



**PUBLIC PRIVATE PARTNERSHIP**  
**REQUEST FOR PROPOSAL (ONE STAGE)**  
**2019**

**MINISTRY OF FINANCE**  
**ROYAL GOVERNMENT OF BHUTAN**



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**[Implementing Institution's Name]**

**One-Stage Request for Proposal  
for the**

**[Title of PPP Project]**

**[DATE]**



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## DISCLAIMER

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

This RFP is not an agreement and is neither an offer nor invitation by the Implementing Institution to the prospective Bidders or any other person. The purpose of this RFP is to provide Bidders with information that may be useful to them in preparing and submitting their Bid pursuant to the Bidding Documents including this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Implementing Institution in relation to the PPP Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. The information contained in the Bidding Documents may not be appropriate for all persons, and it is not possible for the Implementing Institution, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. Each Bidder should 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 Bidders is on a wide range of matters, some of which depends 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. None of the Implementing Institution, its employees, or advisors accepts any responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein. The Implementing Institution, 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 by participating in this Bidding Process.

The Implementing Institution, its employees or advisors, likewise 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 Implementing Institution 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 issuance of this RFP does not imply that the Implementing Institution is bound to select a Bidder or to appoint the Preferred Bidder for the Project and the Implementing Institution reserves the right to reject all or any of the Bidders or Bids or otherwise discontinue the process 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 Implementing Institution 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 Implementing Institution 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.

## GLOSSARY

**Addendum or Addenda** means addendum or addenda to the RFP.

**Bid** means a proposal submitted by a Bidder for the Project.

**Bidder** means an interested single entity or Consortium which takes part in the Bidding Process as set out in this RFP.

**Bidding Company** means a single entity submitting a Bid pursuant to the RFP.

**Bidding Documents** means the RFP, the draft PPP Agreement, any Addenda or clarification issued by the Implementing Institution in accordance with the terms of this RFP, and any other documents provided by the Implementing Institution pursuant to this RFP, as such documents may be modified, altered, amended and clarified from time to time by the Implementing Institution.

**Bidding Process** means the single-stage bidding process being followed by the Implementing Institution to award the Project to the Selected Bidder, the terms of which are set out in this RFP.

**Bid Parameter** means the financial criterion which determines the best bid for the PPP Project. The bid parameter is not necessarily equivalent to “least-cost”, and may vary from one PPP project to another (i.e. highest concession payment to government, lowest tariff, etc).

**Bid Security** means an amount equivalent to [AMOUNT] to be provided by a Bidder as security for its Bid.

**Bid Submission Deadline** means the date specified in Schedule 2 as the last date for submission of Bids.

**Availability Payments** means the payments, if any, to be paid to the Service Provider by the Implementing Institution for the services provided under the PPP Project.

**Conflict of Interest** has the meaning ascribed to it in Clause 2.1.12.

**Consortium** means any combination of entities that have formed a

consortium or association by fulfilling the requirements set out in this RFP, for the purpose of submitting a Bid and for implementing the Project, if such consortium or association is declared as the Selected Bidder.

**Consortium Agreement** means the binding consortium agreement to be executed between Consortium Members in the form set out in this RFP.

**Control** means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of such person, or the power to appoint majority of the directors on the board of directors of such company or corporation and/or the power to direct the management and policies of such person by operation of law, agreement or otherwise 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, agreement or otherwise.

**Data Room** means a virtual data room providing certain information and documents relevant to the PPP Project.

**Eligible Project** means a project demonstrating that a Bidder has the requisite technical capacity to implement the Project.

**Financial Proposal** means the Financial Proposal to be submitted by a Bidder for the development and implementation of the PPP Project as prescribed in this RFP.

**Government** means the Royal Government of Bhutan.

**Implementing Institution** means any Line Ministry, an administrative department reporting to it, or a public entity established or owned by or reporting to a Line Ministry.

**Lead Member** in the context of a Consortium, means the Consortium Member nominated by the Consortium Members as the lead member with the rights and obligations as set out in this RFP.

**Letter of Award** means the letter of award that will be issued by the Implementing Institution to the Selected Bidder in accordance with this RFP.

**Line Ministry** means a Government Ministry responsible for a sector or sectors.

**Member** means a member of a Consortium.

**Net Worth** means the difference between the sum of subscribed and paid up equity, reserves and the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

**O&M** means operation and maintenance.

**Performance Security** means an amount equivalent to [AMOUNT] to be provided by the Preferred Bidder as security for its performance during implementation of the PPP Agreement.

**PPP** means public-private partnership.

**PPP Agreement** means the agreement to be executed between the Implementing Institution and the Selected Bidder to implement the PPP project, substantially in the format set out in this RFP.

**Pre-Bid Conference** means a conference that will be held by the Implementing Institution to answer queries raised by Bidders and to provide information to Bidders on the Project.

**Project Company** means the special purpose company specifically formed and incorporated in [LOCATION] for the purpose of undertaking the Project pursuant to the PPP Agreement.

**RFP or Request for Proposals** means this request for proposal as dated on the cover along with its Schedules, and Addenda, if issued.

**Service Provider** means the legal entity proposed by the Preferred Bidder in its proposal to undertake the PPP Project in accordance with the PPP Agreement

**Preferred Bidder** means the Bidder selected by the Implementing Institution to award the Project following the completion of the Bidding Process.

**Technical Proposal** has the meaning ascribed to it in this RFP.

**Tender Evaluation Committee** means the working group established by the Implementing Institution to carry out the PPP procurement.

**Term** means the period during which the Service Provider shall undertake the PPP Project in accordance with the PPP Agreement.

**User Payment** means a payment to be paid to the Service Provider by a user of the PPP Project.

# 1 INTRODUCTION

## A. Purpose of Issuing the RFP

- 1.1. The RFP is prepared in terms of the Royal Government of Bhutan Public Private Partnership Rules and Regulations, 2017, as amended. Where a conflict exists the PPP Rules and Regulations shall prevail.
- 1.2. The purpose of issuing the RFP is to enable the Implementing Institution to select the Preferred Bidder for the PPP project, by evaluating which among the Bidders presents the best Bid that offers the most value for money for the public in undertaking the PPP Project as set out in the technical and financial criteria in this RFP.
- 1.3. It is intended that the Bidding Process be conducted in a competitive and transparent manner in order to ensure that the Implementing Institution's objectives for initiating the PPP are achieved and value for money objectives met.

## B. Project Background

- 1.4. The Implementing Institution is seeking a private partner or partners for the PPP Project as described below:  
[INSERT PROJECT DESCRIPTION]  
[INSERT PRELIMINARY CONCEPT OF PPP STRUCTURE – E.G. SCOPE, ROLES, ETC.]

Further details on the PPP Project may be found in [USE IF ADDITIONAL PROJECT INFORMATION IS PROVIDED].

## C. PPP Agreement

- 1.5. The Implementing Institution shall enter into the PPP Agreement with the selected Preferred Bidder.

- 1.6. The Term shall be [INSERT] years from [here insert planned start event or date].
- 1.7. The Draft PPP Agreement is attached to this RFP and includes provisions regarding access to, use of, ownership, transfer and/or other treatment of assets.

