

# **Tender Documents for Operator selection for Operation and Maintenance of a 5 Star Hotel at Cochin International Airport, Kerala**

The Tender documents are arranged in three Volumes:

Volume I : Request for Proposal – It includes Instruction to Bidders, Evaluation of Bids, Criteria for Evaluation and Appendices comprising of Formats for Bid Submission.

Volume II : Operation & Maintenance Agreement – It includes Article 1 to Article 25.

Volume III : Schedules to Agreement – From Schedule A to Schedule K

# **REQUEST FOR PROPOSAL**

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**Operation and Maintenance of a 5 Star Hotel at Cochin  
International Airport, Kerala**

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*Volume 1: Instructions to Bidder*

**(BID DUE DATE: 31 OCTOBER 2022)**

## **Operation and Maintenance of a 5 Star Hotel at Cochin International Airport, Kerala**

**Notice No. CIAL/COML/PROJ 10/2022/1**

**Dt: 08 August 2022**

### **REQUEST FOR PROPOSAL DOCUMENT**

Bids in the prescribed format are invited for the project.

1	<b>Name of the Project</b>	<b>Operation and Maintenance of a 5 Star Hotel at Cochin International Airport, Kerala</b>
2	Last date & time for submission of Bid (Bid Due Date)	Date: Monday, 31st October, 2022 Time: 1500 hours
3	Time and Place of Pre Bid Conference	Date: Friday, 30th September, 2022 Time: 1500 hours Place: Cochin International Airport, Airport Rd, Kochi, Kerala 683111
4	Date & time for opening of Technical Bids	Date: Tuesday, 01st November, 2022 Time: 1500 hours Place: Cochin International Airport, Airport Rd, Kochi, Kerala 683111
5	Date & time for opening of Financial Bids	Date: To be intimated. Time: 1530 hours Place: Cochin International Airport, Airport Rd, Kochi, Kerala 683111
6	Cost of RFP document	Non-refundable ₹ 40,000/- (Rupees forty thousand only) or US\$ 550/- (US Dollar five hundred and fifty only). In the form of demand draft issued by one of the Scheduled Commercial Banks in India in favour of Cochin International Airport Limited payable at Cochin or through bank transfer.

It is expressly understood that the party has subscribed to this document with an express understanding that they will use this document only for the sole purpose of participating in the Selection process for the **Operation and Maintenance of a 5 Star Hotel at Cochin International Airport, Kerala** and must not be used for any other purpose. This document must not be passed to a third party except professional advisers assisting with this Bid submission. The document may not be reproduced or communicated, in whole or in part, and its contents may not be distributed in written or oral form without written permission from the issuing authority.

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## **Disclaimer**

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

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

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

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

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

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

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Operator, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or

any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

The Authority reserves its right to withdraw from the process at any stage of the process and/or modify the process or any part thereof or to vary any terms at any time or stage without assigning any reasons whatsoever. In such an event, no financial obligation of whatsoever nature shall accrue to the Authority or any of its respective officers, employees, advisors or agents.

Each Bidder's procurement of this RFP constitutes its agreement to, and acceptance of, the terms set forth in this Disclaimer. By acceptance of this RFP, the recipient agrees that this RFP and any information herewith supersedes document(s) or earlier information, if any, in relation to the subject matter hereto.

## **Glossary**

<b>Associate</b>	As defined in Clause 2.2.1
<b>Authority</b>	As defined in Clause 1.1.1
<b>Bank Guarantee</b>	As defined in Clause 2.27.1
<b>Bids(s)</b>	As defined in Clause 1.2.2
<b>Bidders</b>	As defined in Clause 1.2.2
<b>Bidding Documents</b>	As defined in Clause 1.1.8
<b>Bid Due Date</b>	As defined in Clause 1.1.8
<b>Bidding Process</b>	As defined in Clause 1.2.1
<b>Bid Security</b>	As defined in Clause 1.2.7
<b>CIAL</b>	As defined in Clause 1.1.1
<b>Commercial Operation Date</b>	As defined in Clause 2.2.1(iv)
<b>Conflict of Interest</b>	As defined in Clause 2.2.1(iii)
<b>Damages</b>	As defined in Clause 2.2.1(iii)
<b>Demand Draft</b>	As defined in Clause 2.27.2
<b>EOMT</b>	As defined in Clause 1.1.3
<b>Financial Capacity</b>	As defined in Clause 2.3.1(A)
<b>Government</b>	Government of India
<b>Highest Bidder</b>	As defined in Clause 1.2.9(b)
<b>License</b>	As defined in Clause 1.1.7
<b>LOA</b>	As defined in Clause 4.4.5
<b>Net Worth</b>	As defined in Clause 2.4.2
<b>Operation &amp; Maintenance Agreement or O&amp;M Agreement</b>	As defined in Clause 1.1.4
<b>O&amp;M Experience Capacity</b>	As defined in Clause 2.4.1
<b>Operator</b>	As defined in Clause 1.1.4
<b>PIM</b>	As defined in Clause 1.2.6
<b>PPP</b>	Public Private Partnership
<b>Project</b>	As defined in Clause 1.1.3
<b>Price Bid Stage</b>	As defined in Clause 1.2.5
<b>Price Bid</b>	As defined in Clause 1.2.5
<b>PQ Stage</b>	As defined in Clause 1.2.4
<b>PQ</b>	As defined in Clause 1.2.4
<b>Re. or Rs. or INR</b>	Indian Rupee
<b>Revenue Share</b>	As defined in Clause 1.2.9(a)



<b>RFP</b>	As defined in the Disclaimer
<b>Selected Bidder</b>	As defined in Clause 4.3.2
<b>SPV</b>	As defined in Clause 2.4.4
<b>Tie Bidders</b>	As defined in Clause 4.4.1

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

# 1 INTRODUCTION<sup>§</sup>

## 1.1 Background

1.1.1 Cochin International Airport Limited (the “**Authority**” or “**CIAL**”), is a public company incorporated under the provisions of Companies Act, 1956.

1.1.2 CIAL is mandated to upgrade the infrastructure and passenger facilities, both at air side and city side in order to provide world-class passenger amenities at Cochin International Airport, Kerala. The Cochin International Airport is the first Greenfield International airport to be built in Public-Private Partnership mode in India. Located in Nedubassery, about 25 kms northeast of the city centre, the Cochin International Airport is the 3rd busiest airport in India in terms of handling international passengers – it handled 2.20 million international passengers during FY2021-22. On overall basis (i.e., domestic, and international passengers handled), Cochin International Airport is the 9th busiest airports in India. During pre-COVID levels, Cochin International Airport handled more than 10 (ten) million passengers for a consecutive period of 2 (two) years (i.e., during FY2017-18 and FY2018-19).

1.1.3 As a part of this endeavour, the Authority has decided to invite participations from eligible entities to undertake the Operation and Maintenance of a 5 Star Hotel at Cochin International Airport, Kerala (the “**Project**”) on Equip, Operate, Maintain and Transfer (the “**EOMT**”) basis, and has, therefore, decided to carry out the bidding process for selection of an entity as the Bidder to whom the Project may be awarded. A brief description of the Project may be seen in the Information Memorandum (the “**PIM**”) of the Project which is attached. Brief particulars of the project are as follows:

Name of the Project	Key Components
Equip, Operate, Maintain and Transfer of a 5 Star Hotel at Cochin International Airport, Kerala	5 Star Hotel of 112 keys

The site area available for the Hotel project is 4 acres at 500 metres away from the Terminal 3 of Cochin International Airport. Some of the facilities planned and being constructed in the Hotel are enlisted as below:

- 112 keys (86 King, 21 Twin & 5 Suite)
- All day dining with Alfresco and Deli on Lobby level

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### <sup>§</sup> Instructions for Bidders

**Note 1:** The provisions in curly brackets shall be suitably modified by the Bidder after the RFP is issued.

**Note 2:** Blank spaces contain formats that are to be used by the Bidder after the RFP is issued.

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

- Bar & Specialty Restaurant on Roof Top
- Banquet Hall and Meeting Rooms at Level 2
- Swimming Pool
- Gym, Salon & Spa
- Separate lifts for Rooms and F&B Facilities
- Car Parking area for 220 Cars.
- Separate access Road from Terminals to Hotel.
- Uninterrupted view of airport terminals on one side & Mountains on the other side.

