

**Government of Telangana**



**HYDERABAD METRO RAIL LIMITED**  
( A Government of Telangana Enterprise )



**Doc num 2277/GM(P)/PMS/HMRL/2019**

Request for Proposal

for

Selection of Licensee for Construction, Operation & Maintenance of Temporary Commercial Structures on DBFOT basis in PPP mode at open spaces of  
(i) Lumbini Enclave premises at Madhapur (near Kavuri Hills Reservoir);  
(ii) Besides Nursery at Madhapur (opp. Neerus); and (iii) Open space near Jubilee Hills Check Post Metro Rail Station situated in Hyderabad

**July 06, 2020**

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HYDERABAD METRO RAIL LIMITED

**LETTER OF INVITATION**

Dated \*\*\*\*\*

To,

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**Sub:** RFP for Selection of Licensee for Construction, Operation & Maintenance of Temporary Commercial Structures on DBFOT basis in PPP mode at open spaces of (i) Lumbini Enclave premises at Madhapur (near Kavuri Hills Reservoir); (ii) Besides Nursery at Madhapur (opp. Neerus); and (iii) Open space near Jubilee Hills Check Post Metro Rail Station situated in Hyderabad (the “**Project**”)

Dear Sir,

Hyderabad Metro Rail Limited (“**HMRL**”) invites Bids under this Request for Proposal (the “**RFP**”) for selection of Licensee for the Project, and intends to procure a private entity through open competitive bidding, in accordance with the provisions of this RFP.

HMRL reserves the right to cancel, terminate, change or modify this bid process and/or requirement of Bid stated in the RFP, without assigning any reason or providing any notice and without accepting any liability for the same.

You are requested to participate in the Bidding Process and submit your proposal (the “**Bid**”) for the aforesaid Project in accordance with the RFP.

Please note that the Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever.

Thanking you,

Yours faithfully,

(Signature, name and designation of the Signatory)

## **Disclaimer**

The information contained in this Request for Proposals 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 formulating their proposals and making their financial offers pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

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

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

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

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

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Licensee, 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

<b>Authority</b>	As defined in Clause 1.1.1
<b>Associate</b>	As defined in Clause 2.3.7
<b>Bank Guarantee</b>	As defined in Clause 2.24.1
<b>Bid(s)</b>	As defined in Clause 1.1.9
<b>Bidders</b>	As defined in Clause 1.2.1
<b>Bidding Documents</b>	As defined in Clause 1.1.9
<b>Bid Due Date</b>	As defined in Clause 1.9
<b>Bidding Process</b>	As defined in Clause 1.2.1
<b>Bid Security</b>	As defined in Clause 1.2.4
<b>Conflict of Interest</b>	As defined in Clause 2.2.11
<b>Damages</b>	As defined in Clause 2.2.11
<b>DBFOT</b>	As defined in Clause 1.1.1
<b>Demand Draft</b>	As defined in Clause 2.24.2
<b>Government</b>	Government of Telangana
<b>Highest Bidder</b>	As defined in Clause 1.2.6
<b>LOA</b>	As defined in Clause 3.6.5
<b>License</b>	As defined in Clause 1.1.6
<b>Licensee</b>	As defined in Clause 1.1.2
<b>License Agreement</b>	As defined in Clause 1.1.2
<b>Licensed Premises</b>	As defined in Clause 1.1.3
<b>License Period</b>	As defined in Clause 1.1.3
<b>PPP</b>	Public Private Partnership
<b>Premium</b>	As defined in Clause 1.2.6
<b>Project</b>	As defined in Clause 1.1.1
<b>Re. or Rs. or INR</b>	Indian Rupee
<b>RFP or Request for Proposals</b>	As defined in the Disclaimer
<b>Serviceable Area</b>	As defined in Clause 1.1.3.3
<b>Selected Bidder</b>	As defined in Clause 3.6.1

**Temporary Commercial Structures** As defined in Clause 1.1.1

The words and expressions beginning with capital letters and defined in this RFP shall, unless repugnant to the context, have the meaning ascribed thereto hereinabove. The words and expressions beginning with capital letters and not defined herein, but defined in any other Bidding Document, shall, unless repugnant to the context, have the meaning ascribed thereto therein.

# HYDERABAD METRO RAIL LIMITED

## 1. INTRODUCTION

### 1.1 Background

- 1.1.1 The Hyderabad Metro Rail Limited (the “**Authority**” or “**HMRL**”) having its principal office at Metro Rail Bhavan, Rasoolpura, Begumpet, Hyderabad- 500 003 is engaged in the development of a Mass Rapid Transit System (“**MRTS**”) in the city of Hyderabad and as a part of this endeavour, the Authority has decided to undertake through Public Private Partnership (the “**PPP**”) mode, Construction, Operation & Maintenance of food courts, kiosks and other similar temporary commercial structures (“**Temporary Commercial Structures**”) on Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis at open spaces of (i) Lumbini Enclave premises, Madhapur (near Kavuri Hills Reservoir - 2990 sq yds); (ii) Besides Nursery at Madhapur (opp. Neerus - 2000 sq yds); and (iii) Open space near Jubilee Hills Check Post Metro Rail Station (1210 sq yds) situated in Hyderabad on open plots (collectively referred to as the “**Project**”). The Bid criterion shall be a Premium amount payable per square feet of the Serviceable Area by the Licensee to HMRL every month, subject to a minimum of Rs. 25/- (Rupees twenty five only) per square feet per month and the minimum amount payable per annum by the Bidder/ Licensee to HMRL as Premium shall be Rs.25,00,000 (Rupees twenty five lakh) from the second year of the License Agreement, irrespective of the Serviceable Area then developed by the Bidder/Licensee. The Premium shall be enhanced by 5% every year on a cumulative basis from the 3<sup>rd</sup> (third) year of the License Agreement till the end of the License Period.
- 1.1.2 The Selected Bidder, who is either a company incorporated under the Companies Act, 1956 / 2013 or undertakes to incorporate as such prior to execution of the License Agreement (the “**Licensee**”), shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of a long-term license agreement (the “**License Agreement**”) to be entered into between the Selected Bidder and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.
- 1.1.3 The scope of work will broadly include designing, engineering, financing, procurement, construction, operation and maintenance of Temporary Commercial Structures on DBFOT basis in PPP mode at open spaces of (i) Lumbini Enclave premises, Madhapur (near Kavuri Hills Reservoir); (ii) Besides Nursery at Madhapur (opp. Neerus); and (iii) Open space near Jubilee Hills Check Post Metro Rail Station situated in Hyderabad on open plots of an aggregate of about 6200 Sq Yds (“**Licensed Premises**”). The License Agreement shall be for a period of 25 years (“**License Period**”) from the Effective Date as may be defined in the License Agreement and per other provisions thereof. The following is the description of the different Project components and the related scope of work to be undertaken by the Licensee:

1.1.3.1 As part of development nearer to the Madhapur Metro Station and Jubilee Hills Check Post Station, the Authority has enclosed certain open spaces for development. The open space at Lumbini Enclave Premises (near Kavuri Hills Reservoir) and the open space besides nursery (opp. Neerus) at Madhapur are approximately 100 mts from the Madhapur Metro Station; and the open space near Jubilee Hills Check Post Metro Rail Station is approximately 100 m from the Jubilee Hills Check Post Metro Rail Station and are abutting the busy traffic corridor and junctions, with commercial establishments surrounded by densely populated residential areas.

