



Mumbai Port Authority

**Volume 1
Request for Proposal (RFP)
For**

Tender no. E.34/2023

**Design, Built, Finance, Operate and Transfer of Mumbai Marina at Prince's Dock, Mumbai on PPP
mode
(Global Tender)**



May 2023

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DISCLAIMER

The information contained in the “**Bidding Documents**” (or “**Bid documents**”) for this project comprises of Volume 1 (the “**RFP**” or “**Request for Proposal**”) and Volume 2 (the “**Draft Concession Agreement**”) provided now or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of **Mumbai Port Authority** (the “**Authority**”) or any of their 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 the Bidders with information that may be useful to them in preparing and submitting their proposal pursuant to the Bidding Documents. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which depends upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. 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 by participating in this Bidding Process.

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

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

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Successful 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.

This RFP calls for a single stage – two cover submission consisting of ‘Submission 1: Qualification’ and ‘Submission 2: Commercial proposal’. The financial quote should not be indicated anywhere in the documents except in ‘Submission 2: Commercial proposal’ in the prescribed format failing which the bidder shall be disqualified from the bidding process and there shall be no liability on the Authority 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 words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein. The words and expressions beginning with capital letters and not defined herein, but defined in the Concession Agreement, shall, unless repugnant to the context, have the meaning ascribed thereto therein.

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1 INTRODUCTION

1.1 Background

Prince's Dock, along with Victoria Dock, was built in the 18th century, during the Great Britain Government, to face the increase of maritime traffic in Mumbai, at that time called Bombay. In 2015, due to the high changes on cargo handling, the two docks were filled up to create a new terminal container in the Mumbai Port. Later in 2017, after development of the Jawaharlal Nehru Port for container, the Mumbai Port Authority (MbPA) decided to address the area to leisure activities more suitable with urban uses. This decision was strictly related with the wider development process of the Mumbai Port promoted by MbPA of the Mumbai waterfront regeneration.

Eastern Water Front development:

Mumbai Port is located on the West Coast of India, and most of its area lies in South Mumbai on the Eastern waterfront. South Mumbai is one of the most premium locations in the country; thus, the economic value of Mumbai Port's land parcel is expected to be significant. MbPA is in the process of revamping its activities with the introduction of tourism, public, and office spaces by way of the Master planning of about 500 ha. This will open up the Eastern Waterfront to the residents of Mumbai and suburbs. The development of Eastern Water Front includes development of:

1. Domestic Cruise Terminal
2. Development RO-RO Pax
3. Development of Marina
4. Development of M-Shed

Domestic Cruise Terminal: The Domestic Cruise Terminal (DCT) Phase 1 is a part of the overall waterfront / promenade planned by MbPA, which will have various water transport facilities and leisure activities for public. The waterfront area stretches to almost 1 km length and many activities like walkways, amphitheater, eateries, souvenir stalls, viewpoints, gardens and informal seating. Keeping the huge influx of commuters and general public in mind, a detailed Evacuation Plan is being implemented, with segregation of dock users and public. Keeping the huge influx of commuters and general public in mind, a detailed Evacuation Plan is being implemented, with segregation of dock users and public. DCT operations has already began serving the domestic cruise plying between Mumbai and Goa.

Development RO-RO Pax: The Eastern Waterfront comprises the RO-RO PAX area through RO RO ferry services have started its operation to various destinations in Mumbai, Alibaug and Navimumbai, Domestic Cruise Terminal (DCT) and a dedicated waterfront.

Development of Marina: A considerable fact for a Marina in Mumbai is the high number of yachts that visit or are based in the city. The planned marina which will accommodate approximately 300 number of yachts. The proposed planned marina have ship repair facility, other ancillary facilities a yacht club and a open to public commercial area space.

1.1.1. Development of Marina

The port of Mumbai is located strategically on the west coast of India and blessed by nature with calm and sheltered waters. The port acts as a powerful magnet for International shipping. Lying close to the

main shipping lanes, the port easily and quickly connects to all ports of the world from Gulf to Far East to Europe to America.

With the recent emphasis on improving the city's environment and the general policy to handling clean cargo at Mumbai Port as also for developing separate revenue stream, developing of the water front of Mumbai Port areas is an aspect that needs to be explored. For a country with a vast coastline (>7500Km) India hardly has a marina to park its luxury yachts/pleasure boats. The country's lone operational marina is at Kochi but there are been little movement in this direction up the western coast. The Kochi International Marina was developed by the Kerala Tourism Development Corporation and has started operations in 2010.

