

**Development of District Cooling System for
Amaravati Government Complex in Amaravati,
Andhra Pradesh on PPP Basis**

REQUEST FOR PROPOSAL (RFP)

BID DOCUMENT

VOLUME - I

INSTRUCTIONS TO BIDDERS



NIT No. 16/PROC/Addl. Director/Infrastructure/DCS/2018

Client

**Andhra Pradesh Capital Region Development Authority
Lenin Centre, Governorpet, Vijayawada – 520 002
Andhra Pradesh – India.**

May, 2018

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**ANDHRA PRADESH CAPITAL REGION DEVELOPMENT AUTHORITY
(APCRDA)
Lenin Centre, Governor Pet, Vijayawada – 520002 Andhra Pradesh INDIA**

Notice Inviting Tender

NIT No: 16/PROC/Addl. Director/Infrastructure/DCS/2018

Dated: 14th May 2018

Subject: RFP for Development of District Cooling System in Amaravati Government Complex, Andhra Pradesh under Public Private Partnership (“PPP”) basis.

The Government of Andhra Pradesh had entrusted Andhra Pradesh Capital Region Development Authority (the “Authority” or “APCRDA”), established under Section 4 of Andhra Pradesh Capital Region Development Authority Act, 2014 (APCRDA Act 2014) (Act.No.11 of 2014) for Development of District Cooling System (DCS) for Amaravati Government Complex in Amaravati, Andhra Pradesh (the “Project”) under PPP basis. The Authority has decided to carry out the bidding process for selection of Bidder to whom the Project may be awarded for implementation in terms of Concession Agreement. Brief particulars of the Project are as follows:

Name of the Project	Bid Security
Development of District Cooling System in Amaravati Government Complex of Amaravati, Andhra Pradesh under PPP basis	INR 72,000,000

The complete Bid document can be viewed / downloaded from APCRDA website <https://crda.ap.gov.in/> from 18-05-2018 to 16-06-2018 (up to 15:00 hours IST). Bid must be submitted physically to the Additional Commissioner Office, APCRDA, Lenin Centre, Governor Pet, Vijayawada - 520002. Bid submitted through any other mode shall not be entertained. Along with the Bid, the Bid Security, Demand Draft towards cost of bid document, etc. as specified in Clause 2.11.2 of the RFP shall also be submitted physically by the Bidder on or before 16th June 2018 (up to 17:00 hours IST). Please note that the Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever.

For further details, please contact Mr. V.R.V. Sagar on his mobile number +917995084168 or drop an email to vrvsagar@apcrda.org.

Additional Commissioner
APCRDA

Commissioner
APCRDA

DISCLAIMER

The information contained in this Request for Proposal document (the “RFP”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the 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 (Bids) 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, 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 Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Stage.

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 Developer, 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.

GLOSSARY

Associate	As defined in Clause 2.1.18
APCRDA	As defined in Clause 1.1.1
Authority	As defined in Clause 1.1.1
Bank Guarantee	
Bid(s)	As defined in Clause 2.20.1
Bidders	As defined in the Disclaimer
Bidding Documents	As defined in Clause 1.2.2
Bid Due Date	As defined in Clause 1.1.7
Bidding Process	As defined in Clause 1.1.7
Bid Security	As defined in Clause 1.2.1
Bid Price	As defined in Clause 1.2.4
Concession	As defined in Clause 1.2.6
Conflict of Interest	As defined in Clause 1.1.5
Consortium	As defined in Clause 2.2.1
Damages	As defined in Clause 2.2.1(a) As defined in Clause 2.2.1
Concessionaire	
Eligible Project(s)	As defined in Clause 1.1.2
Financial Bid	As defined in Clause 3.4.1 As defined in Clause 1.2.1
Government	
Lowest Bidder	Government of India
Concession Agreement	As defined in Clause 1.2.6
Concession	As defined in Clause 1.1.2 As defined in Clause 1.1.5
Lowest Bidder	As defined in Clause 1.2.6
LOA	As defined in Clause 3.7.4
Net Worth	As defined in Clause 2.2.4
Project	As defined in Clause 1.1.1
Project Works	As defined in Clause 1.4
PPP	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in the Disclaimer
Selected Bidder	As defined in Clause 3.7.1
SPV	As defined in Clause 2.1.15

Subject Person	As defined in Clause 2.2.1
Technical Bid	As defined in Clause 1.2.1
Technical Capacity	As defined in Clause 2.2.2
Tie Bids	As defined in Clause 3.7.2
Tariff	As defined in Concession Agreement
Charges	As defined in Concession Agreement

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein above. The words and expressions beginning with capital letters and not defined herein, but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto therein. In case of any conflict the definitions given in Concession Agreement shall prevail.

1 INTRODUCTION¹

1.1 Background

1.1.1 The Government of Andhra Pradesh had entrusted to Andhra Pradesh Capital Region Development Authority (the “Authority” or “APCRDA”), established under Section 4 of Andhra Pradesh Capital Region Development Authority Act, 2014 (APCRDA Act 2014) (Act.No.11 of 2014) for Development of District Cooling System for Amaravati Government Complex in Amaravati, Andhra Pradesh and supply of Chilled Water in accordance with the provisions of the Concession Agreement and includes all works, services and equipment relating to or in respect of the Scope of the Project as stated therein (the “**Project**”) on PPP basis

District cooling system comprising of district cooling plant, distribution and interface network, is a thermal energy network network (including the DCP, distribution Network, ETS Equipment, Metering Equipment etc.) that distributes chilled water through insulated pipes over a distance to serve residential, buildings commercial buildings, institutional and industry for space cooling and industrial purposes in Amaravati Governmnet Complex (“**District Cooling System or DCS**”)². DCS provides advantage over competing energy systems by replacing many individual air conditioners with one central cooling source and contributes to improved air quality, reduced power, greater efficiency, consequently lower lifetime costs and array of other benefits. It is used widely across America, Europe, Middle-East and Asia-Pacific regions with over 1000 cities in various countries from US to Russia to Japan using it.

Amaravati Government Complex (AGC), comprises of the High Court, the Assembly, the Secretariat, Head of Department (HoD) building, the Hon’ble Chief Minister’s offices and residence, Government Housing, Judges Bungalows, etc.

The District Cooling System, that is being proposed in AGC includes for High Court, the Assembly, the Secretariat and the HoD building under the Public Private Partnership

¹ **Instructions for Bidders – to be deleted prior to finalisation**

Note 1: The provisions in curly brackets shall be suitably modified by the Bidders after the RFP is issued. (See Appendix-VI)

Note 2: Blank spaces contain formats that are to be used by the Bidders after the RFP is issued. (See Appendix-VI)

Note 3: Footnotes marked “\$” in the relevant Clauses of the RFP are for guidance of the Bidders. In case of Appendices, the footnotes marked “\$” or in other non-numerical characters shall be omitted by the Bidders while submitting their respective Bid. (See Appendix-VI)

(PPP) model and is part of mandated demand for DCS. Other components of AGC can also be included where viability exists but will be part of optional demand for DCS. The Project is proposed to be implemented through PPP. In exercise of the powers conferred under Section 10 of the APCRDA Act, 2014 and amendments if any, APCRDA has decided to carry out the bidding process for selection of the Bidder to whom the Development of District Cooling System for Amaravati Government Complex in Amaravati, Andhra Pradesh, India under Public Private Partnership (PPP) basis and the Project may be awarded for implementation in terms of Concession Agreement.

