

File No. H-39011/09/2020-P&P(Log)

Government of India

Ministry of Road Transport & Highways  
(Logistics Cell)

Transport Bhawan - 1, Parliament Street, New Delhi - 110001

Dt. 02<sup>nd</sup> November 2021

**OFFICE MEMORANDUM**

**Subject:** RFP for selection of Concessionaire for development of Multi-modal Logistics Parks under the Bharatmala Pariyojana for approval - reg.

The undersigned is directed to refer to the draft RFP document for selection of Concessionaire for development of MMLPs under Bharatmala Pariyojana, received vide NHLML File No. NH-35014/25/2017-H (pt-II) dt. 18.10.2021.

2. It is to mention that the model RFP document in line with the above submission for MMLPs, being implemented under the Bharatmala Pariyojana, has been accorded approval by the Hon'ble Minister, RT&H. The final approved model RFP is enclosed as Annexure- A for further necessary action of NHLML/NHAI and NHIDCL in respect of the MMLPs as part of Bharatmala Pariyojana.

3. Moreover, the Chairperson, NHLML is authorized to approve the RFP for a particular MMLP Project basis this Model RFP.

3. This issues with the approval of the Hon'ble Minister, RT&H.

Encl. as above.

Yours Sincerely,

*Bhupendar Singh*

Bhupendar Singh

Deputy Secretary to the Government of India

To:

1. Chairman, NHAI
2. Managing Director, NHIDCL
3. Chairman, NHLML & Member (Projects), NHAI (Kind Attn.: Sh.Manoj Kumar)

Copy to:

1. PS to Hon'ble Minister, RT&H
2. APS to Hon'ble Minister of State, RT&H
3. Sr. PPS to Secretary, MoRT&H
4. Sr. PPS to Additional Secretary (Highways), MoRT&H
5. Sr. PPS to Joint Secretary (Logistics), MoRT&H
6. Sh. Mansoorul Haq, Sr. Technical Director - NIC, MoRT&H - with a request to upload the annexed Model RFP document for MMLPs along with this OM on the 'What's New' and Publication section of the MoRT&H website.

**NATIONAL HIGHWAYS LOGISTICS MANAGEMENT  
LIMITED**

**International Competitive Bidding under Single Stage Bidding  
Process for**

**Name of the Project:**

\*\*\*\*\*

**REQUEST FOR PROPOSAL (RFP)**

**BID DOCUMENT**

**VOLUME -I**

**INSTRUCTIONS TO BIDDERS**

**[Date]**

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\*\*\*\*Name of the Project\*\*\*\*\*

\*\*\*\*\*Name of the Project\*\*\*\*\*

**National Highways Logistics Management Limited, G-5 & 6, Sector 10, Dwarka,  
New Delhi-110075**

## **NOTICE INVITING TENDER**

Bid/ Package no \*\*\*\*\*

Dated \*\*\*\*\*

RFP for \*\*\*\*\*Name of the Project\*\*\*\*\*

The Ministry of Road Transport & Highways (MoRTH), under the Bharatmala Pariyojana, has decided to develop multimodal logistics parks in India with some of the highest freight movement in the country. This is targeted to address and improve the logistics efficiency, and to reduce logistics costs in the country. \_\_\_\_\_ is one of the foremost locations selected for creation of an MMLP (Multimodal Logistics Park) under this scheme.

National Highways Logistics Management Ltd (the “**Authority**”), 100% owned SPV of NHAI, as part of this endeavour, is undertaking Development, Operation and Maintenance of the Multimodal Logistics Park (MMLP) at \_\_\_\_\_ in the State of \_\_\_\_\_ (the “**Project**”) through Public Private Partnership (the “**PPP**”) on Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis, and has decided to carry out the bidding process for selection of a private entity as the Bidder to whom the Project may be awarded.

The Government of India had entrusted to the Authority \*\*\*\*\*Name of the Project\*\*\*\*\*, and has decided to carry out the bidding process for selection of a private entity as the Bidder to whom the Project may be awarded. Brief particulars of the Project are as follows:

<b>Project Name</b>	<b>Estimated Project Cost (In Rs. Cr.)<sup>1</sup></b>
Development, Operation and Maintenance of the Multimodal Logistics Park (MMLP) at ***** in the State of *****through Public Private Partnership on Design, Build, Finance, Operate and Transfer (DBFOT) basis	*****

The complete Bidding Documents can be viewed / downloaded from e-procurement portal <http://etenders.gov.in> from \*\*\*\*\* to \*\*\*\*\* (up to 1100 hours. IST). Bid must be submitted online only at <http://etenders.gov.in> on or before \*\*\*\*\* (up to 1100 hours IST). Bids received online shall be opened on \*\*\*\*\* (at 1130 hours IST).

Bid submitted through any other mode shall not be entertained. However, Bid Security, proof of payment of cost of tender fee, Power of Attorney and Joint Bidding Agreement

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<sup>1</sup> The Estimated Project Cost shall be overall Total Project Cost for development of MMLP.

\*\*\*\*\*Name of the Project\*\*\*\*\*

etc. shall be submitted physically by the Bidder on or before \*\*\*\*\* (up to 1100 hours IST). Please note that the National Highways Logistics Management Limited reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever.

Thanking you,  
Yours faithfully,

\*\*\*\*\*

National Highways Logistics Management Ltd  
G-5 & 6, Sector-10, Dwarka, New Delhi-110075  
Email:.....

## **DISCLAIMER**

- 1 The information contained in this Request for Proposal document (the “RFP”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.
- 2 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 the formulation of their application for qualification and making their financial offers (Bids) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements, data and information furnished in this RFP or to be furnished later under the bidding documents, by the Authority are, only indicative and for the sole purpose of making available to interested parties / bidders information that may be useful to them in the formulation of their Bid. Such assumptions, assessments, statements and information contained in the Bidding Documents, especially the Project Information Memorandum& Feasibility Report, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, before placing reliance on aforesaid assumptions, assessments, statements, data and information [furnished in this RFP or referred to herein, by the Authority] 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. For avoidance of doubt, in case Bidder places reliance on any aforesaid assumptions, assessments, statements, data and information [furnished by the Authority in this RFP or referred to herein], then the same shall not in any manner bind/make liable the Authority, to indemnify the Bidder in respect of any loss/damage/costs whatsoever arising out of or in connection with such reliance placed by the Bidder on the aforesaid assumptions, assessments, statements, data and information.
- 3 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.



\*\*\*\*\*Name of the Project\*\*\*\*\*

- 4 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 there from in any way for participation in this Bid Stage.
- 5 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.
- 6 The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.
- 7 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.
- 8 The Bidders are prohibited from any form of collusion or arrangement in an attempt to influence the selection and award process of the Bid. Giving or offering of any gift, bribe or inducement or any attempt to any such act on behalf of the Bidder towards any officer/employee/ advisor/ representative of Authority or to any other person in a position to influence the decision of the [Authority] for showing any favour in relation to this RFP or any other contract, shall render the Bidder to such liability/penalty as the Authority may deem proper, including but not limited to rejection of the Bid of the Bidder and forfeiture of its Bid Security.
- 9 Laws of the Republic of India are applicable to this RFP.
- 10 The RFP is solely for the implementation of the Project to be undertaken in accordance with this RFP on the Site, the owner of which is and shall always be Authority and the land shall always be deemed to be in the actual exclusive possession of Authority. The Selected Bidder shall only make use of the land to implement the Project and the land on which the proposed Project is to be undertaken shall in no way be deemed to be

\*\*\*\*\*Name of the Project\*\*\*\*\*

transferred by any mode to the Selected Bidder. Any attempt to transfer the land by any mode shall be treated as malfeasance and in that event the Concession Agreement shall be terminated forthwith without any notice and reason and Authority shall resume the land together with all structures and forfeit the Bid Security/ Performance Guarantee without any prejudice to any action taken as per law.

## GLOSSARY

Authority	As defined in Clause 1.1.1 of this RFP
Associate	As defined in Clause 2.1.19 of this RFP
Bank Guarantee	As defined in Clause 2.21.1 of this RFP
Bidders	As defined in Clause 1.2.2 of this RFP
Bidding Documents	As defined in Clause 1.1.7 of this RFP
Bid Due Date	As defined in Clause 1.1.7 of this RFP
Bidding Process	As defined in Clause 1.2.1 of this RFP
Bid Security	As defined in Clause 1.2.4 of this RFP
Bid Validity Period	As defined in Clause 1.3 of this RFP
Concession	As defined in Clause 1.1.5 of this RFP
Concession Agreement	As defined in Clause 1.1.2 of this RFP
Concessionaire	As defined in Clause 1.1.2 of this RFP
Conflict of Interest	As defined in Clause 2.2.1.(c) of this RFP
DBFOT	As defined in Clause 1.1.1 of this RFP
Demand Draft	As defined in Clause 2.21.2 of this RFP
Estimated Project Cost	As defined in Clause 1.1.4 of this RFP
Feasibility Report	As defined in Clause 1.2.3 of this RFP
Financial Bid	As defined in Clause 1.2.1 of this RFP
Government	Government of India
Highest Bidder	As defined in Clause 1.2.6 of this RFP
LOA	As defined in Clause 3.8.5 of this RFP
Member	Member of a Consortium
PPP	Public Private Partnership
Project	As defined in Clause 1.1.1 of this RFP
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in the Disclaimer
Selected Bidder	As defined in Clause 1.2.7 of this RFP
Technical Bid	As defined in Clause 1.2.1 of this RFP

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

The words and expressions beginning with capital letters and not defined herein, but defined in the Concession Agreement, shall, unless repugnant to the context, have the meaning ascribed thereto therein.

## PROJECT INFORMATION MEMORANDUM

S. No.	Parameters	Details
1.	Project Title	[Development, designing, financing, construction, operation and maintenance of .....[to be inserted]... on DBFOT basis
2.	Location	[to be inserted]
3.	Concessioneing Authority	[to be inserted]
4.	Project Site Area (Approx.)	Approximately [to be inserted] acres, out of which a maximum of [to be inserted] acres only shall be available for commercial use by the Concessionaire [and a maximum of [to be inserted] acres only shall be available for residential use].
5.	Proposed Project Components	Development of [to be inserted] as per the definition of 'Project' provided in Clause 1.1.1 hereinafter.  [The Project also envisages various related and allied infrastructure facilities like [to be inserted]including maintenance of the railway line connectivity and optional facilities [to be inserted] as more particularly described in the draft Concession Agreement annexed as Annexure [1] to this RFP].
6.	Minimum Development Obligations (MDOs)	The Minimum Development Obligations include construction, operation and maintenance of the Project Assets till the end of the Concession Period as per the terms of the Concession Agreement (hereinafter defined)
7.	Estimated Project Cost (Approx.)	Rs. [to be inserted]
8.	Development Guidelines	[to be inserted]
9.	Institutional Structure for Implementation	[Special Purpose Vehicle (Concessionaire SPV) to be incorporated by the Selected Bidder.]
10.	Term of the Agreement	[to be inserted] years (including the Construction Period) from the Appointed Date.  [The Concession Agreement shall include the period for fulfillment of Conditions Precedent, Concession Period (which includes the Operations Period and the License Period, which shall be co-terminus to the Concession Period).]
11.	Construction Period for phase-1	[2 (Two)] years from the Appointed Date.
12.	Appointed Date	[to be inserted] days from the date of execution of the Concession Agreement.
13.	Bid Security	Rs. [to be inserted] in the form of an irrevocable, unconditional bank guarantee in favour of [name of the Authority to be

\*\*\*\*\*Name of the Project\*\*\*\*\*

S. No.	Parameters	Details
		inserted] issued by a scheduled bank in India or a foreign bank having a branch in India and acceptable to the Government of [to be inserted], or by way of a demand draft in favour of [to be inserted] and payable at [New Delhi] and payable in Indian rupees.
14	Bidding Parameter	Percentage share of Gross Revenue commencing from the calendar month falling immediately after the 3 <sup>rd</sup> anniversary of the commercial operations date (COD) till the 31st March of the succeeding calendar year & thereafter during the remaining Concession Period
15	Minimum guaranteed Revenue Share	As per Article 27 and Schedule Q (Minimum guaranteed Revenue Share) of the draft Concession Agreement
16	Pre-Bid Meeting	[ to be inserted]
17	Bid Due date	[ to be inserted]

## SECTION-1-INTRODUCTION

### NATIONAL HIGHWAYS LOGISTICS MANAGEMENT LIMITED

#### 1.1. Background

- 1.1.1 The Ministry of Road Transport & Highways (MoRTH), under the Bharatmala Pariyojana, has decided to develop multimodal logistics parks in India with some of the highest freight movement in the country. This is targeted to address and improve the logistics efficiency, and to reduce logistics costs in the country. \_\_\_\_\_ is one of the foremost locations selected for creation of an MMLP (Multi Modal Logistics Park) under this scheme.