1.1.4 The Selected Bidder, who is either a company incorporated under the Companies Act, 1956/2013 or undertakes to incorporate as such prior to execution of the Operation and Maintenance agreement (the “**Operator**”), shall be responsible for operation and maintenance of the Project for the Term in accordance with Operation & Maintenance Agreement (the “**Operation and Maintenance Agreement**” or “**O&M Agreement**”), to be entered into between the Selected Bidder and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

1.1.5 The Scope of work of the Project shall broadly include operation and maintenance of a 5 Star Hotel as per Norms and Guidelines provided by Ministry of Tourism, Government of India (GoI) and applicable laws and acts. The nature of the Project facilities and the list of prohibited activities are detailed in the table below:

S. No.	Project Facilities	Description
a)	No. of Keys	112 Rooms
b)	Number of Food & Beverage Outlet	F&B outlets may include coffee shop, specialty restaurant and Lounge/Bar, all day dining, roof-top bar, etc.
c)	Conference facility	All ancillary areas/service areas like lobby, waiting area, breakout area, pantry, and restrooms etc. as per the National Building Code norms.
d)	Mandatory Compliance	Operation and Maintenance of all facilities to ensure adherence to “Hotel & Restaurant Approval & Classification Committee” by Ministry of Tourism, Govt. of India or as specified in Volume II and Volume III.
e)	Other facilities	Support Facilities & infrastructure like internal road network, parking areas, security, air conditioning, water supply and rain – water harvesting, Power, sewage treatment, solid waste management, landscaping, signage, and other services required for the project.
f)	Prohibited Facilities / Activities	Prohibited activities includes but not limited to, use of any built-up space for the purposes directly or indirectly, as Residential, Hospital, Warehousing, Industrial Activities, LPG Godowns, Petrol Bunk, any trade or activity involving any kind of obnoxious, hazardous, inflammable, non-compatible and polluting substance or process. Any activity which is prohibited by Laws, Regulations, Ordinances and the likes from the Central & State government

S. No.	Project Facilities	Description
g)	Other details	As provided in Volume II and Volume III

- 1.1.6 The Operation and Maintenance Agreement<sup>\$\$</sup> sets forth the detailed terms and conditions for grant of the license to the Operator, including the scope of the Operator’s services and obligations (the “**License**”).
- 1.1.7 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 Operator set forth in the Operation and Maintenance Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the License to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.
- 1.1.8 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the “**Bidding Documents**”), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).

## 1.2 **Brief description of Bidding Process**

- 1.2.1 The Authority has adopted a single-stage two-envelope bidding process (the “**Bidding Process**”) for selection of the Bidder for award of the Project.

The Government of India has issued guidelines (see PART E of RFP) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Authority shall be entitled to disqualify an Applicant in accordance with the aforesaid guidelines at any stage of the Bidding Process. Applicants must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-A1.

- 1.2.2 The Bidders (the “**Bidders**”), which expression shall, unless repugnant to the context, are required to submit their Bids (the “**Bids**”) in two envelopes (i) Technical Bid and (ii) Financial Bid.

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<sup>\$\$</sup> The Draft O&M Agreement shall be made available to interested applicants who have paid the cost of bidding documents in accordance with Clause 1.2.3 of this RFP. Upon payment, the Authority shall furnish the draft O&M Agreement on the email address provided by the interested bidder.

- 1.2.3 Prior to submission of the Bid, the Bidder shall pay to the Authority a sum of Rs 40,000/- (Rupees forty thousand only) or US\$ 550/- (US Dollar five hundred and fifty only) as the cost of procuring the RFP document. The cost is to be paid in the form of a Demand Draft issued by one of the Scheduled Commercial Banks in India in favour of Cochin International Airport Limited, payable at Cochin OR through bank transfer as per details provided in the table below. The prospective bidder shall have to show proof of payment in order to procure the RFP.

The account details for the online transfer of money are as follows:

- (i) For online payments in Indian National Rupees (INR)

Name of beneficiary	Cochin International Airport Limited
Name of Bank	The Federal Bank Limited
Bank Branch Address	CIAL Extension Counter, Cochin Airport P O 683111.
Branch Code	1522
Account Number	15220200000542
IFSC Code	FDRL0001522

- (ii) For online payments in US Dollars (USD)

Name of beneficiary	Cochin International Airport Limited
Name of Bank	The Federal Bank Limited
Bank Branch Address	CIAL Extension Counter, Cochin Airport P O 683111.
Branch Code	1522
Account Number	15220200000542
SWIFT Code	FDRLINBBIBD

- 1.2.4 The pre-qualification stage (the "**PQ Stage**") of the Bidding Process involves pre-qualification (the "**PQ**") of prospective bidder(s) in accordance with the provisions of this RFP. At the end of this stage, the Authority shall shortlist pre-qualified Bidders fulfilling the qualification criteria.
- 1.2.5 The Bidders shortlisted after the pre-qualification stage shall be eligible for opening and evaluation of their Price Bids at the Price Bid stage of the Bidding Process (the "**Price Bid Stage**") comprising the opening and evaluation of price Bid (the "**Price Bid**").
- 1.2.6 The Bidding Documents include the Draft Operation & Maintenance Agreement for the Project. Subject to the provisions of Clause 2.5.1, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- 1.2.7 A Bidder is required to deposit, along with its Bid, a bid security of Rs. 1,50,00,000 (Rupees one crore and fifty lakhs only) (the "**Bid Security**"), refundable not later than 60 (sixty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Operation & Maintenance Agreement. The Bidders will have to provide Bid Security in

the form of a Demand Draft or a Bank Guarantee acceptable to the Authority. In case a Bank Guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. Where a demand draft is provided, its validity shall not be less than 80 (eighty) days from the Bid Due Date, for the purposes of encashment by the Authority. Provided further, where demand draft is provided, it shall be issued by one of the Scheduled Commercial Banks in India in favour of Cochin International Airport Limited, payable at Cochin. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 1.2.8 During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the License including implementation of the Project.
- 1.2.9 (a) Bids are invited for the Project on the basis of a revenue share to the Authority (the “**Revenue Share**”) in terms of the draft Operation & Maintenance Agreement.
- (b) In this RFP, the term “**Highest Bidder**” shall mean the Bidder who is offering the highest Revenue Share. The license period and other terms are pre-determined, as indicated in the draft Operation & Maintenance Agreement, and the Revenue Share as quoted by the Bidder as per the Price Bid shall constitute the sole criteria for evaluation of Bids. Subject to the provisions of Clause 2.22, the Project will be awarded to the Highest Bidder.
- 1.2.10 Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 and Clause 4 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.
- 1.2.11 Details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP.
- 1.2.12 Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/ courier/ special messenger and by e-mail so as to reach the officer designated in Clause 2.17.4 by the specified date. The envelopes/ communication shall clearly bear the following identification/ title:

**“Operator selection for Operation and Maintenance of a 5 Star Hotel at Cochin International Airport, Kerala”.**

### 1.3 **Schedule of Bidding Process**

The authority shall endeavour to adhere to the following schedule:

<b>S. No.</b>	<b>Event Description</b>	<b>Date</b>
1	Availability of Bid Documents at website	Tuesday, 9th August, 2022
2	Last date for receiving queries	Monday, 19th September, 2022
3	Pre-Bid Conference	Friday, 30th September, 2022
4	Authority response to queries latest by	Friday, 14th October, 2022
5	Last date for downloading and/or procurement of the Bid documents	Sunday, 30th October, 2022
6	Bid Due Date	Monday, 31st October, 2022
7	Opening date and time of Technical Bid	Tuesday, 01st November, 2022
8	Announcement of short-listed bidders for Price Bid Stage	Within 30 days of Bid Due date
9	Opening date and time of Financial Bid to be held at the address provided in Clause 2.17.4.	To be intimated.
10	Issue of Letter of Award	To be intimated.
11	Validity of Bids	120 days of Bid Due Date
12	Signing of Operation & Maintenance Agreement	Within 45 days of LOA

### 1.4 **Pre-Bid Conference**

A Pre-Bid Conference shall be held to clarify issues and to answer questions on any matter that may be raised at that stage. The date, time and venue of the Pre-Bid Conference shall be:

Date: 30th September 2022  
Time: 1500 hours  
Venue: Cochin International Airport  
Airport Rd, Kochi, Kerala 683111

## 2 INSTRUCTIONS TO BIDDERS

### A. GENERAL

#### 2.1 Scope of the Bid

2.1.1 The Authority wishes to receive Bids in order to select experienced and capable Bidders for the Project. The Price Bids of Bidders fulfilling the Pre-qualification criteria shall be subsequently evaluated.

#### 2.2 Eligibility of Bidders

2.2.1 For determining the eligibility of bidders hereunder, the following shall apply:

- i. The Bidder for qualification and selection shall be a single entity.
- ii. The Bidder may be a private entity, government-owned entity incorporated under the Indian Companies Act, 1956/2013 or applicable laws of foreign countries or a Partnership Firm under the Indian Partnership Act, 1932 or a LLP.

Further, the Orders (Public Procurement No. 1 & 2) of Ministry of Finance issued vide letter no. F. No. 6/18/ 2019- PPD dated 23.07.2020 enclosed as Appendix-B5A shall be applicable to all Bidders. Bidder, including its sub-contractors, shall be eligible only if they comply to the provisions contained in the above mentioned orders and any further clarifications issued by Government of India to comply with the provisions contained in the above mentioned orders as amended from time to time. Bidder including its sub-contractors (if any) shall submit the form provided at Appendix-B5B in the Technical Bid. Any Bid without Appendix-B5B shall be treated as non-responsive and shall be liable to be rejected.