A considerable fact for a Marina in Mumbai is the high number of yachts that visit or are based in the city. Moreover, the fleet anchors the Gateway of India monument, requiring owners to step on board via a small slipway or, in the case of larger yachts, hire tenders to ferry them around. Having the most number of privately owned leisure boats, it is a ready market for Marina. Due to unavailability of a designated Marina of Mumbai, at any given time, around 200 small leisure boats can be seen moored near the Gateway of India. Considering all these factors, as well as the historical-cultural importance of the City of Mumbai and of its hinterland, the Authority has positively evaluated the opportunity to create a marina equipped with all the typical services of the best marinas in the world to enhance and promote the growth of the territory, of the city, and at the same time, to open the city to tourism by sea. For the same, an area of approx. 9.02Ha is allocated for the development of Marina.

Brief particulars of the Project are provided in the table below

Name of the Project	Number of years of concession	Estimated Cost of work to be incurred by Concessionaire
Design, Built, Finance, Operate and Transfer of Mumbai Marina at Prince's Dock, Mumbai through PPP mode	45 years (including construction period of Three years)	Approx. Rs. 575.19 crores (Three Hundred and Fifty Seven Crores and Thirty Three Lakh only)

The sources of revenue for the concessionaire would include but not limited to:

- Revenue from Marina / water area
- Revenue from Dry Dock / Shipyard operations
- Revenue from Ancillary facilitation charges
- Revenue from Club operations
- Revenue from commercial utilization of area in the Yacht club building
- Renting out of Commercial space in Commercial Area
- Advertisement revenue from advertisement in and around the Ancillary area
- Revenue from Events like film shooting etc.

In accordance to the provision of the Concession Agreement. The Concessionaire is free to provide any additional facilities and shall collect user charges with prior intimation to the Authority.

The Authority intends to qualify and select suitable Bidders (the "Bidder", which expression shall, unless repugnant to the context, include the Members of the Consortium) through an open competitive bidding process in accordance with the procedure set out in this RFP document.

1.1.2. The Selected Bidder, who is either a company (the "**Single Entity**") who is either a company incorporated under the Companies Act, 2013 or undertakes to incorporate as such prior to execution of the Concession Agreement (the "**Concessionaire**") or a group of Companies (the "**Consortium**") incorporated under the Companies Act, 2013 or undertakes to incorporate a Special Purpose Vehicle ("**SPV**") under the Companies Act, 2013, prior to execution of the concession agreement ("**Concession Agreement**"). The **Concessionaire** shall be responsible for the design, build, Finance, operation and maintenance of the Project under and in accordance with the provisions of the concession agreement (the "**Concession Agreement**") to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

1.1.3. The scope of work will broadly include:

- a. Design of Marina and its Ancillary system
- b. Minimum parking for at-least 300 pleasure boats / yachts of varying sizes.
- c. Basin excavation from landside & transportation of excavated materials
- d. Construction of new quays and restoration of existing one
- e. Provision of concrete pontoons & vessels docking system
- f. Construction of Ancillary buildings, walkway & shipyard
- g. Construction of all the Plants and amenities (bunkering, Fire Fighting, water supply, electricity. etc.)
- h. Realization of outer paving, street furniture and green areas
- i. Dry dock and ship repairs facility to be provided in shipyard area along with provision of stack parking.
- j. The 2 Hectare land to be used for Basic Marina Facility, Yacht Club and Commercial Area.

For detailed scope, please refer to the Volume 2 - Draft Concession Agreement.

1.1.4. Indicative capital cost of the Project is Rs.575.19 crores (Five Hundred and Seventy Five Crores and Nineteen Lakh only). However, for the estimation of actual costs and technical and financial viability of the Project, the Bidder(s) may undertake a technical and financial feasibility study of their own. The cost and reliability of such study shall be the sole responsibility of the Bidder.

1.1.5. The Concession Agreement sets forth the detailed terms and conditions for grant of concession to the Concessionaire , including the scope of the Concessionaire's services and obligations (the "Concession")

1.1.6. The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed

or interpreted as limiting in any way or manner the scope of the performance obligations of the Concessionaire set forth in the Concession Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work or the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on such account shall be entertained by the Authority.

- 1.1.7. The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth herein 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 Bid (the "**Bid due date**").