- 1.1.2 The Selected Bidder as defined in Clause 1.2.2, who is either a company incorporated under the Companies Act, 1956/2013 or its substitute thereof or undertakes to incorporate as such, prior to execution of the Concession Agreement (the “**Concessionaire**”), shall be responsible for designing, engineering, financing, procurement, construction of Project Works, operation and maintenance of the Project under and in accordance with the provisions of a concession agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant thereto.
- 1.1.3 The scope of work will broadly include surveys and investigations, design, engineering, approvals, financing, procurement, construction of Project Works and operation & maintenance of the Project for the entire duration of the Concession as detailed in Clause 1.4.
- 1.1.4 The assessment of costs of developing the Project 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 Developer’s services and obligations (the “**Concession**”).
- 1.1.6 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, 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 and in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a single stage two envelop bidding process (referred to as the "**Bidding Process**") for selection of the Bidder and for award of the Project. Under this process, the Bid shall be invited under two envelops. Prior to or along with the Bid, the Bidder shall pay to the Authority a sum of Rs 25000/- (Rupees Twenty Five Thousand only)³ as the cost of the Bid document. Eligibility and qualification of the Bidder will be first examined based on the details submitted under first envelop ("**Technical Bid**") with respect to eligibility and qualifications criteria prescribed in this RFP. The "**Bidder**", which expression shall, unless repugnant to the context, include the members of the Consortium. The second envelop ("Financial Bid") shall be opened of only those Bidders whose Technical Bids are responsive to eligibility and qualifications requirements as per this RFP.

Government of India ("GOI") has issued guidelines (see Annexure VI of Appendix-1A of RFP) for qualification of bidders seeking to acquire stakes in any public-sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority shall be entitled to disqualify any Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-IA

- 1.2.2 Interested eligible bidders, who qualifies for eligibility under Clause 2.2 (the "**Bidders**") are being called upon to submit their Bid in accordance with the terms specified in this Bidding Document. The Bid shall be valid for a period of 180 (one hundred and eighty) days from the date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").
- 1.2.3 The complete Bidding Documents including the draft Concession Agreement⁴ for the Project is enclosed for the Bidders. Subject to the provisions of Clause 2.1.3, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.

- 1.2.4 A Bidder is required to deposit, along with its Bid, a bid security of Rs 72 million (rupees seventy two million) (the “**Bid Security**”), refundable not later than 180 (one hundred and eighty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have to provide Bid Security in the form of a bank guarantee acceptable to the Authority. The bank guarantee validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 180 (one hundred and eighty) 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 During the Bid Stage, Bidders are advised to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the contract including implementation of the Project.
- 1.2.6 Bids would be evaluated under Clause 3 of this RFP on the basis of the assessed Bid price (the “Bid Price”). The Bid Price shall be the net present value (the “NPV”) of the total cost to Authority calculated based on the quoted Tariff comprising of Demand Charge in units of Rs./TR/Month (fixed costs and capital expenditure recovery) and Consumption Charge in units of Rs./TRh (variable costs such as electricity, water, consumables etc.) (same for the entire 30 year period) (calculated at discount rate 11%) by Concessionaire during the operation period granted under the Concession Agreement, required by a Bidder for implementing the Project and shall be paid as per the provisions of Article 23 of the Concession Agreement. The Tariff based Charges will be the only payment made by the Authority to the Concessionaire for the Project. The Concession Period is pre-determined, as indicated in the Concession Agreement. The Bid Price shall constitute the sole criteria for evaluation of Bids. Subject to Clause 2.16, the Project will be awarded to the Bidder quoting the lowest assessed Bid Price. In this RFP, the term “Lowest Bidder” shall mean the Bidder whose Bid Price is the lowest.
- 1.2.7 Generally, the Lowest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Lowest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.

1.2.8 Deleted.

1.2.9 The Concessionaire shall be entitled to levy a user fee in the form of Charges based on the Tariff as bid by the Concessionaire from the Authority for provision of chilled water supply to the buildings, which are part of the service network of District Cooling System.

1.2.10 Other details of the process to be followed under this bidding process and the terms thereof are spelt out in this RFP.

1.2.11 Any queries or request for additional information concerning this RFP shall be submitted by e-mail to the officer designated in Clause 2.11.5 below with identification/ title:

"Queries/Request for Additional Information: RFP for Development of District Cooling System for Amaravati Government Complex in Amaravati, Andhra Pradesh, India under Public Private Partnership (PPP) basis – the Project"

1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

Sl. No.	Event Description	Date
1.	Invitation of RFP (NIT)	15 th May 2018
2.	Last date for receiving queries	31 th May 2018
3.	Pre-Bid meeting at venue mentioned in Clause 2.11.5	4 th June 2018 Time: 11:00 hrs
4.	Authority response to queries latest by	6 th June 2018
5.	Last date of Request for Bid Document	23 rd June 2018
6.	Bid Due Date ("BDD")	23 rd June 2018 Time: 17:00 hrs
7.	Physical Submission of original Bid Security and Bid Processing Fees.	23 rd June 2018 Time: 17:00 hrs
8.	Opening of Technical Bids at venue provided in Clause 2.11.5	24 th June 2018 Time: 11:00 hrs
9.	Declaration eligible / qualified Bidders	4 th July 2018
10.	Opening of Financial Bid	6 th July 2018
11.	Letter of Award (LOA)	30 days from Opening of Financial Bid
12.	Validity of Bid	180 days from Bid Due Date
13.	Signing of Concession Agreement	30 days from LOA

1.4 Scope of Bid

The Concessionaire will design, build, finance, operate and maintain the District Cooling System designed in a stage wise schedule starting with the stage 1 installed capacity of 5,000 TR and maximum capacity of 20,000 TR as per this RFP . The Project works and civil work of district cooling services should be capable to accommodate district cooling plant of 20,000 TR along with a buried distribution network capable of supplying 20,000 TR of chilled water from the district cooling plant as specified in the Concession Agreement (**“Project Works”**) to the following buildings of the Amaravati government complex:

1. Assembly building
2. High Court building
3. Head of Department buildings – 5 nos
4. Future tower 1
5. Future tower 2

The chillers and associated components are to be installed as per the stage wise schedule provided while the civil works of the DCP and the distribution network should be installed for 20,000 TR capacity.

The Concessionaire will also be expected to provide inputs and technical design guide to the Authority, whenever asked by the Authority during the Project development stage, for the development of air handling and chilled water circulation systems in these buildings to ensure compatibility with the District Cooling System.

For a detailed understanding of the scope, refer to Schedule-B.

2 INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 General terms of Bidding

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

- 2.1.2 An international Bidder bidding individually or as a member of a Consortium shall ensure that Power of Attorney is legalized/apostille by appropriate authority notarized in the jurisdiction where the Power of Attorney is being issued and requirement of Indian Stamp Act is duly fulfilled.
- 2.1.3 The deliverable of the projects is being provided only as a preliminary reference by way of assistance to the bidders, who are expected to carry out their own surveys, investigations and other detailed examinations of the project works before submitting their bids.
- 2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- 2.1.5 The Bid shall be furnished in the format exactly as per Appendix-I i.e. Technical Bid as per Appendix IA and Financial Bid as per Appendix IB. Bid amounts shall be indicated clearly in both figures and words, in prescribed format of Financial Bid and shall be signed by the Bidder's authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.1.6 The Bidder shall deposit a Bid Security of Rs. 72 million (Rupees seventy two million only), in accordance with the provisions of this RFP. The Bidder has the to provide the Bid Security in the form of a Bank Guarantee acceptable to the Authority, as per format at Appendix – II from a Scheduled Commercial Bank in India.
- 2.1.7 The validity period of the Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date with a claim period of 180 (one hundred and eighty) 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 after 180 (One Hundred Eighty) days from the Bid Due Date except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement.
- 2.1.8 The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorizing the signatory of the Bid to commit the Bidder.
- 2.1.9 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of any Member, which Member shall thereafter be identified

as the Lead Member, in the format at Appendix – IV⁵. In case the Bidder is a Consortium, Joint Bidding Agreement in the format at Appendix V shall be submitted by the Bidder.