- iii. The 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 the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, *inter alia*, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal (the “**Damages**”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Operation & Maintenance 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
  - a. The Bidder or its Associate (or any constituent thereof) and any other Bidder or its 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 Associate thereof (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Bidder or Associate, as the case may be) in the other Bidder or Associate is less than 5 per cent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.2.1(iii), indirect shareholding held through one or more intermediate persons shall be computed as follows:

- 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
  - subject always to sub-clause (i) 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 (ii) 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
- b. a constituent of such Bidder is also a constituent of another Bidder; or
  - c. such Bidder or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder or any Associate thereof; or
  - d. such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
  - e. 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;
  - f. 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; or

- g. an employee or Director of such Bidder or any Associate thereof is on the Board of Directors of the Authority.
- iv. A Bidder shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) year from COD (the “**Commercial Operation Date**”) of the Project.

*Explanation:*

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

## 2.3 **Pre-Qualification Criteria – Financial Capacity**

2.3.1 To be eligible for short-listing i.e., opening and evaluation of the Financial Bid, the Bidder shall fulfil the following condition:

**A. Financial Capacity:** The Bidder shall have

- (i) Average Annual Turnover of minimum INR 65 crores (Rupees sixty-five crores only) for past 5 (five) financial years preceding the Bid Due Date;
- (ii) Positive Net Worth at the close of the preceding financial year.

(the “**Financial Capacity**”)

For avoidance of doubt, it is clarified that, the Bidders are not allowed to use the experience of its/their Associates, for fulfilling the Financial Capacity as provided in this Clause 2.3.1(A).

## 2.4 **Pre-Qualification Criteria – O&M Experience:**

2.4.1 For demonstrating technical capacity and experience (the “**O&M Experience Capacity**”), the Bidder shall comply with each of the following qualification criteria:

- i. The Bidder shall have experience of operating and maintaining international/national chains of hotels or a standalone hotel in 5 Star and above category as

per Ministry of Tourism guidelines/ or any other relevant International organization for any 7 (seven) financial years out of the preceding 10 (ten) financial years, i.e., FY2022, FY2021, FY2020, FY2019, FY2018, FY2017, FY2016, FY2015, FY2014, and FY2013, such that:

- a. the Bidder has operated and maintained a minimum of 250 keys in the categories mentioned above; and
  - b. atleast 1 (one) hotel in the categories mentioned above had a minimum capacity of 100 keys.
- ii. The Bidder is currently operating at least one operational hotel project in 5 Star and above category as per Ministry of Tourism guidelines/ or any other relevant International organization.

For avoidance of doubt, it is clarified that the Bidder may use the project credentials of its Associates to fulfil the O&M Experience Capacity as provided in this Clause 2.4.1.

2.4.2 The Bidder shall enclose with its Bid, to be submitted as per the formats in Part B of the Appendices, the following:

- i. certificate(s) from statutory auditors of the Bidder or its Associates specifying the Annual Turnover and 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 2.4.2 (i). For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid-up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

2.4.3 The Bidder should submit a Power of Attorney as per the format in Appendix-A2, authorizing the signatory of the Bidder to commit the Bidder.

2.4.4 The Selected Bidder shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 2013 (the “**SPV**”), to execute the O&M Agreement and undertake the Project.

2.4.5 The Selected Bidder shall continue to hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the 5<sup>th</sup> (fifth) anniversary of the commercial operation date of the Project.

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

2.4.7 A Bidder including any Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or

judicial authority or a judicial pronouncement or arbitration award against the Bidder, or Associate, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder or Associate. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.4.7 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any wilful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

2.4.8 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 Appendices is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- b) Information supplied by a Bidder must apply to the Bidder or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms.
- c) In responding to the Bid submissions, Bidders should demonstrate their capabilities in accordance with Section 2, 3 and 4.

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

- a) Where, on the date of the Bid, 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital in a Bidder is held by persons resident outside India or where a Bidder is controlled by persons resident outside India; or
- b) if at any subsequent stage after the date of the Bid, there is an acquisition of 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder;

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

## **2.5 General terms of Bidding**

- 2.5.1 The PIM is being provided only as a preliminary reference document 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 RFP 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 RFP.
- 2.5.2 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the Draft Operation & Maintenance Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Operation & Maintenance Agreement.
- 2.5.3 Any condition or qualification or any other essential stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.5.4 The documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the properties 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 2.5.4 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.
- 2.5.5 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder 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 Operation & Maintenance Agreement. In the event any such adviser is engaged by the Selected Bidder or Operator, as the case

may be, after issue of the LOA or execution of the Operation & Maintenance Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Operation & Maintenance 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 Operation & Maintenance 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 for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from COD of the Project.

2.5.6 This RFP is not transferable.

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

## **2.6 Change of Ownership**

2.6.1 By submitting the Bid, the Bidder shall be deemed to have acknowledged and agreed that in the event of a change in control of itself or an Associate whose Technical 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 Operation & Maintenance Agreement, it would, notwithstanding anything to the contrary contained in the Operation & Maintenance Agreement, be deemed to be a breach of the Operation & Maintenance Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Operator. In such an event, notwithstanding anything to the contrary contained in the Operation & Maintenance 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 Operation & Maintenance Agreement or otherwise

## **2.7 Number of Bids and costs thereof**

2.7.1 No Bidder shall submit more than one Bid for the Project. A Bidder shall not be entitled to submit another Bid.

2.7.2 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.

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

2.8.1 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 and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

## **2.9 Acknowledgement of the Bidders**

2.9.1 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 2.8.1 above;
- d) satisfied itself about all matters, things and information including matters referred to in Clause 2.8.1 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 2.8.1 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 Operation & Maintenance Agreement by the Operator;
- 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.

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

## **2.10 Verification and disqualification**

2.10.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to accept or reject any Bid and to annul or modify the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

### 2.10.2 Right to accept or reject any or all Bids

Notwithstanding anything contained in this RFP, The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.10.3 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 such disqualification / rejection occur after the Bids have been opened and the Highest Bidder gets disqualified / rejected, then the Authority reserves the right to:

- a) invite the remaining Bidders to submit their Bids in accordance with Clause 4.4;  
or
- b) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.10.4 In case it is found during the evaluation or at any time before signing of the Operation & Maintenance Agreement or after its execution and during the period of subsistence thereof, including the License thereby granted by the Authority, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Operator either by issue of the LOA or entering into of the Operation & Maintenance Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Operation & Maintenance 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 Operator, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or Operator. 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 Operation & Maintenance Agreement, or otherwise.

## **B. DOCUMENTS**

### **2.11 Contents of the RFP**

2.11.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.14.

#### **GLOSSARY**

Section 1	INTRODUCTION
Section 2	INSTRUCTIONS TO BIDDERS
Section 3	EVALUATION OF BIDS
Section 4	CRITERIA FOR EVALUATION
Section 5	FRAUD AND CORRUPT PRACTICES
Section 6	PRE-BID CONFERENCE
Section 7	MISCELLANEOUS

#### **APPENDICES:**

##### **PART A – FORMATS FOR BID SUBMISSION**

Appendix A1-Letter comprising the Bid for Pre-qualification and Financial Evaluation

Appendix A2-Power of Attorney for Signing of Bid

Appendix A3-Bank Guarantee for Bid Security

Appendix A4-Statement of Legal Capacity

##### **PART B – FORMATS FOR TECHNICAL BID SUBMISSION**

Appendix B1-Particulars of the Bidder

Appendix B2 - Financial Capacity of the Bidder

Appendix B3 - Details of O&M Experience

Appendix B4 – Anti Blacklisting Self-Declaration

Appendix B5A – Guidelines for Neighbour Sharing Land Border with India

Appendix B5B –Undertaking for Neighbour Sharing Land Border with India

PART C – FORMAT FOR FINANCIAL BID SUBMISSION

Appendix C1-Financial Bid Form

PART D – INTEGRITY PACT

PART E - GUIDELINES OF THE DEPARTMENT OF DISINVESTMENT

2.11.2 The draft Operation & Maintenance Agreement provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFP.

## 2.12 **Clarifications**

2.12.1 Applicants requiring any clarification on the RFP may notify the Authority in writing by speed post/ courier/ special messenger e-mail and the Authority shall post the clarifications, if any, on its Official Website in accordance with Clause 1.2.12. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Application Due Date. The responses will be sent by e-mail. The Authority will forward all the queries and its responses thereto, to all purchasers of the RFP without identifying the source of queries.

2.12.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

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

## 2.13 **Amendment of Bidding Documents**

2.13.1 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 bidding documents by issuance of addenda.

2.13.2 Any Addendum issued shall be part of the Bidding Document and shall be available on the website or sent to the bidders.

2.13.3 In order to afford the Bidders a reasonable time for taking an Addendum into account for preparing their bids, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

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

### **2.14 Language**

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

### **2.15 Preparation of Bid**

2.15.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable to rejection.

### **2.16 Format and signing of Application**

2.16.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects.

2.16.2 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.