#### **D. Financing Provisions**

- 1.8. The assumptions, provisions, rights and responsibilities for financing, revenues and cost streams of the PPP Project, as well as the payment mechanism/s, are elaborated in the Updated Project Information attached to this RFP.
- 1.9. The following provisions regarding financing are highlighted, namely:  
[INSERT ANY SPECIFIC FINANCING, GUARANTEE, GRANT FUNDING, OR OTHER PROVISIONS TO EMPHASISE TO BIDDERS]

#### **E. Overview of the Bidding Process**

- 1.10. The Implementing Institution has adopted a two-envelope, one-stage process (collectively referred to as the “Bidding Process”) for selection of the Preferred Bidder for award of the PPP Project. The Bidding Process comprises the bidding process detailed in this RFP and is open to all Bidders. Bidders are called upon to submit their proposals (the “Bids”) in respect of the project, in accordance with the RFP and other documents herein provided by the Implementing Institution.
- 1.11. This RFP includes a schedule with a Bidding Timeline. The Implementing Institution will strive to adhere to the specified timeline, but may vary the timeline if required and shall then notify Bidders in writing and by issuance of an Updated Bidding Timeline.
- 1.12. The Implementing Institution will make the Data Room available to Bidders.

- 1.13. Bidders may submit questions, seek clarifications or address remarks to the Implementing Institution regarding the project or the RFP, including the Draft PPP Agreement, by submitting these in writing to the Implementing Institution. The Implementing Institution will prepare and maintain a register of any such written submissions received by Bidders.
- 1.14. One or more pre-bid conferences may be convened at the designated date, time and place by the Implementing Institution and is open to all interested parties. During the course of the pre-bid conference, the parties will be free to seek clarifications and make suggestions for consideration of the Implementing Institution. The Implementing Institution 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.
- 1.15. The Implementing Institution will provide written responses to issues raised verbally during the first pre-bid conference. These responses will be provided in writing publically, where the question, clarification or comment is clearly stated, the written response of the Implementing Institution is provided, but the source of the question, clarification or comment is kept anonymous.
- 1.16. The Implementing Institution may allow for further written submissions to be made during one or more timeframes, and will clearly notify publically of such timeframes.
- 1.17. The Implementing Institution may amend the RFP including the Draft PPP Agreement through issuance of public notices, addenda or by the issue of a revised RFP. The Implementing Institution will notify interested parties of the final version of the RFP on which their Bids shall be based.
- 1.18. Bidders shall submit Bids that meet the requirements of this RFP before the Bid Due Date, and following the submission requirements and procedures [INSERT SUBMISSION REQUIREMENT AND PROCEDURES].



- 1.19. Bidders may be required to deposit, along with its Bid, a refundable Bid Security as specified in this RFP.
- 1.20. The Implementing Institution will record all Bids received by the Bid Due Date and will assess these for compliance and responsiveness to the Bid submission requirements. The Implementing Institution will establish a Tender Evaluation Committee which will undertake the Evaluation of Compliant and Responsive Bids according to the process and criteria set out in this RFP, and will determine the first ranked Bid.
- 1.21. The Tender Evaluation Committee and Implementing Institution cannot negotiate with any of the bidders, except for the following:
  - a. The first ranked Bidder withdraws or is not selected for any reason, Public Private Partnership Steering Committee shall decide and recommend whether to undertake negotiation with the second ranked Bidder or to retender; or
  - b. Where all bid prices substantially exceed the cost estimates, the Implementing Institution may, instead of calling for new bids, after consultation with Public Private Partnership Steering Committee, call for best and final offer from the eligible Bidders, and negotiate with such bidder for a reduction of the bid price; or
  - c. The bid price quoted by the Bidder shall be analyzed with respect to internal benchmark, and if found abnormally high or low, as the case may be, recommendation from Public Private Partnership Steering Committee shall be sought for accepting or rejecting the bid from the first ranked Bidder or if first ranked bidder is rejected, then for negotiating with the second ranked Bidder or for retendering.
- 1.22. At the end of the limited final negotiations, the Implementing Institution will, with approval of the PPP Steering Committee, issue a Letter of Award to the Preferred Bidder stating the intention to sign the PPP Agreement with the Preferred Bidder and the related terms, and stating any conditions to be met by the Preferred Bidder

within a set period as a condition precedent to signing of the PPP Agreement.

- 1.23. The selected Bidder to whom the project is awarded may be required to submit a Performance Security as specified in this RFP.
- 1.24. The Implementing Institution will sign the PPP Agreement with the Preferred Bidder, and may engage in further actions and/or enter agreements as part of the Financial Close of the project.

## **2 INSTRUCTIONS TO BIDDERS**

### **A. General Provisions**

#### **2.1. Eligibility of Bidders**

- 2.1.1. Any Bidders meeting the requirements of this RFP are eligible to receive this RFP and to take part in the bidding process.
- 2.1.2. A Bidder shall submit only 1 (one) Bid either individually or as a Member of a Consortium. A Bidder submitting a Bid individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.
- 2.1.3. An Applicant may be a natural person, legal entity, or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in this RFP.
- 2.1.4. The Bid should be furnished in the formats specified in this RFP and signed by the Bidder's authorized signatory. The Bidder should note that the formats specified in the RFP have been provided for the convenience of the Bidders and may not exhaustively enumerate or describe various information required to be provided by the Applicants under this RFP. The Applicants should ensure that all the information required to be provided by them under this RFP is included in their Bid whether or not a particular format specified herein makes provision for submission of such information and/or whether or not a format for submission of such information is incorporated in this RFP.
- 2.1.5. The Bidder should submit a Power of Attorney in accordance with Schedule 7 of this RFP, authorizing the signatory of the Bid to commit the Bidder.
- 2.1.6. In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in accordance with Schedule 8 of this RFP.

- 2.1.7. Any condition or qualification or any other stipulation contained in the Bid which is inconsistent with the terms of this RFP may render the Bidder liable to rejection as a non-responsive Bid.
- 2.1.8. The Bid and all communications in relation to or concerning this RFP shall be in the 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 appropriate translations of 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.
- 2.1.9. This RFP and all attached or other documents, are and shall remain the property of the Implementing Institution and are made available to the Bidders solely for the purpose of preparation and submission of a Bid. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparing and submitting their Bid.
- 2.1.10. Change in the composition of a Consortium will not be permitted by the Implementing Institution after the Submission of the Bid Due Date.
- 2.1.11. A Consortium shall submit a Power of Attorney and a Consortium Agreement in conformance with this RFP along with the Bid on or before the Submission of Bid Due Date.
- 2.1.12. The Consortium Agreement shall, inter alia:
  - a. convey the intent to form a Project Company with shareholding/ownership equity commitments in accordance with this RFQ;
  - b. clearly outline the proposed roles and responsibilities of each Member and the Lead Member; and
  - c. fulfil the minimum shareholding structure indicated below:

- i. The Lead Member of the Consortium shall hold at least \*\*\*\* % of the subscribed and paid up equity of the Project Company for \*\*\*\* years after the Completion Date, and at least \*\*\*\* % for the following \*\*\*\* years.
- ii. [Each member of the Consortium shall hold at least \*\*\*\* % of the subscribed and paid up equity of the Project Company for \*\*\*\* years after the Completion Date, and at least \*\*\*\* % for the following \*\*\*\* years.]

## **2.2. Verification of Information of Bidder**

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

- a. made a complete and careful examination of the RFP;
- b. agreed to be bound by the undertakings provided by it under and in terms hereof; and
- c. acknowledged that it does not have a Conflict of Interest.