- 2.1.10 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.11 The Bid and all communications and documents in relation to or concerning the Bidding Documents and the Bid shall be in English language. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified above, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 2.1.12 The Bidding 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 2.1.12 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.13 This RFP is not transferable.
- 2.1.14 Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents.
- 2.1.15 Where the Bidder and its Associate, if any, whose performance is evaluated is a single entity, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 2013 (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 03 (Three). However, none of the members in a Consortium should be under any sort of ineligibility under the

⁵ *In case of a Consortium, the Members should submit a Power of Attorney in favor of the any Member as per the format as Appendix-IV. Such Member shall thereafter be identified as the Lead Member. The Lead Member should submit a power of Attorney as per the format in Appendix-III, authorising the signatory of the Application. Members of the Consortium of need not submit Power of Attorney as per the format at Appendix-III, authorising the signatory of the Application*

Bidding Documents but information sought in the Bid may be restricted to 3 (Three) members in the order of their equity contribution;

- b. subject to the provisions of clause (a) above, the Bid should contain the information required for each member of the Consortium;
- c. members of the Consortium shall nominate one member as the lead member who shall be an experience District Cooling System operator (the “Lead Member”), who shall have an equity share holding of at least 51% ⁶(fifty one per cent) of the paid up and subscribed equity of the SPV. 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, civil works, technical and O&M obligations;
- e. an individual Bidder cannot at the same time be member of a Consortium applying RFP. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for 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-V (the “Jt. Bidding Agreement”), for the purpose of submitting a Bid. The Jt. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:

convey the intent to form an SPV, solely for the purpose of domiciling the Project and no other purpose, with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Joint Development Agreement and subsequently perform all the obligations of the Developer in terms of the Joint Development Agreement, in case the right to undertake the Project is awarded to the Consortium;
- h. clearly outline the proposed roles and responsibilities, if any, of each member;
- i. commit the minimum equity stake to be held by each member;

- j. commit that the Lead Member, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 51% (fifty one per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that the Lead Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 51% (fifty one 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 Joint Development Agreement;
- k. members of the Consortium undertake that they shall collectively hold 100% (One Hundred 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
- l. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Developer in relation to the Project until the Financial Close of the Project is achieved in accordance with the Joint Development Agreement; and
- m. 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.

2.1.16 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.

2.1.17 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Bidder, Consortium Member or Associate.

Authority would place sole reliance on the certification provided by the Bidder in this regard in its letter comprising the Technical Bid.

2.1.18 In computing the Technical Capacity and Net Worth of the Bidder/ Lead Member of the Consortium as the case may be under Clauses 2.2.2, 2.2.4 and 3.4, the

Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

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

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

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

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;
- (c) in responding to the RFP submissions, Bidders should demonstrate their capabilities in accordance with Clause 2.2 and 3 below; and
- (d) in case the Bidder is a Consortium, each Member should substantially satisfy the RFP requirements to the extent specified herein.

2.1.20 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 25% (twenty five 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 an Bidder or its Member is controlled by persons resident outside India; or

- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 25% (twenty five 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 Eligibility of such Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

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

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

2.1.21 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 Application and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.

2.1.22 Not applicable

2.2 Eligibility and qualification requirements of Bidder

2.2.1 For determining the eligibility of Bidder the following shall apply:

- (a) The Bidder may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. 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) Bidder may be a private entity or a government entity or a combination thereof with a formal intent to enter into a Joint Bidding Agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.1.15.

- (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 be entitled to forfeit and appropriate 5% of the value of the Bid Security or equivalent amount from the Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder's proposal (the "Damages"), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - (i) The Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the director in direct shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of not more than 25%(twenty five percent) of the paid up and subscribed capital; of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is not more than 25% (Twenty five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956/2013. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other

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

- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other’s’ information about, or to influence the Bid of either or each other; or
- (vi) such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- (vii) such Bidder or any Associate thereof has appointed any official of the Authority, Technical Advisors of Authority for the Project, Legal Advisors of Authority for the Project, Financial Advisors of Authority for the Project, dealing with the Project, within a period of 1 years from the date of award of the Project to that Bidder.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.12, 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 percent) 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 Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Developer, 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 Developer 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 RFP for the Project. Nor will this disqualification apply where such adviser is engaged after a period of 3(three) years from the date of commercial operation of the Project.

Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, a Bidder may, within 10 (ten) days after the Application Due Date remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof. However his financial bid shall not be opened.

Provided further, in case the Authority seeks information / clarification from a Bidders related to occurrence / non-occurrence of Conflict of Interest and the Bidders fails to provide such information within a reasonable time, the Authority

shall disqualify the Bidders. Encash its Bid Security as per provision of Clause 2.20.7 (a) and further debar it from participation in any future procurement process for a minimum period of 1 year.

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

- (A) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall, over the past 10 (ten) financial years preceding the Bid Due Date, have:
- (i) invested for development of an Eligible Project (as defined in clause 3.4.1) with total investment excluding the operation and maintenance of the project is more than Rs 1,450 million (Rupees one thousand and four hundred and fifty million only) (the “**Threshold Technical Capability**”).
 - (ii) Operated and maintained the Eligible Project for a minimum period of 7 (seven) years
- (B) **Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) of Rs. 360 million (Rupees three hundred and sixty million) at the close of the preceding financial year⁷.

In case of a Consortium, the technical capability and net worth of only the Lead Member, who has and shall continue to have an equity share of at least 51% (fifty one per cent) in the SPV, should satisfy the above conditions of eligibility; provided that the Lead Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 51% (fifty one 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. Post this 2 year period the Lead Member may divest his stake in the SPV upon obtaining approval from the Authority.

Provided further that each member of the Consortium shall have a minimum Net Worth of Rs. 180 million (Rupees one hundred and eighty million) in the immediately preceding financial year.

2.2.3 **O&M Experience:** The Bidder shall, if so required, engage an experienced O & M contractor or hire qualified and trained personnel for operation and maintenance of the Project who have operation and maintenance experience for a minimum 7 (seven) years of district cooling system of same/similar project as the project used to demonstrate Technical Capacity of the Bidder in conformity with the provisions of the Concession Agreement.

⁷ In case a Bidder has issued any fresh Equity Capital or any change in Net Worth from the preceding financial year during the current financial year, the same shall be permitted to be added to the Bidder's Net Worth subject to the Statutory Auditor of the Bidder certifying to this effect

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

- (i) Certificate(s) from its statutory auditors⁸ or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 years in respect of the projects specified in Clause 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
- (ii) Certificate(s) from its statutory auditors specifying the net worth of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.

2.2.5 The EPC contractor or member of Consortium, as the case may be, responsible for the civil works and/or the distribution network for the Project must be registered as a Special Class contractor as per GO Ms No 94, I&CAD (PWW) Department Dt 01-07-2003.

2.3 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.

2.4 Cost of Bidding

⁸ 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 Bidder may provide the certificates required under this RFP

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

2.5 Site visit and verification of information

2.5.1 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water & other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them. Bidders are advised to visit the site and familiarise themselves with the Project with in the stipulated time of submission of the Bid. No extension of time is likely to be considered for submission of Bids.

2.5.2 It shall be deemed that by submitting a 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 2.5.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Joint Development Agreement by the Developer;
- (f) acknowledged that it does not have a Conflict of Interest;
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof; and
- (h) Not applicable

2.5.3 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning

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

The Bidder and any of its personnel or agents will be granted permission by the Authority to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Authority and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection

2.6 Verification and Disqualification

- 2.6.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.
- 2.6.2 The Authority reserve the right to reject any Bid & appropriate the Bid Security if:
- (a) at any time, a material misrepresentation is made or uncovered, or
 - (b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

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

- (a) invite the remaining Bidders to submit their Bids in accordance with Clauses 3.3.3 and 3.3.4; or
- (b) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

- 2.6.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof that one or more of the eligibility and /or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Selected Bidder shall be disqualified forthwith if not yet appointed as the Developer either by issue of the LOA or entering into of the Concession Agreement, and if the Selected Bidder has already been issued the LOA or the SPV has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Developer, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Developer. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under this RFP, the Bidding Documents, the Concession Agreement or otherwise. In addition to the above the Selected Bidder shall be blacklisted by APCRDA.
- 2.6.4 If the Selected Bidder backs out at the time of execution of the Concession Agreement, the Selected Bidder will be suspended for a period of one year duly forfeiting the Bid Security as per G.O.Ms.No.259, T.R&B (Roads-V) Dept., dt.6.9.2008 at the sole discretion of the Authority.

