evaluation of technical proposal ;
- (iv) evaluation of financial proposal;
- (v) finalization of Successful Bidder;
- (vi) obtain GOTN/ Empowered Committee approval;
- (vii) issuing Letter of Award.

APPENDICES

APPENDIX I

Letter Comprising the Bid (Refer Clause 2.13.2A)

Dated: [●]

To,

General Manager (Projects)
Tamil Nadu Road Development Company Ltd.
Sindhur Panthion Plaza, 2nd Floor
346, Pantheon Road, Egmore
Chennai - 600 008, Tamil Nadu, India
Phone: 91-44-2819 4800 / 4900
Fax: 91-44-2819 5800

Sub: Bid for “**Development of Chennai Outer Ring Road Phase II from Nemilicheri in NH 205 To Minjur in Thiruvottiyur – Ponneri – Panchetti (TPP) Road on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity basis at Chennai, in the State of Tamil Nadu (“the Project”)**”

Dear Sir,

With reference to your RFP document dated [●][§], 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 Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided in the Bid and in Annexes I to V is 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. This statement is made for the express purpose of our selection as Concessionaire for the development, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive to the fullest extent permitted by applicable law our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:

[§] All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.

- (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority;
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFP document;
 - (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 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.
 - (e) the undertakings given by us along with the Application in response to the RFP for the Project were true and correct as on the date of making the Application and are also true and correct as on the Bid Due Date and I/We shall continue to abide by them.
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 satisfy(s) 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 the project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ employees.
14. I/We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Appendix-VII 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 RFP, we shall intimate the Authority of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the 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 RFP, are also enclosed.
17. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
18. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
19. I/ We certify that in terms of the RFP, my/our Networth is ₹.....
(Rs..... in words).
20. I/ We acknowledge and undertake that our Consortium is qualified on the basis of Technical Capacity and Financial Capacity in accordance with this RFP, of those of its Members who shall, for a period of 2 (two) years from the date of full 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 of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. I/We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.
21. I/ We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity is taken into consideration for the purposes of short-listing and qualification in accordance with this RFP, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
22. I/ We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate as such prior to execution of the Concession Agreement and any other addendums thereof.

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

23. I/ We have studied all the Bidding Documents carefully and also surveyed the Project. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
24. I/ We offer a Bid Security of **₹ 9.86 Crore (Rupees Nine Crore and Eighty Six Lakh only)** to the Authority in accordance with Clause 2.26 of the RFP Document.
25. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.
26. The Demand Draft or Payment Receipt towards the cost of Bidding Documents as specified in Clause 1.2.1 is attached.
27. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
28. The Annuity has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of cost and traffic and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.
29. {We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.}
30. I/ We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
31. (a) The EPC contractor/s who would be executing the EPC works of the Project are _____, _____, _____ and it is confirmed that these contractors meet the minimum criterion set out in 2.2.1 A of the RFP for this project.

(b) It is irrevocably agreed that the value of any contract for EPC works awarded shall not be less 20% of the TPC or ₹ 500 cr. whichever is less.

(c) It is also agreed that any change in the name(s) of EPC contractor(s) would be with prior consent of the Authority. We agree that the Authority shall grant such permission only and only if the substitute proposed is of the required technical capabilities as applicable.

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

Yours faithfully,

Date:

(Signature, name and designation of the Authorised Signatory)

Place:

Name and seal of the Bidder/ Lead Member

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, or modified as necessary to reflect Bidder-specific particulars.

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 Authority:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:
5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Bid.
 - (c) Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role* {Refer Clause 2.2.6(d)} ^{\$}	Percentage of equity in the Consortium {Refer Clauses 2.2.6(a), (c) & (g)}
1.			
2.			
3.			

* 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% 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):

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

Annex - II

Technical Capacity of the Bidder @

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

Bidder type #	Proposed Equity Shareholding in Consortium (%)	Member Code*	Project Code**	Category \$	Experience [¥] (Equivalent ₹ crore) ^{SS}			Experience Score [£]
					Payments made/ received for construction of Eligible Projects in Category 3 & 4 (6)	Payments made for development of Eligible Projects in Category 1 & 2 (7)	Revenues appropriated from Eligible Projects in Category 1 & 2 (8)	
(1)	(2)	(3)	(4)	(5)				(9)
Single Entity			A					
			B					
			C					
			D					
Consortium Member 1			1a					
			1b					
			1c					
			1d					
Consortium Member 2			2a					
			2b					
			2c					
			2d					
Consortium Member 3			3a					
			3b					
			3c					
			3d					
	Aggregate Experience Score =							

@ 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.

An 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 7 and 8 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 45 (forty five 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.

\$ 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 and in case of a Consortium, further multiply the result thereof by the proposed equity shareholding of the applicable Member, 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 6, 7 and 8, as the case may be, in respect of each Eligible Project shall be restricted to a ceiling equivalent to the Estimated Project Cost.