As part of the scope of work for the Project, the Licensee shall be required *inter alia* to construct, operate the Licensee's share, manage and maintain the entire Temporary Commercial Structures and the Licensed Premises including the Serviceable Area to the satisfaction of the Authority for the entire License Period in accordance with the terms of the Draft License Agreement and the Bidding Documents. The Licensee shall be entitled to sub-license the built up space for activities approved by HMRL.

1.1.3.2 The Licensee shall be permitted to utilize certain specified spaces of the open space with prior approval of HMRL for displaying advertisements and generating revenues from the same in accordance with all applicable laws, approvals and clearances.

**1.1.3.3 Food Courts, Kiosks and other similar temporary commercial structures:**

- (i) The Licensee may utilize the spaces specifically earmarked for development by the Authority in the Licensed Premises (such earmarked spaces within the respective open space hereinafter referred to as "**Serviceable Area**") for commercial exploitation, for revenue generation and the Licensee may consider this revenue at the time of offering share for the Serviceable Area, in the form of Premium by setting up Temporary Commercial Structures upon the Serviceable Area. The Licensee shall set-up, in accordance with the provisions of the License Agreement, only pre-fabricated structures which are aesthetic and blend with the surrounding precincts without hindering the free movement of users or blocking the viaduct structures. The Temporary Commercial Structures can be commercially exploited by way of sub-licensing for day-to-day business. In addition, specified area of Temporary Commercial Structures can be utilized for displaying advertisements as per applicable laws, approvals and clearances. The operation and maintenance of the Temporary Commercial Structures shall be undertaken by the Licensee for the License Period in accordance with the terms of the License Agreement.
- (ii) The Licensee shall not indulge in unlawful activities while operating or sub-licensing the Temporary Commercial Structures and shall comply with all applicable laws. The Licensee shall ensure that no unlawful activities take place at the Temporary Commercial Structures and all applicable laws are fully complied with in the utilization of the Serviceable Areas. The decision of the Authority regarding the

permissibility of the nature of business to be carried out from the Temporary Commercial Structures shall be binding on the Licensee.

- 1.1.3.4 The operation and maintenance of the entire Licensed Premises including, without limitation, housekeeping and security for the entire Licensed Premises, as well as maintenance and repairs, if any, during the License Period shall be the responsibility of the Licensee.
- 1.1.3.5 Procurement of applicable approvals from all relevant governmental and regulatory authorities, if any, shall be the responsibility of the Licensee.
- 1.1.4 For the license to be granted on the Licensed Premises for undertaking the Project, the Licensee shall be required to pay every year during the License Period a Premium as per Clause 1.1.1 above to HMRL (subject to a minimum of Rs.25/- (Rupees twenty five only) per square feet per month for the Serviceable Area and the minimum amount payable as Premium per annum by the Licensee to HMRL being Rs.25,00,000 (Rupees twenty five lakh only) from the second year of the License Agreement. The Premium shall be enhanced by 5% every year on a cumulative basis from the 3<sup>rd</sup> (third) year of the License Agreement till the end of the License Period. For the avoidance of doubt, the enhancement of 5% shall be on the Premium quoted by the Bidder (subject to a minimum of Rs 25/- (Rupees twenty five only) per square feet per month) and Rs. 25,00,000 (Rupees twenty five lakh only) per annum, whichever is higher.
- 1.1.5 The assessment of actual costs for undertaking the Project will have to be made by the Bidders.
- 1.1.6 The License Agreement sets forth the detailed terms and conditions for grant of the license on the Licensed Premises for undertaking the Project to the Licensee, including the scope of the Licensee's services and obligations (the "License").
- 1.1.7 The Bidders are specifically apprised and are requested to note that the Government of Telangana has granted a long term concession for the development and implementation of the Hyderabad metro rail system (Corridor I, II and III) to L&T Metro Rail (Hyderabad) Limited under the concession agreement entered into for the Hyderabad metro rail project ("HMR CA"). The Project and the proposed development of Temporary Commercial Structures in the Licensed Premises are being undertaken as supplementary activities to the Hyderabad metro rail project and the License to be granted to the Licensee for undertaking the Project under the License Agreement shall always be subject to the concession granted to the concessionaire under the HMR CA. It shall be the Licensee's obligation to ensure that the implementation and operation of the Project and performance of the Licensee's obligations under the License Agreement shall not, in any manner and under any circumstances, adversely impact the construction, operations or maintenance of the metro rail project. The Licensee shall also ensure that the entity implementing and operating the Hyderabad metro rail project shall continue to have free and unrestricted access to and use of the areas under and around the metro station required for the

smooth implementation and functioning of the rail system and the surrounding development in accordance with the terms of the HMR CA.

- 1.1.8 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 Licensee set forth in the License Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the License to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.
- 1.1.9 The Authority invites bids ("**Bid(s)**") for selection of a Licensee through an open competitive bidding process in accordance with the procedure set out herein. The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the "**Bidding Documents**"), and all 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 two-cover selection process (collectively referred to as the "**Bidding Process**") for evaluating the Bids submitted by interested parties/ consortia ("**Bidders**") comprising technical and financial proposals to be submitted in two separate sealed envelopes as provided in this RFP. In the first stage of the process, a technical evaluation will be carried out as specified in Clause 2.25, Clause 3.1, Clause 3.2 and other relevant provisions hereof for determining the eligibility of Bidders. Based on this technical evaluation, a list of pre-qualified bidders shall be prepared as specified in Clause 3.3. In the second stage, a financial evaluation will be carried out, as specified in Clause 3.5, based on the bids for Premium to be paid to the Authority.

Prior to making a Bid, the Bidder shall pay to the Authority a sum of Rs 1,00,000/- (Rupees one lakh only) as the cost of the RFP process.

The Government of India has issued guidelines (see Annex VIII, Appendix-I 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 a 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-I.

- 1.2.2 The Bid shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date.

- 1.2.3 The Bidding Documents include the draft License Agreement for the Project. 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.50,00,000 (Rupees Fifty Lakh only) (the “**Bid Security**”), refundable not later than 60 (sixty) 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 License Agreement. The Bidders will have an option to provide Bid Security in the form of a Demand Draft or a Bank Guarantee acceptable to the Authority. In case a Bank Guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. Where a Demand Draft is provided, its validity shall not be less than 80 (eighty) days from the Bid Due Date, for the purposes of encashment by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5 During the Bidding Process, Bidders are invited to examine the Project in detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the License including implementation of the Project.
- 1.2.6 (a) Bids are invited for the Project on the basis of an offer to pay a premium to the Authority in the form of the Authority’s share (the “**Premium**”) as specified in Clause 1.1.1 above and in terms of the draft License Agreement.
- (b) The License Period is pre-determined, as indicated in the License Agreement. The Premium shall constitute the sole criteria for evaluation of Bids.
- (c) In this RFP the term “**Highest Bidder**” shall mean the Bidder who is offering the highest Premium.
- (d) The Premium shall be payable to the Authority as per Clause 1.1.1 above and in addition to any other amounts payable under the License Agreement in accordance with the terms of the License Agreement.
- 1.2.7 Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.
- 1.2.8 Details of the process to be followed during the Bidding Process and the terms thereof are spelt out in this RFP.