B. DOCUMENTS

2.7 Contents of the RFP

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

Invitation for Bids

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Evaluation of Bids
- Section 4. Fraud and Corrupt Practices
- Section 5. Pre-Bid Conference

Section 6. Miscellaneous

Appendices

IA. Letter comprising the Technical Bid including Annexure I to VI

IB. Letter comprising the Financial Bid

II. Bank Guarantee for Bid Security

III. Power of Attorney for signing of Bid

IV. Joint Bidding Agreement for Consortium

IV. Integrity Pact Power of Attorney for Lead Member of Consortium

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

2.8 Clarifications

- 2.8.1 Bidders requiring any clarification on the RFP may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.11. and enclose the clarification points in a document duly signed by authorized personnel. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. Inquiries made during pre-bid meeting also to be enclosed in a document duly signed by authorized personnel and sent to the Authority's e-mail address/ physical address specified earlier. The Authority shall endeavor to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The Authority shall upload the copies of its response on the APCRDA website including a description of the inquiry but without identifying its source. Should the clarification result in changes to the essential elements of the Bidding Documents, the Authority shall amend the Bidding Documents following the procedure under Clause 2.9.
- 2.8.2 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.
- 2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.9 Amendment of RFP

- 2.9.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.9.2 Any corrigendum/ addendum issued hereunder shall be part of the Bidding Documents. The Authority shall also promptly publish the addendum on the APCRDA website.
- 2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Bid Due Date.

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

- 2.10.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects..
- 2.10.2 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink. The name and position held by each person signing the authorization must be typed or printed below the signature. 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. Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.
- 2.10.3 The bidders are requested to submit the originals of Bid Security and hard copies of Bid submission documents to the Authority before the closing date of the bid either personally or through courier or by post and the receipt of the same within the due date shall be the responsibility of bidder. The department shall not take any responsibility for any delay or non-receipt. If any of the documents furnished by the bidder is found to be false/fabricated/bogus, the bidder is liable for black listing, forfeiture of the Bid Security, cancellation of work and criminal prosecution.
The bidder is requested to get a confirmed acknowledgement from the Authority as a proof of 1 original bid (technical and financial), 2 Hardcopies of technical bid

and 1 hard copy of financial bid to avoid any discrepancy. The bidder has to attach the required documents after uploading the same on the APCRDA website as required by Authority.

2.11 Documents comprising Technical and Financial Bid

2.11.1 The Bidder shall submit the bid (the "**Bid**") which includes:

- a. Technical Bid in the format specified at Appendix-IA , and seal it in an envelope and mark the envelope as "TECHNICAL BID"
- b. Financial Bid in the format specified at Appendix-Ib , and seal it in an envelope and mark the envelope as "FINANCIAL BID". The Selected Bidder shall submit hard copies of all documents

The Letter of Bid and other documents, shall be prepared using the relevant forms furnished in Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided. All blank spaces shall be filled in with the information requested.

Technical Bid

- (a) Application in the prescribed format Appendix-IA (Letter comprising the Technical Bid) along with Annexes and supporting certificates and documents including Annexure I to V.
- (b) Deleted;
- (c) Deleted
- (d) copy of Memorandum and Articles of Association, if the Applicant is a body corporate, and if a partnership then a copy of its partnership deed;
- (e) copies of Applicant's duly audited balance sheet and profit and loss statement for preceding 5 years.
- (f) Deleted.
- (i) An undertaking from the person having PoA referred to in Sub. Clause-(b) above that they agree and abide by the Bidding Documents uploaded by Authority and amendments thereof as uploaded, if any.
- (j) A copy of the draft Concession Agreement with each page initialled by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (b) hereinabove.

Financial Bid

- (k) Appendix-IB (Letter comprising the Financial Bid)

2.11.2 The documents accompanying the Bid shall be placed in a separate envelope and marked as “Enclosures of the Bid”. The documents shall include::

- (a) Original Power of Attorney for signing the Bid as per format at Appendix-III;
- (b) if applicable, Original Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;
- (c) if applicable, Original Joint Bidding Agreement for Consortium as per the format at Appendix-V
- (d) Deleted
- (e) Bid Security of Rs 72 million (Rupees seventy two million only) in the form of Original Bank Guarantee in the format at Appendix-II from a Scheduled Bank.
- (f) Demand draft issued by a Scheduled Bank in India, drawn in favour of the Commissioner, APCRDA and payable at Vijayawada of Rs. 25,000/- (Rupees Twenty-Five Thousand only) towards cost of Bid document.
- (g) Integrity pact on plain paper shall be submitted by the Bidder with the RFP Bid duly signed by Authorized signatory & shall be part of the Concession Agreement;
- (h) An undertaking from the person having PoA referred to in Sub. Clause-(a) above that they agree and abide by the Bidding Documents uploaded by Authority and amendments uploaded, if any.
- (i) Original Statement of Legal Capacity as per format at Annexure V to Appendix I.

2.11.3 A true copy of the documents accompanying the Bid, as specified in Clause 2.11.2 above, shall be bound together in hard cover and the pages shall be numbered serially. Each page thereof shall be initialled in blue ink by the authorised signatory of the Bidder. This copy of the documents shall be placed in a separate envelope and marked “Copy of Documents”.

2.11.4 The three envelopes specified in Clauses 2.11.1, 2.11.2 and 2.11.3 shall be placed in an outer envelope, which shall be sealed. Each of the four envelopes shall clearly bear the following identification: “Bid for the Development of District Cooling System for Amaravati Government Complex in Amaravati, Andhra Pradesh on Public Private Partnership (PPP) Basis” and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

The Bid should bear the specific identification of this bidding process specified in the NIT No: 16/PROC/Addl. Director/Infrastructure/DCS/2018

2.11.5 The envelopes shall be addressed to the following officer and shall be submitted at the respective address:

Attention : Commissioner
Street Address : APCRDA, Lenin Center, Governor Pet
City : Vijayawada
ZIP Code : 520002
Country : India
Telephone : 0866 – 2577475
APCRDA website : www.crda.ap.gov.in

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

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

2.12 Bid Due Date

2.12.1 Bids should be submitted before 17:00 hours IST on the Bid Due Date at the address provided in Clause 2.11.5 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.5.

2.12.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an addendum/corrigendum in accordance with Clause 2.9 uniformly for all Bidders.

2.13 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.

2.14 Contents of the Bid

- 2.14.1 The Bid shall be furnished in the format at Appendix–I and shall consist of the Tariff in Rs/TRh and electricity requirement in KWh/TRh to be quoted by the Bidder to undertake the Project in accordance with this RFP and the provisions of the Concession Agreement.
- 2.14.2 Generally, the Project will be awarded to the Lowest Bidder as assessed by the Authority.
- 2.14.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.
- 2.14.4 The proposed Concession Agreement shall be deemed to be part of the Bid.

2.15 Modifications/ Substitution/ withdrawal of Bids

- 2.15.1 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.
- 2.15.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.11, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- 2.15.3 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.

2.16 Rejection of Bids

- 2.16.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.16.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.17 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. A bid validity for a shorter period shall be rejected by the Authority as non-responsive.

In exceptional circumstances, prior to the expiration of the bid validity period, the Authority may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. The bid security shall also be extended for a mutually agreed period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid

2.18 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority 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. 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 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 acceptance or rejection of any Bid.

2.20 Bid Security

2.20.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.6 and 2.1.7 hereinabove in the form of a bank guarantee issued by a nationalised bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. one thousand crore), in favour of the Authority in the format at Appendix-II (the “**Bank Guarantee**”) and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 180 (one hundred and eighty) 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 bank outside India, confirmation of the same by any Nationalised Bank or Scheduled 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.