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 ₹ crore^{ss})

Applicant type ^s	Member Code [£]	Proposed Equity Shareholding in Consortium (%)	Net Cash Accruals					Net Worth [£]
			Year 1	Year 2	Year 3	Year 4	Year 5	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Single entity Applicant								
Consortium Member 1								
Consortium Member 2								
Consortium Member 3								
TOTAL								

Name & address of Bidder's Bankers:

^s 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.

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

Instructions:

- 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:

- 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 (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
 - 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 (g) 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 (Give a brief description for better understanding)		
Year-wise (a) payments received, (b) payments made for development of PPP projects and/ or (c) revenues appropriated	<u>6</u>	
Entity for which the project was constructed/ developed/operated	<u>7</u>	
Location		
Project cost	<u>8</u>	
Date of commencement of project/ contract		
Date of completion/ commissioning	<u>9</u>	
Equity shareholding (with period during which equity was held)	<u>10</u>	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	15	

Instructions:

- Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.2.3 and 3.2.4 of the RFP. Information provided in this section is intended to serve as a back up for information provided in the Bid. Bidders should also refer to the instructions below.
- 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.
- A separate sheet should be filled for each Eligible Project.
- 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 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 Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.2.12). 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 auditor⁵ 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.

⁵ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

13. If the Bidder is claiming experience under Categories 1 & 2[£], it should provide a certificate from its statutory auditor in the format below:

Certificate from the Statutory Auditor regarding PPP projects ☐

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%• of the total paid up and subscribed equity capital) of the project company from (date) to (date)*. The project was/is likely to be commissioned on (date of commissioning of the project).

We further certify that the total estimated capital cost of the project is ₹ cr. (Rupeescrore), 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. (Rupees..... crore) as per year-wise details noted below:

Name of the audit firm:

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

Date:

£ Refer Clause 3.2.1 of the RFP.

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

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

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

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

Certificate from the Statutory Auditor/ Client regarding construction works□

Based on its books of accounts and other published information authenticated by it, {this is to certify that..... (name of the Bidder/Member/Associate) was engaged by..... (title of the project company) to execute (name of project) for (nature of project)*. The construction of the project commenced on (date) and the project was/ is likely to be commissioned on (date, if any). It is certified that (name of the Bidder/ Member/ Associate) received/paid ₹ 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.}♠

Name of the audit firm:

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

Date:

♣ Refer Clauses 3.2.1 and 3.2.4 of the RFP.

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

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

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

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

Certificate from Statutory Auditor/ Company Secretary regarding Associate^s

Based on the authenticated record of the company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of (name of the Bidder/Consortium Member/ Associate) is held, directly or indirectly[£], by (name of Associate/ Applicant/ 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 and the Associate. In the event the Associate is under common control with the Applicant/ Consortium Member, the relationship may be suitably described and similarly certified herein.}

Name of the audit firm:

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

Date:

operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

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

[£] Refer Clause 3.2.6 of the RFP.

Annex -V

Statement of Legal Capacity

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

Ref.

Date:

To,

General Manager (Projects)
Tamil Nadu Road Development Company Ltd.
Sindhur Panthion Plaza, 2nd Floor
346, Pantheon Road, Egmore
Chennai - 600 008, Tamil Nadu, India
Phone: 91-44-2819 4800 / 4900
Fax: 91-44-2819 5800

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

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 the **“Development of Chennai Outer Ring Road Phase II from Nemilicheri in NH 205 To Minjur in Thiruvottiyur – Ponneri – Panchetti (TPP) Road on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity basis at Chennai, in the State of Tamil Nadu”** Project proposed or being developed by the Tamil Nadu Road Development Company Ltd. (the “Authority”) including but not limited to signing and submission of all bids and other documents and writings, participate in pre-bids and other conferences and providing information/ responses to the Authority, presenting us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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

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

For

.....

(Signature, name, designation and address)

Witnesses:

1.

2.

(Notarised)

Person identified by me/ personally appeared before

me / signed before me/ Attested / Authenticated*

(* Notary to specify as applicable)

(Signature, Name and Address of the Notary)

Seal of the Notary

59

Registration Number of the Notary

Date : _____

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 Apostille certificate.*

APPENDIX III

Power of Attorney for Lead Member of Consortium

(Refer Clause 2.2.5)

Whereas the Tamil Nadu Road Development Company Ltd. (“the Authority”) has invited Bids from interested parties for the **“Development of Chennai Outer Ring Road Phase II from Nemilicheri in NH 205 To Minjur in Thiruvottiyur – Ponneri – Panchetti (TPP) Road on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity basis at Chennai, in the State of Tamil Nadu, India”** (the “Project”) and

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 document (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 in accordance with the terms and conditions of the Request for Proposal document (RFP) and other connected documents in respect of the Project 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 and be held responsible for the same.

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 pre-qualification of the Consortium and 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 Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our

said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

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

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

Witnesses:

1.

2.