1.2.9 Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/ courier/ special messenger and by e-mail so as to reach the officer designated in Clause 2.17.6 by the specified date. The envelopes/ communication shall clearly bear the following identification/ title:

**“Queries/Request for Additional Information:** RFP for Selection of Licensee for Construction, Operation & Maintenance of Temporary Commercial Structures on DBFOT basis in PPP mode at open spaces of (i) Lumbini Enclave premises at Madhapur (near Kavuri Hills Reservoir); (ii) Besides Nursery at Madhapur (opp. Neerus); and (iii) Open space near Jubilee Hills Check Post Metro Rail Station situated in Hyderabad.

### 1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

	<b>Event Description</b>	<b>Date (RFP publishing tentative date 10.07.2020)</b>
1.	Last date for receiving queries	17.07.2020
2.	Authority response to queries latest by	22.07.2020
3.	Bid Due Date	30.07.2020 @ 1500 hrs
4.	Opening of Bids	30.07.2020 @ 1600 hrs
5.	Presentation (Walk through), Methodology and Work Plan	04.08.2020 @ 11:30 hrs at Metro Rail Bhavan, Begumpet, Hyderabad
6.	Letter of Award (“ <b>LOA</b> ”)	14.08.2020
7.	Validity of Bids	120 days of Bid Due Date
8.	Signing of License Agreement	Within 30 days of award of LOA

## **2. INSTRUCTIONS TO BIDDERS**

### **2A. GENERAL**

#### **2.1 Scope of Proposal**

2.1.1 The Bidder shall submit its Bids in the form and manner specified in Section 2 and Section 3 of the RFP. The Technical Proposal shall be submitted in the form at Appendix-I and the Financial Proposal shall be submitted in the form at Appendix-II.

#### **2.2 General Terms of Bidding and Eligibility to Bid**

2.2.1 The Bidder shall be a single entity to implement the Project. A Bidder shall be entitled to submit only a single Bid.

2.2.2 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft License 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 License Agreement.

2.2.3 The Bid shall consist of the Premium which shall be payable by the Licensee to the Authority, as per the terms and conditions of this RFP and the provisions of the License Agreement.

2.2.4 The Bidder shall deposit a Bid Security of the respective amount specified under Clause 1.2.4 in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of a Bank Guarantee acceptable to the Authority, as per format at Annex VI, Appendix-I.

2.2.5 The validity period of the Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder. Where a Demand Draft is provided, its validity shall not be less than 80 (eighty) days from the Bid Due Date, for the purposes of encashment by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 60 (sixty) days from the Bid 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 License Agreement.

2.2.6 The Bidder shall submit a Power of Attorney as per the format at Annex VII, Appendix-I authorising the signatory of the Bid to commit the Bidder.

2.2.7 Deleted.

- 2.2.8 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.2.9 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.2.10 The documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.2.10 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.
- 2.2.11 A Bidder shall not have a conflict of interest that affects the Bidding Process (the “**Conflict of Interest**”). 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 the Bid Security or 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 License 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 or Associate (or any constituent thereof) and any other Bidder or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder or Associate (or any constituent thereof) (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder or Associate, in the other Bidder or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.2.11, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb)

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

- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, or any Associate thereof; or
- (iv) such Bidder or any Associate thereof 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.

2.2.12 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 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 License Agreement. In the event any such adviser is engaged by the Selected Bidder or Licensee, as the case may be, after issue of the LOA or execution of the License Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the License 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 thereunder or otherwise, the LOA or the License 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 Licensee for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will

this disqualification apply where such adviser is engaged after a period of 3 (three) years from the Effective Date (as defined in the License Agreement).

2.2.13 This RFP is not transferable.

2.2.14 Any award of License pursuant to this RFP shall be subject to the terms of Bidding Documents.

### **2.3 Minimum Eligibility Criteria**

2.3.1 To be eligible for submitting a Bid hereunder, the Bidder shall fulfill the following conditions of eligibility:

#### **A. Technical Capacity**

For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall, over the past 5 (five) financial years preceding the Bid Due Date, have:

- (i) Successfully completed at least 1 (one) Eligible Project in Category 1 or Category 3 having a built up area of not less than 10 lakh square feet or 2 (two) Eligible Projects in Category 1 or Category 3 having built up area of not less than 5 lakh square feet each; or
- (ii) Successfully completed at least 1 (one) Eligible Project in Category 2 or Category 4 having a built up area of not less than 10 lakh square feet or 2 (two) such Eligible Projects in Category 2 or Category 4 having built up area of not less than 5 lakh square feet each.

#### **B. Financial Capacity**

The Bidder shall have (i) a minimum Net Worth of Rs. 20 crore (Rupees twenty crore) at the close of the preceding financial year; and (ii) an average annual turnover of not less than Rs.25 crore (Rupees twenty five crore only) per annum in the last three (3) financial years (the “**Financial Capacity**”).

The Bidder’s technical capacity, Net Worth and average annual turnover should satisfy the above conditions of eligibility; provided that such Bidder shall, for a period of 2 (two) years from the Effective Date (as defined in the License Agreement), hold equity share capital not less than 26% (twenty-six per cent) of the subscribed and paid up equity of the SPV.

2.3.2 The Bidder shall enclose with its Technical Proposal, to be submitted as per the format at Appendix-I, complete with its Annexes, the following:

- (i) Certificate(s) from statutory auditors of the Bidder or the concerned client(s) stating the payments made/ received or works commissioned, as the case may

be, during the past 5 (five) years in respect of the projects specified in Clause 2.3.1 (A) above; and

- (ii) certificate(s) from statutory auditors of the Bidder specifying the (a) Net Worth of the Bidder, as at the close of the preceding financial year, and (b) annual turnover of the Bidder in the last three (3) financial years, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 2.3.2 (ii). For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.
- 2.3.3 The Bidder should submit a Power of Attorney as per the format at Annex VII, Appendix-I, authorising the signatory of the Bid to commit the Bidder.
- 2.3.4 The Bidder may be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 2013 (the “**SPV**”), to execute the License Agreement and implement the Project.
- 2.3.5 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 Bid Due Date, would not be eligible to submit a Bid.
- 2.3.6 A Bidder 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, nor should have been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.3.6 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any wilful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.
- 2.3.7 In computing the Technical Capacity, Net Worth and annual turnover of the Bidder under Clauses 2.3.1, 2.3.2 and 3.2, the Technical Capacity, Net Worth and annual turnover of their respective Associates would also be eligible hereunder. Provided that, in such case, the Bidder shall continue to control/ be controlled by/be under the

common control with such Associate until such time the Bidder/ Licensee meets the aforementioned Technical Capacity and Financial Capacity threshold, or expiry of a period of 2 (two) years from the Effective Date (as defined in the License Agreement), whichever is earlier.

For purposes of this RFP, associate means, in relation to a Bidder, a person who controls, is controlled by, or is under the common control with such Applicant (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.