### **2.17 Instructions for submission of Bid**

2.17.1 The Applicant shall submit the Application in the format specified at Appendix-I, together with the documents specified in Clause 2.17.2, and seal it in an envelope and mark the envelope as "BID". The Applicant shall seal the original and the copy of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.17.2, 2.17.3 and 2.13.4.

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

**Appendices:**

<b>PART A: FORMAT FOR SUBMISSION OF BID</b>		
1	Appendix- A1	Letter comprising the Bid for Pre-Qualification and Financial Evaluation.
2	Appendix -A2	Power of Attorney for signing the Bid
3	Appendix-A3	Demand Draft or Bank Guarantee towards Bid Security
4	Appendix-A4	Statement of Legal Capacity
<b>PART B: FORMAT FOR TECHNICAL BID SUBMISSION</b>		
5	Appendix B1	Particulars of the Bidder
6	Appendix B2	Financial Capacity of the Bidder
7	Appendix B3	Details of O&M Experience
8	Appendix B4	Anti Blacklisting self-declaration
9	Appendix B5B	Undertaking for Neighbour Sharing Land Border with India
<b>ADDITIONAL DOCUMENTS</b>		
9	Copies of Bidder’s duly audited balance sheet and profit and loss account for the preceding 5 (five) years	
10	A copy of the Operation & Maintenance Agreement with each page initialled by the person signing the Bid in pursuance of the Power of Attorney	
11	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	
12	Any other document as specified in Section 2 and Section 3 of RFP	
<b>Part D: Integrity Pact</b>		

2.17.3 A true copy of the documents accompanying the Bid, as specified in Clause 2.17.2 above, shall be bound together in hard cover and the pages shall be numbered serially. Each page thereof shall be initialled in blue ink by the authorised signatory of the Bidder. This copy of the documents shall be placed in a separate envelope and marked “Copy of Documents”.

2.17.4 Each of the four envelopes shall clearly bear the following identification:

**“Operator selection for Operation and Maintenance of a 5 Star Hotel at Cochin International Airport, Kerala”**

and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

Each of the envelopes shall be addressed to:

ATTN. OF:	Joseph Peter Painunkal
DESIGNATION:	General Manager (Commercial)
ADDRESS:	Cochin International Airport, Airport Rd, Kochi, Kerala 683111
E-MAIL ADDRESS	<a href="mailto:jp@cial.aero">jp@cial.aero</a>

2.17.5 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.

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

## **2.18 Bid Due Date**

2.18.1 Bids should be submitted before 1500 hours IST on the Bid Due Date at the address provided in Clause 2.17.4 in the manner and form as detailed in this RFP.

2.18.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.13.3 uniformly for all Bidders.

## **2.19 Late Bids**

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

## **2.20 Contents of the Bid**

2.20.1 The Bid shall be furnished in the format at Appendices Part A, Part B, Part C and Part D and shall consist of a Revenue Share to be quoted by the Bidder. The Bidder shall specify (in %) the Revenue Share offered by him/ it, to undertake the Project in accordance with this RFP and the provisions of the Operation & Maintenance Agreement.

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

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

2.20.4 The proposed Operation & Maintenance Agreement shall be deemed to be part of the Bid.

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

2.21.1 The Bidder may modify, substitute or withdraw its Bid prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

## **2.22 Rejection of Bids**

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

without assigning any reasons therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.22.2 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.

## **2.23 Validity of bids**

2.23.1 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.

## **2.24 Confidentiality**

2.24.1 Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the 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.

## **2.25 Correspondence with the Bidder**

2.25.1 Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

## **2.26 Performance Security**

2.26.1 On or before signing the Operation & Maintenance Agreement, the selected Bidder shall furnish to the Authority an irrevocable and unconditional guarantee from a Bank in the form, amount and period specified in draft Operation & Maintenance Agreement (the "Performance Security").

# **D. BID SECURITY**

## **2.27 Bid Security**

2.27.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clause 1.2.7 hereinabove in the form of a bank guarantee issued by a Scheduled Commercial Bank in India having a net worth of at least Rupees 1,000 crore (Rupees one thousand crore), for an amount of Rs. 1,50,00,000/- (Rupees one crore fifty lakhs only), in favour of the

Authority in the format at Appendix–A3 (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 through a counter guarantee to be issued by any scheduled commercial 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.

- 2.27.2 Bid Security can also be in the form of a demand draft issued by one of the Scheduled Commercial Banks in India in favour of the Authority, payable at Cochin (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.
- 2.27.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.27.4 Save and except as provided in Clauses 1.2.8 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority, and in any case within 60 (sixty) days from the Bid 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.
- 2.27.5 The Selected Bidder’s Bid Security will be returned, without any interest, upon the Operator signing the Operation & Maintenance 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 Operation & Maintenance Agreement.
- 2.27.6 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.27.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.

- 2.27.7 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 Operation & Maintenance Agreement, or otherwise, if
- a) a Bidder submits a non-responsive Bid;
  - b) a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 5 of this RFP;
  - c) a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
  - d) the Selected Bidder fails within the specified time limit –
    - i. to sign and return the duplicate copy of LOA; or
    - ii. to sign the Operation & Maintenance Agreement; or
    - iii. to furnish the Performance Security within the period prescribed thereof in the Operation & Maintenance Agreement;
  - e) the Selected Bidder, having signed the Operation & Maintenance Agreement, commits any breach thereof.

### **3 EVALUATION OF BIDS**

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

- 3.1.1 The Authority shall open the Bids at 1530 hours IST on the Bid Due Date, at the place specified in Clause 1.3 and in the presence of the Bidders who choose to attend.
- 3.1.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.21 shall not be opened.
- 3.1.3 The Authority will subsequently examine and evaluate Bids in accordance with the provisions set out in Section 2, 3 and 4.
- 3.1.4 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.
- 3.1.5 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 3.1.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.



3.1.7 To facilitate the evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

### **3.2 Test of responsiveness**

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

- a) it is received as per formats prescribed in Appendices Part-A, Part-B, Part-C and Part-D;
- b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.18.2;
- c) it is signed, sealed, and marked as stipulated in Clauses 2.16 and 2.17;
- d) it is accompanied by the Bid Security as specified in Clause 1.2.7;
- e) it is accompanied by the Power of Attorney as specified in clauses 2.4.3;
- f) it contains all the information and documents (complete in all respects) as requested in this RFP;
- g) it contains information in formats same as those specified in this RFP/Bidding documents;
- h) it contains certificates from Statutory Auditors/Chartered Accountants in the formats specified in Part B and Part C of Appendices of the RFP for each Eligible Project;
- i) it does not contain any condition or qualification; and
- j) it is not non-responsive in violation of terms hereof.

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

### **3.3 Clarifications**

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

3.3.2 If any Bidder does not provide clarifications sought under Clause 3.3.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

### **3.4 Qualification and Bidding**

#### **3.4.1 Short-Listing and Notification**

The Authority would announce a list of Pre-Qualified bidders after the Pre-Qualification criteria evaluation. Only the Bidders who qualify under the Pre-Qualification Criteria would be eligible for Financial Evaluation as per Clause 4.1. The Authority will not entertain any query or clarification from the Bidder who could not be shortlisted.

#### **3.4.2 Opening of Price Bids**

Price bids of only those Bidders who are short-listed after the Pre-qualification shall be opened by the Authority.

#### **3.4.3 Proprietary data**

All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Authority will not return any Bid or any information provided along therewith.

#### **3.4.4 Correspondence with the Bidder**

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

## **4 CRITERIA FOR EVALUATION**

### **4.1 Financial Evaluation**

4.1.1 Only those Bidders who meet the Pre-Qualification Criteria specified in Clause 2.3 and Clause 2.4 shall qualify for evaluation under Clause 4.1. Bids that do not meet the Pre-Qualification Criteria shall be rejected.

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

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

4.2.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.

4.2.3 The Bidder must establish the minimum Net Worth and Turnover specified in Clause 2.3.1 (A), and provide details as per format of Appendix-B2.

### **4.3 Financial Bid**

4.3.1 Bid parameter – Revenue Share as % of Project Revenue as defined in Draft Operation & Maintenance Agreement.

4.3.2 The Bidder who quotes the highest Percentage of Project Revenue as Revenue Share to be paid to the Authority shall be declared as the selected bidder (the “**Selected Bidder**” or “**Highest Bidder**”).

4.3.3 Bidders would be ranked in the ascending order of the percentage of Project Revenue as Revenue Share furnished by the Bidders.

4.3.4 The Financial Bid should be furnished in the format at Appendix–C1, clearly indicating the Revenue Share percentage in both figures and words, and signed by the Bidder’s authorised signatory. In the event of any difference between figures and words, the higher of the two shall be considered.

### **4.4 Selection of Bidder**

4.4.1 Subject to the provisions of the RFP, the Bidders shortlisted in the Technical Bids shall be notified about the time of opening of the Financial Bids. The Authority shall open the Financial Bids of the Bidders qualified in the Technical Bids on the scheduled date and time and the Bidders shall be ranked according to the Bid Price submitted by them.

4.4.2 In the event that two or more Bidders quote the same amount of Revenue Share (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.