2.2.2. The Implementing Institution, its employees, and consultants shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP or the Bidding Process, including any error or mistake therein or in any information or data given by or on behalf of the Implementing Institution.

## **2.3. Cost of bidding**

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

## **2.4. Conflict of Interest**

2.4.1. The Conflict of Interest requirements set in the RFP shall continue to apply. A Bidder shall not have a 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 Implementing Institution shall be entitled to forfeit and appropriate the Bid Security and/or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to the Implementing Institution under the Bidding Documents or otherwise. Determining the presence of Conflict of Interest shall be the prerogative of the Implementing Institution. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- a. such Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest; or
- b. a consortium member or any constituent of such Bidder is also a consortium member or constituent of another Bidder; or
- c. such Bidder (or any constituent thereof) receives or has received any direct or indirect subsidy from any other Bidder (or any constituent thereof), or has provided any such subsidy to any other Bidder (or any constituent thereof); or
- d. such Bidder (or any constituent thereof) thereof has the same legal representative for purposes of this Bid as any other Bidder (or any constituent thereof); or
- e. such Bidder (or any constituent thereof) has a relationship with another Bidder (or any constituent thereof), directly or through common third parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or
- f. such Bidder (or any constituent thereof) has participated as a consultant to the Implementing Institution in the preparation of any documents, design or technical specifications of the PPP Project, or

- g. any legal, financial or technical adviser of the Implementing Institution in relation to the PPP Project is engaged by the Bidder (or any constituent thereof) in any manner for matters related to or incidental to the PPP Project.

## **2.5. Data Room**

- 2.5.1. For the benefit of the Bidders, the Implementing Institution has provided a virtual Data Room. The Data Room can be accessed by any Bidder by submitting the relevant details to be provided on the website on the following link. [INSERT url]

## **2.6. Site visit and Verification of Information by Bidders**

- 2.6.1. Bidders are encouraged to submit their respective Bids after visiting the Project Site[s] and ascertaining for themselves the sites' conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to sites, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.
- 2.6.2. A site visit/s may be organized by the Implementing Institution for all Bidders. Further details regarding such site visit/s shall be given by the Implementing Institution to all Bidders in due course.
- 2.6.3. It shall be deemed that by submitting a Bid, the Bidder has:
  - a. made a complete and careful examination of the Bidding Documents;
  - b. accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Implementing Institution relating to any of the matters referred to in the RFP;

- c. satisfied itself about all matters, things and information including matters referred to in the RFP 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;
- d. 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 the RFP shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits, or a ground for termination of the PPP Agreement by the Service Provider; and
- e. acknowledged that it does not have a Conflict of Interest.

2.6.4. The Implementing Institution, its employees, and consultants shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by or on behalf of the Implementing Institution.

2.6.5. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the Draft PPP 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 PPP Agreement.

## **2.7. Verification and Disqualification**

2.7.1. The Implementing Institution reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by the Implementing Institution, make available all such information, evidence



and documents as may be necessary for such verification. Any such verification or lack of such verification by the Implementing Institution shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Implementing Institution thereunder.

2.7.2. The Implementing Institution reserves the right to reject any Bid and appropriate the Bid Security if:

- a. Refer to the Clause 2.10;
- b. at any time, a material misrepresentation is made or uncovered; or
- c. the Bidder does not provide, within the time specified by the Implementing Institution, the supplemental information sought by the Implementing Institution for evaluation of the Bid, or
- d. a Conflict of Interest persists.

2.7.3. Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member shall be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Preferred Bidder gets disqualified/ rejected, then the Implementing Institution reserves the right to select the Bidder which proposed the second best Bid as Preferred Bidder or cancel the Bidding Process.

## **2.8. Amendment**

2.8.1. At any time prior to the Bid Submission Deadline, the Implementing Institution 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.

2.8.2. Any addendum issued hereunder will be uploaded in the website of the Implementing Institution. The Implementing Institution may notify Bidders about the issuance of an Addendum by public notification.

- 2.8.3. In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Implementing Institution may, at its sole discretion, extend the Bid Submission Deadline.

## **2.9. Correspondence with the Bidders**

- 2.9.1. Save and except as provided for in this RFP, the Implementing Institution shall not entertain any correspondence with any Bidder in relation to the RFP including the project and process, and/or the acceptance or rejection of any Bid.

## **2.10. Fraudulent and Corrupt Practices**

- 2.10.1. 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 Letter of Award and during the subsistence of the PPP Agreement.
- 2.10.2. The Implementing Institution may reject a Bid, withdraw the Letter of Award, or terminate the PPP Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or the Service Provider, as the case may be, if it determines that the Bidder or Service Provider, 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.
- 2.10.3. In such an event, the Implementing Institution shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to the Implementing Institution under the Bidding Documents and/or the PPP Agreement or otherwise.
- 2.10.4. In pursuit of this policy, the Government defines, for the purposes of this provision, the terms set forth below as follows:

- a. “corrupt practice” means the offering, giving, receiving, or soliciting, of anything of value to influence the action of a public official in the Bidding Process (for the avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Implementing Institution who is or has been associated in any manner with the Bidding Process, at any time during the Bidding Process and within one year from the date of the conclusion of such process, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process), and includes inter alia, bribery, extortion or coercion, which involves threats of injury to person, property or reputation;
- b. “fraudulent practice” means a misrepresentation, omission, 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; and
- d. “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Implementing Institution or member of the Tender Committee 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.

2.10.5. Government reserves the right, where the Bidder has been found by a national or international entity to have engaged in corrupt or fraudulent practices, to declare such Bidder ineligible, for a period of ten years, to be awarded a PPP contract or any publicly funded contract.

## **B. Formats and Procedures**

2.11. This RFP comprises the Disclaimer, the contents of the RFP and any appendixes, and any amendments, addendums, corrections, clarifications or interpretations issued in writing by the Implementing Institution to Bidders.

### **2.12. Clarifications**

2.12.1. Bidders wishing to address questions, request clarification or submit comments to the Implementing Institution regarding the RFP must do so in writing, before the deadlines indicated by the Implementing Institution, and following the submission method indicated by the Implementing Institution (INSERT WEBSITE, DATA ROOM SITE, PROJECT SITE, OR EMAIL / PHYSICAL ADDRESS TO BE USED).

2.12.2. The Implementing Institution will provide answers, clarification or comments publically and in writing in the method indicated by the Implementing Institution, and where the identity of the requestor is kept anonymous. (INSERT WEBSITE, DATA ROOM SITE, PROJECT SITE, OR EMAIL / PHYSICAL ADDRESS TO BE USED).

2.12.3. The Implementing Institution may also on its own initiative, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Implementing Institution shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by the Implementing Institution or its employees or representatives shall not be binding on the Implementing Institution.

2.12.4. Should the Implementing Institution deem it necessary to amend the RFP as a result of a clarification, it shall do so in writing publically and following the communication method being followed.

2.12.5. In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Implementing Institution may, at its sole discretion, extend the Bid Submission Deadline.