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

- (a) Where, on the date of the Bid, 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital in a Bidder is held by persons resident outside India or where a Bidder 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 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder;

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

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

2.3.9 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 3 (three) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years, 3 (three) years or 1

(one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

**2.4** Deleted.

**2.5 Change in Ownership**

2.5.1 By submitting the Bid, the Bidder acknowledges that it will be selected on the basis of its Technical Capacity and Financial Capacity and it shall continue to hold equity share capital representing not less than 26% (twenty six per cent) of the subscribed and paid-up equity of the Licensee till expiry of a period of 2 (two) years from the Effective Date (as defined in the License Agreement). The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the License Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the License Agreement, be deemed to be a breach of the License Agreement and dealt with as such there under.

2.5.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of evaluating the Bid, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the License Agreement but prior to (i) such time as the Bidder/ Licensee itself meets the Technical Capacity and Financial Capacity, or (ii) expiry of a period of two (2) years from the Effective Date (as defined in the License Agreement), whichever is earlier, it would, notwithstanding anything to the contrary contained in the License Agreement, be deemed to be a breach of the License Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Licensee. In such an event, notwithstanding anything to the contrary contained in the License Agreement, 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 License Agreement or otherwise.

**2.6 Bid Costs**

2.6.1 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.

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

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

2.7.2 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 2.7.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.7.1 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 there under;
- (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 2.7.1 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 License Agreement by the Licensee;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

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

2.8.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons there for. 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.

2.8.2 The Authority reserves the right to reject any Bid and appropriate the Bid Security or Performance 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 such disqualification / rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then the Authority reserves the right to:

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

2.8.3 In case it is found during the evaluation or at any time before signing of the LicenseAgreement or after its execution and during the period of subsistence thereof, including the License thereby granted by the Authority, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Licensee either by issue of the LOA or entering into of the LicenseAgreement, and if the Selected Bidder/SPV has already been issued the LOA or has entered into the LicenseAgreement, 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 Licensee, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Licensee and without prejudice to any other right or remedy which the Authority may have under this RFP, the Bidding Documents, the LicenseAgreement or under applicable law. 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 LicenseAgreement, or otherwise.

2.8.4 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.

## **2.9 Verification**

2.9.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by the 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 there under.

## **2B. DOCUMENTS**

### **2.10 Contents of the RFP**

2.10.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.12

#### **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**

- I. Appendix I: Letter comprising the Bid
  - (i) Annex – I: Details of the Bidder
  - (ii) Annex – II: Technical Capacity of the Bidder
  - (iii) Annex – III: Financial Capacity of the Bidder
  - (iv) Annex – IV: Details of Eligible Projects
  - (v) Annex – V: Statement of Legal Capacity
  - (vi) Annex – VI: Bank Guarantee for Bid Security
  - (vii) Annex – VII: Power of Attorney for signing of Bid
  - (viii) Annex – VIII: Guidelines of the Department of Disinvestment
- II. Appendix II – Financial Proposal

2.10.2 The draft License Agreement provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFP.

## **2.11 Clarifications**

- 2.11.1 Bidders requiring any clarification on the RFP may notify the Authority in writing by speed post/ courier/ special messenger and by e-mail in accordance with Clause 1.2.9. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be sent by e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.
- 2.11.2 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.
- 2.11.3 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.

## **2.12 Amendment of RFP**

- 2.12.1 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.
- 2.12.2 Any Addendum issued hereunder will be in writing and shall be sent to all the Bidders.
- 2.12.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

## **2C. PREPARATION AND SUBMISSION OF BIDS**

### **2.13 Language**

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

## **2.14 Format and Signing of Bid**

2.14.1 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.

2.14.2 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. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.

2.14.3 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 must apply to the Bidder named in the Bid and not, unless specifically requested, to other associated companies or firms. LOA will be issued only to the Selected Bidder whose identity and/ or constitution is identical to that at the time of selection;
- (c) in responding to the submissions for the Technical Proposal, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (d) deleted.

## **2.15 Technical Proposal**

2.15.1 The Bidder shall submit the technical proposal in the format specified at Appendix-I together with the Annexes and the documents specified in Clause 2.15.2 (the “**Technical Proposal**”).

2.15.2 Each Technical Proposal shall include the following documents:

- (a) Technical Proposal in the prescribed format (*Appendix-I – Letter comprising the Bid*) and supporting documents;
- (b) Annexes I to VIII to Appendix I;
- (c) copy of Memorandum and Articles of Association of the Bidder;
- (d) copies of the Bidder’s duly audited balance sheet and profit and loss account for the preceding 5 (five) years;

- (e) 2 (two) soft copies of the complete Technical Proposal on a Compact Disc (“CD”);
  - (f) Methodology and work plan;
  - (g) Architectural and preliminary structural drawings;
  - (h) Traffic management plan (both internal and external); and
  - (i) A copy of the draft License Agreement with each page initialled by the person signing the Bid in pursuance of the Power of Attorney for signing of Bid.
- 2.15.3 Failure to comply with the requirements spelt out in this Clause 2.15 shall make the Bid liable to be rejected.

2.15.4 The Technical Proposal shall not include any financial information relating to the Financial Proposal.

## **2.16 Financial Proposal**

2.16.1 Bidders shall submit the financial proposal in the format at Appendix-II (the “**Financial Proposal**”) which shall comprise a Premium to be quoted by the Bidder.

The Bidder shall clearly indicate the Premium in both figures and words, in Indian Rupees, and signed by the Bidder’s authorised representative. In the event of any difference between figures and words, the amount indicated in words shall prevail.

2.16.2 The Premium shall be payable under the License Agreement in accordance with the terms of the License Agreement and Clause 1.1.1 above.

2.16.3 Generally, the Project will be awarded to the Highest Bidder.

2.16.4 The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.

2.16.5 The Premium specified in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.

## **2.17 Sealing and Marking of Bids**

2.17.1 The Bidder shall submit the Technical Proposal in the format specified at Appendix-I (along with all Annexes (Annex-I to Annex-VIII) and documents mentioned in Clause 2.15.2), and seal it in an envelope and mark the envelope as “TECHNICAL PROPOSAL”.

2.17.2 **The Bidder shall submit the Financial Proposal in the format specified at Appendix-II, and seal it in an envelope and mark the envelope as “FINANCIAL PROPOSAL”.**

2.17.3 The Bidder shall submit the Technical Proposal and Financial Proposal in a bound form and all pages must be **numbered serially**.

2.17.4 The two separate sealed envelopes, one clearly marked ‘TECHNICAL PROPOSAL’ and the other clearly marked ‘FINANCIAL PROPOSAL’ shall be placed in an outer envelope, which shall be sealed. Each of the three envelopes shall clearly bear the following identification:

“Bid for the Selection of Licensee for Construction, Operation & Maintenance of Temporary Commercial Structures on DBFOT basis in PPP mode at open spaces of (i) Lumbini Enclave premises at Madhapur (near Kavuri Hills Reservoir); (ii) Besides Nursery at Madhapur (opp. Neerus); and (iii) Open space near Jubilee Hills Check Post Metro Rail Station situated in Hyderabad”

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.