National Highways Logistics Management Limited (the “**Authority**”), 100% owned SPV of NHAI, as part of this endeavour, is undertaking Development, Operation and Maintenance of the Multi Modal Logistics Park (MMLP) at \*\*\*\*\*in the State of \*\*\*\*\* (the “**Project**”) through Public Private Partnership (the “**PPP**”) on Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis, and has decided to carry out the bidding process for selection of a private entity as the Bidder to whom the Project may be awarded on PPP basis. A brief description of the Project may be seen in the Project Information Memorandum Brief particulars of the Project are as follows:

Project Name	Estimated Project Cost <sup>2</sup> (In Rs. Cr.)
Development, Operation and Maintenance of the Multimodal Logistics Park (MMLP) at _____ in the State of _____ through Public Private Partnership on Design, Build, Finance, Operate and Transfer (DBFOT) basis	

- 1.1.2 The Selected Bidder undertakes to incorporate a special purpose vehicle (a company to be incorporated under the Companies Act, 2013 and its amendment from time to time) prior to execution of the concession agreement (the “**Concessionaire**”). The concession agreement (the “Concession Agreement”) shall be entered into between such company incorporated by the Selected Bidder and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant thereto.

- 1.1.3 The scope of work will broadly include the following:

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<sup>2</sup> The Estimated Project Cost shall be the overall Total Project Cost for development of MMLP .

\*\*\*\*\*Name of the Project\*\*\*\*\*

- a) Arrange and mobilize finances required for the Project within the prescribed time period (as prescribed in the Concession Agreement).
  - b) Undertake, at its cost, risk and expense, the design, procurement, construction and development of the Project related infrastructure and the facilities in accordance with various requirements and within the time period specified, set out under Concession Agreement
  - c) Undertake, at its own cost, risk and expenses, operation, management and maintenance of the Project for the Concession Period, in accordance with various requirements set out under Concession Agreement.
  - d) To determine, demand, charge and appropriate the user charges/ tariff/ revenue from the users of the Project, developed by the Concessionaire in accordance with the provisions of the Concession Agreement.
  - e) Undertake any further obligation as set out under Concession Agreement.
- 1.1.4 The estimated cost of the Project (the “**Estimated Project Cost**”) has been specified in the Clause 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.5 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “**Concession**”).
- 1.1.6 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.
- 1.1.7 The Authority shall receive Bids pursuant to and 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 of Section 1 of this RFP for submission of Bids (the “**Bid Due Date**”).

## 1.2. Brief description of Bidding Process

- 1.2.1 The Authority has adopted a single stage two envelop process (referred to as the “**Bidding Process**”) for selection of the Bidder for award of the Project using e-

\*\*\*\*\*Name of the Project\*\*\*\*\*

procurement process. Under this process, the Bid shall be invited under two envelopes. Prior to the Bid, the Bidder shall pay to the Authority a sum of Rs \*\*\*\*\*<sup>3</sup> as the cost of the tender transmitted online to NHLML as per the details mentioned below and submit a proof of payment along with the Technical Bid. Eligibility and qualification of the Bidder (The “**Bidder**”, which expression shall, unless repugnant to the context, include the members of the Consortium) will be first examined based on the details submitted under First Envelop (“**Technical Bid**”) with respect to eligibility and qualifications criteria prescribed in this RFP. The Financial bid under the Second Envelop (“**Financial Bid**”) shall be opened of only those Bidders whose Technical Bids are responsive to eligibility and qualifications requirements as per this RFP.

The details of NHLML Account for depositing of the cost of tender fee online is given below:

Beneficiary	National Highways Logistics Management Ltd
Bank	
Account Number	
IFSC Code	

GOI has issued guidelines (see Annexure VI of Appendix-IA 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 as applicable. The Authority shall be entitled to disqualify any Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-IA

- 1.2.2 Interested bidders (the “**Bidders**”) are being called upon to submit their Bid in accordance with the terms specified in this Bidding Document. The Bid shall be valid for a period of 120 days from the date specified in Clause 1.3 of this section for submission of Bids.
- 1.2.3 The complete Bidding Documents including the draft Concession Agreement for the Project are enclosed for the Bidders. The Feasibility Report prepared by the Authority/ consultants of the Authority (the “**Feasibility Report**”) is also enclosed for guidance purposes only at Appendix VIII. Subject to the provisions of Clause 2.1.3 of Section 2 of this RFP, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.

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<sup>3</sup> The Cost of tender fee may be determined at the rate of Rs. 10,000 for every Rs. 100 crore or part thereof comprising the Estimated Project Cost. The Estimated Project Cost shall be the overall Total Project Cost for development of MMLP.



- 1.2.4 A Bidder is required to deposit, along with its Bid, a Bid Security of Rs\*\*\*\*\* (Rupees \*\*\*\*\* only)<sup>4</sup> (the "**Bid Security**"), refundable not later than 180 (one hundred and eighty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority, and in such event, the validity period of the 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 from time to time and that the validity of the demand draft shall not be less than 75 (seventy five) days from the Bid Due Date. Upon submission of demand draft, the same shall be encashed by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5 During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies and investigations as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.
- 1.2.6 Bids are invited for the Project on the basis of the highest percentage share of Gross Revenue (the "**Bidding Parameter**"). The bidding parameter shall be the percentage share of Gross Revenue (quoted up to two decimal places) and shall be paid as per the provisions of [Article 27 of the Concession Agreement]. The Concession Period is predetermined, as indicated in the Concession Agreement. The percentage share of Gross Revenue shall constitute the sole criteria for evaluation of Financial Bids. Subject to Clause 2.17 of Section 2 of this RFP, the Project will be awarded to the Bidder quoting the highest percentage share of gross revenue.

In this RFP, the term "**Highest Bidder**" shall mean the Bidder whose percentage share of Gross Revenue is the highest.

Note: The Highest Bidder, upon signing the Concession Agreement, shall pay to the Authority minimum guaranteed Revenue Share/Concession fee as a consideration towards grant of Concession as per the terms of the Concession Agreement as detailed in Article 27 and Schedule Q.

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<sup>4</sup> equivalent to about 1% (one per cent) of the Estimated Project Cost. The Estimated Project Cost shall be the overall Total Project Cost for development of MMLP

\*\*\*\*\*Name of the Project\*\*\*\*\*

1.2.7 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid. Further other details of the process to be followed under this Bidding Process and the terms thereof are spelt out in this RFP.

1.2.8 Any queries or request for additional information concerning this RFP shall be submitted by e-mail to the officer designated in Clause 2.12.4 of Section 2 of this RFP with identification/ title:

**"Queries/Request for Additional Information:**

RFP for Development, Operation and Maintenance of the Multi Modal Logistics Park (MMLP) at\*\*\*\*\*in the State of \*\*\*\*\* through Public Private Partnership on Design, Build, Finance, Operate and Transfer (DBFOT) basis”.

### 1.3. [Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

SI. No.	Event Description	Date
1.	Invitation of RFP (NIT)	T <sub>0</sub>
2.	Last date for receiving queries	T <sub>0</sub> + [...] days
3.	Pre-Bid meeting at venue mentioned at Clause 2.12.4 of Section 2 of this RFP	T <sub>0</sub> + [...] days at 1100 Hours IST at NHLML HQ
4.	Authority response to queries latest by	T <sub>0</sub> + [...] days
5.	Bid Due Date	****(Upto 1100 Hrs IST)
6.	Physical submission of Bid Security/ Power of Attorney etc.	***
7.	Validity of Bid (“ <b>Bid Validity Period</b> ”)	120 days from Bid Due Date
8.	Signing of Concession Agreement	Within 45 days of award of LOA

#### Clarification:

- (1) The above schedule is tentative. The Authority reserves the right to modify the said schedule of Bidding Process at any time during the Bidding Process at its sole discretion without assigning any reason or being liable for the same in any manner whatsoever. Such change, if any, would be uploaded at the website of the Authority from time to time.

\*\*\*\*\*Name of the Project\*\*\*\*\*

- (2) Further the Authority reserves the right to hold, in its sole and absolute discretion, more than one pre-bid meeting or hold one or more consultation meetings with the interested parties and in such event the above schedule shall stand modified and amended.

## SECTION-2- INSTRUCTIONS TO BIDDERS

### A. GENERAL

#### 2.1. General terms of Bidding

2.1.1 The Bidder may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be. A Bidder may be a natural person, private entity, government owned entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.1.16 of Section 2 of this RFP.

2.1.2 An international Bidder bidding individually or as a member of a Consortium shall ensure that Power of Attorney is legalised /apostilled by appropriate authority notarised in the jurisdiction where the Power of Attorney is being issued and requirements under the Indian Stamp Act, 1899 are duly fulfilled. Further:

I. Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure 1 of Order (Public Procurement No. 1) issued by Ministry of Finance, Department of Expenditure, Public Procurement Division vide F. No. 6/18/2019- PPD, dated 23rd July 2020, which shall form an integral part of RFP and DCA (Copy enclosed).

II. “Bidder” (including the terms ‘tendered’, or ‘service provider’ in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.

III. “Bidder from a country which shares a land border with India” means:

- a. An entity incorporated, established or registered in such a country, or
- b. A subsidiary of an entity incorporated, established or registered in such a country; or
- c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d. An entity whose beneficial owner is situated in such a country; or
- e. An Indian (or other) agent of such an entity; or
- f. A natural person who is a citizen of such a country; or
- g. A Consortium or joint venture where any member of the consortium or joint venture falls under any of the above.

IV. Beneficial owner for the purpose of (III) above means:

In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more judicial person, has a controlling ownership interest or who exercises control through other means.

Explanation:

- a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent of shares or capital or profits of the company.
- b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholding agreements or voting agreements;
- c. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or one or more juridical person: has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
- d. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individual;
- e. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
- f. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. The Selected Bidder/ Concessionaire shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "contractor from a country which shares a land border with India" shall be as in Clause III above.

Certificate regarding Compliance:

A certificate shall be required to be submitted by the bidders in the format prescribed at Appendix-VII.

It may be noted that in case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.

Validity of Registration:

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In respect of RFP, registration should be valid at the time of submission of bids and at the time of acceptance of bids. If the Bidder was validly registered at the time of acceptance, registration shall not be a relevant consideration during contract execution.