## **2.13. Format, Signing and Submission of Bids**

- 2.13.1. The Bidder shall provide in its Bid all the information sought under the RFP. The Implementing Institution will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be rejected.
- 2.13.2. The Bidder shall prepare and submit one original set of its Bid clearly marked “ORIGINAL”, and one copy of its Bid clearly marked “COPY”. In the event of any discrepancy between the original and the copy, the original shall prevail.
- 2.13.3. The Bid shall be signed by the authorized 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 signing the Bid. The Bid shall contain page numbers.

## **2.14. Contents of the Bid**

- 2.14.1. The “Bid” shall be comprised of three separately sealed envelopes: (1) the Compliance Documents, (2) Technical Proposal, and (3) the Financial Proposal, each containing the respective “ORIGINAL” and “COPY”.
- 2.14.2. Each envelope shall be marked as follows:

“BID FOR THE [NAME OF PROJECT]”  
“COMPLIANCE DOCUMENTS” or “TECHNICAL  
PROPOSAL” or “FINANCIAL PROPOSAL”  
NAME AND ADDRESS OF BIDDER

The separately sealed compliance, technical and financial envelopes shall be placed in a sealed outer envelope marked as follows:

ATTENTION: [Name of Implementing Institution’s  
Designated Recipient for Project Proposals]

ADDRESS: [Address of Implementing Institution]

BID FOR THE [Name of Project]  
“COMPLIANCE DOCUMENTS, TECHNICAL PROPOSAL  
AND FINANCIAL PROPOSAL”

NAME AND ADDRESS OF BIDDER

2.14.3. **Envelope 1: Compliance Documents:** This envelope should clearly be marked as Compliance Documents and shall contain the compliance submission documents requested and substantially in the format required by this RFP, including the:

- a. Bid Letter;
- b. Bank Security;
- c. Power of Attorney for Signing of Bid;
- d. Company Information Form;
- e. If relevant, Consortium Identification Form;
- f. If relevant, Consortium Agreement;
- g. Anti-Collusion Certificate;
- h. Declaration of Undertaking, and
- i. Such other compliance documents as may be requested in the RFP.

2.14.4. **Envelope 2: Technical Proposal:** This envelope should clearly be marked as Technical Proposal and shall contain the Technical Proposal and any attachments meeting the requirements and substantially in the format set out in the RFP.

2.14.5. **Envelope 3: Financial Proposal:** This envelope should clearly be marked as Financial Proposal and any attachments meeting the requirements and substantially in the format set out in the RFP.

## **2.15. Bid and Performance Security**

- 2.15.1. The Bidder shall furnish as part of its Bid a Bid Security having validity at least till the selection of Preferred Bidder along with the Bids. The amount of the Bid Security shall be [INSERT AN AMOUNT].
- 2.15.2. The selected Bidder to whom the project is awarded shall if required by the Implementing Institution furnish a Performance Security valid for a period during which the obligation of the developer exists under the PPP Agreement. The amount of the Performance Security shall be stated in the RFP [INSERT AN AMOUNT; INSERT WHETHER AND HOW THE PERFORMANCE SECURITY MAY BE REDUCED OVER TIME].
- 2.15.3. The Bid security and the Performance Security shall be in the following forms:
  - a. Unconditional guarantee issued by a reputed financial institution acceptable to the Implementing Institution in the form provided in the RFP or any other form satisfactory to the Implementing Institution;
  - b. Banker's cheque or Cash warrant; or
  - c. Demand draft.
- 2.15.4. The Bid Security of the unsuccessful Bidders shall be discharged or returned to them as promptly as possible upon award of the Contract or in event of cancellation of the Bid Process, but in any event not later than thirty days after the expiration of the period of bid validity prescribed by the Implementing Institution.
- 2.15.5. The Bid Security may be forfeited:
  - a. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in this RFP;
  - b. If a Bidder withdraws its bid during the period of bid validity specified by the Bidder;
  - c. If a Bidder does not accept the arithmetical corrections

of its bid price; or

- d. In the case of a Preferred Bidder, if the Bidder fails:
  - i. To sign the Contract within the prescribed time; or
  - ii. To furnish the Performance Security within the prescribed time.

2.15.6. Any Bid not accompanied by a Bid Security shall be summarily rejected by the Implementing Institution as non-responsive.

## **2.16. Bid Submission**

2.16.1. Bids must be received by the Implementing Institution in the manner and form specified in the RFP no later than the Bid Submission Deadline.

2.16.2. Bids received by the Implementing Institution after the specified Bid Submission Deadline shall be declared late and shall not be eligible for consideration and shall be summarily rejected.

## **2.17. Modifications / Substitution / Withdrawal of Bid**

2.17.1. The Bidder may modify, substitute or withdraw its Bid after submission and prior to the Bid Submission Deadline, provided that the written notice of the modification, substitution or withdrawal is received by the Implementing Institution prior to the Bid Submission Deadline. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Submission Deadline.

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



## **2.18. Rejection of Bids**

- 2.18.1. Notwithstanding anything contained in this RFP, the Implementing Institution reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore.
- 2.18.2. In the event that the Implementing Institution rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids under this RFP.

## **2.19. Validity of Bids**

- 2.19.1. The Bids shall be valid for a period of not less than [INSERT \*\*\*\*] days from the Bid Submission Deadline.
- 2.19.2. The validity of Bids may be extended by mutual consent of the respective Bidders and the Implementing Institution.

## **2.20. Confidentiality**

- 2.20.1. Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the Bidding Process or is not a retained professional advisor advising the Implementing Institution in relation to or matters arising out of, or concerning the Bidding Process.
- 2.20.2. The Implementing Institution will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence.
- 2.20.3. The Implementing Institution 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 Implementing Institution.

### **3 EVALUATION OF BIDS**

#### **A. Bid Register and Compliance Check**

- 3.1. The Tender Evaluation Committee shall prepare a Bid Register in which is recorded the serial number of each Bid received, the date and time of each Bid received.
- 3.2. Exactly one hour after the Bid Submission Deadline, the Tender Evaluation Committee at the place specified in the RFP and in the presence of Bidders who choose to attend will review the Bid Register and identify any Bids for which a Notice of Withdrawal has been received prior to the submission deadline. Such Bids shall be labelled in the Bid Register as Withdrawn and shall be returned unopened to the Bidder.
- 3.3. The Tender Evaluation Committee shall open the outer envelope of any remaining Bids on the Bid Register received prior to the Bid Submission Deadline and verify that all requested documents and envelopes are included and in the correct format and form. Any Bid which does not materially meet the requirements will be marked as Unresponsive and returned unopened to the Bidder. The Tender Evaluation Committee will open the Envelope 1: Compliance Documents of each remaining Bid and verify that all compliance documents requested in the RFP are included. Bids that materially meet the requirements will be marked as Responsive, and any Bid which does not materially meet the requirements will be marked as Unresponsive and returned unopened to the Bidder. The Bid Register will be updated accordingly and finalised.
- 3.4. The Tender Evaluation Committee members will each sign the Bid Register, a copy of which will be provided to all Bidders who submitted Bids.