- 4.4.3 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “**first round of bidding**”), the Authority may invite all the remaining Bidders shortlisted at the Technical Bids stage to revalidate or extend their respective Bid Validity, as necessary, and match the Bid of the aforesaid Highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the second and third Highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said second highest Bidder shall be the Selected Bidder.
- 4.4.4 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 4.4.3, the Authority may, in its discretion, invite fresh Bids (the “third round of bidding”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Validity, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 4.4.5 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 4.4.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Operator to execute the Operation & Maintenance Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Operation & Maintenance Agreement.

#### **4.5 Contacts during Bid Evaluation**

- 4.5.1 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.

## **5 FRAUD AND CORRUPT PRACTICES**

- 5.1.1 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 Operation & Maintenance Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Operation & Maintenance Agreement, the Authority may reject a Bid, withdraw the LOA, or the Authority may terminate the Operation & Maintenance Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Operator, as the case may be, if it determines that the Bidder or Operator, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Operation & Maintenance Agreement, or otherwise.
- 5.1.2 Without prejudice to the rights of the Authority under Clause 5.1.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Operation & Maintenance Agreement, or otherwise if a Bidder or Operator, 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 Operation & Maintenance Agreement, such Bidder or Operator 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 Operator, 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.
- 5.1.3 For the purposes of this Clause 5, 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 Operation & Maintenance 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 2.5.5 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 Operation & Maintenance Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Operation & Maintenance Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

- b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- d) **“unfair 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.

## **6 PRE-BID CONFERENCE**

- 6.1.1 Pre-Bid Conference(s) of the Bidders shall be convened at the designated date, time and place. Only those persons who have purchased / downloaded the RFP document shall be allowed to participate in the Pre-Bid Conference(s). A maximum of three representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 6.1.2 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.

## **7 MISCELLANEOUS**

- 7.1.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which the Authority has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 7.1.2 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.
- 7.1.3 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, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.



## **APPENDICES**



## **PART A – FORMATS FOR BID SUBMISSION**

**APPENDIX-A1**

**Letter comprising the Bid for Pre-qualification**

*(Refer Clause 1.2.1)*

To,  
.....  
.....  
.....

**Sub: Operation and Maintenance of a 5 Star Hotel at Cochin International Airport, Kerala**

Dear Sir,

1. With reference to your RFP document dated ....., I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Operator for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Operator for the operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we or our Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:
  - (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and

- (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1 (iii) and 2.5.5 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 5.1.3 of the RFP document, in respect of any tender or request for proposals 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 5 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice;
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.22 of the RFP document.
9. I/ We believe that we satisfy the Financial Capacity and Operation and Maintenance Experience Capacity criteria and meet(s) the requirements as specified in the RFP document.
10. I/ We declare that we, or our Associates are not a member of any other entity submitting a Bid for the Project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a Court 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 or any of our 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 or against our Associates or against our CEO or any of our directors/ managers/ employees.<sup>‡</sup>

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<sup>‡</sup> In case the Bidder is unable to provide certification regarding any pending investigation as specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedule ..... hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Bid. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for award hereunder.

14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001.
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 guidelines referred to above, we shall intimate the Authority of the same immediately.
16. I/We further certify that we or any of our Association are not barred by the Central Government/State Government or any entity controlled by it, from participation in any project (DBFOT or otherwise), and no bar subsists as on date of Bid.
17. I/ We acknowledge and agree that in the event of a change in control of an Associate whose Operation and Maintenance Experience Capacity was taken into consideration for the purposes of short-listing and qualification 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 us 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 Operation & Maintenance Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Operation & Maintenance Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
18. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the Operation & Maintenance Agreement.
19. I /We hereby confirm that we shall comply with the O&M Experience Capacity requirements specified in Clause 2.4.
20. 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.
21. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Operation & Maintenance 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.
22. I/ We have studied all the Bidding Documents carefully and also surveyed the site. We understand that except to the extent as expressly set forth in the Operation & Maintenance 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 License.

23. I/ We offer a Bid Security of Rs. 1,50,00,000/- (Rupees one crore fifty lakhs only) to the Authority in accordance with the RFP Document.
24. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.
25. The documents accompanying the Bid, as specified in Clause 2.17 & 2,18 of the RFP, have been submitted in a separate envelopes and marked as “Technical Bid” and “Financial Bid”.
26. 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 / License is not awarded to me/us or our Bid is not opened or rejected.
27. The **Revenue Share** has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Operation & Maintenance Agreement, our own estimates of costs and revenues and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.
28. I/ We certify that in terms of the RFP, my/our Annual Turnover is Rs. [●] (Rupees [●]);
29. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
30. We, agree and undertake to be liable for all the obligations of the Operator under the Operation & Maintenance Agreement in accordance with the Operation & Maintenance Agreement.
31. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
32. I/We certify that I/We have never been blacklisted by any Government/Public Sector undertaking in last five years.
33. In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date: [●]

(Signature, name and designation of the Authorized signatory)

Place: [●]

Name and seal of Bidder

Date: [●]

## APPENDIX–A2

### Power of Attorney for signing of Bid<sup>§</sup>

(Refer Clause 2.4.3)

Know all men by these presents, We [●] (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), [●] son/daughter/wife of [●] and presently residing at [●], who is presently employed with us and holding the position of [●], as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for selection and submission of our bid for the **Operation and Maintenance of a 5 Star Hotel at Cochin International Airport, Kerala** Project proposed or being developed by the **Cochin International Airport Limited** (the “Authority”) including but not limited to signing and submission of all Bids, bids and other documents and writings, participate in Pre-Bids 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 Operation & Maintenance 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 Operation & Maintenance Agreement with the Authority.

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

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

For [●]

(Signature, name, designation and address)

Witnesses:

1. [●]

2. [●]

Accepted

Notarised

---

<sup>§</sup> To be submitted in original.



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

*Notes:*

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
  
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
  
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

## **APPENDIX–A3**

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

*(Refer Clauses 1.2.7 and 2.27.1)*

B.G. No. Dated:

1. In consideration of you, [●], having its office at [●], (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of [●] (a company registered under the Companies Act, 1956/ 2013) and having its registered office at [●] (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the **Operation and Maintenance of a 5 Star Hotel at Cochin International Airport, Kerala** Project on O&M 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 Operation & Maintenance 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 1.2.8 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. 1,50,00,000 (Rupees one crore fifty lakhs only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and

payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. [●] (Rupees [●] only).

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

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorized to receive the said notice of claim.
10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
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 authorized 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. [●] crore (Rupees [●] only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [[●] (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by [●] Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

## **APPENDIX-A4**

### **Statement of Legal Capacity**

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

Ref. Date:

To,

.....  
.....  
.....

Dear Sir,

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

We have agreed that [●] (insert individual's name) will act as our representative/ will act as the representative our behalf<sup>s</sup> 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 [●]



## **PART B – FORMATS FOR TECHNICAL BID SUBMISSION**

## **APPENDIX-B1**

### **Particulars of the Bidder**

*(Refer Clause 2.4.4)*

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

**Name of Bidder:**

No.	Criteria	Yes	No
1.	Has the Bidder been barred/blacklisted by the [Central/ State] Government, or any entity controlled by it, from participating in any project (O&M or otherwise)?		
2.	If the answer to 1 is yes, does the bar/blacklisting subsist as on the date of Bid?		
3.	Has the Bidder paid liquidated damages of more than		



*Request for Proposal - Operator selection for Operation and Maintenance of a 5 Star Hotel at Cochin International Airport*

No.	Criteria	Yes	No
	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. A statement by the Bidder (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).

Year	Description	Amount of Non-performed portion of contract (INR equivalent)	Total contract Amount (INR equivalent)
<i>[insert year]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i>  Name of Authority: <i>[insert full name]</i>  Address of Authority: <i>[insert street/city/country]</i>  Reason(s) for non-performance: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>	<i>[insert amount]</i>

## APPENDIX-B2

### Financial Capacity of the Bidder

(Refer to Clauses 2.3.1(A) of the RFP)

(In Rs. crore\$)

Name of Bidder:

Net-worth (for the latest financial year)	INR million
<b>Bidder</b>	
Total Assets	
Less: Total Liabilities:	
<b>Net-worth of the Bidder</b>	

Average Annual Turnover from Eligible Projects for the Last 5 Years			
Year	Amount Currency	Exchange Rate	Turnover Amount in INR
	A	B	A * B
<b>Bidder:</b>			
Year 1*			
Year 2			
Year 3			
Year 4			
Year 5			
*Year 1 shall be the latest financial year.			
<b>Average Annual Turnover from Eligible Projects</b>			

#### Instructions:

1. The Bidder shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Bid Due Date. The financial statements shall:
  - (a) reflect the financial situation of the Bidder;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and

*Request for Proposal - Operator selection for Operation and Maintenance of a 5 Star Hotel at Cochin International Airport*

- (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. The Bidder shall provide an Auditor's Certificate specifying the Annual Turnover and Networth of the Bidder.