.....
(Executants)

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

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

Seal of the Notary

Registration Number of the Notary

Date : _____

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *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 IV

Joint Bidding Agreement

(Refer Clause 2.13.2A)

(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)}

WHEREAS,

(A) The GOTN, HD represented by Tamil Nadu Road Development Company Ltd. and having its principal office at Sindhur Panthion Plaza, 2nd Floor, 346, Pantheon Road, Egmore Chennai - 600 008, India (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the “**Bids**”) by its Request for Proposal No. dated(the “**RFP**”) for development and operation/ maintenance of **Chennai Outer Ring Road Phase II from Nemilicheri in NH 205 To Minjur in Thiruvottiyur – Ponneri – Panchetti (TPP) Road on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity basis at Chennai, in the State of Tamil Nadu, India** (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 Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. Consortium

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

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

3. Covenants

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

4. Role of the Parties

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

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding process and until the Agreement Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be {the Technical Member of the Consortium;}
- {(c) Party of the Third Part shall be the Financial Member of the Consortium/ Operation and Maintenance Member/ Other Member; and}

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 SPV

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

First Party:

Second Party:

{Third Party:}

- 6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till 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 network 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 SPV 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 SPV 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 and any other requirements set forth in the Concession Agreement and RFP.

7. Representation of the Parties

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

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, 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 pre-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 pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

9. Miscellaneous

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

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

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SECOND PART

(Signature)

(Name)

(Designation)

(Address)

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

THIRD PART

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

FIFTH PART

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

FOURTH PART

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

SIX PART

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

In the presence of:

1.

2.

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

Seal of the Notary

Registration Number of the Notary

Date : _____

Notes:

- 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.*
- Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.*
- 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 V

Letter Comprising the Financial Offer
(Refer Clause 2.13.2B)

Dated:

To,

General Manager (Projects)
Tamil Nadu Road Development Company Ltd
Registered Office :
Sindhur Panthion Plaza, 2nd Floor
346, Pantheon Road, Egmore
Chennai - 600 008, Tamil Nadu, India
Phone: 91-44-2819 4800 / 4900
Fax: 91-44-2819 5800

Sub Bid for **“Development of Chennai Outer Ring Road Phase II from Nemilicheri in NH 205 To Minjur in Thiruvottiyur – Ponneri – Panchetti (TPP) Road on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity basis at Chennai, in the State of Tamil Nadu, India”**

Dear Sir,

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

1. I/We hereby submit our Bid and require an Annuity of Rs..... (in _____ words)) for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.
2. I/We hereby declare that the Annuity quoted above is fixed, semiannual in nature and inclusive of all applicable taxes and shall be interpreted and evaluated as per the other clauses of the Bidding Document
3. I/ We hereby declare to undertake the aforesaid Project in accordance with the terms & conditions of the Concession Agreement and the Bidding documents.

In witness thereof, I/we submit this Financial Proposal under and in accordance with the terms of the RFP and the Bidding documents.

Yours faithfully,

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

Place:

Name and seal of Bidder/Lead Member

APPENDIX VI

Bank Guarantee for Bid Security (refer clauses 2.26)

B.G. No.

Dated:

1. In consideration of the Tamil Nadu Road Development Company Ltd (hereinafter called “**TNRDC**”) which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of (a company registered under the Companies Act, 1956) 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 the RFP for **Development of Chennai Outer Ring Road Phase II from Nemilicheri in NH 205 to Minjur in Thiruvottiyur – Ponneri – Panchetti (TPP) Road on Design, Build, Finance, Operate and Transfer (DBFOT) Annuity basis at Chennai, in the State of Tamil Nadu, India** (hereinafter referred to as “the Project”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft concession agreement (hereinafter collectively referred to as “**Bidding Documents**”), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the “**Bank**”), at the request of the Bidder, do hereby in terms of Clause 2.26 read with 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 TNRDC an amount of **₹ 9.86 Crore (Rupees Nine Crore and Eighty Six Lakhs)** (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 fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of TNRDC is disputed by the Bidder or not, merely on the first demand from the TNRDC stating that the amount claimed is due to the TNRDC 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 **₹ 9.86 Crore (Rupees Nine Crore and Eighty Six Lakhs)**.
4. This Guarantee shall be irrevocable and remain in full force for a period of

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

5. We, the Bank, further agree that TNRDC 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 TNRDC that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between TNRDC 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.

In order to give full effect to this Guarantee, TNRDC shall be entitled to treat the Bank as the principal debtor. TNRDC 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 TNRDC, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of TNRDC or any indulgence by TNRDC to the said Bidder or by any change in the constitution of TNRDC 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.

7. 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.
8. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
9. It shall not be necessary for TNRDC 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 TNRDC 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.

10. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of TNRDC in writing.
11. 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.
12. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to **₹ ₹ 9.86 Crore (Rupees Nine Crore and Eighty Six Lakhs)** The Bank shall be liable to pay the said amount or any part thereof only if TNRDC serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 240 days after the Bid Due Date)].

Signed and Delivered by Bank

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

(Signature of the Authorised Signatory)
(Official Seal)

APPENDIX-VII

Guidelines of the Department of Disinvestment

(Refer Clause 1.2.1)

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

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

OFFICE MEMORANDUM

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

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

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by agency of the Government/conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.

- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/Managers/employees, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

Sd/-

(A.K. Tewari)

Under Secretary to the Government of India