## **B. Opening and Evaluation of Technical and Financial Proposals**

- 3.5. The Tender Evaluation Committee will convene in private one or more times at the date and place agreed to open and evaluate the Technical Proposal envelopes of Responsive Bids. The Tender Evaluation Committee may be supported in the evaluation by appointed transaction advisors who shall act in an impartial manner and who shall be bound to confidentiality.
- 3.6. The Tender Evaluation Committee will evaluate the Technical Proposals received and will score or otherwise assess these in terms of the Technical Evaluation Criteria set out in this RFP. The Tender Evaluation Committee may at its discretion in writing request a Bidder to clarify a matter regarding its Technical Proposal which shall be made in writing by the Bidder. Such clarification requests and any written responses of Bidders shall not result in a material change to the Technical Proposal as originally submitted. The Tender Evaluation Committee will maintain a record of any clarification requests made, and responses received.
- 3.7. The Tender Evaluation Committee will prepare a table in which the technical evaluation of the Responsive Bids is recorded following the criteria set in this RFP, and a summary table with the resulting total technical scores and/or ranking of Bids, both of which will be signed by all members of the Technical Evaluation Committee. A copy of the summary table shall be provided to all Bidders whose Technical Proposals were opened and evaluated.
- 3.8. The Tender Evaluation Committee shall schedule the opening of Financial Proposals which may be attended by Bidders. The Tender Evaluation Committee will open the Financial Proposal of Responsive Bids according to the criteria for determining the opening of Financial Proposals as set out in this RFP. The Tender Evaluation Committee will record the financial amount of the principal financial bid criteria as set out in this RFP of the opened Financial Proposal or Proposals.

- 3.9. The Tender Evaluation Committee will meet one or more times to verify the compliance, comprehensiveness and accuracy (including calculations) of the Financial Proposal or Proposals in meeting the requirements set out in the RFP. If necessary, the Tender Evaluation Committee may in writing request clarification from Bidders of any matters regarding their Financial Proposal, provided that written responses from Bidders to clarifications may not materially change the amount/s of the financial criteria submitted or comprise conditions. The Tender Evaluation Committee will maintain a record of any clarifications requested, and the written responses of Bidders.
- 3.10. After verifying Financial proposals, the Tender Evaluation Committee will combine technical and financial evaluations according to the method and calculation set out in this RFP. The Technical Evaluation Committee will determine the Preferred Bidder which is generally the first ranked Bidder, and the further ranking of Bid.
- 3.11. The Tender Evaluation Committee will prepare an evaluation report detailing the procurement process followed, including the technical and financial evaluation process and results, the recommendation of the Preferred Bidder, and the further ranking of Bids.

### **C. Award and Signing of the PPP Agreement**

- 3.12. The Implementing Institution will submit the Tender Evaluation Committee's evaluation report to the PPP Steering Committee. After confirmation by the PPP Steering Committee, the Implementing Institution will indicate to the PPP Steering Committee its intention to enter into the PPP Agreement with the Preferred Bidder and provide the PPP Agreement to the PPP Steering Committee, including all terms and amounts, and any conditions to be met by the Preferred Bidder as condition of signing of the PPP Agreement. After confirmation by the PPP Steering Committee, the Implementing Institution will issue a Letter of Award to the Preferred Bidder indicating any conditions to be met by the Bidder and the timeframes thereof as condition precedent to signing of the PPP Agreement.

- 3.13. After the Preferred Bidder has met all and any conditions set in the Letter of Award and within the timeframes set, the Implementing Institution and the Preferred Bidder or Project Company if so stipulated will sign the PPP Agreement/s. The Implementing Institution will as appropriate support the Preferred Bidder to conclude the financing agreement for the project, and may itself or through other Ministries sign pre-approved agreements in support of the project financing, such as Direct Agreements with lenders.

#### **D. Miscellaneous**

- 3.14. The Bidding Process shall be governed by, and construed in accordance with, the laws of Bhutan and the Courts of Bhutan shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bidding Documents and/or the Bidding Process.
- 3.15. The Implementing Institution, in its sole discretion and without incurring any obligation or liability or assigning any reason, reserves the right, at any time, to:
- a. suspend, withdraw and/or cancel the Bidding Process and/or amend and/or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - b. consult with any Bidder in order to receive clarification or further information;
  - c. retain any information and/or evidence submitted to the Implementing Institution by, on behalf of, and/or in relation to any Bidder;
  - d. independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder;
  - e. amend, modify or reissue the Bidding Documents or any part thereof; and/or
  - f. accept or reject any or all of the Bids.

- 3.16. It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Implementing Institution, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.

## 4 SCHEDULES

### A. Schedule 1: Updated Project Information Memorandum<sup>1</sup>

- 4.1. The Implementing Institution has, as part of its [*insert development strategy*]<sup>2</sup>, identified the PPP opportunity at [*insert location*].
- 4.2. It is intended that by the Implementing Institution entering into the PPP with a private party, the Implementing Institution may be able to [*insert the purpose for entering into PPP*]. It is intended that the project will be implemented by the private party in compliance with any terms and conditions stipulated in the PPP Agreement.
- 4.3. The Implementing Institution embarked on the project after conducting feasibility studies in order to determine whether it could proceed with the project and whether the project may be viable.
- 4.4. Under the project, the private partner will build an asset by using its own funds or funds it has raised, transfer the possession as specified in the PPP Agreement, and transfer it to local ownership upon the expiration of the PPP Agreement. The payment to the private partner will comprise of [user payments from users of the PPP project]; [and/or] [availability payments from the Implementing Institution].
- 4.5. [DESCRIPTION OF THE ASSET]<sup>3</sup>
- 4.6. [SITE REVIEW]<sup>4</sup>

1 All numbered footnotes in Schedule 1 are for guidance of the Implementing Institution and should be omitted prior to issue of the RFP.

2 All project specific provisions have been enclosed in square parenthesis and may be modified, as necessary, before issuing the RFP for the project. The square parenthesis should be removed after carrying out the required modifications.

3 The Implementing Institution must provide relevant details regarding the asset and the possible product or service categories which could be provided through the use of the asset. The Implementing Institution will be heavily guided by its feasibility study as to what information is relevant. The Implementing Institution must provide sufficient information so as to allow interested parties to consider whether they would wish to be involved in the PPP.

4 The Implementing Institution must provide a summary on the site information and on issues that were identified during the feasibility phases, such as: legal, environmental, stakeholders, personnel and human resources, infrastructure, equipment, performance standards, transfer of risk and other information identified as being relevant through the inception and feasibility phases.

## B. Schedule 2: Updated Bidding Process Timelines

The Implementing Institution shall endeavor to adhere to the following timelines:

<b>Event Description</b>	<b>Estimated Date, Time, and Location (if applicable)</b>
Last date for receipt of queries	
Pre-bid conference/s	
Implementing Institution's response to queries	
Bid Submission Deadline	
Opening of Envelope Technical Proposal	
Announcement of Technical Proposal Short List	
Opening of Envelope Financial Proposal	
Selection and Announcement of Preferred Bidder	
Approval of Preferred Bidder	
Finalisation of matters to permit signing of PPP Agreement	



### C. Schedule 3: Bid Letter

[On the letterhead of the Bidder / Lead Member]

Original or Copy number:

Date:

To: [Implementing Institution's Name]

[*Insert Implementing Institution's Address*]

Re: Submission of Bid for the [name of project]

Dear Madam/Sir,

With reference to your RFP dated [DATE], I/we, having examined the document and understood its contents, hereby submit my/our Bid for the aforesaid Project. We hereby confirm that we/our members in the Consortium satisfy the terms and conditions laid out in the Bidding Documents. We have agreed that \_\_\_\_\_ [*insert member's name*] will act as the Lead Member of our consortium, and 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 Bid.<sup>5</sup>

The Bid is being submitted for the express purpose of qualifying as a Preferred Bidder for the aforesaid Project. The Bid is unconditional and unqualified.