## APPENDIX-B3

### Particulars of the O&M Experience

(Refer to Clause 2.4 of this RFP)

1. Details of the operational hotels in 5 Star and above category as per the Ministry of Tourism guidelines/ or any other relevant organization :

Sl. No.	Property Name	Location	Period of Operation (From – To dates)	Category as per Ministry of Tourism Guidelines/ any other relevant organization	Other facilities like F&B, conference facilities etc	Certificate issued by Ministry of Tourism/other relevant organization for the category of Hotels (5 Star and above)	No. of keys	Year certificate issued

*\*Attach relevant project certificates*

Notes:

For the project to be considered for O&M experience following documents shall be mandatorily submitted–

- a) A copy of the Hotel & Restaurant Approval & Classification Committee (HRACC) certificate of the 5 Star hotel clearly mentioning the keys and Star Category has to be submitted along with the Bid. The validity of the certificate shall be at least till March 31,2022.
- b) A copy of the Operation & Maintenance Agreement has to be submitted. The agreement shall be valid at least till March 31, 2022.

*Request for Proposal - Operator selection for Operation and Maintenance of a 5 Star Hotel at Cochin International Airport*

**Certificate from the Statutory Auditor regarding operation and management (O&M)**

This is to certify that \_\_\_\_ (Name of the Bidder or Associate) has operated and managed the Hotel \_\_\_\_\_ (name of the Hotel) with \_\_\_\_\_ keys (insert number of keys) of \_\_\_\_\_ star category (*insert star category*) for at least \_\_\_\_ years continuously preceding to Bid Due Date and it is operational as on date.

Name of Authorized Signatory:

Designation:

Name of audit firm:

Seal of the audit Firm

(Signature of the Authorized Signatory)

In case of non-submission of HRACC certificate and / or Auditor certificate of the Hotel for which the O&M experience is claimed, then the same shall not be considered for pre-qualification.

**APPENDIX-B4**

**Self-Declaration**

**(Should not have been blacklisted)**

(On the letterhead of the Bidder)

I / We agree that all decisions of the Authority in relation to RFP for “Operator selection for Operation and Maintenance of a 5 Star Hotel at Cochin International Airport, Kerala”, including all addendum /corrigendum will be final and binding to me / us. I / We confirm that we have not been blacklisted/ terminated/ debarred/ banned for business dealings with Central or State Governments & PSUs and/or any of the respective entity’s attached or subordinate offices in the last 5 years.

Name of the Bidder

.....

Signature of the Authorized Person

.....

Name of the Authorized Person

## **Appendix B5A**

### **Guidelines for Neighbour Sharing Land Border with India**

*(Refer Clause 2.2.1)*

F.No.6/18/2019-PPD  
Ministry of Finance  
Department of Expenditure  
Public Procurement Division


161, North Block,  
New Delhi  
23rd July, 2020

#### **Office Memorandum**

**Subject: Insertion of Rule 144 (xi) in the General Financial Rules (GFRs), 2017**

Rule 144 of the General Financial Rules 2017 entitled 'Fundamental principles of public buying', has been amended by inserting sub-rule (xi) as under:

*Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.*

  
(Sanjay Prasad)  
Joint Secretary (PPD)  
Email ID: [js.pfc2.doe@gov.in](mailto:js.pfc2.doe@gov.in)  
Telephone: 011-23093882

To,  
(1) Secretaries of All Ministries/ Departments of Government of India  
(2) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi



F.No.6/18/2019-PPD  
Ministry of Finance  
Department of Expenditure  
Public Procurement Division

161, North Block,  
New Delhi  
23rd July, 2020

**Order (Public Procurement No. 1)**

**Subject: Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017**

Attention is invited to this office OM no. 6/18/2019-PPD dated 23<sup>rd</sup> July 2020 inserting Rule 144 (xi) in GFRs 2017. In this regard, the following is hereby ordered under Rule 144 (xi) on the grounds stated therein:

**Requirement of registration**

1. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in **Annex I**.
2. This Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or before the date of this order; and (ii) cases falling under **Annex II**.

**Transitional cases**

3. Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -
  - a) *In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed:* No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.
  - b) *If the tendering process has crossed the first exclusionary qualificatory stage:* If the qualified bidders include bidders from such countries, the

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entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in this Order.

- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph 1, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 8, 9 and 10 read with para 1 of this Order.

Incorporation in tender conditions

4. In tenders to be issued after the date of this order, the provisions of paragraph 1 and of other relevant provisions of this Order shall be incorporated in the tender conditions.

Applicability

5. Apart from Ministries / Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, this Order shall also be applicable
- a. to all Autonomous Bodies;
  - b. to public sector banks and public sector financial institutions; and
  - c. subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
  - d. to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
  - e. Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

Definitions

6. "Bidder" for the purpose of this Order (including the term 'tenderer', 'consultant' 'vendor' 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.
7. "Tender" for the purpose of this Order will include other forms of procurement, except where the context requires otherwise.
8. "Bidder from a country which shares a land border with India" for the purpose of this Order means

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- 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

9. "Beneficial owner" for the purpose of paragraph 8 above will be as under:

- (i) 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 juridical person(s), 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 the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

- (ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership or entitlement to more than fifteen percent of capital or profits of the partnership;

- (iii) 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 or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

- (iv) Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

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(v) 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.

10. "Agent" for the purpose of this Order is a person employed to do any act for another, or to represent another in dealings with third persons.

Sub-contracting in works contracts

11. In works contracts, including turnkey contracts, contractors 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 paragraph 8 above. This shall not apply to sub-contracts already awarded on or before the date of this Order.

Certificate regarding compliance

12. A certificate shall be taken from bidders in the tender documents regarding their compliance with this Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

Validity of registration

13. In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

Government E-Marketplace


14. The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with this Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

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Model Clauses/ Certificates

15. Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are enclosed as **Annex III**. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to this Department.

  
(Sanjay Prasad)  
Joint Secretary (PPD)  
Email ID: [js\\_pfc2\\_doe@gov.in](mailto:js_pfc2_doe@gov.in)  
Telephone: 011-23093882

To

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Secretary DPIIT with a request to initiate action as provided under Annex I
- (4) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

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**Annex I: Competent Authority and Procedure for Registration**

- A. The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)\*.
- B. The Registration Committee shall have the following members\*:
- i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
  - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
  - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- C. DPIIT shall lay down the method of application, format etc. for such bidders as stated in para 1 of this Order.
- D. On receipt of an application seeking registration from a bidder from a country covered by para 1 of this Order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- E. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- F. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- G. Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur\*.
- H. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but **also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.**

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- I. The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
- J. For national security reasons, the Competent Authority shall not be required to give reasons for rejection / cancellation of registration of a bidder.
- K. In transitional cases falling under para 3 of this Order, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.
- L. Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

[\*Note:

- i. In respect of application of this Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government and paragraph G above shall not apply. However, the requirement of **political and security clearance as per para D shall remain and no registration shall be granted without such clearance.**
- ii. Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.]

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**Annex II: Special Cases**

- A. Till 31<sup>st</sup> December 2020, procurement of medical supplies directly related to containment of the Covid-19 pandemic shall be exempt from the provisions of this Order.
- B. *Bona fide* procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by this Order.
- C. *Bona fide* small procurements, made without knowing the country of the bidder, shall not be invalidated by this Order.
- D. In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in this Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
- E. This Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

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**Annex III**

**Model Clause /Certificate to be inserted in tenders etc.**

*(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)*

**Model Clauses for Tenders**

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. "Bidder" (including the term 'tenderer', 'consultant' 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" for the purpose of this Order 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. The *beneficial owner* for the purpose of (iii) above will be as under:
  1. 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 juridical 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;

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- 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 shareholders agreements or voting agreements;
2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership or entitlement to more than fifteen percent of capital or profits of the partnership;
  3. 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 or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
  4. 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;
  5. 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. *[To be inserted in tenders for Works contracts, including Turnkey contracts]* The successful bidder 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.

Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

*"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."*

Model Certificate for Tenders

*"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the*

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*Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"*

**Model Certificate for Tenders for Works involving possibility of sub-contracting**

*"I 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 fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"*

**Model Certificate for GeM:**

*"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"*

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F.No.6/18/2019-PPD  
Ministry of Finance  
Department of Expenditure  
Public Procurement Division

161, North Block  
New Delhi  
23rd July, 2020


**Order ( Public Procurement No. 2)**

**Subject: Exclusion from restrictions under Rule 144 (xi) of the General Financial Rules (GFRs), 2017 –regarding.**

In Order (Public Procurement No. 1) dated 23rd July 2020, orders have been issued requiring registration of bidders from a country sharing a land border with India in order to be eligible to bid in public procurement.

2. Notwithstanding anything contained therein, it is hereby clarified that the said Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects.

3. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs.