- 2.1.3 The Project Information Memorandum & Feasibility Report of the Project are being provided only as a preliminary reference by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Project Information Memorandum & Feasibility Report shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Project Information Memorandum & Feasibility Report.
- 2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the Concession Agreement shall have an overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder Clause 2.1 of this RFP shall continue to have effect in addition to its obligations under the Concession Agreement.
- 2.1.5 The Bid shall be furnished in the format prescribed in the RFP. The Technical Bid shall be as per Appendix IA and the Financial Bid shall be as per Appendix IB of the RFP. Financial Bid amount shall be indicated clearly in both figures and words, in Indian Rupees, in prescribed format of Financial Bid and shall be signed by the Bidder's authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall prevail and be taken into account.
- 2.1.6 The Bid shall consist of a percentage of Revenue Share, as per the terms and conditions of this RFP and the provisions of the Concession Agreement.
- 2.1.7 The Bidder shall deposit a Bid Security of Rs. \*\*\*\*\* (Rupees \*\*\*\*\* only) 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 Appendix-II. The Bidders shall also make online payment towards cost tender fee Rs. \*\*\*\*\* (Rupees \*\*\*\*\* only) to be transmitted online to NHLML and furnish a proof of payment along with the Technical Bid.
- 2.1.8 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. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 180 (one

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hundred and eighty) days from the Bid Due Date except in the case of the Selected Bidder, whose Bid Security shall be retained till the Selected Bidder has provided the Performance Security under the Concession Agreement.

- 2.1.9 The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorising the signatory of the Bid to commit the Bidder.
- 2.1.10 Subject to the provision of Clause 2.1.16 of Section 2 of this RFP, in case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of any Member, which Member shall thereafter be identified as the Lead Member, in the format at Appendix – IV<sup>6</sup>. In case the Bidder is a Consortium, Joint Bidding Agreement in the format of Appendix V shall be submitted by the Bidder.
- 2.1.11 The Bidders to specifically take note of what is mentioned under Clause 1.2.7 in section-1 of this RFP. In case any condition or qualification or any other stipulation is contained in the Bid, the same shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.12 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.13 The Bidding Documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.13 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.14 This RFP is not transferable.
- 2.1.15 Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents.

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<sup>6</sup>In case of a Consortium, the Members should submit a Power of Attorney in favour of the any Member as per the format as Appendix-IV. Such Member shall thereafter be identified as the Lead Member. The Lead Member should submit a power of Attorney as per the format in Appendix-III, authorising the signatory of the Application. Members of the Consortium need not submit Power of Attorney as per the format at Appendix-III, authorising the signatory of the Application.

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2.1.16 Where the Bidder is a single entity, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 2013 (the “Concessionaire SPV”), to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming a Concessionaire SPV, comply with the following additional requirements:

- a. Number of members in a Consortium shall not exceed 4 (four). However, none of the members in a Consortium should be under any sort of ineligibility under the Bidding Documents and the information sought in the Bid should be in the order of their equity contribution;
- b. the Bid should contain the information required for each member of the Consortium;
- c. members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the Concessionaire SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III and Appendix-IV, signed by all the other members of the Consortium;
- d. the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- e. an individual Bidder cannot at the same time be member of a Consortium applying for RFP. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for RFP;
- f. the members of a Consortium shall form an appropriate Concessionaire SPV to execute the Project, if awarded to the Consortium;
- g. members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-V (the “**Joint. Bidding Agreement**”), for the purpose of submitting a Bid. The Joint. Bidding Agreement, to be submitted along with the Application, shall, inter alia:
  - i. convey the intent to form an Concessionaire SPV, solely for the purpose of domiciling the Project and no other purpose, with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;



- ii. clearly outline the proposed roles and responsibilities, if any, of each member;
- iii. commit the minimum equity stake to be held by each member;
- iv. commit that each of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the Concessionaire SPV and shall further commit that each such member shall, for a period commencing from the date of incorporation of the Concessionaire SPV up to 6 (six) months from the date of commercial operation of the Project, hold equity share capital not less than: 26% (twenty six per cent) of the subscribed and paid up equity share capital of the Concessionaire SPV;
- v. members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the Concessionaire SPV at all times until 6 (six) months from the commercial operation date of the Project; and
- vi. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and

2.1.17 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (DBFOT or otherwise), and the bar subsists as on the Bid due date, would not be eligible to submit a Bid, either individually or as member of a Consortium.

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

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

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concealment of any information in this regard shall render the Bid liable for outright rejection at the sole discretion of the Authority.

2.1.19 In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members under Clauses 2.2.2, 2.2.5 and 3.4 of this RFP, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder Clause 2.1.19 of this RFP.

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

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

2.1.20 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<sup>5</sup> the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;
- (c) in responding to the RFP submissions, Bidders should demonstrate their capabilities in accordance with Clause 3.1 of Section 3 of this RFP; and
- (d) in case the Bidder is a Consortium, each Member should substantially satisfy the RFP requirements to the extent specified herein.

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<sup>5</sup> Format refers to the way a document is laid out on the page and it addresses things like font selection, font size and presentation (like bold or italics), spacing, margins, alignment, columns, indentation, and lists. It does not include addition or deletion of any text which would alter the meaning of the prescribed form.

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

- (a) Where, on the date of the Bid, not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where an Bidder or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

then the eligibility and/ or opening of Financial Bid and/or award of the Project to such Bidder shall, in addition to the requirements of Clause 2.1.2 above (as applicable), be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

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

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

2.1.22 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three (03) 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 (for Average annual turnover purpose) or 1 (one) year (for Net Worth purpose), 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 this RFP, mean the accounting year followed by the Bidder in the course of its normal business.

## **2.2. Eligibility and qualification requirements of Bidder**

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

- (a) The Bidder may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
- (b) Bidder may be a natural person, private entity, or any combination of them with a formal intent to enter into a Joint Bidding Agreement or under an existing agreement to form a Consortium.
- (c) A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate 5% of the value of the Bid Security or equivalent amount from the Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, *inter alia*, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal (the “**Damages**”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
  - (i) The Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of not more than 25%(twenty five percent) of the paid up and subscribed capital; of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is not more than 25% (Twenty five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 2(72) of the Companies Act, 2013. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the

- shareholding of such controlling person in the Subject Person; and
- (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
  - (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
  - (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
  - (v) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or
  - (vi) such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
  - (vii) Such Bidder or any Associate thereof has appointed any official of the Authority, Ministry of Road Transport & Highways, Technical Advisors of Authority for the Project, Legal Advisors of Authority for the Project, Financial Advisors of Authority for the Project, dealing with the Project, within a period of 6 months from the date of award of the Project to that Bidder.

*Explanation:*

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.12 above, shall include each Member of such Consortium.

For the purposes of this RFP, the term Associate in relation to the Bidder/Consortium shall have the meaning as ascribed under Clause 2.1.19 of Section 2 of this RFP.

- (d) A Bidder shall be liable for disqualification and forfeiture of Bid Security, if any legal, financial or technical adviser of the Authority in relation to the

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Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFP for the Project. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

*Provided, in case the Authority seeks information / clarification from a Bidders related to occurrence / non-occurrence of Conflict of Interest and the Bidders fails to provide such information within a reasonable time, the Authority shall disqualify the Bidders. Encash its Bid Security as per provision of Clause 2.21.7 of Section 2 of this RFP (a) and further debar it from participation in any future procurement process of MoRTH/NHAI/NHML for a minimum period of One (1) year from the Bid Due Date of this work.*

If the Bidder has submitted any documents, created or originating from outside the Republic of India, such as work experience certificate(s), financial detail(s), power of attorney(s), undertaking(s), documentary evidence(s), qualifying document(s), etc. (collectively “**Foreign Documents**”) then the Bidder, before any such Foreign Document(s) are sent to India for the purpose of applying towards this Project, shall be required to get each and every page of such Foreign Document(s), duly authenticated/ embossed/ legalized/ notarized from the Indian Embassy/Indian High Commission situated in the country from where such Foreign Document(s) were created or are originating from. Such authentication/ embossment/ legalization/ notarisation from the Indian Embassy/Indian High Commission shall also apply to all such document(s) that are in a language other than English, which shall compulsorily be required to be translated (as the true translated copies of the original) by a duly certified/ authorized /qualified Translator, supported by the affidavit of the said translator, certifying the correctness of the English translation. In case of any inconsistency between the original Foreign Document and its English translation, the latter shall prevail and

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be held binding on such Bidder.

However, in the case of Foreign Document(s) created or originating from countries that have signed, ratified and have made operational the Hague Convention abolishing the requirement of legalization for foreign public documents, 5 October, 1961 - "**Hague Legalization Convention, 1961**", the Bidders may affix an "Apostille" sticker on each and every page of their Foreign Document(s) [including all commercial document(s) duly notarized]. Thereafter, the Bidder shall be compulsorily required to get all such "Apostilled" Foreign Document(s) approved, certified and attested from the Indian Embassy /Indian High Commission in that country where the 'Foreign Document(s)' were created or are originated from or the Ministry of External Affairs, Government of India, New Delhi and the Bidder/s shall follow any other norms/guidelines laid by the Ministry of External Affairs, Government of India, New Delhi

2.2.2 To be eligible for this RFP, a Bidder shall fulfil any one of the Group A or Group B eligibility conditions as specified below:

I. "Group A" Eligibility

"**Group A**" Bidders shall mean the prospective Bidders having requisite technical experience and meeting the required minimum Financial Capacity as mentioned hereunder Clause 2.2.2 of this RFP:

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

- (i) paid for, or received payments for, construction of Eligible Project(s); and/or
- (ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.4.1 of this RFP (excluding the cost of land); and/ or
- (iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.4.1 of this RFP,

such that the sum total of the above, as further adjusted in accordance with Clause 3.4.6 of this RFP, is more than Rs. \*\*\*\*\* Crore (Rupees \*\*\*\*\* only) (the "**Threshold Technical Capability**")<sup>6</sup>.

Provided that at least one fourth of the Threshold Technical Capability shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 3.4.1 of this RFP.

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<sup>6</sup> This amount should be equivalent to the Estimated Project Cost for which bids are being invited. The Estimated Project Cost shall be the overall Total Project Cost for development of MMLP.

- (B) **Financial Capacity:** The Bidder shall have a minimum Net Worth of Rs. \*\*\*\* Crore (Rupees \*\*\*\*\* only)<sup>7</sup> at the close of the immediately preceding financial year<sup>8</sup>.

II. “Group B” Eligibility

“**Group B**” Bidders shall mean the prospective Bidders having required minimum Financial Capacity as mentioned hereunder Section 2 of this RFP and such Bidder itself does not have the required Technical Capacity. However, the Selected Bidder has to comply with the Clause 2.2.3 of Section 2 of this RFP in case the project is awarded.

**Financial Capacity:**

- i. The Bidder shall have a minimum Net Worth of Rs. \*\*\*\* Crore (Rupees \*\*\*\*\* only)<sup>8</sup> at the close of the immediately preceding financial year<sup>8</sup>.
- ii. Average annual turnover during the last three financial years [i.e. 2020-21, 2019-20 and 2018-19] shall not be less than two times the Estimated Project Cost<sup>9</sup>.