I/We hereby certify/declare that:

1. all the required accompanying documents are complete and are all included in this Bid;
2. all information provided in the Bid are true and correct;
3. nothing has been omitted which renders such information misleading;
4. all documents accompanying such Bid are true copies of their respective originals;
5. I/we shall make available to the Implementing Institution any additional information it may find necessary or require to supplement or authenticate the submissions;
6. I/we will abide by all the terms and conditions of the RFP;

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<sup>5</sup> Please strike out if not applicable.

7. I/We have examined and have no reservations to the Bidding Documents, including any addendum issued by the Implementing Institution;
8. in the last 3 years, I/we/any of the Members have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach by [us/any of the Members];
9. I/we are not barred by the Government, or any public agencies from participating in similar projects as of [Bid Submission Deadline];
10. I/We do not have any Conflict of Interest;
11. 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 this RFP, in respect of any tender or request for proposal issued by or any agreement entered into with the Implementing Institution or any other public sector enterprise or any government, at central or state level;
12. I/we have taken steps to ensure that in conformity with the provisions of this RFP, no person acting for me/us or on my/our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice;
13. you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive, without incurring any liability to the Bidders;
14. I/we/any Member, am/are not a member of a/any other Consortium applying for the Project;
15. I/we or any Member of our consortium 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;
16. in regard to matters relating to security and integrity of the country, I/ we have not been charged by any government agency or convicted by a court of law;

17. no investigation by a regulatory authority is pending either against me/ us/any Member or against our chief executive officer or any of my/our directors/managers/employees;

I/We believe that I/we satisfy(s) and meet(s) all the requirements as specified in the RFP and are/is qualified to submit a Bid.

I/We understand that the Preferred Bidder shall be required to incorporate and capitalize a Project Company in accordance with the Bidding Documents prior to execution of the PPP Agreement.

I/We agree and undertake to be jointly and severally liable for all our obligations under the PPP Agreement as per the provisions set out therein.

Yours faithfully,

(Name, designation, and signature of the authorised representative)

For and on behalf of: (name and seal of the Bidder / Lead Member of the Consortium)

## D. Schedule 4: Updated Bidder Information<sup>6</sup>

Bidder Information	
Applicant's legal name	
In case of Consortium, legal name of each member	
Applicant's actual or intended country of constitution	
Applicant's actual or intended year of constitution	
Applicant's legal address in country of constitution	
Applicant's authorized representative information (name, designation, address, Telephone/ Fax numbers, E-mail)	
<b>Attached are copies of original documents of:</b>	
<input type="checkbox"/> 1. Notarized documents of constitution of the legal entity named above	
<input type="checkbox"/> 2. Letter of authorization to represent the applicant	
<input type="checkbox"/> 3. Letter of intent to form Consortium or Consortium agreement.	

<sup>6</sup> This section must be completed by the authorized consortium representative, or if the Bidder is a sole organization, by that organization.

## E. Schedule 5: Updated Consortium Member Information<sup>7</sup>

<b>Consortium Member Information</b>	
Consortium member's legal name	
Consortium member's actual or intended country of constitution	
Consortium member's actual or intended year of constitution	
Consortium member's legal address in country of constitution	
Consortium member's authorized representative information (name, designation, address, Telephone/ Fax numbers, E-mail)	
<b>Attached are copies of original documents of:</b>	
<input type="checkbox"/> 1. Notarized documents of constitution of the legal entity named above	
<input type="checkbox"/> 2. Letter of authorization to represent consortium member	
<input type="checkbox"/> 3. Letter of intent to form Consortium or Consortium agreement.	

<sup>7</sup> This section is to be completed by each consortium member.

**F. Schedule 6: Bank Guarantee for Bid Security**

Address of the guarantor bank: [•]

Address of the beneficiary: [•]

We, the undersigned [•] (the “Guarantor”), in order to enable [Name of Bidder] to bid for the [Name of the Project], hereby irrevocably and independently guarantee to pay to you an amount up to a total of [•] waiving all objections and defences.

We shall effect payments under this guarantee on your first written demand, which must be accompanied by your confirmation that you have accepted the above-mentioned bid and that the firm [Name of Bidder] is no longer prepared to abide by this bid.

This guarantee shall remain in full force for a period of 180 days from the Bid Submission Deadline (as defined in the RFP).

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

This guarantee is governed by the laws of [LOCATION] and shall be subject to the exclusive jurisdiction of the Courts of [LOCATION].

-----  
Date      Guarantor

## **G. Schedule 7: Power of Attorney for Signing of Bid**

I (name of the company) incorporated under applicable laws and having its registered office at [ ] “Company”, do hereby irrevocably constitute, nominate, appoint and authorize Mr. /Ms (name), presently residing at [indicate business address], who is presently employed with us and holding the position of [designated position], 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, matters and things as are necessary or required in connection with or incidental to submission of our Bid and for our selection as Preferred Bidder for the [Title of Project] (the ‘Project’) proposed or being developed by the Implementing Institution including but not limited to signing and submission of our Bid and other documents and writings, participate in pre-bid conferences and other conferences and providing information/responses to the Implementing Institution, representing us in all matters before the Implementing Institution, signing and execution of all contracts including the PPP Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Implementing Institution 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 PPP Agreement with the Implementing Institution.

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

Capitalised terms not defined herein shall have the meaning assigned to them under the RFP.

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

For .....

(Signature)

(Name, Title and Address)

Witnesses:

(Notarised)

Accepted

..... (Signature)

(Name, Title and Address of the Attorney)<sup>8</sup>

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<sup>8</sup> The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure. Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.



## H. Schedule 8: Power of Attorney for Lead Member of Consortium

Whereas, the members of the Consortium are interested in bidding for the Project and implementing the [Title of Project] (the 'Project') in accordance with the terms and conditions of the Bidding Documents and other connected documents in respect of the Project.

Whereas, it is necessary for the members of the Consortium to designate the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Project and its execution. who, acting jointly, would have all necessary power and authority to do all acts, deeds and things on behalf of the Consortium, as may be necessary in connection with the Consortium's bid for the Project.

NOW THIS POWER OF ATTORNEY WITNESSETH THAT;

We, M/s. \_\_\_\_\_(Lead Member) and M/s \_\_\_\_\_ (the respective names and addresses of the registered office) do hereby designate M/s. \_\_\_\_\_ being one of the members of the Consortium, as the Lead Member of the Consortium, to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the Consortium's bid and submission of its proposal for the Project, including but not limited to signing and submission of relevant documents and writings, participating in pre-bid and other conferences, responding to queries, and generally to represent the Consortium in all its dealings with the Implementing Institution or any person in connection with the Project until the PPP Agreement is entered into between the Concessionaire and the Implementing Institution. We hereby agree to ratify all acts, deeds and things lawfully done by Lead Member, our said attorney pursuant to this Power of Attorney and that all acts deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us/Consortium.