2.17.5 The Bidder shall prepare one original set of the Bid (together with originals/ copies of documents required to be submitted along therewith pursuant to this RFP) as required under Clause 2.17.1 and Clause 2.17.2 above and the envelopes clearly marked “ORIGINAL”. In addition, the Bidder shall submit a copy of the Bid, with the envelopes marked “COPY”. In the event of any discrepancy between the original and its copies, the original shall prevail. Furthermore, the Bidder shall also submit 2 (two) copies each of the Technical Proposal on CDs as specified in Clauses 2.15.

2.17.6 Each of the envelopes shall be addressed to:

ATTN. OF:	Mr. M. Vishnu Vardhan Reddy
DESIGNATION	General Manager (P)
ADDRESS:	Hyderabad Metro Rail Limited, Metro Rail Bhavan, Rasoolpura, Hyderabad-500003, Telangana, India.
E-MAIL ADDRESS	mvrhmr@gmail.com

2.17.7 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.

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

## **2.18 Bid Due Date**

2.18.1 Bids should be submitted before **1500 hours IST** on the Bid Due Date at the address provided in Clause 2.17.6 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.17.6.

2.18.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.12 uniformly for all Bidders.

## **2.19 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.

## **2.20 Modifications/ Substitution/ Withdrawal of Bids**

2.20.1 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.

2.20.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.17, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.

2.20.3 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.

## **2.21 Validity of Bids**

The Bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

## **2.22 Deleted**

## **2.23 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.

## **2D. BID SECURITY**

### **2.24 Bid Security**

- 2.24.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clause 1.2.4 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 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 2.24.2 Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Authority and payable at Hyderabad, Telangana (the “**Demand Draft**”). The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.24.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.24.4 Save and except as provided in Clauses 1.2.4, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding Process is cancelled by the Authority, and in any case within 60 (sixty) days from the Bid Due Date. Where Bid Security has been paid by Demand Draft, the refund thereof shall be in the form of an account payee Demand Draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said Demand Draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.
- 2.24.5 The Selected Bidder’s Bid Security will be returned, without any interest, upon the Licensee signing the License 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 License Agreement.
- 2.24.6 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages *inter alia* in any of the events specified in Clause 2.24.7 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.

- 2.24.7 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 LicenseAgreement, 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 License Agreement; or
    - (iii) to furnish the Performance Security within the period prescribed there for in the LicenseAgreement.
  - (e) the Selected Bidder, having signed the LicenseAgreement, commits any breach thereof prior to furnishing the Performance Security.

## **2E Evaluation Process**

### **2.25 Opening and Evaluation of Bids**

- 2.25.1 The Authority shall open the Bids at 16:00 hours on the Bid Due Date, at the place specified in Clause 2.17.6and in the presence of the Bidders who choose to attend. The envelopes marked “TECHNICAL PROPOSAL” shall be opened first. The envelopes marked “FINANCIAL PROPOSAL” shall be kept sealed for opening at a later date.
- 2.25.2 The Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Clause 2.25 and Clause 3.5.
- 2.25.3 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.
- 2.25.4 Bidders are advised that selection of Bidders will be entirely at the discretion of the Authority. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

- 2.25.5 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 2.25.6 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant project when determining if the Bidder meets the Technical Capacity.
- 2.25.7 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same when determining if the Bidder meets the Technical Capacity. Where any information is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the Bid in accordance with the provisions of Clause 2.8.

## **2.26 Confidentiality**

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

## **2.27 Tests of responsiveness**

- 2.27.1 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) the Technical Proposal 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 1.3;
  - (c) it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.17
  - (d) it is accompanied by the Bid Security as specified in Clause 1.2.4
  - (e) it is accompanied by a Power of Attorney as specified in Clause 2.2.8;

- (f) it contains all the information and documents (complete in all respects) as requested and specified in this RFP and/or Bidding Documents (in formats same as those specified);
- (g) it contains certificates from its statutory auditors<sup>§</sup> in the formats specified at Appendix-I of the RFP for each Eligible Project;
- (h) it contains an attested copy of the receipt of the Authority towards the cost of the Bidding Process as specified in Clause 1.2.1;
- (i) deleted;
- (j) it does not contain any condition or qualification; and
- (k) it is not non-responsive in terms hereof.

2.27.2 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.

2.27.3 As a part of the technical evaluation, the Authority will ask the Bidders to make a power-point presentation on the proposed scheme of development with broad architectural and structural designs and features for the Project. The date and time of presentation will be intimated to the Bidders in advance. After evaluation of the Technical Proposal, the Authority shall prepare a list of pre-qualified Bidders in terms of Clause 3.1, 3.2 and Clause 3.3 for opening of their Financial Proposals. The date, time and venue will be notified to all Bidders for announcing the result of evaluation and opening of Financial Proposals. Before opening of the Financial Proposals, the list of pre-qualified Bidders will be read out. The opening of Financial Proposals shall be done in presence of respective representatives of prequalified Bidders who choose to be present. The Authority will not entertain any query or clarification from Bidders who fail to qualify at any stage of the Bidding Process. The financial evaluation shall be carried out in terms of Clause 3.5.

## **2.28 Clarifications sought by the Authority**

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

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<sup>§</sup> In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.27.1 (g). 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.

2.28.2 If a Bidder does not provide clarifications sought under Clause 2.28.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

### **2.29 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.

### **2.30 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. 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 CRITERIA FOR EVALUATION OF BIDS

#### 3.1 Evaluation parameters

- 3.1.1 Only those Bidders who meet the eligibility criteria specified in Clauses 2.3.1 and whose Technical Capacity evaluation scores less than 80 marks out of 100 shall be liable to be rejected. The other technical proposals shall be ranked from highest to the lowest on the basis of their technical score and shall qualify for evaluation of their Financial Proposal under this Section 3. The Bidder shall make a powerpoint presentation to the Authority at Hyderabad, on a date specified in Clause 1.3 after the Bid Due Date but before evaluation of the Proposals. Bids of Applicants who do not meet these criteria shall be rejected.
- 3.1.2 The Bidder’s competence and capability is proposed to be established by the following parameters:  
 (a) Technical Capacity; and  
 (b) Financial Capacity.
- 3.1.3 The scoring criteria to be used for Technical Capacity evaluation shall be as follows :

Item Code	Parameter	Maximum Marks	Criteria
1	Quantitative Experience of the Bidder	25	40% of the maximum marks shall be awarded for the number of Eligible Assignments undertaken by the Bidder. The remaining 60% shall be awarded for the comparative size of the Eligible Assignment.
2	Qualitative Experience of the Bidder	50	Marks will be awarded based on the quality of the Eligible Assignments, Area of Projects executed, quality of the work force, credentials of the Projects undertaken.
3	Presentation (Walk through), Methodology and Work Plan	25	Marks will be awarded based on the planning proposals, optimum commercial usage of the open space, emphasis on aesthetics, methodology and work plan
<b>Total</b>		<b>100</b>	

## 3.2 Technical Capacity for purposes of evaluation

3.2.1 Subject to the provisions of Clause 2.3, the following categories of experience would qualify as Technical Capacity and eligible experience (the “**Eligible Experience**”) in relation to eligible projects as stipulated in Clauses 3.2.3 and 3.2.4 (the “**Eligible Projects**”):

Category 1: Project experience on Eligible Projects that qualify under Clause 3.2.3 where construction of a hotel complex/ commercial complex/ multiplex/ high rise gated community tower/ gated community township was completed successfully;

Category 2: Project experience on Eligible Projects that qualify under Clause 3.2.3 where operation, maintenance and housekeeping of a hotel complex/ commercial complex/ multiplex/ high rise gated community tower/ gated community township was undertaken successfully;

Category 3: Contractual experience on Eligible Projects that qualify under Clause 3.2.4 where construction of a hotel complex/ commercial complex/ multiplex/ high rise gated community tower/ gated community township was completed successfully;

Category 4: Contractual experience on Eligible Projects that qualify under Clause 3.2.4 where operation, maintenance and housekeeping of a hotel complex/ commercial complex/ multiplex/ high rise gated community tower/ gated community township was undertaken successfully.