The above conditions of Net Worth and Average annual turnover shall together constitute the Financial Capacity for Group B

- III. Further a Bidder including any Consortium Member shall, whether applying under “Group A” or “Group B”, in the last [three] financial years [i.e. 2020-21, 2019-20 and 2018-19] have neither been a loss making company nor been in the list of Non Performing Asset (NPA) and / or Corporate Debt Restructuring (CDR) and / or Strategic Debt Restructuring (SDR) and/or should not have any notice from National Company Law Tribunal (NCLT). The Bidder shall provide a certificate as per the format given at Appendix- IA Annexure IA.

- IV. In case of a Consortium, following requirement of eligibility should be fulfilled:  
For “Group A” Eligibility, the combined technical capability and financial capability of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the Concessionaire SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 6 (six) months from the date of commercial operation of the Project, hold

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<sup>7</sup> This amount should be 15% (fifteen per cent) of the Estimated Project Cost for which bids are being invited. The Estimated Project Cost shall be the overall Total Project Cost for development of MMLP.

<sup>8</sup> In case a Bidder has issued any fresh Equity Capital during the current financial year, the same shall be permitted to be added to the Bidder's Net Worth subject to the Statutory Auditor of the Bidder certifying to this effect.

<sup>8</sup> This amount should be 30% (thirty per cent) of the Estimated Project Cost for which bids are being invited. The Estimated Project Cost shall be the overall Total Project Cost for development of MMLP.

<sup>8</sup> In case a Bidder has issued any fresh Equity Capital during the current financial year, the same shall be permitted to be added to the Bidder's Net Worth subject to the Statutory Auditor of the Bidder certifying to this effect.

<sup>9</sup> The Estimated Project Cost shall be the overall Total Project Cost for development of MMLP<sup>£</sup> The Authority may, in its discretion, impose further obligations in the Concession Agreement, but such obligations should provide sufficient mobility for partial divestment of equity without compromising the interests of the Project.



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equity share capital not less than: 26% (twenty six per cent) of the subscribed and paid up equity of the Concessionaire SPV<sup>£</sup>;

- V. In case of a Consortium, following requirement of eligibility should be fulfilled:  
For “Group B” Eligibility, the financial capability of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the Concessionaire SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 6 (six) months from the date of commercial operation of the Project, hold equity share capital not less than: 26% (twenty six per cent) of the subscribed and paid up equity of the Concessionaire SPV<sup>£</sup>;

Provided further that each member of the Consortium eligible in “Group A” shall have a minimum Net Worth of 7.5% of Estimated Project Cost in the immediately preceding financial year as set forth in Clause 2.2.2 (I,B) above.

Provided further that each member of the Consortium eligible in “Group B” shall have a minimum Net Worth of 15% of Estimated Project Cost in the immediately preceding financial year as set forth in Clause 2.2.2 (II,B) above.

- 2.2.3 The Selected Bidder of “Group B” itself may not have the requisite technical capacity towards execution of the Project as specified in the Bidding Documents. Such Bidder shall have to submit its plan to the Authority to ensure that the Project is implemented to meet its objectives and performance as per terms and conditions of the Concession Agreement and conforming to the standards and specifications stipulated therein. For avoidance of doubt, it is clarified that submission of such plan to the Authority for sourcing the requisite technical competency towards execution of the Project shall not relieve the Selected Bidder / Concessionaire from any obligation as per the Bidding Documents / Concession Agreement and they shall solely be responsible for fulfilment and performance of the contract as per terms and conditions stipulated therein.

**2.2.4 O&M Experience:**

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

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

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

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

- (i) Certificate(s) from its statutory auditors<sup>§</sup> or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 (five) financial years in respect of the projects specified in paragraph 2.2.2 ( I, A) above (for “Group A” Eligibility). In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
- (ii) Certificate(s) from its statutory auditors specifying the net worth of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.5 (ii). For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the aggregate value of the paid-up share capital<sup>10</sup> and all free reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation, profits on fair value measurement. Further, Statutory auditors shall all ensure and certify that any disputed receivables, advances, other assets need to be excluded for Net Worth computation.
- (iii) Certificate(s) from its statutory auditors specifying the Turnover of the Bidder, as at the close of the preceding financial year ( For “Group B” eligibility only).

### 2.3. Change in Ownership

2.3.1 By submitting the Bid, the Bidder acknowledges that it would be pre-qualified and short-listed on the basis of its Technical Capacity and/or Financial Capacity or those of its Consortium Members (in case of Bidder being a Consortium) who shall, at all times commencing from the date of incorporation of the SPV i.e. Concessionaire until 6 (six) months from the COD of the Project, hold equity share capital representing not less than: 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; The aggregate equity shareholding of the Selected Bidder (whether a single entity or a Consortium) in the issued and paid up equity capital of the Concessionaire shall not be less than 100% (one hundred percent) at all times

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<sup>10</sup> It is being clarified that any instrument such as Compulsory Convertible Debentures (CCD) etc. shall not be part of the paid-up share capital. Any award amount claimed by the Bidder shall not be eligible for inclusion in computation of Net Worth until the same is included in the Profit & Loss Statement of the Bidder.

\*\*\*\*\*Name of the Project\*\*\*\*\*

commencing from the date of incorporation of the Concessionaire, until and including the date of execution of the Concession Agreement, and thereafter , subject to the terms of this RFP and the draft Concession Agreement, the aggregate equity shareholding of the Selected Bidder (whether a single entity or a Consortium) in the issued and paid up equity capital of the Concessionaire shall not be less than 51% (fifty one percent) until 6 (six) months from the COD of the Project (the Lock-in-Period);

The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder.

- 2.3.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority 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 Concession Agreement or otherwise.

#### **2.4. 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.

#### **2.5. Cost of Bidding**

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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.

## **2.6. Site visit and verification of information**

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

2.6.2 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 2.6.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.6.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.6.1 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 Concession Agreement by the Concessionaire;
- (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.

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

## **2.7. Verification and Disqualification**

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- 2.7.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder Clause 2.7.1 of this RFP nor will it affect any rights of the Authority thereunder.
- 2.7.2 The Authority reserves the right to reject any Bid and appropriate the Bid Security if:
- (a) at any time, a material misrepresentation is made or uncovered, or
  - (b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

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

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

## **B. DOCUMENTS**

### **2.8. Contents of the RFP**

- 2.8.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10 of Section 2 of this RFP.

#### Invitation for Bids

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Evaluation of Bids
- Section 4. Fraud and Corrupt Practices
- Section 5. Pre-Bid Conference
- Section 6. Miscellaneous

#### Appendices

- IA Letter comprising the Technical Bid including Annexure I to VI
- IB Letter comprising the Financial Bid
- II. Bank Guarantee for Bid Security
- III. Power of Attorney for signing of Bid
- IV. Power of Attorney for Lead Member of Consortium
- V. Joint Bidding Agreement for Consortium
- VI. Integrity Pact
- VII. Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs)

- 2.8.2 The draft Concession Agreement and Project Information Memorandum provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFP.

### **2.9. Clarifications**

- 2.9.1 Bidders requiring any clarification on the RFP may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.9 of Section 1 of this RFP. They should send in their queries before the date mentioned in the Schedule of Bidding Process as specified in Clause 1.3 of Section 1 of this RFP. 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.
- 2.9.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this

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Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

2.9.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives or advisors shall not in any way or manner be binding on the Authority.

## **2.10. Amendment of RFP**

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

2.10.2 Any Addendum issued hereunder Clause 2.10 of this RFP will be in writing and shall be send to all the Bidders.

2.10.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Bid Due Date<sup>s</sup>.

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<sup>s</sup>While extending the Bid Due Date on account of an addendum, the Authority shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Bid Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

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

### **2.11. Format and Signing of Bid**

- 2.11.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received online in the required formats and complete in all respects and Bid Security, copy of payment proof of cost of tender fee, Power of Attorney and Joint Bidding Agreement etc. as specified in Clause 2.12.2 of this RFP are received in hard copies.
- 2.11.2 The Bid shall be typed and signed in indelible blue ink by the authorised signatory of the Bidder. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.

### **2.12. Documents comprising Technical and Financial Bid**

- 2.12.1 The Bidder shall submit the Technical Bid & Financial Bid online through e-procurement portal <http://etenders.gov.in> comprising of the following documents along with supporting documents as appropriate:

#### **Technical Bid**

- (a) Appendix-IA (Letter comprising the Technical Bid) including Annexure I to V and supporting certificates / documents.
- (b) Power of Attorney for signing the Bid as per the format at Appendix-III;
- (c) if applicable, Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;
- (d) if applicable, Joint Bidding Agreement for Consortium as per the format at Appendix-V;
- (e) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
- (f) Copies of Bidder's duly audited balance sheet and profit and loss statement for preceding 5 years from the Bid Due Date'
- (g) Integrity pact as per format given in Appendix VI shall be submitted by the Bidder with the Bid duly signed by authorised signatory and shall be part of the Concession Agreement;
- (h) Bid Security of Rs. \*\*\*\*\* Crores (Rupees \*\*\*\*\* only) in the form of Bank Guarantee in the format at Appendix-II from a Scheduled Bank or in the form of Demand Draft
- (i) Proof of online payment of Rs. \*\*\*\*\*/(Rupees \*\*\*\*\* only) towards RFP Process Cost transmitted online to NHLML
- (j) An undertaking from the person having Power of Attorney referred to in Sub. Clause-(b) above that they agree and abide by the Bidding Documents uploaded by NHLML and amendments uploaded, if any.



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- (k) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs) as per format given in Appendix-VII shall be submitted by the Bidder with the RFP Bid duly signed by Authorised signatory and shall be part of the Concession Agreement.
- (l) Copy of Registration from the Competent Authority as defined in Public Procurement Order No. F. No. 6/18/2019-PPD dated 23rd July 2020, if applicable (to be submitted by the “Bidder from a country which shares a land border with India”).

### **Financial Bid**

(m) Appendix-IB (Letter comprising the Financial Bid)<sup>β</sup>

2.12.2 The Bidder shall submit the following documents physically to the Authority along with the scanned copies submitted online on or before the Bid Due Date:

- (a) Original Power of Attorney for signing the Bid as per format at Appendix-III;
- (b) if applicable, original Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;
- (c) if applicable, original Joint Bidding Agreement for Consortium as per the format at Appendix-V;
- (d) Original Bid Security of Rs. \*\*\*\*\* Crores (Rupees \*\*\*\*\* only) in the form of Demand Draft or Bank Guarantee in the format at Appendix-II from a Scheduled Bank;
- (e) Proof of online payment of Rs. \*\*\*\*\* (Rupees \*\*\*\*\* only) towards Cost of tender fee transmitted online to NHLML;
- (f) Integrity pact on plain paper shall be submitted by the Bidder with the Bid duly signed by authorized signatory & shall be part of the Concession Agreement;
- (g) Deleted
- (h) An undertaking from the person having Power of Attorney referred to in Sub. Clause-(a) above that they agree and abide by the Bidding Documents uploaded by NHLML and amendments uploaded, if any and
- (i) Original Statement of Legal Capacity as per format at Annexure V to Appendix IA.
- (j) Original of Experience certificates apostille at foreign origin, if any.
- (k) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs) as per format given in Appendix-VII shall be submitted by the Bidder, along with the RFP Bid, duly signed by Authorised signatory and the same shall form part of the Concession Agreement.

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<sup>β</sup> Appendix – IB shall be uploaded in a separate folder along with the financial quotation.