  
(Sanjay Prasad)  
Joint Secretary (PPD)  
Email ID: [js\\_pfc2\\_doe@gov.in](mailto:js_pfc2_doe@gov.in)  
Telephone: 011-23093882

To,

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.
- (3) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

F.No.6/18/2019-PPD  
Ministry of Finance  
Department of Expenditure  
Public Procurement Division

161, North Block,  
New Delhi  
24<sup>th</sup> July, 2020

**Order (Public Procurement No. 3)**

**Subject: Clarification to Order (Public Procurement No.1) dated 23<sup>rd</sup> July 2020**

Attention is invited to paragraph 3(b) of the Order (Public Procurement No.1), under the heading "Transitional provisions" which reads as follows:

- b) *If the tendering process has crossed the first exclusionary qualificatory stage:* If the qualified bidders include bidders from such countries, the entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in this Order.

It is hereby clarified that for the purpose of paragraph 3 (b), "qualified bidders" means only those bidders who would otherwise have been qualified for award of the tender after considering all factors including price, if Order (Public Procurement No. 1) dated 23<sup>rd</sup> July 2020 had not been issued.

2. If bidders from such countries would not have qualified for award for reasons unconnected with the said Order (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender / start the process de novo.

3. The following examples are given to assist in implementation of the Order.

Example 1: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23<sup>rd</sup> July. In this case, the tender should be scrapped and fresh tender initiated.


Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be



qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23<sup>rd</sup> July 2020. In such a case, there is no need to scrap the tender.

Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.

Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.

  
(Sanjay Prasad)  
Joint Secretary (PPD)  
Email ID: [js.pfc2.doe@gov.in](mailto:js.pfc2.doe@gov.in)  
Telephone: 011-23093882

To,

- (1) Secretaries of All Ministries/ Departments of Government of India for information and necessary action. They are also requested to inform the clarification to all procuring entities.
- (2) Secretary, Department of Public Enterprises with a request to immediately circulate this clarification among Public Enterprises.
- (3) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

## **Appendix B5B**

### **Undertaking for Neighbour Sharing Land Border with India**

*(Refer Clause 2.2.1)*

We .....have read the Orders (Public Procurement No.1 & 2) of Ministry of Finance issued vide letter no. F.No. 6/18/ 2019- PPD dated 23.07.2020 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 a country. We hereby certify that we fulfil all the requirements under Orders (Public Procurement No.1 & 2) of Ministry of Finance issued vide letter no. F.No. 6/18/ 2019- PPD dated 23.07.2020 and are eligible to be considered.

i. We come under the definition of bidder from neighbouring country sharing land boundary with India as per the orders (Public Procurement No.1 & 2) of Ministry of Finance issued vide letter no. F.No. 6/18/2019- PPD dated 23.07.2020 and are registered with competent authority vide registration no..... valid up to ..... (attached along with this Appendix)

ii. We do not come under the definition of bidder from neighbouring country sharing land boundary with India as per the orders (Public Procurement No.1& 2) of Ministry of Finance issued vide letter no. F.No. 6/18/ 2019- PPD dated 23.07.2020.

*(Strike out (i) or (ii) whichever is not applicable)*

We undertake that we shall not sub-contract any work to a contractor from such countries unless such contractor is registered with competent authority.

We further undertake that in case the work is awarded to us, and at any point of time before completion of the work, if we cease to comply the orders mentioned herein above, we are bound to notify the same to the Authority as soon as possible but not later than 28 days of such change in status.

Stamp and Signature of Authorised Signatory

To be submitted along with the Technical Bid separately by sole entity/ any specialist subcontractor being the part of the Bidder.

*Request for Proposal - Operator selection for Operation and Maintenance of a 5 Star Hotel at Cochin International Airport*

**PART C – FORMAT FOR FINANCIAL BID SUBMISSION**

**APPENDIX–C1**

**Financial Bid Form**

*(Refer Clauses 4.3.4 )*

Ref. Date:

To,

.....  
.....  
.....

Dear Sir,

I/ We hereby submit the following Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Operation & Maintenance Agreement:

- (a) We offer the annual Revenue Share of [●] % (in word per cent) of the Project Revenue, as specified in the draft Operation & Maintenance Agreement.

Yours faithfully,

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

Place: Name and seal of Bidder



## **PART D – INTEGRITY PACT**

## **INTEGRITY PACT**

This Pact made this .....day of ..... between (NAME OF SPV TO BE INSERTED), a company incorporated under the Companies Act, 2013 and having its Corporate Office at ....., hereinafter called the Authority ( which term shall unless excluded by or is repugnant to the context, be deemed to include its Chairman, or Member, Executive Directors, officers or any of them specified by the Chairman in this behalf, and shall also include its successors and assigns) of the one part

AND

.....represented by ..... of the other part, hereinafter called the “Bidder/Contractor “( which term shall unless excluded by or is repugnant to the context be deemed to include its heirs, representatives, successors and assigns of the Bidder/ Contractor)

WHEREAS the Authority intends to award, under laid down organizational procedures, tender/ contract for .....The Authority, while discharging its functions on business principles, values proper compliance with all relevant laws and regulations, and the principles of natural justice, ethics, equity, fairness and transparency in its relations with the Bidders/ Contractors.

WHEREAS the Authority is desirous to make its business mechanism more transparent, thus to ensure strict adherence of the aforesaid objectives/goals, the Authority hereby adopts the instrument developed by the renowned international non-governmental organization “Transparency International” ( T I ) headquartered in Berlin ( Germany ).The Authority will appoint an Independent Engineer ( IE )/PMC who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

AND WHEREAS the Bidder is submitting a tender to the Authority for ..... In response to the NIT (Notice Inviting Tender) dated ..... Contractor is signing the contract for execution of .....

NOW, therefore,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to

Enabling the Authority to obtain the desired said stores/equipment/execution of works at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling Authority to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the Authority will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

### **1. Commitments of the Authority;**

*Request for Proposal - Operator selection for Operation and Maintenance of a 5 Star Hotel at Cochin International Airport*

- 1.1 The Authority undertakes that no official of the Authority, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.
- 1.2 The Authority will, during the pre-contact stage, treat all BIDDERS alike, and will provide to all BIDDERS the same information and will not provide any such information to any particular BIDDER which could afford an advantage to that particular BIDDER in comparison to other BIDDERS.
- 1.3 All the officials of the Authority will report to the appropriate authority office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.

2.0 In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER to the Authority with full and verifiable facts and the same is prima facie found to be correct by the Authority, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the Authority and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the Authority the proceedings under the contract would not be stalled.

### **3. Commitments of Bidders/Contractor.**

The Bidder/Contractor commits itself to take all measures necessary to prevent corrupt practice, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:-

- 3.1 The Bidder/Contractor will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Authority, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.2 (i) The Bidder/Contractor further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Authority or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Authority for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Authority.
- 3.2 (ii) The Bidder /Contractor has not entered and will not enter with other bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specification, certifications, subsidiary contracts, submission or

*Request for Proposal - Operator selection for Operation and Maintenance of a 5 Star Hotel at Cochin International Airport*

- non-submission of bids or any actions to restrict competitiveness or to introduce cartelization in the bidding process.
- 3.3 The Bidder/Contractor shall, when presenting his bid, disclose the name and address of agents and representatives and Indian BIDDERS shall disclose their foreign principals or associates.
- 3.4 The Bidder/Contractor shall when presenting his bid disclose any and all the payments he has made or, is committed to or intends to make to agents/brokers or any other intermediary, in connection with this bid/contract.
- 3.5 The Bidder/Contractor further confirms and declares to the Authority that the BIDDER is the original manufacturer/integrator/ authorized government sponsored export entity of the stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Authority or any of its functionaries, whether officially or unofficially to the award of the contract to the BIDDER, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
- 3.6 The Bidder/Contractor, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the Authority or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- 3.7 The Bidder/Contractor will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- 3.8 The Bidder/Contractor will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.9 The Bidder / Contractor shall not use improperly, for purposes of competition or personal gain ,or pass on to others, any information provided by the Authority as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The Bidder / Contractor also undertake to exercise due and adequate care lest any such information is divulged.
- 3.10 The Bidder/Contractor will inform to the Independent Engineer. i) If he receives demand for an illegal/undue payment/benefit. ii) If he comes to know of any unethical or illegal payment/benefit. iii) If he makes any payment to any Authority's associate(s)
- 3.11 The Bidder/Contractor commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.12 The Bidder/Contractor shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

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- 3.13 If the Bidder/Contractor or any employee of the Bidder/Contractor or any person acting on behalf of the Bidder/ Contractor, either directly or indirectly, is a relative of any of the officers of the Authority, or alternatively, if any relative of an officer of the Authority has financial interest/stake in the Bidder's/Contractor's firm, the same shall be disclosed by the Bidder/Contractor at the time filing of tender. The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956.
- 3.14 The Bidder/Contractor shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Authority.
- 3.15 That if the Bidder/ Contractor, during tender process or before the award of the contract or during execution of the contract/work has committed a transgression in violation of section 2 or in any other form such as to put his reliability or credibility as Bidder/Contractor into question, the Authority is entitled to disqualify him from the tender process or to terminate the contract for such reason and to debar the BIDDER from participating in future bidding processes.