2.20.2 Deleted

- 2.20.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.20.4 Save and except as provided in Clauses 2.10.3, 2.20.6⁹ and 2.20.7 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 180 (one hundred and eighty) days from the Bid Due Date.
- 2.20.5 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.
- 2.20.6 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages *inter alia* in any of the events specified in Clause 2.20.7 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.
- 2.20.7 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Concession Agreement, or otherwise, if
- (a) a Bidder submits a non-responsive Bid;
 - (b) a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this RFP;
 - (c) a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
 - (d) the Selected Bidder fails within the specified time limit -
 - (i) to sign and return the duplicate copy of LOA; or
 - (ii) to sign the Concession Agreement; or
 - (iii) to furnish the Performance Security within the period prescribed therefor in the Concession Agreement.

- (e) the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

3 EVALUATION OF TECHNICAL BIDS AND OPENING AND EVALUATION OF FINANCIAL BIDS

3.1 Opening and Evaluation of Technical Bids

- 3.1.1 The Authority shall open the Financial Bid of the Bidders at 11:00 hours on date as mentioned in clause 1.3, at the place specified in Clause 2.11.5 and in the presence of the Bidders who choose to attend.
- 3.1.2 The Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.
- 3.1.3 To facilitate evaluation of Financial Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Financial Bid.
- 3.1.4 The Authority will not entertain any query or clarification from Bidders who fail to qualify at 1st stage of evaluation of Technical Bid of the selection process.
- 3.1.5 The Authority shall prepare a record of the Financial Bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Tariff, per lot (contract) if applicable, “including any discounts” and alternative bids; and the presence or absence of a Bid Security, if one was required. The Bidders representatives who are present shall be requested to sign the record. In case of electronic bidding the Bidders will receive the final comparative statement of the price bid evaluation.
- 3.1.6 The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: INDIAN RUPEES (INR/Rs.).

3.2 Tests of responsiveness

-
- 3.2.1 Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of this RFP. A Bid shall be considered responsive if:
- (a) it is received as per the format at Appendix-I;
 - (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.12.2;
 - (c) it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.10 and 2.11;
 - (d) it is accompanied by the Bid Security as specified in Clause 2.1.6;
 - (e) it is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.8, as the case may be;
 - (f) it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
 - (g) it does not contain any condition or qualification; and
 - (h) it is not non-responsive in terms hereof.

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

3.3 Evaluation parameters

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

3.3.2 A Bidder's competence and capability is proposed to be established by the following parameters:

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

3.4 Technical Capacity for purposes of evaluation

3.4.1 Subject to the provisions of Clause 2.2, the following experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to Eligible Projects:

Project Experience on Eligibility Experience. For the purpose of this RFP, eligible project (the "**Eligible Project**") would include any single project involving design, supply, construction, erection, testing, commissioning, operation and maintenance of chilled water system and distribution network as well as thermal storage, associated electrical system etc., with minimum capacity of 10,000 TR, indirect connection to building network (plate and

frame type heat exchangers) & distribution network of minimum length of 3.0 km.

3.4.2 Eligible Experience shall be measured only for Eligible Projects.

3.4.3 For a project to qualify as an Eligible Project

- a) It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or or DBFOT or HAM project or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port or district cooling system 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 owing the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire project duration for which Eligible Experience is being claimed;
- c) the capital cost of the project should be more than Rs. 1,450 million (Rupees one thousand and four hundred and fifty million only); and
- d) the entity claiming experience shall, during the last 10 (ten) financial years preceding the Application Due Date, have (i) paid for development of the project (excluding the cost of land), and (ii) collected and appropriated the revenues from users availing of chilled water supply from the District Cooling System

3.4.4 Deleted

3.4.5 Deleted

3.4.6 Deleted

3.4.7 Deleted

3.4.8 Deleted

3.5 Details of Experience

3.5.1 The Bidders should furnish the details of Eligible Experience for the last 10(ten years) financial years immediately preceding the Bid Due Date.

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

3.5.3 The Bidders 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.

3.5.4 Deleted

3.6 Financial information for purposes of evaluation

3.6.1 The Bids must be accompanied by the Audited Annual Reports of the Applicant for the last 5 (five) financial years, preceding the year in which the Bid is made.

3.6.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make the same 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.

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

3.6.4 In case of foreign companies, a certificate from a qualified external auditor who audits the book of accounts of the Bidder 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 and has been duly attested by the Consular General of India.

3.6.5 During the evaluation process,

(i) 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 may reject / correct such claim for the purpose of qualification requirements.

(ii) The Authority will get the Bid security verified from the issuing authority and after due verification, the Authority will evaluate the Technical Bids for their compliance to the eligibility and qualification requirements pursuant to clause 2.2.1 & 2.2.2 of this RFP.

(iii) After evaluation of Technical Bids, the Authority will publish a list of technically responsive Bidders whose financial bids shall be opened. The Authority shall notify other Bidders that they have not been technically responsive. The Authority will not entertain any query or clarification from Bidders who fail to qualify.

3.6.6 The Bidder can provide their financing plan for the Project along with a comfort letter from their lenders agreeing in principle to fund the Project.

3.7 Selection of Bidder

- 3.7.1 Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 and whose assessed Bid Price is the lowest, shall be declared as the selected Bidder (the "Selected Bidder").
- 3.7.2 In the event that, the assessed Bid Price of two or more Bidders is the same (the "Tie Bids"), 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 Subject to Clause 2.6.2, in the event that the Lowest Bidder is not selected for any reason, the Authority shall annul the Bidding Process and invite fresh Bids. 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.
- 3.7.4 Subject to Clause 2.16, the Authority shall award the Contract to the Bidder who has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

After selection, a Letter of Award detailing the terms and conditions for award and implementation of the Project and payment of Annuity (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 token of acknowledgement and acceptance thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date the Authority may, unless it consents to extension of time for submission thereof appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA.

- 3.7.5 Within 14 days of receipt of acknowledgement of the LOA as aforesaid by the Selected Bidder, the Authority shall send the draft Concession Agreement to the selected Bidder and cause the Bidder 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 draft Concession Agreement. Until, the Concession Agreement is executed, the acknowledged and accepted LOA shall constitute a binding obligation on the part of the Selected Bidder.

3.7.6 Deleted

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.

3.9 Correspondence with Bidder

3.9.1 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.

3.9.2 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.

3.9.3 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.

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 Joint Development Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Joint Development Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Joint Development Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Joint Development 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 Joint

Development Agreement, or otherwise if a Bidder or Contractor, 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 Joint Development Agreement, such Bidder, at the sole and absolute discretion of the Authority, shall not be eligible to participate in any bid or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder, 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 Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA

or has dealt with matters concerning the Joint Development Agreement or arising therefrom, before or after the \ execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.2.1(d), engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Joint Development Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Joint Development 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;
 - (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.
- 4.4 Bidder shall comply with the provisions of Model Agreement for Integrity Pact (IP),(format given in Appendix VI) shall be submitted by the Bidder along with the Bid duly signed by the Authorised signatory of the Bidder and shall be deemed to be a part of the Joint Development Agreement.

In further pursuance of this policy, Bidders shall permit and shall cause its agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers and any personnel thereof, to permit the Authority to inspect all accounts, records and other documents relating to any prequalification process, bid submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Authority.

5 PRE-BID CONFERENCE

- 5.1 Pre-Bid conference of the Bidders shall be convened at the designated date, time at APCRDA office, Lenin Centre, Vijayawada. A maximum of two representatives of prospective Bidders shall be allowed to participate on production of authority letter from the Bidder.

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

The Bidder is requested to submit any questions in writing, to reach the Authority not later than one week before the Pre-Bid conference.