Dated this the \_\_\_\_ day of \_\_\_\_\_, 20\*\*

(Executors) <sup>9</sup>

<sup>9</sup> 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 executors and when it is so required the same should be under common seal affixed in accordance with the required procedure. Wherever required, the Applicant should submit for verification the extract of the charter documents and documents

## I. Schedule 9: Updated Consortium Agreement

THIS CONSORTIUM AGREEMENT is entered into on this [•] day of [•] 20[•] (the “Agreement”) AMONGST

1. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the “First Part” which expression shall, unless repugnant to the context include its successors and permitted assigns);

AND

2. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the “Second Part” which expression shall, unless repugnant to the context include its successors and permitted assigns);

AND

3. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the “Third Part” which expression shall, unless repugnant to the context include its successors and permitted assigns).

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

WHEREAS,

1. The Implementing Institution has invited Bids by its Request for Proposal No. [•] dated [•] (the “RFP”) for selecting the Preferred Bidder for the [Title of the Project] through Public Private Partnership;
2. The Parties are interested in jointly bidding for the Project as members of a Consortium (as defined below) and in accordance with the terms and conditions of the Bidding Documents including this RFP; and
3. It is a necessary condition under the RFP that the members of the Consortium shall enter into a concession agreement and furnish a copy thereof with the Bid.

---

such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

NOW IT IS HEREBY AGREED as follows:

### **Definitions and Interpretations**

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

### **Consortium**

- 1.1 The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.
- 1.2 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 the Project, either directly or indirectly.

### **Covenants**

The Parties hereby undertake that in the event the Consortium is declared the Preferred Bidder and awarded the Project, it shall incorporate the Project Company under [legislation] as required by and in accordance with the Bidding Documents for performing all its obligations as the Concessionaire in terms of the PPP Agreement for the Project.

### **Role of the Parties**

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

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;

{Party of the Second Part shall be [•]; and}

{Party of the Third Part shall be [•]}

## **Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project in accordance with the terms of the RFP, and for the performance of the Service Providers obligations under the PPP Agreement.

## **Shareholding in the Project Company**

The Parties agree that the proportion of shareholding among the Parties in the Project Company shall be as follows:

First Party:

Second Party:

Third Party:

Subject to the terms of the PPP Agreement, the Lead Member shall for [•] years hold equity share capital not less than \*\* % (\*\* percent) of the subscribed, paid up and voting equity share capital of the Project Company; and

Each member of the Consortium shall hold at least \*\* % of the subscribed and paid up equity of the Project Company for [•] years after the Completion Date, and at least \*\* % for the following [•] years.

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

## **Representation of the Parties**

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

- 1.1 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;
- 1.2 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 Member of Consortium is annexed to this Agreement, and will not, to the best of its knowledge:

- 1.3 require any consent or approval not already obtained;
- 1.4 violate any applicable law presently in effect and having applicability to it;
- 1.5 violate the memorandum of association and articles of association, by-laws or other applicable organizational documents thereof;
- 1.6 violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, 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; and
- 1.7 create or impose any liens, mortgages, pledges, claims, security interests, charges or any other 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;
- 1.8 this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- 1.9 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.

## **Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect till the full and final satisfaction of all obligations under the PPP Agreement in accordance with the terms thereof, in case

the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project as the Preferred Bidder, the Agreement will stand terminated, in accordance with the mutual agreement of the Parties.

### **Miscellaneous**

This Consortium Agreement shall be governed by laws of \*\*\*\*.

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of SECOND PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of THIRD PART

(Signature)

(Name)

(Designation)

(Address)

**J. Schedule 10: Anti-Collusion Certificate<sup>10</sup>**

We undertake that, in competing for (and, if the award is made to us, in executing) the Project, we will strictly observe the laws against fraud and corruption in force in [LOCATION].

We hereby certify and confirm that in the preparation and submission of our Bid, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with this Bid.

Dated this .....day of ....., 20\*\*

.....  
(Name of the Bidder)

.....  
(Signature of the Bidder / Authorised Person)

.....  
(Name of the Authorised Person)

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10 To be executed on stamp paper of appropriate value

## K. Schedule 11: Format and Evaluation of Technical Proposal

The Bidders shall prepare a Technical Proposal based on the requirements given in the RFP, setting out the proposed plan for implementation of the PPP Project. The Technical Proposal shall comprise the technical approach and methodology for implementing the Project, implementation schedule and timelines, manpower deployment, etc. The Technical Proposal shall be in adherence to Laws and the requirements set out in the draft PPP Agreement.

The Bidders shall submit their Technical Proposal in line with the contents provided in the table below. The Technical Proposals shall be evaluated against the criteria outlined for each of the parameters in the table below, with Bidder getting marks for each parameter based on the predefined scoring scale.

Parameter <sup>11</sup>	Criteria for Evaluation	Marking scale
<b>Conceptual Engineering Design:</b>		
<ul style="list-style-type: none"> <li>- Architectural analysis of the Project Location and its peripheral areas</li> <li>- Details key design/ engineering concepts considered in the design of the facility</li> <li>- Conceptual layout of the facility, illustrating technical specifications of key components of the facility.</li> </ul>	<ul style="list-style-type: none"> <li>- The conceptual engineering design must conform to the output specifications prescribed in the Bidding Documents</li> <li>- The engineering surveys, plans, and estimates should be doable within +/- **% of the final quantities</li> </ul>	To be defined based on the needs and characteristics of each individual project

<sup>11</sup> May vary based on the requirements of the PPP Project.



**Technical Plan for Construction/Rehabilitation:**

- |   |  |  |
|---|--|--|
| <ul style="list-style-type: none"><li>- Methodology statement outlining appreciation of the project</li><li>- Implementation Plan – present a detailed activity schedule along with milestones in line with the requirements set out in the PPP Agreement. This should also outline the timeline envisaged for obtaining various Government/ Local Government approvals</li></ul> | <ul style="list-style-type: none"><li>- Time planning and procedures for the construction of the completed facility must be well-defined, shown to be feasible at the municipal context, allow a completion, commissioning, and handover of the PPP Project on time</li><li>- Must be in line with output specifications</li></ul> | <p>To be defined based on the needs and characteristics of each individual project</p> |
|---|--|--|

**Operation & Maintenance Plan:**

- |   |   |  |
|---|---|--|
| <ul style="list-style-type: none"><li>- Process Flow Chart and Material Balance Statement setting out the activities and the outputs at each stage</li><li>- Methodology for operations.</li><li>- Timelines and frequency for carrying out and completion of various activities.</li></ul> | <ul style="list-style-type: none"><li>- System/methodology for the O&amp;M of the completed facility must be well-defined, shown to be feasible and practicable at the municipal context,</li><li>- Must show that key performance indicators are achievable by the proposed O&amp;M system</li></ul> | <p>To be defined based on the needs and characteristics of each individual project</p> |
|---|---|--|

- Resource Utilization  
Statement indicating the proposed organizational structure, employee deployment, equipment procurement and utilization, contracting activities, utilization of office and other facilities.
- The maintenance (regular & emergency) schedules should also be indicated over the Term

**Organization & Staffing:**

<p>Bidders should present the calculations for manpower requirement for the Project. Proposed organization structure and composition of the project and operational team to be presented, including staff deployment plan, number of shifts per day of operations and roles and responsibilities Bidders should indicate the number of staff to be sourced locally.</p>	<ul style="list-style-type: none"> <li>- Adequacy of proposed organization</li> <li>- Well defined roles &amp; responsibility that facilitates the implementation of the proposed Technical and O&amp;M Plans</li> <li>- Local staffing in line with public sector expectations</li> </ul>	<p>To be defined based on the needs and characteristics of each individual project</p>
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The marks would be summed up for all evaluation parameters for each individual bidder. The score for evaluation of the Technical Proposal will be calculated as follows:

$$\text{Score (in \%)} \text{ for evaluation of Technical Proposal of Bidder 'N'} = \frac{\text{(total marks from evaluation for Bidder N/ highest total marks among all Bidders)}}{100}$$

Bidders receiving less than 70% score would not be eligible for the evaluation of their financial proposals. Financial proposals of all such bidders would be returned unopened.<sup>12</sup>

OR

The scores from evaluation of the Technical Proposal would be used for calculation of the weighted average score, along with the score from the evaluation of the Financial Proposal, as described in Section 3.8 of this document.