For the purpose of this RFP

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

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

- (a) It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract in private sector also, as the case may be.
- (b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six percent) equity during the entire year for which Eligible Experience is being claimed;
- (c) the capital cost of the project should be more than Rs. 5 crores in Category 1 and Rs. 15 crores in Category 2; and
- (d) the entity claiming experience shall, during the last 5 (five) financial years preceding the Bid Due Date, have (i) paid for development of the project (excluding the cost of land) and /or (ii) collected and appropriated the revenues from users availing of non discriminatory access to or use of fixed project assets, such as revenue from use of the project constructed or operation, maintenance and housekeeping of a project but shall

not include revenues from sale or provision of goods or services such as electricity, telecommunications, other products or fare/freight revenues and other incomes of the company owning the Project.

- 3.2.4 For a project to qualify as an Eligible Project under Category 3 and 4, the Bidder should have paid for execution of its construction/ works or received payments from its client(s) for construction works executed, fully or partially or for operation, maintenance and housekeeping, during the 5 (five) financial years immediately preceding the Bid Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of determining the Technical Capacity. The capital cost of the project should be more than Rs. 10crore in Category 3, and Rs. 20crore in Category 4. For the avoidance of doubt, contractual work under Category 3 and 4 shall not include supply of goods or equipment except when such goods or equipment form part of a turn key construction contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder.
- 3.2.5 The Bidder shall quote experience in respect of a particular Eligible Project under any one category only, even though the Bidder may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.

### **3.3 Details of Experience and Qualification of Bidders**

- 3.3.1 The Bidder should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Bid Due Date.
- 3.3.2 The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.
- 3.3.3 The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.
- 3.3.4 In order for a Bidder to pre-qualify for the opening and consideration of their Financial Proposals, a Bidder shall meet the Technical Capacity as established through its Technical Proposal.

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

- 3.4.1 The Bid must be accompanied by the Audited Annual Reports of the Bidder for the last 5 (five) financial years, preceding the year in which the Bid is made.
- 3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.

3.4.3 The Bidder must establish the minimum Net Worth and annual turnover specified in Clause 2.3.1(B) and provide details as per format at Annex-III of Appendix-I.

### **3.5 Evaluation of Financial Proposal**

3.5.1 In the second stage, the financial evaluation of the Bidders who have been pre-qualified pursuant to Clause 3.3.4 will be carried out as per this Clause 3.5. Prior to evaluation of Financial Proposals, the Authority will determine whether each Financial Proposal is responsive to the requirements of the RFP. The Authority may, in its sole discretion, reject any Financial Proposal that is not responsive hereunder. A Financial Proposal shall be considered responsive only if:

- (a) the Financial Proposal is received as per the format at Appendix–II and Clause 1.1.1 above;
- (b) it is signed, sealed, bound together and marked as stipulated in Clauses 2.17;
- (c) it contains all the information and documents (complete in all respects) as requested and specified in this RFP and/ or Bidding Documents (in formats same as those specified);
- (d) it does not contain any conditions or qualifications; and
- (e) it is not non-responsive in terms hereof.

3.5.2 For financial evaluation, only the Premium specified in the Financial Proposal will be considered.

3.5.3 The Authority will determine whether the Financial Proposals are complete, unqualified and unconditional. The Premium indicated in the Financial Proposal as per this RFP document shall be deemed as final.

### **3.6 Selection of Bidder**

3.6.1 Subject to the provisions of Clause 2.8.1, the Bidder who has been pre-qualified pursuant to Clause 3.3.4, whose Bid is adjudged as responsive in terms of Clause 2.27 and Clause 3.5.1 and who quotes the highest Premium offered to the Authority shall ordinarily be declared as the selected Bidder (the “**Selected Bidder**”). 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.

3.6.2 In the event that two or more Bidders quote the same amount of Premium (the “**Tie Bidders**”), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.

3.6.3 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “**first round of bidding**”), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary,

and match the Bid of the aforesaid Highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth Highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third Highest Bidder shall be the Selected Bidder.

- 3.6.4 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.6.3 above, the Authority may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second Highest Bidder in the first round of bidding.
- 3.6.5 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, 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, and the next eligible Bidder may be considered.
- 3.6.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Licensee to execute the License 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 License Agreement.

#### 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 License Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the License Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the License Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Licensee, as the case may be, if it determines that the Bidder or Licensee, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority 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 License 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 License Agreement, or otherwise if a Bidder or Licensee, 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 License Agreement, such Bidder or Licensee shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or the Licensee, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this 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 License Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a

person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.2.12 of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the License Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the License Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

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

## **5. PRE-BID CONFERENCE**

5.1 Deleted.

5.2 Deleted.

## 6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in Hyderabad 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.

## **Appendices**

APPENDIX-I

**Letter Comprising the Bid**  
(Refer Clause 2.15.2)

Dated:

To,  
Hyderabad Metro Rail Limited,  
Metro Rail Bhavan,  
Rasoolpura, Begumpet,  
Hyderabad – 500 003.

Sub: Bid for the Selection of Licensee for Construction, Operation & Maintenance of Temporary Commercial Structures on DBFOT basis in PPP mode at open spaces of (i) Lumbini Enclave premises at Madhapur (near Kavuri Hills Reservoir); (ii) Besides Nursery at Madhapur (opp. Neerus); and (iii) Open space near Jubilee Hills Check Post Metro Rail Station situated in Hyderabad on open plots (collectively referred to as the “**Project**”)

Dear Sir,

1. With reference to your RFP document dated ....., I/ we, having examined the RFP and other Bidding Documents and understood its contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/we acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for pre-qualification and selection of the Bidders for the aforesaid Project, and I/ we certify that all information provided in the Bid including all Annexes 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 Bidder 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 or our Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/we declare that:
  - (a) I/we have examined and have no reservations to the RFP and other Bidding Documents, including any Addendum issued by the Authority;

- (b) I/we do not have any conflict of interest in accordance with Clauses 2.2.12 of the RFP document;
  - (c) I/we have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
  - (d) I/we hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, 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 2.8 of the RFP document.
  9. I/we believe that we satisfy(s) the Net Worth and annual turnover criteria and meet(s) all the requirements as specified in the RFP and am/ are qualified to submit a Bid.
  10. I/we declare that we or our Associates are not submitting another Bid for the Project.
  11. I/we certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a court 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 or any of our Associates have not been charge-sheeted by any agency of the Government or convicted by a court.
  13. I/we further certify that no investigation by a regulatory authority is pending either against us or against our 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 13<sup>th</sup> July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines form part of the RFP at Annex VIII, Appendix-I.