Minutes of the pre-bid conference, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Documents. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid conference shall be made by the Authority exclusively through the issue of an Addendum pursuant to the RFP and not through the minutes of the pre-bid meeting. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

6 MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Vijayawada 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) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 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, 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 Deleted

APPENDICES

APPENDIX IA: Letter Comprising the Technical Bid

(Refer Clause 2.1.5, 2.11 and 3.2)

Date :- / /2018

To,
Commissioner,
APCRDA, Lenin Center, Governor Pet,
Vijayawada – 520002, India

Sub: Bid for Development of District Cooling System for Amaravati Government Complex in Amaravati, Andhra Pradesh on Public Private Partnership (PPP) basis (the “Project”)

Dear Sir,

1. With reference to your RFP document dated¹⁰, I, 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 acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Developer for the aforesaid Project, and we certify that all information provided in the Bid and in Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as a Developer 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

¹⁰ All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant

by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the RFP document, 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; and
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any bid 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.
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 2.16.2 of the RFP document.
9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria , and meet(s) all the requirements as specified in the RFP document.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for this Project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the

Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.
14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines form part of the RFP at Appendix-VI thereof.
15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately.
 - (a) The Statement of Legal Capacity as per format provided at Annex-V in Appendix-IA 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 III and IV respectively of the RFP, are also enclosed.
 - (b) I/We hereby confirm that we are in compliance of/ shall comply with the O & M requirements specified in Clause 2.2.3.
16. I acknowledge and undertake that our Consortium is qualified on the basis of Technical Capacity and Financial Capacity of the Lead Member, who for the period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than 51% (fifty one percent) of the subscribed and paid up equity of the Concessionaire; and (ii) 5% (five percent) of the Total Project Cost specified in the Concession Agreement. 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.

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17. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity shall be taken into consideration for the purposes of selection as Developer under and in accordance with the 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 Concession 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.
 18. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the Concession Agreement.
 19. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
 20. In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
 21. I/We have studied all the Bidding Documents carefully and also surveyed the project highway and the traffic. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
 22. I/We offer a Bid Security of Rs 72 million (Rupees seventy two million only) to the Authority in accordance with the RFP Document.
 23. The Bid Security in the form of a Bank Guarantee is attached.

24. The documents accompanying the Technical Bid, as specified in Clause 2.11.2 of the RFP, have been submitted in a separate envelope and marked as “Enclosures of the Bid”.
25. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
26. The Tariff, water requirement and electricity requirement has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project.
27. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
28. {We, the Consortium Members agree and undertake to be liable for all the obligations of the Developer under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.}
29. I/ We certify that in terms of the RFP, my/our Net Worth¹¹ is Rs. (Rs. in words),) and fulfil the qualification criteria mentioned in Clause 2.2.2
30. I/We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
31. I/ We hereby submit our Bid as indicated in Financial Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Joint Development Agreement.
- 32(a) {The EPC contractor/s who would be executing EPC works of the Project are,and it is confirmed that these contractors meet the minimum criterion set out in our RFP for this Project.
- (b) It is irrevocably agreed that the value of any contract for the EPC works awarded shall not be less than Rs. 20 Crore.
- (c) It is also agreed that any change of EPC contractor(s) would with be prior written approval of the Authority. We agree that the Authority shall grant such permission

¹¹ Net Worth of the Lead Member

only and only if the substitute proposed is of the required technical capability 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 of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory) Name and seal of Bidder/Lead Member

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

APPENDIX IB: Letter comprising the Financial Bid

(Refer Clauses 2.1.5, 2.11.1)

(NOT TO BE SUBMITTED IN THE TECHNICAL Bid)

Date :- / / 2018

To,
Commissioner
APCRDA, Lenin Center, Governor Pet,
Vijayawada – 520002, India

Sub: Bid for Development of District Cooling System for Amaravati Government Complex in Amaravati, Andhra Pradesh on Public Private Partnership (PPP) basis (the “Project”)Concession

Dear Sir,

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

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Developer for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. The Bid has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Draft Concession Agreement and its Schedules, our own estimates of costs and after a careful assessment of the site and all own the conditions that may affect the Project cost and implementation of the Project.
4. 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.
5. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

6. I shall keep this offer valid for 180 (One hundred and Eighty) days from the Bid Due Date specified in the RFP.
7. I hereby submit our Bid for Tariff of :
Demand Charge: Rs...../TR/month (in words)
Consumption Charge: Rs...../TRh
for undertaking the aforesaid Project in accordance with the Bidding Documents and Concession Agreement and excluding GST.

Appendix IA

Annex-I

Details of Bidder

- (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 Joint Bidding Agreement, as envisaged in Clause 2.1.15 (g) should be attached to the Application.
 - c. Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role* {Refer Clause 2.1.15(d)} [§]	Percentage of equity in the Consortium {Refer Clauses 2.1.15(a), (c) & (g)}

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 Bidder to reflect the particulars relating to such Bidder.

[£] or has been declared by the Authority as non performer/blacklisted.

ANNEX-II

Technical Capacity of the Bidder[@]

(Refer to Clauses 2.2.2(A), 3.4 and 3.5 of the RFP)

(i)

Bidder type #	Project Code**	Technical Capacity [¥]	[Add Year wise data here]
		6.1.1.1.1 (Equivalent Rs. crore)\$§	
		Payments made for development of Eligible Project	
(1)	(4)	(5)	
Single Entity Bidder or Lead Member of consortium	A		

(ii) Proof that the Bidder has carried out operations and maintenance of project of similar size and size as the Eligible Project used to indicate Technical Capacity for a minimum period of 07 (seven) years to be attached along with this annexure.

|

[@] 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 2.1.18 and/ or by a project company eligible under Clause 3.4.3(b). In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.21.

[#] In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.1.18, shall be provided.

^{*} Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. 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-IA. Add more rows if necessary.

[¥] In the case of Eligible Project, cost of the land shall not be included while computing the Technical Capacity in Rs. Cr..

^{\$§} For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 65 (Sixty 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.

Appendix IA

Annex-III

ANNEX-III

Financial Capacity of the Bidder*(Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.6 of the RFP)*(In Rs. crore^{\$\$})

Bidder type §	Member Code [£]		Net Cash Accruals					Net Worth [€]
			Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	*9)
Single entity Bidder or Lead Member of consortium								
TOTAL								

Name & address of Bidder's Bankers:

§

£For Member Code, see instruction 4 at Annex-IV of this Appendix-IA.

€The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 2.1.18.

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

Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.21.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.1.15 (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 Project*(Refer to Clauses 2.2.2(A), 3.4 and 3.5 of the RFP)***Project Code:****Member Code:**

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

Instructions:

1. Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.4.3 of the RFP, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.

- 2.
3. Deleted.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write "Associate" along with Member Code.
5. Deleted.
6. The total payments received/ made for the Eligible Project are to be stated in Annex-II of this Appendix-IA. The figures to be provided here should indicate the break-up for the past 1 (one) financial year. 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 2.1.21). For the Eligible Project, expenditure on development of the project should be provided, but only in respect of the project having an estimated capital cost exceeding the amount specified in Clause 3.4.3(c).
7. In case of Eligible Project, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.)/ client may be provided.
8. Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.4.3
9. For the Eligible Project, the date of commissioning of the project upon completion should be indicated. In the case of projects under construction, the likely date of commissioning shall be indicated.
10. 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 3.4.3).
11. Deleted

12. Certificate from the Bidder’s statutory auditor[§] or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.
13. The Bidder claiming experience for development of the Eligible Project[£] 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 Rs. cr. (Rupees crore) of equity (which constitutes%[€] of the total paid up and subscribed equity capital) of the project company from (date) to (date)[¥]. The project was/is likely to be commissioned on (date of commissioning of the project).

We further certify that the total estimated capital cost of the project is Rs. cr. (Rupeescrore), of which Rs. 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 2.2.2 (A) and 3.4.3 (d) of the RFP during the past five financial years were Rs. cr. 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:

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

[£] Refer Clause 2.2.2 (A) 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. Deleted

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.1.18, the Bidder should also provide a certificate in the format below:

♣ Refer Clauses 2.2.2 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/ Lead 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.

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

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of (name of the Associate) is held, directly or indirectly[£], by (name of Bidder /

Lead Member). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.1.18 of the RFP.

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

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

Name of the audit firm:

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

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

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

16. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Technical Capacity[⊖].