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<sup>12</sup> The Thromde will have to select one of the two paragraphs above based on the approach used for evaluation of bids. The first paragraph will be used if the Thromde is using the pass-fail criteria for technical evaluation, to identify the bidders whose financial proposal would be opened. In such case the final selection of the best Bid would be based on the evaluation of the financial proposal only. The second paragraph will be selected if the Thromde intends to use the weighted average of the scores from Technical and Financial Evaluations for the selection of the financial proposal.

## L. Schedule 12: Format of Financial Proposal

[On the letterhead of the Applicant / Lead Member]

Original or Copy number:

Date:

To: [Implementing Institution's Name]

[*Insert Implementing Institution's Address*]

Re: Financial Proposal for the [Title of the PPP Project]

Dear Madam/Sir,

Please find below our Financial Proposal for the [Title of the Project] (the "Project") in response to the Request for Proposal ("RFP") issued by [the Name of the Implementing Institution] ("the Implementing Institution") on [DATE].

We hereby confirm the following:

- This Financial Proposal is being submitted by [name of Bidder] in accordance with the conditions stipulated in the RFP;
- We have examined in detail and understand and agree to abide by all terms and conditions stipulated in the Bidding Documents issued by the Implementing Institution, as amended, and in any subsequent communication sent by the Implementing Institution;
- Our Financial Proposal is consistent with all requirements of submission stated in the RFP and in any subsequent communication sent by the Implementing Institution;
- It is adequately supported by the following documents as attachments:
  - (a) Supporting cost estimates for the design, construction, operation and maintenance components;
  - (b) A financial model consistent with the above cost estimates and the technical proposal, and which includes a short explanatory memorandum; and
  - (c) A project financing plan showing positively showing that the same can adequately meet the cost requirements of the PPP Project, which may include the amount of equity to be infused, debt to be obtained for the Project, and sources of financing.

Our Bid Value is as follows:

[Grant/ Fee]	[amount in [CURRENCY]/ percentage]
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We are solely responsible for any errors or omissions in our Financial Proposal.

Respectfully,

(Name, designation, and signature of the authorised representative)

For and on behalf of: (name and seal of the Applicant / Lead Member of the Consortium)

### **M. Schedule 13: Declaration of Undertaking**

We underscore the importance of a free, fair and competitive procurement process that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our Application, nor will we offer or grant or accept any such incentives or conditions in this Bidding Process or, in the event that we are awarded the contract, in the subsequent execution of the contract.

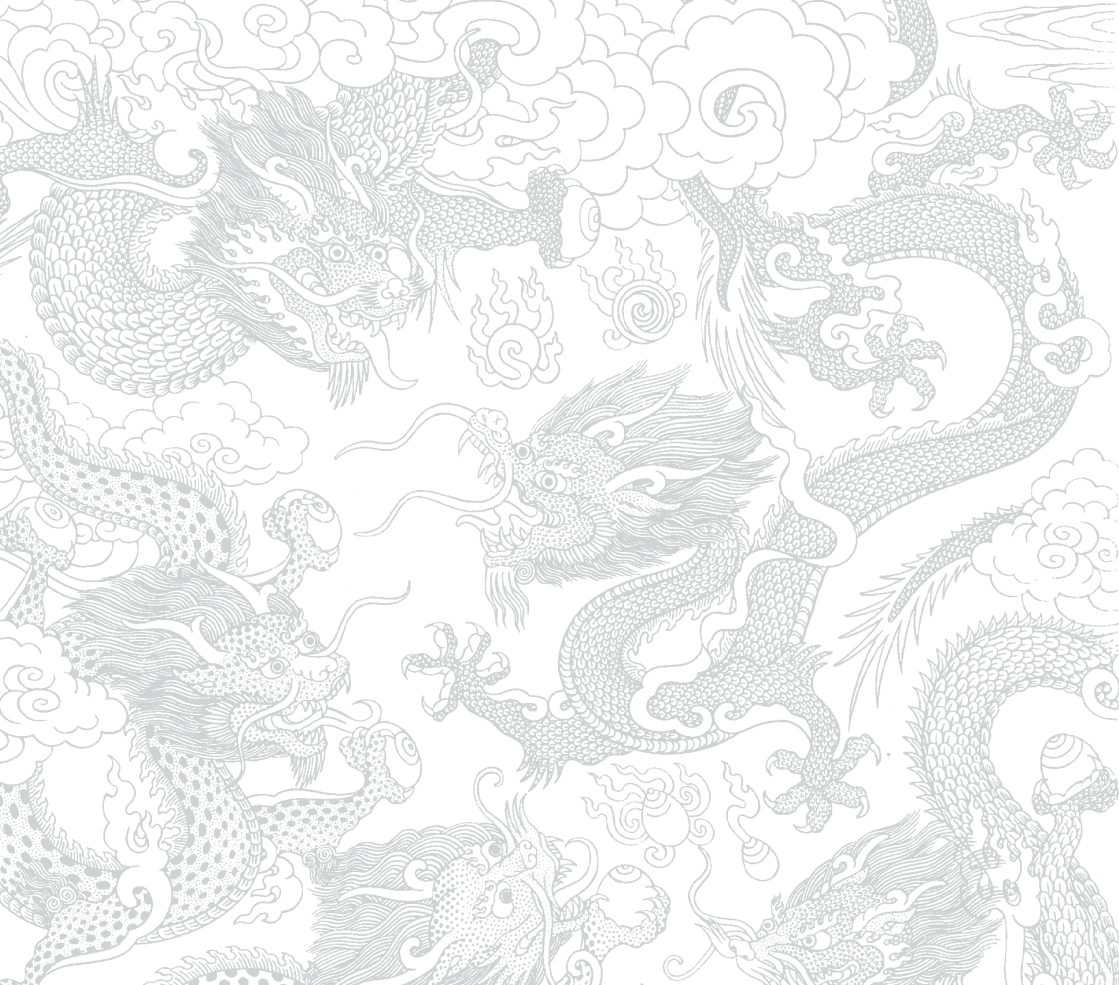
We also declare that our company/all members of the consortium has/ have not been included in the list of sanctions of the United Nations nor in any other list of sanctions and affirm that our company/all members of the consortium will immediately inform the client if this situation should occur at a later stage.

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding for the client, the client is entitled to exclude our company/ the consortium from the Bidding Process and, if the contract is awarded to our company/ the consortium, to terminate the contract immediately if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion occurs after the Declaration of Undertaking has been issued.

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Place, date

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Authorized Representative of the Bidder

## **N. Schedule 14: Draft PPP Agreement**



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