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- (l) Copy of Registration from the Competent Authority as defined in Public Procurement Order No. F. No. 6/18/2019-PPD dated 23rd July 2020, if applicable (to be submitted by the “Bidder from a country which shares a land border with India”).
- (m) Memorandum and Articles of Association of the Bidder

2.12.3 The documents listed at Clause 2.12.2 above shall be placed in an envelope, which shall be sealed. The envelope shall clearly bear the identification “***Bid for Development, Operation and Maintenance of the Multimodal Logistics Park (MMLP) at \_\_\_\_\_ in the State of \_\_\_\_\_ through Public Private Partnership (on Design, Build, Finance, Operate and Transfer (DBFOT) basis***” and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right-hand top corner of the envelope.

2.12.4 The envelope shall be addressed to the following officer and shall be submitted at the respective address:

ATTN. OF: Mr. \*\*\*\*  
\*\*\*\*

ADDRESS: National Highways Logistics Management Limited  
G-5&6, Sector-10, Dwarka, New Delhi-110075  
Phone No.: +91-11-25074100 (Extn. \*\*\*\*)  
Fax No.: +91-11-25074100  
E-MAIL ADDRESS: \*\*\*\*\*

2.12.5 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. Bidder (including all of its Consortium Members) failing to submit the original documents required as per Clause 2.12.2 above shall be liable to the rejection of their Bids and forfeiture of Bid Security.

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

### **2.13. Bid Due Date**

Technical & Financial Bid comprising of the documents listed at Clause 2.12.1 of the RFP shall be submitted online through e-procurement portal <http://etenders.gov.in> on or before 1100 hrs IST on \*\*\*\*\* Documents listed at Clause 2.12.2 of the RFP shall be physically submitted on or before 1100 hours IST on the Bid Due Date at the address provided in Clause 2.12.4 above in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.12.4.

The Authority may, in its sole discretion, extend the Bid Due Date by issuing an

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Addendum in accordance with Clause 2.10 of this RFP uniformly for all Bidders.

## **2.14. Late Bids**

E-procurement portal <http://etenders.gov.in> shall not allow submission of any Bid after the prescribed date and time at Clause 2.13 of this RFP. Physical receipt of documents listed at Clause 2.12.2 of the RFP after the prescribed date and time at Clause 2.13 shall not be considered and the Bid shall be summarily rejected.

## **2.15. Procedure for e-tendering**

### **2.15.1 Accessing/ Purchasing of Bidding Documents**

- 2.15.1.1 It is mandatory for all the Bidders to have class-III Digital Signature Certificate (DSC) (in the name of Authorized Signatory / Firm or Organization / Owner of the Firm or Organisation) from any of the licensed Certifying Agency (Bidders can see the list of licensed CAs from the link [www.cca.gov.in](http://www.cca.gov.in)) to participate in e-tendering of the Authority.

DSC should be in the name of the authorized signatory as authorized in Appendix III of this RFP. It should be in corporate capacity (that is in Bidder capacity / in case of Consortium in the Lead Member capacity, as applicable). The Bidder shall submit document in support of the class III DSC.

The authorized signatory holding Power of Attorney or the person executing such Power of Attorney shall only be the Digital Signatory. In other cases, the Bid shall be considered **non –responsive**.

- 2.15.1.2 To participate in the bidding, it is mandatory for the Bidders to get registered their firm / Consortium with e-procurement portal of the Authority <http://etenders.gov.in> to have user ID & password for which the requisite fee may be paid to the service provider, i.e., \*\*\*\*\*. Following may kindly be noted:

- a) Registration with e-procurement portal of the Authority should be valid at least up to the date of submission of Bid.
- b) Bids can be submitted only during the validity of registration.

- 2.15.1.3 If the firm / Consortium is already registered with e-tendering service provider of the Authority, and validity of registration is not expired the firm / Consortium is not required a fresh registration.

- 2.15.1.4 The complete Bidding Documents can be viewed / downloaded by the Bidder from e-procurement portal of the Authority <http://etenders.gov.in> from \*\*\* to \*\*\*\*\* (up to 1100 Hrs. IST).

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### **2.15.2 Preparation & Submission of Bids:**

- 2.15.2.1 The Bidder may submit his Bid online following the instruction appearing on the screen. A buyer manual containing the detailed guidelines for e-procurement is also available on e-procurement portal of the Authority.
- 2.15.2.2 The documents listed at Clause 2.12.1 above shall be prepared and scanned in different files (in PDF or RAR format such that file size is not more than 30 MB) and uploaded during the on-line submission of Bid.
- 2.15.2.3 Bid must be submitted online only through e-procurement portal of the Authority <http://etenders.gov.in> using the digital signature of authorised representative of the Bidder on or before \*\*\*\*\* (up to 1100 hours IST).

### **2.15.3 Modifications/ Substitution/ withdrawal of Bids**

- 2.15.3.1 The Bidder may modify, substitute or withdraw its e- Bid after submission prior to the Bid Due Date. No Bid can be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date and Time.
- 2.15.3.2 For modification of e-Bid, Bidder has to detach its old Bid from e-procurement portal and upload / resubmit digitally signed modified Bid. For withdrawal of Bid, a Bidder has to click on withdrawal icon at e-procurement portal and can withdraw its e-Bid. Before withdrawal of a Bid, it may specifically be noted that after withdrawal of a Bid for any reason, Bidder cannot re-submit e-Bid again.
- 2.15.3.3 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

### **2.16. Online Opening of Bids.**

- 2.16.1 Opening of Bids will be done through online process.
- 2.16.2 The Authority shall on-line open Technical Bids on \*\*\*\*\* at \*\*\*\*\* hours IST, in the presence of the authorized representatives of the Bidders, who choose to attend. Technical Bid of only those Bidders shall be online opened whose documents listed at Clause 2.12.2 of the RFP have been physically received. The NHLML will subsequently examine and evaluate the Bids in accordance with the provisions of Section 3 of RFP.

### **2.17. Rejection of Bids**

- 2.17.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and/or 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 thereof. In the event that the

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Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder Clause 2.17.1 of this RFP.

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

## **2.18. 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.

## **2.19. Confidentiality**

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

## **2.20. 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.

## **D. BID SECURITY**

### **2.21. Bid Security**

- 2.21.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.7 and 2.1.8 hereinabove in the form of a bank guarantee issued by 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.
- 2.21.2 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 New Delhi (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.
- 2.21.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.21.4 Save and except as provided in Clauses 1.2.4 and 1.2.5 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority, and in any case within 180 (one hundred and eighty) days from the Bid Due Date. 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.
- 2.21.5 The Selected Bidder’s Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder’s option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.

\*\*\*\*\*Name of the Project\*\*\*\*\*

2.21.6 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.21.7 of this RFP. 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.

2.21.7 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or under the Concession Agreement, or otherwise, under the following conditions:

a) If a Bidder submits a non-responsive Bid;

Subject however that in the event of encashment of Bid Security occurring due to operation of para 2.21.7 (a), the Damage so claimed by the Authority shall be restricted to 5% of the value of the Bid Security.

b) If 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) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;

d) In the case of Selected Bidder, if it fails within the specified time limit –

i) to sign and return the duplicate copy of LOA;

ii) to sign the Concession Agreement; or

iii) to furnish the Performance Security within the period prescribed in the Concession Agreement; or

iv) If a Bidder fails to provide any clarification or explanation as may be sought by the Authority from such Bidder within the time specified for the same; or

v) If a Bidder makes a misrepresentation as to any facts or figures regarding its Bid or during the Bidding Process in order to get the LOA/ Concession

e) Any other conditions, with respect to the Bidder as well as the Selected Bidder, for which forfeiture of Bid Security has been provided under this RFP

f) In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

## **SECTION-3- EVALUATION OF TECHNICAL BIDS AND OPENING & EVALUATION OF FINANCIAL BIDS**

### **3.1. Opening and Evaluation of Technical Bids**

- 3.1.1 The Authority shall open the Technical Bids received online at \*\*\*\*\* hours IST on the Bid Due Date, at the place specified in Clause 2.12.4 above and in the presence of the Bidders who choose to attend.
- 3.1.2 Bid documents of only those Bidders shall be opened online whose documents listed at Clause 2.12.2 of this RFP have been physically received;
- 3.1.3 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.15.3 of this RFP shall not be opened;
- 3.1.4 The Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.
- 3.1.5 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid within a prescribed time period.
- 3.1.6 Bidders are advised that qualification of Bids 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;
- 3.1.7 Any information contained in the Bid submitted shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information;
- 3.1.8 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 information from consideration of eligibility and qualification of the Bidder.
- 3.1.9 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from computation of the Experience score, and may also, while computing the aggregate Experience score of the Bidder, make a further deduction equivalent to the claim rejected hereunder Clause 3.1.9 of this RFP. 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 applicable provisions of this RFP.



### **3.2. Tests of responsiveness**

3.2.1 As a first step towards evaluation of Technical Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFP. A Technical Bid shall be considered responsive only if:

- (a) Technical Bid is received online as per the format at Appendix-IA including Annexure I to V;
- (b) Documents listed at Clause 2.12.2 above are received physically;
- (c) Technical Bid is accompanied by the Bid Security as specified in Clause 2.1.7 and 2.1.8 above;
- (d) Technical Bid is accompanied by the Power of Attorney as specified in Clauses 2.1.9 above;
- (e) Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium and the Joint Bidding Agreement as specified in Clause 2.1.10 above, if so required;
- (f) Technical Bid contain all the information (complete in all respects);
- (g) Technical Bid does not contain any condition or qualification or reservation ;
- (h) It contains information in formats same as those specified in this RFP;
- (i) It contains certificates from its statutory auditors in the formats specified in this RFP
- (j) Integrity pact as per format given in Appendix VI has been submitted by the Bidder with the Bid duly signed by authorised signatory;
- (k) Technical Bid contains proof of online payment of Rs. \*\*\*\*\* (Rupees \*\*\*\*\* only) towards cost of tender fee submitted online to NHLML as specified in Clause 2.1.7 hereabove
- (l) it is not non-responsive in terms hereof.

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

### **3.3. Evaluation parameters**

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

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

- (a) Technical Capacity (only in case of "Group A" Bidder); and
- (b) Financial Capacity (for both "Group A" & "Group B" Bidders)

### 3.4. Technical Capacity for purposes of evaluation

3.4.1 Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects as stipulated in Clauses 3.4.3 and 3.4.4 of this RFP (the "**Eligible Projects**"):

- Category 1: Project experience on Eligible Projects in [Logistics] sector that qualify under Clause 3.4.3 of this RFP
- Category 2: Project experience on Eligible Projects in Core sector that qualify under Clause 3.4.3 of this RFP
- Category 3: Construction experience on Eligible Projects in [Logistics] sector that qualify under Clause 3.4.4 of this RFP
- Category 4: Construction experience on Eligible Projects in Core sector that qualify under Clause 3.4.4 of this RFP

For the purpose of this RFP:

- (a) Logistics sector would be deemed to include construction cost of Maritime Ports, Riverine ports, Air cargo terminals, Rail cargo terminals, Logistics parks, Inland Container Depot (ICD), Container Freight station, Free Trade Warehousing Zone (FTWZ), Freight Village, Warehouses, Cold storage facilities, manufacturing / processing related Industrial Parks/ Estates/SEZ; and
- (b) Core sector would be deemed to include construction cost of highways, railways, metro rail, power sector, airports, pipelines, irrigation, water supply, stadium, hospitals, hotel, smart city, silos, oil and gas and real estate development.<sup>\$</sup>

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

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

- (a) It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as

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<sup>\$</sup> Real estate development shall not include residential flats unless they form part of a real estate complex or township which has been built by the Bidder.

an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;

- (b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty-six per cent) equity during the entire year for which Eligible Experience is being claimed;
- (c) the capital cost of the project should be more than Rs. \*\*\*\*\* Crore (Rupees \*\*\*\*\* only)<sup>11</sup>; 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 project assets, such as revenues from logistics parks, rail cargo terminals, highways, airports, ports and other projects listed under Clause 3.4.1 above, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products, telecommunications or fare/freight revenues and other incomes of the company owning the Project.