[⊖] Refer Clause 2.2.2 of the RFP.

Appendix IA
Annex-V

ANNEX-V
Statement of Legal Capacity

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

Ref. Date:

To,
Commissioner
APCRDA, Lenin Center, Governor Pet,
Vijayawada – 520002, India

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the application) 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 / Bidder on its behalf* and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

**Please strike out whichever is not applicable.*

Annexure VI
Guidelines of the Department of Disinvestment
(Refer Clause 1.2.1)

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

Block 14, CGO Complex
New Delhi.

Dated 13th July, 2001.

OFFICE MEMORANDUM

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

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

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (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

APPENDIX II: Bank Guarantee for Bid Security

(Refer Clauses 2.1.6 and 2.20.1)

Form of Bid Security

(Demand Guarantee)

Beneficiary : _____
 Invitation for Bids No : _____
 Date : _____
 Bid GUARANTEE No. : _____
 Guarantor : _____

We have been informed that _____ (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its bid (hereinafter called "the Bid") for the execution of _____ under Invitation for Bids No. _____ ("the NIT no.").

Furthermore, we understand that, according to the Beneficiary's conditions, bids must be supported by a bid guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay merely on demand without demur the Beneficiary any sum or sums not exceeding in total an amount of _____ (_____) upon receipt by us of the Beneficiary's demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

- (a) Has withdrawn its Bid during the period of bid validity set forth in the Applicant's Letter of Bid ("the Bid Validity Period"), or any extension thereto provided by the Applicant; or
- (b) Having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the Concession Agreement, or (ii) has failed to furnish the performance security, in accordance with the Concession Agreement.

This guarantee will expire: (a) if the Applicant is the Selected Bidder, upon our receipt of copies of the Concession Agreement signed by the Applicant and the EMD issued to the Beneficiary in relation to such Concession Agreement; or (b) if the Applicant is not the Selected Bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the bidding process; or (ii) one hundred and eighty days after the end of the Bid Validity Period.

Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before _____.¹²

 [signature(s)]

¹² This date needs to be specific.

APPENDIX III: Format for Power of Attorney for signing of Bid

(Refer Clause 2.1.8)

Know all men by these presents, We, (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr. / Ms. _____ 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 District Cooling System for Amaravati Government Complex in Amaravati, Andhra Pradesh under Public Private Partnership basis (the "Project") proposed or being developed by the Andhra Pradesh Capital Region Development Authority established under Andhra Pradesh Capital Region Development Authority Act, 2014 (Act No. 11 of 2014) having its office at Lenin Centre, Governor pet, Vijayawada 520002(the "Authority") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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

IN WITNESS WHEREOF WE,, THE ABOVE NAMED AUTHORITY HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 2018

For

(Signature, name, designation and address)

of person authorized by Board resolution (in
case of Firms/Company)/Partner in case of
Partnership Firms

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
Registration Number of the Notary

Date _____

Accepted

(Signature, name, designation 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 IV:

Format for Power of Attorney for Lead Member of Consortium

(Refer Clause 2.1.9)

Whereas the Andhra Pradesh Capital Region Development Authority (APCRDA) established under Andhra Pradesh Capital Region Development Authority Act, 2014 (Act No. 11 of 2014) having its office at Lenin Centre, Governor pet, Vijayawada 520002 (“the Authority”) has invited bids from interested parties for the Development of District Cooling System for Amaravati Government Complex in Amaravati, Andhra Pradesh on Public Private Partnership (PPP) basis (the “Project”). Whereas,....., and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s., having our registered office at, and M/s., having our registered office at, (hereinafter

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

Project and/ or upon award thereof till the Joint Development 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 2017

For

(Signature, Name & Title)

For

(Signature, Name & Title)

For

(Signature, Name & Title)

Witnesses:

1.

2.

(Executants)

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

Notes:

- ☐ *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- ☐ *Wherever required, the Bidder 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 Bidder.*
- ☐ *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from*

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

APPENDIX V:

Format for Joint Bidding Agreement for Consortium

(Refer Clause 2.1.9 & 2.1.15(g))

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the ...day of 2018

AMONGST

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

AND

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

AND

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

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

WHEREAS,

- e.

- (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 1956/2013 for entering into a Joint Development Agreement with the Authority and for performing all its obligations as the Developer in terms of the Joint Development Agreement for the Project.

4. Role of the Parties

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

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding

Process and until the Appointed Date under the Joint Development Agreement when all the obligations of the SPV shall become effective;

- (b) Party of the Second Part shall be {.....}

- {(c) Party of the Third Part shall be the {.....}

}

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 Joint Development Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Joint Development Agreement.

6. Shareholding in the SPV

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

First Party: Lead Member – 51%

Second Party:

{Third Party:}

- 6.2 The Parties undertake that a minimum of 51% (fifty one 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 FirstPart whose experience and net worth have been reckoned for the purposes of qualification and short-listing of Applicants for the Project in terms of the RFP. Further, the shareholding in the SPV will change only on prior approval of the Authority.
- 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 100% (one hundred 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 requirements set forth in the Joint Development Agreement.

7. Representation of the Parties

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

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

9. Miscellaneous

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

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

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of
LEAD MEMBER by:

SECOND PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of
THIRD PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

- 1.
- 2.

Notes:

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

APPENDIX IV: Integrity Pact

(Refer clause 4.4)

Draft Integrity Pact Format applicable for works having value of Rs. 100 Cr and above

Development of District Cooling System for Amaravati Government Complex in Amaravati, Andhra Pradesh under Public Private Partnership basis (the “Project”)

Bid No. _____

This Integrity Pact is made at _____ on this _____ day of _____ 2018

Between

[Andhra Pradesh Capital Region Development Authority (APCRDA) established under Andhra Pradesh Capital Region Development Authority Act, 2014 (Act No. 11 of 2014) , which has been entrusted with the responsibility of development of Capital City of Andhra Pradesh – Amaravati, having its office at Lenin Centre, Governorpet, Vijayawada, hereinafter referred to as the “Authority”, which expression shall unless repugnant to the meaning or contract thereof include its successors and permitted assigns.].]

and

_____. hereinafter referred to as “The Bidder / Developer ” and which expression shall unless repugnant to be meaning or context thereof include its successors and permitted assigns.

Preamble

Whereas

, _____ the Authority intends to award, under laid down organizational procedures contract/s for..... The Authority values full compliance with all relevant laws of the land, rules of land, regulations, economic use of resources and of fairness/ transparency in its relations with its Bidder(s) and for Contractor(s)/Developer(s)/Consultant(s).

And whereas in order to achieve these goals, the Authority will appoint an independent external Monitor (IEM), who will monitor the bid process and the execution of the contract for compliance with the Authority mentioned above.

And whereas to meet the purpose aforesaid, both the parties have agreed to enter into this Integrity Pact (hereafter referred to as Integrity Pact) the terms and conditions of which shall also be read as integral part and parcel of the Bidding Documents and contract

between the parties. Now, therefore, in consideration of mutual covenants stipulated in this pact, the parties hereby agree as follows and this pact witnesseth as under:-

Article-1-Commitments of the Authority

- (1) The Authority commits itself to take all measures necessary to prevent corruption and to observe the following principle: -
 - (a) No employee of the Authority, personally or through family members, will in connection with the tender for, or the execution of a contract, demand or take a promise for or accept for self or third person any material or immaterial benefit which the person is not legally entitled to.
 - (b) The Authority will, during the bid process treat all Bidder(s) with equity and reason. The Authority will in particular, before and during the bid process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the bid process or the contract execution.
 - (c) The Authority will exclude all known prejudiced persons from the process, whose conduct in the past has been of biased nature.
- (2) If the Authority obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act or any other Statutory Acts or if there be a substantive suspicion in this regard, the Authority will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions as per its internal laid down Rules/ Regulations.

Article-2 Commitments of the Bidder(s)/ Contractor(s)/ Developer(s)

The Bidder(s)/ Contractor(s)/ Developer(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the bid process and during the contract execution.