#### **4. Previous Transgression**

- 4.1 The Bidder/Contractor declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify Bidders' exclusion from the tender process.
- 4.2 The Bidder/Contractor agrees that if it makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason and he may be considered for debarment for future tender/contract processes.
- 4.3 That the Bidder/Contractor undertakes to get this Pact signed by the subcontractor( s) and associate(s) whose value of the work contribution exceeds Rs 0.5 Crores.(Rupees zero point five Crores.) and to submit the same to the Authority along-with the tender document/ contract before contract signing.
- 4.4 That sub-contractor(s)/ associate(s) engaged by the Contractor, with the approval of the Authority after signing of the contract, and whose value of the work contribution exceeds Rs 0.5 Crs. (Rupees Zero point five Crs.) will be required to sign this Pact by the Contractor, and the same will be submitted to the Authority before doing/ performing any act/ function by such subcontractor( s)/ associate(s) in relation to the contract/ work.
- 4.5 That the Authority will disqualify from the tender process all Bidder(s) who do not sign this Pact or violate its provisions or fails to get this Pact signed in terms of section 4.3 or 4.4 above.

4.6 That if the Contractor(s) does/ do not sign this Pact or violate its provisions or fails to get this Pact signed in terms of Section 4.3 or 4.4 above. Authority will terminate the contract and initiate appropriate action against such Contractor(s).

**5. Earnest Money, Security Deposit, Bank guarantee, Draft, Pay order or any other mode and its validity i/c Warranty Period, Performance guarantee/Bond.**

While submitting bid, the BIDDER shall deposit an EMD/SD/BG/DRAFT/PAY ORDER ETC I/C WARRANTY PERIOD, PG/BOND, VALIDITY ETC , which is as per terms and conditions and details given in NIT / tender documents sold to the Bidders.

**6. Sanctions for Violations/Disqualification from tender process and exclusion from future Contacts.**

6.1 Any breach of the aforesaid provisions by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) shall entitle the Authority to take all or any one of the following actions, wherever required:-

- (i) To immediately call off the pre contract negotiations without assigning any reason or giving any compensation to the BIDDER. However, the proceedings with the other BIDDER(s) would continue.
- (ii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER.
- (iii) If the Authority has disqualified / debarred the Bidder from the tender process prior to the award under section 2 or 3 or 4, the Authority is entitled to forfeit the earnest money deposited/Bid Security.
- (iv) To recover all sums already paid by the Authority, and in case of an Indian BIDDER with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of a BIDDER from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the BIDDER from the Authority in connection with any other contract or any other stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.
- (v) To encash the advance bank guarantee and performance bond/warranty bond, if furnished by the BIDDER, in order to recover the payments, already made by the BUYER, along with interest.
- (vi) To cancel all or any other Contracts with the BIDDER. The BIDDER shall be liable to pay compensation for any loss or damage to the Authority resulting from such cancellation/rescission and the Authority shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER.
- (vii) To debar the BIDDER from participating in future bidding processes for a minimum period of three years, which may be further extended at the discretion of the Authority.
- (viii) To recover all sums paid in violation of this Pact by BIDDER(s) to any middleman or agent or broker with a view to securing the contract.

- (ix) In case where irrevocable Letters of Credit have been received in respect of any contract signed by the Authority with the BIDDER, the same shall not be opened.
- (x) Forfeiture of Performance Bond in case of a decision by the BUYER to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.
- (xi) That if the Authority have terminated the contract under section 2 or 3 or 4 or if the Authority is entitled to terminate the contract under section 2 or 3 or 4, the Authority shall be entitled to demand and recover from the contractor damages equivalent to 5% of the contract value or the amount equivalent to security deposit or performance bank guarantee, whichever is higher.
- (xii) That the Bidder / Contractor agrees and undertakes to pay the said amount without protest or demur subject only to condition that if the Bidder/Contractor can prove and establish to the satisfaction of the Authority that the disqualification / debarment of the bidder from the tender process or the termination of the contract after award of the contract has caused no damage to the Authority.

6.2 The Authority will be entitled to take all or any of the actions mentioned at para 6.1(i) to (xii) of this Pact also on the Commission by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.

6.3 That if the Bidder/Contractor applies to the Authority for premature revocation of the debarment and proves to the satisfaction of the Authority that he has installed a suitable and effective corruption prevention system and also restored/recouped the damage, if any, caused by him, the Authority may, if thinks fit, revoke the debarment prematurely considering the facts and circumstances of the case, and the documents/evidence adduced by the Bidder/Contractor for first time default.

6.4 That a transgression is considered to have occurred if the Authority is fully satisfied with the available documents and evidence submitted along with Independent External Monitor's recommendations/suggestions that no reasonable doubt is possible in the matter.

6.5 The decision of the Authority to the effect that a breach of the provisions of this Pact has been committed by the BIDDER shall be final and conclusive on the BIDDER. However, the BIDDER can approach the Independent External Monitor(s) appointed for the purpose of this Pact.

## **7. Allegations against Bidders/Contractors/ Sub-Contractors/ Associates:**

That if the Authority receives any information of conduct of a Bidder/ Contractor or Sub-Contractor or of an employee or a representative or an Associates of a Bidder, Contractor or Sub- Contractor which constitute corruption, or if the Authority has substantive suspicion in this regard, the Authority will inform the Vigilance Department for appropriate action.

**8. Independent Engineer (s),**

8.1. That the Authority has appointed competent and credible Independent Engineer (s) for this Pact.

8.2 The task of the Engineer is to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact. He will also enquire into any complaint alleging transgression of any provision of this Pact made by the Bidder, Contractor or Authority.

8.3. That the Engineer is not subject to any instructions by the representatives of the parties and would perform his functions neutrally and independently. He will report to the Chairperson of the Board of the Authority.

8.4 That the Bidder / Contractor accepts that the Engineer has the right to access without restriction to all project documentation of the Authority including that provided by the Bidder/Contractor. The Bidder/Contractor will also grant the Engineer, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation including minutes of meeting. The same is applicable to Sub - Contractors and Associates. The Engineer is under obligation to treat the information and documents of the Authority and Bidder/ Contractor / Sub- Contractors/ Associates with confidentiality.

8.5. That as soon as the Engineer notices, or believes to notice, a violation of this Pact, he will so inform the management of the Authority and request the management to discontinue or heal the violation, or to take other relevant action. The Engineer can in this regard submit his recommendations/ suggestions. Beyond this, the Engineer has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

8.6 That the Authority will provide to the Engineer sufficient information about all meetings among the parties related to the project provided such meetings could have an impact on the contractual relations between the Authority and the Contractor / Bidder. The parties offer to the Engineer the option to participate in such meetings.

8.7 That the Engineer will submit a written report to the Chairperson of the Board of the Authority within 2 weeks from the date of reference or intimation to him by the Authority and, should the occasion arise, submit proposals for correcting problematic situations.

8.8 That if the Engineer has reported to the Chairperson of the Board a substantiated suspicion of an offence under relevant Anti- Corruption Laws of India and the Chairperson has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Vigilance Department, the Engineer may also transmit this information directly to the Central Vigilance Commissioner, Government of India.

8.9 The word 'Engineer' would include singular and plural.

**9. Facilitation of Investigation.**

In case of any allegation of violation of any provisions of this Pact or payment of commission, the Authority or its agencies shall be entitled to examine all the documents including the Books of



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Accounts of the BIDDER and the BIDDER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such Examination.

**10. Law and Place of Jurisdiction.**

That this Pact is subject to Indian Law. The place of performance and jurisdiction is the Corporate Headquarter /the Regional Headquarter / office of the Authority, as applicable.

**11. Other Legal Actions**

11.1 That the changes and supplements as well as termination notices need to be made in writing.

11.2 That if the Bidder / Contractor is a partnership, this Pact must be signed by all the partners and members or their authorized representatives.

**12. Pact duration (Validity)**

12.1 That this Pact comes into force when both the parties have signed it. It expires for the Operator 12 months after the initial/extended term. It expires for the Contractor/sub-contractor 12 months after the final payment under the respective contract, and for all other Bidders 3 months after the contract is awarded.

12.2. That if any claim is made / lodged during this period, the same shall be binding and continue to be valid despite the lapse of this Pact as specified herein before, unless it is discharged/determined by Chairman of the Authority.

12.3 That should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

**13. Company Code of Conduct**

Bidders are also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behavior) and a compliance program for the implementation of the code of conduct throughout the company.

14. The parties hereby sign this Integrity Pact at \_\_\_\_\_ on \_\_\_\_\_

Buyer	Bidder
Name of the Officer	Chief Executive Officer
Designation	Witness
Deptt./Ministry/PSU	1. _____
Witness	2. _____
1. _____	
2. _____	

**PART E – GUIDELINES OF THE DEPARTMENT OF  
DISINVESTMENT**

## **Guidelines of the Department of Disinvestment**

*(Refer Clause 1.2.1)*

No. 6/4/2001-DD-II

Government of India

Department of Disinvestment

Block 14, CGO Complex

New Delhi.

Dated 13<sup>th</sup> July, 2001.

### **OFFICE MEMORANDUM**

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

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

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

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- (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