15. I/we further certify that we or any of our Associates are not barred by the Central Government/ State Government or any entity controlled by it, from participating in any project (BOT or otherwise), and no bar subsists as on the Bid Due Date.
16. 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 the RFP, we shall intimate the Authority of the same immediately.
17. I/ We acknowledge and undertake that our selection will be on the basis of our Technical Capacity and Financial Capacity and shall continue to hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid-up equity of the Licensee for a period of 2 (two) years from the Effective Date (as defined in the License Agreement). We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the License Agreement in respect of Change in Ownership.
18. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFP, and duly signed, is enclosed. The power of attorney for signing of Bid as per format provided at Annex VII, Appendix-I of the RFP is also enclosed.
19. 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 License Agreement.
20. Deleted.
21. I/ we acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity is taken into consideration for the purposes of pre-qualification for opening of Financial Proposals 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 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 License Agreement but prior to (i) such time as the Bidder/ Licensee meets the Technical Capacity and Financial Capacity, or (ii) expiry of a period of two (2) years from the Effective Date (as defined in the License Agreement), whichever is earlier, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the License Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
22. In the event I/we being declared as the Selected Bidder, I/we agree to enter into a License Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. I/we agree not to seek any changes in the aforesaid draft and agree to abide by the same.
23. I/we hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection

with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

24. I/ We offer a Bid Security of Rs..... (Rupees ..... only) to the Authority in accordance with the RFP.
25. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.
26. I/we agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, shall I/we have any claim or right of whatsoever nature if the Project / License is not awarded to me/us or my/our Bid is not opened or rejected.
27. I/ We have studied all the Bidding Documents carefully. We understand that 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 the License.
28. The Premium has been quoted by me after taking into consideration all the terms and conditions stated in the RFP, draft License 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.
29. I/we agree and undertake to abide by all the terms and conditions of the RFP.
30. I/we certify that in terms of the RFP, my Net Worth is Rs. .... (Rupees ..... ) and my annual turnover for the last three financial years i.e. FY....., FY..... and FY..... is Rs..... (Rupees.....), Rs..... (Rupees.....) and Rs..... (Rupees.....) respectively.
31. Deleted.
32. I/we shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.

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

Yours faithfully,

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

Place: Name and seal of the Bidder

ANNEX-I

**Details of the Bidder**

1.
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
  - (d) Date of incorporation and/ or commencement of business:
  
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
  
3. Particulars of individual(s) who will serve as the point of contact/ communication for the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Company:
  - (d) Address:
  - (e) Telephone Number:
  - (f) E-Mail Address:
  
4. Particulars of the Authorised Signatory of the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
  
5. The following information shall also be provided for the Bidder:

**Name of Bidder:**

No.	Criteria	Yes	No
1.	Has the Bidder 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 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. Deleted:

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

ANNEX-II

**Technical Capacity of the Bidder<sup>@</sup>**

*(Refer to Clauses 2.3.1(A), 3.2 and 3.3 of the RFP)*

(1)	Project Code	Category	Experience in the past 5 (five) years <sup>£</sup> (Equivalent Rs. crore)		
			Payments made/received for Eligible Projects in Categories 3 and 4 (4)	Payments made for development of Eligible Projects in Categories 1 and 2 (5)	Revenues appropriated from Eligible Projects in Categories 1 and 2 (6)
<b>Single entity Bidder</b>	<b>a</b>				
	<b>b</b>				
	<b>c</b>				
	<b>d</b>				

<sup>@</sup> 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 2.3.7 and/ or by a project company eligible under Clause 3.2.3(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.2.3(c) and for Categories 3 and 4, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.2.4. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.3.9.

<sup>#</sup>The Bidder should fill in details as per the row titled Single entity Bidder. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.3.7, shall be provided.

<sup>¥</sup>Refer Annex-IV of this Appendix-I. Add more rows if necessary.

<sup>\$</sup> Refer Clause 3.2.1.

*£In the case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included in the payments made/ received.*

*\$\$ For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 70 (seventy) 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.*

ANNEX-III

**Financial Capacity of the Bidder**  
*(Refer to Clauses 2.3.1(B), 2.3.2 (ii) and 3.4 of the RFP)*

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

Bidder type <sup>\$\$</sup>	Net Cash Accruals						Net Worth <sup>££</sup>
	Year 1 (2)	Year 2 (3)	Year 3 (4)	Year 4 (5)	Year 5 (6)	Year 1 (7)	
(1)							
<b>Single entity Bidder</b>							
<b>TOTAL</b>							

Name & address of Bidder's Bankers:

<sup>\$</sup>For conversion of other currencies into rupees, see notes below Annex-II of this Appendix-I.

<sup>\$\$</sup>The Bidder should fill in details as per the row titled Single entity Bidder.

<sup>££</sup>The Bidder should provide details of its own Financial Capacity or of an Associate specified in Clause 2.3.7.

Instructions:

1. The Bidder 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 and its Associates where the Bidder is relying on its Associate's financials;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.3.9.
5. Deleted.
6. 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 2.3.2 (ii) of the RFP document.

ANNEX-IV

**Details of Eligible Projects<sup>1</sup>**

*(Refer to Clauses 2.3.1(A), 3.2 and 3.3 of the RFP)*

**Project Code:**

Item  (1)	Refer Instruction  (2)	Particulars of the Project  (3)
Title & nature of the project		
Category	5	
Year-wise (a) payments received/ made for construction/maintenance and house-keeping, (b) payments made for development of PPP projects and/ or (c) revenues appropriated	6	
Entity for which the project was constructed/ developed/maintained	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)	15	

**Instructions:**

1. Bidders are expected to provide information in respect of each Eligible Project in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.2.3 and 3.2.4 of the RFP, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.

---

<sup>1</sup>All such details of Eligible Projects shall be limited to the past 5 (five) years.

2. For a single entity Bidder, the Project Codes would be a, b, c, d etc.
3. A separate sheet should be filled for each Eligible Project.
4. In case the Eligible Project relates to an Associate of the Bidder, write “Associate” next to the Project Code.
5. Refer to Clause 3.2.1 of the RFP for category number.
6. The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.3.9). For Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.2.3(c). In case of Categories 3 and 4, payments made/ received only in respect of construction/ operation, maintenance and house-keeping should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.2.4. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
7. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to the project agreement, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
8. Provide the estimated capital cost of the Eligible Project. Refer to Clauses 3.2.3 and 3.2.4
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, and/ or the period of operation, maintenance and housekeeping of the project should be indicated. In case of Categories 3 and 4, date of completion of construction and/ or the period of operation, maintenance and housekeeping of the project should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
10. For Categories 1 and 2, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.2.3).
- 11.Deleted.

12. Certificate from the Bidder's statutory auditor<sup>\$</sup> or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/Associate may provide the requisite certification.
13. If the Bidder is claiming experience under Categories 1 & 2<sup>£</sup>, it should provide a certificate from the statutory auditor of the Bidder, or its Associate, in the format below:

**1. 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/Associate) is/ was an equity shareholder in .....(title of the project company) and holds/held Rs. .... cr. (Rupees ..... crore) of equity (which constitutes .....%<sup>€</sup> of the total paid up and subscribed equity capital) of the project company from ..... (date) to ..... (date)<sup>¥</sup>. The project was/is likely to be commissioned on ..... (date of commissioning of the project).