3.4.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Bidder should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Bid Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, the total payments/receipts of less than Rs. \*\*\*\*\* Crore (Rupees \*\*\*\*\* only)<sup>12</sup> in respect to a particular project; shall not be reckoned as payments/receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder Clause 3.4.4 of this RFP.

3.4.5 The Bidders shall quote experience in respect of a particular Eligible Project under any one category only, even though the Bidder (either individually or along with a member of the Consortium) may have played multiple roles in the cited project.

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<sup>11</sup> equivalent to about 5% (five per cent) of the Estimated Project Cost. The Estimated Project Cost shall be the overall Total Project Cost for development of MMLP.

<sup>12</sup> equivalent to about 5% (five per cent) of the Estimated Project Cost. The Estimated Project Cost shall be the overall Total Project Cost for development of MMLP.

Double counting for a particular Eligible Project shall not be permitted in any form.

*Illustration:*

*For illustration and avoidance of any doubt, if a Bidder has developed a Logistics sector project such that the project is eligible to qualify in Category 1 as well as in Category 3 of the Clause 3.4.1 above, then the Bidder shall quote the experience pertaining to this particular project only once towards meeting Threshold Technical Capacity.*

- 3.4.6 A Bidder's experience shall be measured and stated in terms of a score (the "**Experience Score**"). The Experience Score for an Eligible Project in a given category would be the eligible payments and/or receipts specified in Clause 2.2.2 (I A) above, divided by one crore and then multiplied by the applicable factor in Table 3.4.6 . In case the Bidder has experience across different categories, the score for each category would be computed as above and then aggregated to arrive at its Experience Score.

**Table 3.4.6: Factors for Experience across categories**

Category	Factor
Category 1	1.45
Category 2	1.0
Category 3	1.0
Category 4	0.70

- 3.4.7 The Experience Score determined in accordance with Clause 3.4.6 above in respect of an Eligible Project situated in a developed country which is a member of OECD shall be further multiplied by a factor of 0.5 (zero point five) and the product thereof shall be the Experience Score for such Eligible Project.
- 3.4.8 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

- 3.4.9 (a) The Experience Score of the Bidder shall be computed as a weighted average of the Experience Score of a member and its proposed equity stake (%) in the Consortium,
- (b) Similarly, the Financial Score of the Bidder shall be computed as a weighted average of the Financial Score of a member and its proposed equity stake (%) in the Consortium

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

*Illustration:*

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

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

*For Weighted Financial Score*

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

*For Weighted Experience Score*

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

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

### **3.5. Details of Experience**

- 3.5.1 The Bidders should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Bid Due Date.
- 3.5.2 The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-IA.

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

### **3.6. Financial information for purposes of evaluation**

- 3.6.1 The Bids must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Bid is made.
- 3.6.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make the same available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 3.6.3 The Bidder must establish the minimum Net Worth specified in Clause 2.2.2 above, and provide details as per format at Annex-III of Appendix-IA.
- 3.6.4 In case of foreign companies, a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium Member in the form as provided in the country where the project has been executed shall be accepted, provided it contains all the information as required in the prescribed format of the RFP.

### **3.7. Opening and Evaluation of Financial Bids**

The Authority shall inform the venue and time of online opening of the Financial Bids to the Technically responsive Bidders through e-procurement portal and e-mail. The Authority shall online open the Financial Bids received online on date and time to be informed in this Clause in the presence of the authorized representatives of the Bidders who may choose to attend. The Authority shall publicly announce the quoted percentage share of gross revenue for each of the technically responsive Bidder. The Authority shall prepare a record of opening of Financial Bids.

### **3.8. Selection of Bidder**

- 3.8.1 Subject to the provisions of Clause 2.17.1 above, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 above and who quotes highest

percentage of Revenue to the Authority, in accordance with Appendix-IB shall 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 Bid hereunder Clause 3.8 of this RFP.

- 3.8.2 In the event that two or more Bidders quote the same amount of Percentage of Revenue Share , as the case may be (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
- 3.8.3 In the event that the Highest Bidder withdraws or is not selected for any reason, , the Authority shall annul the Bidding Process and invite fresh Bids. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder Clause 3.8 of this RFP.
- 3.8.4 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, in acknowledgement 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 forfeit its Bid Security.
- 3.8.5 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3 above. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

### **3.9. Contacts during Bid Evaluation**

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

### **3.10. Correspondence with Bidder**

- 3.10.1 Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.
- 3.10.2 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 3.10.3 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.



## **SECTION-4-FRAUD AND CORRUPT PRACTICES**

### **4.1. Fraud and Corrupt Practices**

- 4.1.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 4.1.2 Without prejudice to the rights of the Authority under Clause 4.1.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder, at the sole and absolute discretion of the Authority, 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 Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.1.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any

person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the \ execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.2.1(d) 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 Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

- (b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts;
- (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.

\*\*\*\*\*Name of the Project\*\*\*\*\*

- 4.1.4 Bidder shall comply with the provisions of office Memorandum No. 13030/09/2008-vig dated 28.01.2013 issued by NHAI i.e. Model Agreement for Integrity Pact (IP), (format given in Appendix VI) shall be submitted by the Bidder along with the Bid duly signed by the Authorized Signatory of the Bidder and shall be deemed to be a part of the Concession Agreement.

## **SECTION-5-PRE-BID CONFERENCE**

### **5.1. Pre-bid Conference**

- 5.1.1 Pre-Bid conference of the Bidders shall be convened at the designated date, time and place. A maximum of two representatives of prospective Bidders shall be allowed to participate on production of authority letter from the Bidder.
- 5.1.2 During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

## SECTION-6-MISCELLANEOUS

### 6.1. Miscellaneous

- 6.1.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.1.2 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.
- 6.1.3 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 this RFP, 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.

\*\*\*\*\*Name of the Project\*\*\*\*\*

## **APPENDICES**

**APPENDIX IA**  
**LETTER COMPRISING THE TECHNICAL BID**  
*(Refer Clause 2.1.5, 2.12 and 3.2 of this RFP)*

The \*\*\*\*\*

National Highways Logistics Management Limited  
G-5&6, Sector 10, Dwarka,  
New Delhi - 110 075

Sub: Bid for \*\*\*\*\*

Dear Sir,

1. With reference to your RFP document dated .....<sup>s</sup>, I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided therein in the Bid 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 Concessionaire for the development, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement

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<sup>s</sup> All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.

or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:

- a. I/ We have examined and have no reservations to the RFP document, including any Addendum issued by the Authority.
  - b. I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFP document; and
  - c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.1.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
  - d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
  - e. the undertakings given by us along with the Application in response to the RFP for the Project were true and correct as on the date of making the Application and are also true and correct as on the Bid Due Date and I/We shall continue to abide by them.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.17.2 of the RFP document.
9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFP document.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for this Project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been



convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.
14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines form part of the RFP at Appendix-VI thereof.
15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately.
  - (a) The Statement of Legal Capacity as per format provided at Annex-V in Appendix-IA of the RFP document, and duly signed, is enclosed. The Power of Attorney for signing of Bid and the Power of Attorney for Lead Member of Consortium, as per format provided at Appendix III and IV respectively of the RFP, are also enclosed.
  - (b) I/We hereby confirm that we are in compliance of/ shall comply with the O&M requirements specified in Clause 2.2.4 of the RFP document.
16. I/We acknowledge and undertake that our Consortium is qualified on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for the period commencing from the date of incorporation of the Concessionaire / date of signing of the Concession Agreement up to at least 6 (six) months from the date of commercial operation of the Project, hold equity share capital not less than: 26% (twenty six per cent) of the subscribed and paid up equity of the Concessionaire. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.

17. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity shall be taken into consideration for the purposes of selection as Concessionaire under and in accordance with the RFP, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
18. I/ We understand that the Selected Bidder shall be required to incorporate a Company under the Indian Companies Act, 2013, prior to execution of the Concession Agreement.
19. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes and modifications in the aforesaid draft and agree to abide by the same.
21. I/We have studied all the Bidding Documents carefully. We understand that except to the extent as expressly set-forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
22. I/We offer a Bid Security of Rs. \*\*\*\*\* Crore (Rupees \*\*\*\*\* only) to the Authority in accordance with the RFP Document.
23. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strikeout whichever is not applicable) is attached.
24. The documents accompanying the Technical Bid, as specified in Clause 2.12.2 of the RFP, have been submitted in a separate envelope and marked as “Enclosures of the Bid”.
25. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
26. The Revenue Share percentage has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession

\*\*\*\*\*Name of the Project\*\*\*\*\*

Agreement, our own estimates of costs and market demand and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project.

27. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
28. {We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.}
29. I/ We certify that in terms of the RFP, my/our Net worth is Rs. .... (Rs. in words) and Average annual turnover<sup>31</sup> is Rs..... (Rs. in words).
30. 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 the RFP document.

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Member

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

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<sup>31</sup> Applicable for Group B.

**Appendix IA**

**Annex-I**

**Details of Bidder**

- (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
  - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
  3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
    - (a) Name:
    - (b) Designation:
    - (c) Company:
    - (d) Address:
    - (e) Telephone Number:
    - (f) E-Mail Address:
    - (g) Fax Number:
  4. Particulars of the Authorised Signatory of the Bidder:
    - (a) Name:
    - (b) Designation:
    - (c) Address:
    - (d) Phone Number:
    - (e) Fax Number:
  5. In case of a Consortium:
    - (a) The information above (1-4) should be provided for all the Members of the Consortium.
    - (b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.1.16 (g) above should be attached to the Application.
    - (c) Information regarding the role of each Member should be provided as per table below:

**Appendix IA**  
**Annex-I**

Sl. No.	Name of Member	Role* {Refer Clause 2.1.16(d) of this RFP}\$	Percentage of equity in the Consortium{Refer Clauses 2.1.16(a), (c) & (g) of this RFP}
1.			
2.			
3.			
4.			

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

(d) The following information shall also be provided for each Member of the Consortium: (Refer Clause 2.1.16 of this RFP):

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

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

6. 6. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary): Refer. Clause : 2.1.17 of Section 2 of this RFP:

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

<sup>£</sup>or has been declared by the Authority as non performer/blacklisted.

\*\*\*\*\*Name of the Project\*\*\*\*\*

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

S. No.	Criteria	1st last year	2nd last year	3rd last year
1.	If Bidder/ Consortium Member has either failed to perform for works of 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 or any of its Consortium Member, as the case may be, or has been expelled / terminated by Central/ State Government, or any entity controlled by it for breach by such Bidder or any of its Consortium Member, along-with updated details of ongoing process of litigation / blacklisting.			

\*\*\*\*\*Name of the Project\*\*\*\*\*

Appendix -1A, (Annexure -1A)

Statement of Undertaking Regarding Non-Performing Asset (NPA) / Corporate Debt  
Restructuring (CDR)/Strategic Debt Restructuring (SDR)/National Company Law Tribunal  
(NCLT)  
(Clause 2.2.2 (III))

The \*\*\*\*\*

Date:

National Highways Logistics Management Limited  
G-5&6, Sector 10, Dwarka,  
New Delhi - 110 075

Sub: Bid for Development, Operation and Maintenance of the Multi Modal Logistics Park (MMLP) at \_\_\_\_\_ in the State of \_\_\_\_\_ through Public Private Partnership on Design, Build, Finance, Operate and Transfer (DBFOT) basis

Dear Sir,

We hereby confirm that we/ any members in the Consortium (constitution of which has been described in the Bid) are not in the list of NPA/CDR / SDR/ and do not have any notice from NCLT during the last three years preceding the Bid Due Date and have not been a loss making company in the last three years preceding the Bid Due Date.