- (a) The Bidder(s)/ Contractor(s)/ Developer(s) will not, directly or through any other person or firm, offer, promise or give to any of the Authority employees /Consultants involved in the bid process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the bid process or during the execution of the contract.
- (b) The Bidder(s)/ Contractor(s)/ Developer(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission or bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
- (c) The Bidder(s)/ Contractor(s)/ Developer(s) will not commit any offence under the relevant IPC / PC. Act and other Statutory Acts; further the Bidder(s)/ Contractor(s)/ Developer(s) will not use improperly for purposes of completion or personal gain, or pass on to others, any information or document provided by the Authority as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- (d) The Bidder(s)/ Contractor(s)/ Developer(s) of foreign origin shall disclose the name and address of the Agents / representatives in India. If any similarly the Bidder(s)/ Contractor(s)/ Developer(s) of Indian Nationality shall furnish the name and address of the foreign principle, if any.
- (e) The Bidder(s)/ Contractor(s)/ Developer(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract. He shall also disclose the details of services agreed upon for such payments.
- (f) The Bidder(s)/ Contractor(s)/ Developer(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- (g) The Bidder(s)/ Contractor(s)/ Developer(s) will not bring any outside influence through any Govt. bodies/quarters directly or indirectly on the bidding process in furtherance of his bid.

Article 3 Disqualification from bid process and exclusion from future contracts

- (1) If the Bidder(s)/ Contractor(s)/ Developer(s) before award or during execution has committed a transgression through a violation of any provision of Article-2, above or in any other from such as to put his reliability or credibility in question, the Authority is entitled to disqualify the Bidder(s)/ Contractor(s)/ Developer(s) from the bid process.

- (2) If the Bidder/Contractor/Developer has committed a transgression through a violation of Article-2 such as to put his reliability or credibility into question, the Authority shall be entitled to exclude including blacklist and put on holiday the Bidder/Contractor/Developer for any future bids/contract award process. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the Authority taking into consideration the full facts and circumstances of each case particularly taking into account the number of transgressions, the position of the transgressors within the company hierarchy or the Bidder/Contractor/Developer and the amount of the damage. The exclusion will be imposed for a minimum of 1 year.
 - (3) A transgression is considered to have occurred if the Authority after due consideration of the available evidence concludes that “On the basis of facts available there are no material doubts”.
 - (4) The Bidder/ Contractor/Developer/Consultant will its free consent and without any influence agrees and undertakes to respect and uphold the Authority’s absolute rights to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.
 - (5) The decision of the Authority to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder/Contractor/Developer shall be final and binding on the Bidder/Contractor/Developer.
 - (6) On occurrence of any sanctions/ disqualification etc. arising out from violation of integrity pact, Bidder/ Contractor/Developer shall not be entitled for any compensation on this account.
 - (7) Subject to full satisfaction of the Authority, the exclusion of the Bidder/ Contractor / Developer could be revoked by the Authority if the Bidder/ Contractor/ Developer can prove that he has
-

restored/recouped the damage caused by him and has installed a suitable corruption prevention system in his organization.

Article 4 Compensation for Damages

- (1) If the Authority has disqualified the Bidder(s) from the bid process prior to the award according to Article 3, the Authority shall be entitled to forfeit the Earnest Money Deposit (EMD) / Bid Security or demand and recover the damages equivalent to Earnest Money Deposit / Bid Security apart from any other legal right that may have accrued to the Authority.
- (2) In addition to above, the Authority shall be entitled to take recourse to the relevant provisions of the contract related to Termination of Contract due to Contractor / Developer's Default. In such case, the Authority shall be entitled to forfeit the Performance Bank Guarantee of the Contractor/Developer and /or demand and recover liquidated and all damages as per the provisions of the contract/Concession Agreement against Termination.

Article 5 Previous Transgression

- (1) The Bidder declares that no previous transgression occurred in the last 3 years immediately before signing of this integrity pact with any other Company in any country conforming to the anticorruption/Transparency International (TI) approach or with any other Public-Sector Enterprise/Undertaking in India or any Government Department in India that could justify his exclusion from the tender process.
- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the bid process or action for his exclusion can be taken as mentioned under Article-3 above for transgression of Article-2 and shall be liable for compensation for damages as per Article-4 above.

Article 6 Equal treatment of all Bidders/ Contractors/ Developers / Sub Contractors

- (1) The Bidder(s)/Contractor(s)/Developer(s) undertake(s) to demand from all sub-contractors a commitment in conformity with this integrity Pact, and to submit it to the Authority before contract signing.
- (2) The Authority will enter into agreements with identical conditions as this one with all Bidders/Contractors/Developer and Subcontractors.

- (3) The Authority will disqualify from the tender process all Bidders who do not sign this Pact violate provisions.

Article 7 Criminal charges against violating Bidder(s)/ Contractor(s)/ Developer(s) / Sub-contractor(s)

If the Authority obtains knowledge of conduct of a Bidder/ Contractor/ Developer or Subcontractor, or of an employee or a representative or an associate of a Bidder/Contractor/Developer or Subcontractor, which constitutes corruption, or if the Authority has substantive suspicion in this regard, the Authority will inform the same to the Chief Vigilance Officer.

Article 8 Independent External Monitor (IEM)

- (1) The Authority appoints competent and credible Independent External Monitor (IEM) for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Commissioner, VMC Vijayawada.
- (3) The Bidder/Contractor/Developer accepts that the Monitor has the right to access without restriction to all Project documentation of the Authority including that provided by the Bidder/ Contractor/ Developer. The Bidder/ Contractor/ Developer will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to the Project. The Monitor is under contractual obligation to treat the information and documents of the Bidder/ Contractor/ Developer/ subcontractors with confidentiality.
- (4) The Authority will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Authority and the Bidder/Contractor/ Developer. The parties offer to the Monitor the option to participate in such meetings.
- (5) As soon as the Monitor notices, or believes to notice any transgression as given in Article-2, he may request the Management of the Authority to take corrective action, or to take relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand

from the parties that they act in a specific manner, refrain from action or tolerate action.

- (6) The Monitor will submit a written report to the Commissioner, VMC Vijayawada within 8-10 weeks from the date of reference or intimation to him by the Authority and, should the occasion arise, submit proposals for correcting problematic situations.
- (7) If the Monitor has reported to the Commissioner, VMC Vijayawada, a substantiated suspicion of under relevant IPC/PC Act or any other Statutory Acts, and the Commissioner, VMC Vijayawada has not, within the reasonable time taken visible action to proceed against such offence or reported it the Vigilance Officer, the Monitor may also transmit this information directly to the Vigilance Commissioner.
- (8) The word 'Monitor' would include both singular and plural.

Article 9 Pact Duration

This Pact begins when both parties have signed and it expires for the Developer 24 months after his concession period is over and for all other unsuccessful Bidders 6 months after this Contract has been awarded and Concession Agreement signed.

If any claim is made/lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged determined by Commissioner, VMC Vijayawada.

Article 10 Other Provisions

- (1) This pact is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Authority, i.e. Vijayawada, Andhra Pradesh.
- (2) Changes and supplements as well as termination notices need to be made in writing.
- (3) If the Bidder/Contractor/Developer is a partnership or a Consortium, this pact must be signed by all partners or Consortium members.
- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid, in this case, the parties will strive to come to an agreement to their original intentions.

- (5) Any dispute/differences arising between the parties with regard to term of this Pact, any action taken by the Authority in accordance with this Pact or interpretation thereof shall not be subject to any Arbitration.

- (6) He actions stipulated in the integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions to the extant law in force relating to any civil or criminal proceedings.

In witness whereof the parties have signed and executed this pact at the place and date first done mentioned in the presence of following witnesses:-

(For & On behalf of the Authority)

(For & On behalf of Bidder/
Contractor/Developer/Consultant

(Office Seal)

Place:-

Date:-

Witness 1:

(Name & Address)

Witness 2:

(Name & Address)