We further certify that the total estimated capital cost of the project is Rs. .... cr. (Rupees .....crore), 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 3.2.1 and 3.2.3 (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:

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

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

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

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

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

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

<b>Certificate from the Statutory Auditor/ Client regarding construction works<sup>□</sup></b>	
Based on its books of accounts and other published information authenticated by it, {this is to certify that .....(name of the Bidder/Associate) was engaged by .....(title of the project company) to execute ..... (name of project) for ..... (nature of project)} <sup>□</sup> . [The construction of the project commenced on .....(date) and the project was/ is likely to be commissioned on ..... (date, if any)/ The ..... (name of the Bidder/ Associate) commenced the maintenance and house-keeping of the project on .....(date) and continued till..... (date)]. It is certified that ..... (name of the Bidder/ Associate) received/paid Rs. .... cr. (Rupees ..... crore) by way of payment for the aforesaid construction/ maintenance and house-keeping works.	
We further certify that the total estimated capital cost of the project is Rs. .... cr. (Rupees .....crore), of which the Bidder/Associate received/paid Rs. .... cr. (Rupees ..... crore), in terms of Clauses 3.2.1 and 3.2.4 of the RFP, during the past five financial years as per year-wise details noted below:	
.....	
.....	
Name of the audit firm:	
Seal of the audit firm:	(Signature, name and designation of the
Date:	authorised signatory).

\* Refer Clauses 3.2.1 and 3.2.4 of the RFP.

<sup>□</sup> Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder or its Associate may provide the certificates required under this RFP.

<sup>▽</sup>In case the Bidder owned the Eligible Project and engaged a contractor for undertaking the works, this language may be modified to read: “this is to certify that ..... (name of Bidder/ Associate) held 26% or more of the paid up and subscribed share capital in the..... (name of Project company) when it undertook construction/ operation, maintenance and house-keeping of the ..... (name of Project) through ..... (name of the contractor).

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.3.7, the Bidder should also provide a certificate in the format below:

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

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of ..... (*name of the Applicant/ Associate*) is held, directly or indirectly<sup>£</sup>, by ..... (*name of Associate/ Applicant*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.3.7 of the RFP.

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

*{Describe the share-holding of the Applicant and the Associate. In the event the Associate is under common control with the Applicant, the relationship may be suitably described and similarly certified herein. }*

Name of the audit firm:

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

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

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

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

ANNEX-V

**Statement of Legal Capacity**

*(To be forwarded on the letterhead of the Bidder)*

Ref. Date

To,  
The Managing Director  
Hyderabad Metro Rail Limited,  
Metro Rail Bhavan,  
Rasoolpura, Begumpet,  
Hyderabad – 500 003.

**Subject:** Bid for the Selection of Licensee for Construction, Operation & Maintenance of Temporary Commercial Structures on DBFOT basis in PPP mode at open space of (i) Lumbini Enclave premises at Madhapur (near Kavuri Hills Reservoir); (ii) Besides Nursery at Madhapur (opp. Neerus); and (iii) Open space near Jubilee Hills Check Post Metro Rail Station situated in Hyderabad.

Dear Sir,

We hereby confirm that we satisfy the terms and conditions laid out in the RFP document.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

ANNEX-VI

**Bank Guarantee for Bid Security**

*(Refer Clauses 2.2.5)*

B.G. No. Dated:

1. In consideration of you, Hyderabad Metro Rail Limited, having its principal office at Metro Rail Bhavan, Rasoolpura, Begumpet, Hyderabad– 500 003, (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns), having agreed to receive the Bid of ..... (a company registered under the Companies Act, 1956/ 2013) and having its registered office at ..... (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the ..... Project on DBFOT basis (hereinafter referred to as the “**Project**”) pursuant to the RFP Document dated ..... issued in respect of the Project and other related documents including without limitation the draft License Agreement (hereinafter collectively referred to as “**Bidding Documents**”), we (Name of the Bank) having our registered office at ..... and one of its branches at ..... (hereinafter referred to as the “**Bank**”), at the request of the Bidder, do hereby in terms of Clause 2.2.5 read with Clause 2.2.6 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. .... (Rupees ..... only) (hereinafter referred to as the “**Guarantee**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including

failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. .... (Rupees ..... only).

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

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. .... (Rupees ..... only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [..... (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by ..... Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

ANNEX-VII

**Power of Attorney for signing of Bid**  
(Refer Clause 2.2.7)

Know all men by these presents, We, ..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of ..... and presently residing at ....., who is presently employed with us 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 ..... Project proposed or being developed by the ..... (the "Authority") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in 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 License 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 License Agreement with the Authority.

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

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

For.....

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Accepted

Notarised

(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 Appostille certificate.*

ANNEX–VIII

**Guidelines of the Department of Disinvestment**  
(Refer Clause 1.2.1)

No. 6/4/2001-DD-II  
Government of India  
Department of Disinvestment  
Block 14, CGO Complex  
New Delhi.  
Dated 13<sup>th</sup> July 2001.

**OFFICE MEMORANDUM**

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

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

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

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

**Financial Proposal**

*(On Bidder's letter head)*

*(Date)*

To,  
Hyderabad Metro Rail Limited,  
Metro Rail Bhavan,  
Rasoolpura,  
Begumpet,  
Hyderabad – 500 003.

Dear Sir,

**Subject:** Bid for the Selection of Licensee for Construction, Operation & Maintenance of Temporary Commercial Structures on DBFOT basis in PPP mode at open spaces of (i) Lumbini Enclave premises at Madhapur (near Kavuri Hills Reservoir); (ii) Besides Nursery at Madhapur (opp. Neerus); and (iii) Open space near Jubilee Hills Check Post Metro Rail Station situated in Hyderabad.

1. I/we, ..... (Bidder's name) herewith make the Financial Proposal for selection of my/our firm for undertaking the Project. This Financial Proposal is in continuation of our Technical Proposal for the same Project and may be read together with the said Technical Proposal as our complete Bid for this Project.
2. I/we agree that this offer shall remain valid for a period of 120 (one hundred and twenty) days from the Bid Due Date or such further period as may be mutually agreed upon with the Authority.
3. The Premium has been quoted by me/ us after taking into consideration all the terms and conditions stated in the RFP, draft License Agreement, our own estimates of costs and after a careful assessment of all the conditions that may affect the Premium. We agree and acknowledge that the Premium shall be payable under the License Agreement in accordance with the terms of the License Agreement.
4. I/we offer a Bid comprising Premium of Rs. \*\*\*\*\* (Rupees \*\*\*\*\*) per square feet per month. The minimum amount payable to the Authority per annum by us shall be Rs. 25,00,000 (Rupees twenty five lakh only) from the second year of License Agreement. The Premium shall be enhanced by 5% (five percent) every year [on a cumulative basis] from the 3<sup>rd</sup> (third) year of the License Agreement till the end of the License Period as provided in the RFP and the License Agreement.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

Note: The Financial Proposal is to be submitted strictly as per the form given in the RFP.