We also confirm that we / any member in the JV is not in the list of NPA/ CDR / SDR/ and do not have any notice from NCLT as on Bid Due Date.

Thanking you,

.....

.....

Signature, name and designation  
of Authorised Signatory

For and on behalf of  
.....(Name of the  
Applicant)

.....

.....

Name of the Statutory Auditor's firm:  
Seal of the audit firm: (Signature,  
name and designation and  
Membership No. of authorised  
signatory)

Note: This undertaking is to be signed by the Applicant / Lead Member of the JV and is to be countersigned by the Statutory Auditor.

ANNEX-II

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

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

Bidder type #	Proposed Equity Sharehold ing in Consortium (%)	Membe r Code*	Project Code**	Cate- gory <sup>s</sup>	Experience <sup>‡</sup> (Equivalent Rs. crore) <sup>\$\$</sup>			Experience Score <sup>£</sup>
					Payments made/ received for construction of Eligible Projects in Categories 3 and 4	Payments made for development of Eligible Projects in Categories 1 and 2	Revenues appropriated from Eligible Projects in Categories 1 and 2	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Single entity Bidder			a					
			b					
			c					
			d					
Consortium Member 1			1a					
			1b					
			1c					
			1d					
Consortium Member 2			2a					
			2b					
			2c					
			2d					
Consortium Member 3			3a					
			3b					
			3c					
			3d					
Consortium Member 4			4a					
			4b					
			4c					
			4d					
Aggregate Experience Score =								



Appendix IA

Annex-II

- @ *Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.1.19 above and/ or by a project company eligible under Clause 3.4.3(b) hereinabove. In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.4.3(c) above and for Categories 3 and 4, include only those projects where the payments made/received exceed the amount specified in Clause 3.4.4 hereinabove. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.22 above.*
- # *A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.1.19 above, shall be provided.*
- \* *Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.*
- \*\* *Refer Annex-IV of this Appendix-IA. Add more rows if necessary.*
- \$ *Refer Clause 3.4.1 of this RFP.*
- ¥ *In the case of Eligible Projects in Categories 1 and 2, the figures in columns 7 and 8 may be added for computing the Experience Score of the respective projects. In the case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included while computing the Experience Score of an Eligible Project.*
- \$\$ *For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 60 (Sixty) to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.*
- £ *Divide the amount in the Experience column by one crore and then multiply the result thereof by the applicable factor set out in Table 3.4.6 and in case of a Consortium, further multiply the result thereof by the proposed equity shareholding of the applicable Member, to arrive at the Experience Score for each Eligible Project. In the case of an Eligible Project situated in an OECD country, the Experience Score so*

\*\*\*\*\*Name of the Project\*\*\*\*\*

*arrived at shall be further multiplied by 0.5, in accordance with the provisions of Clause 3.4.7, and the product thereof shall be the Experience Score for such Eligible Projects. Above all, the sum total of columns 6, 7 and 8, as the case may be, in respect of each Eligible Project shall be restricted to a ceiling equivalent to the Estimated Project Cost, as specified in Clause 3.4.8 of this RFP.*

ANNEX-III

**Financial Capacity of the Bidder**

*(Refer to Clauses 2.2.2(B), 2.2.5 (ii) and 3.6 of the RFP)*

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

Bidder type §	Member Code <sup>£</sup>	Proposed Equity Shareholding in Consortium (%)	Net Cash Accruals					Net Worth <sup>€</sup>
			Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	*9)
Single entity Bidder								
Consortium Member 1								
Consortium Member 2								
Consortium Member 3								
Consortium Member 4								
TOTAL								

**Name & address of Bidder's Bankers:**

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

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

€The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 2.1.19 hereinabove.

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

Balance-Sheet

(in Rs. Crores)

S. No	In Rupee, at the end of concerned Financial Year	FY [2016-17]	FY [2017-18]	FY [2018-19]	FY [2019-20]	FY [2020-21]
	Paid up Equity ( A)					
	Contributions ( B)					
	Reserves (C)					

\*\*\*\*\*Name of the Project\*\*\*\*\*

	Revaluation Reserves (D)					
	Miscellaneous Expenditure not written off (E)					
	Accrued Liabilities (F)					
	Net Worth = (A+B+C-D-E-F)					

Net Cash Accruals

(in Rs. Crores)

S. No	In Rupee, at the end of concerned Financial Year	FY [2016-17]	FY [2017-18]	FY [2018-19]	FY [2019-20]	FY [2020-21]
	Turnover /Income from Operations/Revenue (A)					
	Operating Cost (B) =(C+D+E)					
	Employees cost ( C )					
	Admin and General Cost (D)					
	Other Costs (E)					
	Depreciation (F)					
	Interest (G)					
	Provisions (H)					
	Profit Before Tax I = (A-B-F-G-H)					
	Tax Paid ( J )					
	Profit After Tax K (I – J)					
	Net Cash Accruals (K+F)					

Note: This information should be extracted from the Annual Financial Statement/Balance Sheet which should be enclosed, and the response sheet shall be certified by the Statutory Auditor of the Single Entity of the Consortium Member.

**Instructions:**

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
  - (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean aggregate value of the paid-up share capital<sup>13</sup> and all Free reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation, profits on fair value measurement. Further, Statutory auditors shall all ensure and certify that any disputed receivables, advances, other assets need to be excluded for Net Worth computation.
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.22 of this RFP.
5. In the case of a Consortium, a copy of the Joint. Bidding Agreement shall be submitted in accordance with Clause 2.1.16 (g) of the RFP document.

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<sup>13</sup> It is being clarified that any instrument such as Compulsory Convertible Debentures (CCD) etc. shall not be part of the paid-up share capital. Any award amount claimed by the Bidder shall not be eligible for inclusion in computation of Net Worth until the same is included in the Profit & Loss Statement of the Bidder.

\*\*\*\*\*Name of the Project\*\*\*\*\*

6. The Bidder shall also provide the name and address of the Bankers to the Bidder.
7. The Bidder shall provide an Auditor's Certificate specifying the net worth and Average annual turnover (if applicable) of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.5 (ii) of the RFP document.

**Appendix I**

Annex-IV

ANNEX-IV

**Details of Eligible Projects**

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

**Project Code:**

**Member Code:**

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

**Instructions:**

- Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.4.3 and 3.4.4 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.

2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each Eligible Project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write “Associate” along with Member Code.
5. Refer to Clause 3.4.1 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-IA. 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 2.1.22 above). 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 3.4.3(c) of this RFP. In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 3.4.4 of this RFP. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
7. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
8. Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.4.3 and 3.4.4 of this RFP document.
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
10. For Categories 1 and 2, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.4.3 above).
11. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a



Consortium in respect of the same experience shall be permitted in any manner whatsoever.

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

<p><b>Certificate from the Statutory Auditor regarding PPP projects</b></p> <p>Based on its books of accounts and other published information authenticated by it, this is to certify that ..... <i>(name of the Bidder/Member/Associate)</i> is/ was an equity shareholder in ..... <i>(title of the project company)</i> 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 ..... <i>(date)</i> to ..... <i>(date)</i><sup>¥</sup>. The project was/is likely to be commissioned on ..... <i>(date of commissioning of the project)</i>.</p> <p>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:</p> <p>.....</p> <p>.....</p> <p>We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 3.4.1 and 3.4.3 (d) of the RFP during the past five financial years were Rs. .... cr. as per year-wise details noted below:</p> <p>.....</p> <p>.....</p>	
<p>Name of the audit firm:</p> <p>Seal of the audit firm:</p>	<p>(Signature, name and designation)</p> <p>Date:</p>

<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 3.4.1 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 Bidder) constructed and/ or owned the ..... (name of project) from ..... (date) to ..... (date)."

of the authorised signatory)

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

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

Based on its books of accounts and other published information authenticated by it, {this is to certify that ..... (*name of the Bidder/Member/Associate*) was engaged by ..... (*title of the project company*) to execute ..... (*name of project*) for ..... (*nature of project*)}<sup>Ψ</sup>. The construction of the project commenced on ..... (*date*) and the project was/ is likely to be commissioned on ..... (*date, if any*). It is certified that ..... (*name of the Bidder/ Member/ Associate*) received/paid Rs. .... cr. (Rupees ..... crore) by way of payment for the aforesaid construction works.

We further certify that the total estimated capital cost of the project is Rs. .... cr. (Rupees .....crore), of which the Bidder/Member/Associate received/paid Rs. .... cr. (Rupees ..... crore), in terms of Clauses 3.4.1 and 3.4.4 of the RFP, during the past five financial years as per year-wise details noted below:

.....  
.....

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

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation of the

\* Refer Clauses 3.4.1 and 3.4.4 of the RFP.

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

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

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

Date:	authorised signatory).
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15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.1.19 of Section 2 of this RFP, the Bidder should also provide a certificate in the format below:

<p><b>Certificate from Statutory Auditor/ Company Secretary regarding Associate<sup>\$</sup></b></p> <p>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 ..... (<i>name of the Associate</i>) is held, directly or indirectly<sup>£</sup>, by ..... (<i>name of Bidder / Consortium Member</i>). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.1.18 of the RFP.</p> <p>A brief description of the said equity held, directly or indirectly, is given below:</p> <p><i>{Describe the share-holding of the Bidder/ Consortium Member in the Associate}</i></p> <p>Name of the audit firm:</p> <p>Seal of the audit firm: (Signature, name and designation of Date: the authorised signatory).</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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

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

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

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<sup>©</sup> Refer Clause 3.4.6 of the RFP.

ANNEX-V  
**Statement of Legal Capacity**

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

Ref. Date:

To,  
\*\*\*\*\*National Highways Logistics Management Limited  
G-5&6, Sector-10, Dwarka,  
New Delhi-110075

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

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

Annexure VI  
**Guidelines of the Department of Disinvestment**  
*(Refer Clause 1.2.1 of this RFP document)*

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

\*\*\*\*\*Name of the Project\*\*\*\*\*

## **APPENDIX IB**

Letter comprising the Financial Bid  
(Refer Clauses 2.1.5, 2.12.1 and 3.2 of this RFP document)

### **(NOT TO BE SUBMITTED IN THE TECHNICAL Bid)**

**The \*\*\*\*\***

National Highways Logistics Management Limited  
G-5&6, Sector 10, Dwarka,  
New Delhi - 110 075

Dated:

SUB: \*\*\*\*\*NAME OF THE PROJECT\*\*\*\*\*

Dear Sir,

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

7. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
8. The Bid has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement and its Schedules, our own estimates of market demand and costs and after a careful assessment of the site and all own the conditions that may affect the Project cost and implementation of the Project.
9. 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.
10. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
11. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid

\*\*\*\*\*Name of the Project\*\*\*\*\*

Due Date specified in the RFP.

12. I/ We hereby submit our Bid and offer:

A Revenue Share at the rate of ..... % (..... percent [in words]), quoted up to two decimal places, of the Gross Revenue for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

Yours faithfully,

Place:  
)

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

Name & seal of Bidder/Lead Member:.....  
Class III DSC ID of Authorised Signatory :.....



## APPENDIX II

### **Bank Guarantee for Bid Security**

*(Refer Clauses 2.1.6 and 2.21.1 of this RFP document)*

B.G. No. Dated:

1. In consideration of you, National Highways Logistics Management Limited, having its office at G-5&6, Sector-10, Dwarka, New Delhi-110075, (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 Companies Act, 2013) and having its registered office at ..... (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the \*\*\*\*\* 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 Concession Agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at ..... and one of its branches at ..... (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.1.7 read with Clause 2.1.8 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. \*\*\*\*\* Crores (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. \*\*\*\*\* Crores (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 Appendix II shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to name of Bank along with branch address and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the 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 Appendix II, 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.\*\*\*\*\* Crores (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).
14. This guarantee shall also be operatable at our \_\_\_\_\_ branch at New Delhi, from whom, confirmation regarding the issue of this guarantee or extension/ renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment hereunder Appendix II claimed, the said branch shall accept such invitation letter and make payment of amounts so demanded under the said invocation.

Signed and Delivered by .....

\*\*\*\*\*Name of the Project\*\*\*\*\*

Bank

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

(Signature of the Authorised Signatory)  
(Official Seal)

**APPENDIX III**  
**Format for Power of Attorney for signing of Bid**  
*(Refer Clause 2.1.9 of this RFP document)*

Know all men by these presents, We, ..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr. / Ms (Name), son/daughter/wife of ..... and presently residing at ....., who is presently employed with us/ the Lead Member of our Consortium and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the \*\*\*\*\* proposed or being developed by the National Highways Logistics Management Limited(the “Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

---

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

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

For .....

(Signature, name, designation and address)  
of person authorized by Board Resolution (in

\*\*\*\*\*Name of the Project\*\*\*\*\*

case of Firms/Company)/Partner in  
case of  
Partnership Firms

Witnesses:

1.

2.

Notarised

Notarised

Person identified by me/personally appeared before me  
/signed before me/Attested/Authenticated\*

(\*Notary to specify as applicable)

(Signature, Name and Address of the Notary)

Seal of the Notary

Registration Number of the Notary

Date \_\_\_\_\_

Accepted

(Signature, name, designation and address of the Attorney)

Notes:

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

\*\*\*\*\*Name of the Project\*\*\*\*\*

*Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

**APPENDIX IV**  
**Format for Power of Attorney for Lead Member of Consortium**  
*(Refer Clause 2.1.10 of this RFP document)*

Whereas the National Highways Logistics Management Limited (“the Authority”) has invited bids from interested parties for the \*\*\*\*\* (the Project”).Whereas, ....., ....., and ..... (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

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

**NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS**

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

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



\*\*\*\*\*Name of the Project\*\*\*\*\*

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

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

For .....

(Signature, Name & Title)

For .....

(Signature, Name & Title)

For .....

(Signature, Name & Title)

Witnesses:

1.

2.

(Executants)

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

Notes:

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

\*\*\*\*\*Name of the Project\*\*\*\*\*

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

**APPENDIX V**  
**Format for Joint Bidding Agreement for Consortium**  
*(Refer Clause 2.1.10 & 2.1.16(g) of this RFP document)*  
*(To be executed on Stamp paper of appropriate value)*

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

**AMONGST**

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

**AND**

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

**AND**

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

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

**WHEREAS,**

- (A) THE NATIONAL HIGHWAYS LOGISTICS MANAGEMENT LIMITED, , represented by its Chairman and having its principal offices at G-5 & 6, Sector 10, Dwarka, New Delhi-110075 (hereinafter referred to as the **“Authority”** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited bids (the **Bids**”) by its Request for Proposal No. .... dated .....(the **“RFP”**) for award of contract for \*\*\*\*\* (the **“Project”**) through public private partnership.
- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and

- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

Appendix V  
Page 2

**NOW IT IS HEREBY AGREED as follows**

**1. Definitions and Interpretations**

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

**2. Consortium**

- 2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**Concessionaire SPV**”) under the Indian Companies Act 2013 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

**4. Role of the Parties**

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

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

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

- (b) Party of the Second Part shall be {the Technical Member of the Consortium ;}
- {(c) Party of the Third Part shall be the Financial Member of the Consortium; and}
- {(d) Party of the Fourth Part shall be the Operation and Maintenance Member/ Other Member of the Consortium.}

## **5. Joint and Several Liability**

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

## **6. Shareholding in the Concessionaire SPV**

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

First Party:

Second Party:

{Third Party:}

{Fourth Party:}

- 6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the Concessionaire SPV shall, at all times till six months from the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and net worth have been reckoned for the purposes of qualification of the Bidder for the Project in terms of the RFP.
- 6.3 The Parties undertake that they shall collectively hold at least 51% (fifty-one per cent) of the subscribed and paid up equity share capital of the Concessionaire SPV at all times until 6 (six) months from the commercial operation date of the Project.
- 6.4 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

- 6.5 The Parties undertake that the O&M Member shall subscribe and hold at least 10% (ten per cent) of the subscribed and paid up equity shares in the Concessionaire SPV in terms of the Concession Agreement.}

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

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

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

## **8. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified/selected or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

## **9. Miscellaneous**

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SIGNED, SEALED AND DELIVERED

SECOND PART

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

SIGNED, SEALED AND DELIVERED

For and on behalf of

\*\*\*\*\*Name of the Project\*\*\*\*\*

THIRD PART

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

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

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

FOURTH PART

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

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

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

In the presence of:

- 1.
- 2.

**Notes:**

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



**APPENDIX VI**  
**Integrity pact** (*Refer clause 4.1.4 of this RFP document*)

\*\*\*\*\* (the “**Project**”)

(\_\_\_\_\_Division)

Tender No. \_\_\_\_\_

This Integrity Pact is made at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2021

Between

National Highways Logistics Management Limited, which has been entrusted with the responsibility of development, maintenance and management of Multi Modal Logistics Park (MMLP), having its office at G-5 & 6, Sector-10, Dwarka, New Delhi, hereinafter referred to as “The Principal”, which expression shall unless repugnant to the meaning or contract thereof include its successors and permitted assigns.

and

\_\_\_\_\_. hereinafter referred to as “The Bidder/ Contractor/ Concessionaire/ Consultant” and which expression shall unless repugnant to be meaning or context thereof include its successors and permitted assigns.

Preamble

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

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

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

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

### **Article-1-Commitments of the Principal**

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

### **Article-2 Commitments of the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s)**

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

- (a) The Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principals employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

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

### **Article 3 Disqualification from tender process and exclusion from future contracts**

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

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

#### **Article 4 Compensation for Damages**

- (1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Article3, the Principal shall be entitled to forfeit the Earnest

Money Deposit/Bid Security or demand and recover the damages equivalent to Earnest Money Deposit/Bid Security apart from any other legal right that may have accrued to the Principal.

- (2) In addition to above, the Principal shall be entitled to take recourse to the relevant provisions of the contract related to Termination of Contract due to Contractor/Concessionaire/Consultant's Default. In such case, the Principal shall be entitled to forfeit the Performance Bank Guarantee of the Contractor/Concessionaire/Consultant and/or demand and recover liquidated and all damages as per the provisions of the contract/Concession agreement against Termination.

#### **Article 5 Previous Transgression**

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

#### **Article 6 Equal treatment of all Bidders/ Contractors/ Concessionaires/ Consultants/ Subcontractors**

- (1) The Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) undertake(s) to demand from all sub-contractors a commitment in conformity with this integrity Pact, and to submit it to the Principal before contract signing.
- (2) The Principal will enter into agreements with identical conditions as this one with all Bidders/Contractors/Concessionaire/Consultant and Subcontractors.
- (3) The Principal will disqualify from the tender process all Bidders who do not sign this Pact violate provisions.

#### **Article 7 Criminal charges against violating Bidder(s)/ Contractor(s)/ Concessionaire(s)/Consultant(s)/ Sub-contractor(s)**

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

## **Article 8 Independent External Monitor (IEM)**

- (1) The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Chairman, [NHAI/NHLML].
- (3) The Bidder/Contractor/Concessionaire/Consultant accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Bidder/ Contractor/ Concessionaire/ Consultant. The Bidder/ Contractor/ Concessionaire/ Consultant will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to the Project. The Monitor is under contractual obligation to treat the information and documents of the Bidder/ Contractor/ Concessionaire/ Consultant/ subcontractors with confidentiality.
- (4) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Bidder/Contractor/ Concessionaire/Consultant. The parties offer to the Monitor the option to participate in such meetings.
- (5) As soon as the Monitor notices, or believes to notice any transgression as given in Article-2, he may request the Management of the Principal to take corrective action, or to take relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
- (6) The Monitor will submit a written report to the Chairman, [NHAI/NHLML] within 8-10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.

- (7) If the Monitor has reported to the Chairman, [NHAI/NHLML], a substantiated suspicion of under relevant IPC/PC Act or any other Statutory Acts, and the Chairman, [NHAI/NHLML] has not, within the reasonable time taken visible action to proceed against such offence or reported it the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
- (8) The word 'Monitor' would include both singular and plural.

### **Article 9 Pact Duration**

This Pact begins when both parties have signed (In case of EPC i.e. for projects funded by Principal and consultancy services) It expires for the Contractor/Consultant 12 months after his Defect Liability Period is over or 12 months after his last payment under the contract whichever is later and for all other unsuccessful Bidders 6 months after this Contract has been awarded (In case BOT projects) It expires for the concessionaire 24 months after his concession period is over and for all other unsuccessful Bidders 6 months after this Contract has been awarded.

If any claim is made/lodged during this time, the same shall be bidding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged determined by Chairman of [NHAI/NHLML].

### **Article 10 Other Provisions**

- (1) This pact is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Principal, i.e. New Delhi.
- (2) Changes and supplements as well as termination notices need to be made in writing.
- (3) If the Bidder/Contractor/Concessionaire/Consultant is a partnership or a Consortium, this pact must be signed by all partners or Consortium members.
- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid, in this case, the parties will strive to come to an agreement to their original intentions.
- (5) Any dispute/differences arising between the parties with regard to term of this Pact, any action taken by the Principal in accordance with this Pact or interpretation thereof shall not be subject to any Arbitration.

\*\*\*\*\*Name of the Project\*\*\*\*\*

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

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

\_\_\_\_\_

\_\_\_\_\_

(For & On behalf of the (Principal)

(For & On behalf of Bidder/

Contractor/Concessionaire/Consultant

(Office Seal)

Place \_\_\_\_\_

Date \_\_\_\_\_

Witness 1:

(Name & Address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Witness 2:

(Name & Address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## APPENDIX VII

### Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs)

The .....

National Highways Logistics Management Ltd ,  
G-5&6, Sector 10, Dwarka,  
New Delhi - 110 075

Sub: BID for Development, Operation and Maintenance of the Multimodal Logistics Park (MMLP) at \_\_\_\_\_ in the State of \_\_\_\_\_ (the “Project”) through Public Private Partnership (the “PPP”) on Design, Build, Finance, Operate and Transfer (the “DBFOT”) basis

Dear Sir,

With reference to your RFP document dated ....., I/we, having examined the Bidding Documents and understood their contents, hereby undertake and confirm as follows:

I/We have read the Clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries;

I certify that this Bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority.

I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered.

Date:  
faithfully,

Yours

Place:  
signatory)

(Signature of the Authorised

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Member

Notes:

{Where applicable, evidence of valid registration by the Competent Authority shall be attached}

In case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.

\*\*\*\*\*Name of the Project\*\*\*\*\*

**APPENDIX VIII**  
Feasibility Report