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a single-stage two cover bidding process (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. This stage shall comprise of two submissions, '**Submission 1: Qualification**' and '**Submission 2: Commercial Proposal**'. Prior to making an Application, the Bidder shall pay to the Authority a sum of Rs.2,52,000/- (Rupees Two Lakh Fifty Two Thousand only) inclusive of GST as the cost of the RFP document. The authority will first open 'Submission 1: Qualification' from all Bidder(s) and announce a short-list of qualified Bidders whose 'Submission 2: Commercial Proposal' shall be considered for participation in the 2nd stage of Bidding Process (the "**Bid Stage**") as per the Request for Proposals (the "**Request for Proposals**" or "**RFP**").

The Government of India has issued guidelines (see Appendix-IX) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Authority shall be entitled to disqualify a Bidder in accordance with the previously mentioned guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I. The bidders shall fulfill all the requirements and criteria as stated in Appendix XIV.

- 1.2.2 In the Bidding Stage, Bidders, including their successors, (the "**Bidders**", which expression shall, unless repugnant to the context, include the Members of the Consortium) would be required to furnish all the information specified in this RFP. The Bid shall be valid for a period of not less than 180 (One Hundred Eighty) days from the Bid due date.
- 1.2.3 Under Submission 1 (the "Qualification"), the Bidders would be required to furnish the information for qualification specified in this RFP for the purpose of this project. Submission 2: Commercial Proposals will entail the **Annual Premium Amount** in Indian Rupees to be quoted by bidders. Commercial Proposal of only those Bidders who are qualified by the Authority as per the criteria prescribed in accordance with Clause 3.4 of this RFP document will be evaluated, remaining Commercial Proposals of Bidders will be returned unopened. The aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- 1.2.4 A bidder is required to deposit , along with its Bid, a bid security of Rs.5,75,00,000/- (Rupees Five Crore and Seventy Five 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 Concession Agreement. The Bidders will have an option to provide Bid Security in form of a demand draft or a bank guarantee acceptable to Authority, and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 240 (Two hundred and forty) 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. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 1.2.5 During the Bidding process, Bidders are invited to examine the Project in detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the concession including implementation of the Project.
- 1.2.6 The Bids will be invited for the Project on the basis of the highest quoted **Annual Premium Amount** (“**Bid Parameter**”), payable to the Authority every year from the 1st anniversary of the commercial operation date for award of the Concession. The highest **Annual Premium Amount** shall constitute the sole criteria for evaluation of Bids. Subject to Clause 2.18, the Project will be awarded to the Bidder quoting the highest **Annual Premium Amount**.
- (a) Deleted;
- (b) Deleted
- (c) Deleted
- 1.2.7 In this RFP, the term “**Highest Bidder**” shall mean the Bidder who is offering the highest **Annual Premium Amount**
- 1.2.8 Generally, the Highest Bidder shall be the Selected Bidder, subject to the provisions of Clause 2.19. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Section 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process
- 1.2.9 The Concessionaire shall be entitled to determine the User Charges of the Project Facilities and Services as per the Tariff set by the Concessionaire (as defined in the Concession Agreement under Article 8). Such activities shall be approved by the Concessions Authority from time to time. The Concessionaire shall be responsible for fulfilling all the regulatory and statutory obligations applicable as per the Concession Agreement.
- 1.2.10 Details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP.
- Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/ courier/ hand delivery and by e-mail so as to reach the officer designated in Clause 2.9 by the specified date. The envelopes/ communications shall clearly bear the following identification/ title: “**Queries/ Request for Additional Information: RFP for Design, Built, Finance, Operate and Transfer of Mumbai Marina at Prince’s Dock, Mumbai on PPP mode**”.
- 1.2.11 The following documents shall be part of the Request for Proposal for the “Project”
- a. This document i.e., “Request for Proposal”

- b. Draft Concession Agreement
- c. Detailed Project Report For Marina at MbPA, Mumbai – Volume I Technical Feasibility

1.3 Schedule of Bidding Process

The Authority shall endeavor to adhere to the following schedule:

S. No.	Event Description	Date
1.	Issue of Bid Documents	6.6.2023
2.	Last date for receiving queries	20.6.2023
3.	Pre Bid Conference	23.6.2023
4.	Authority's response to queries latest by	30.6.2023
5.	Bid due date	24.7.2023
6.	Validity of Bids	180 days from bid due date
7.	Opening of bid - Submission 1: Qualification	
8.	Issuance of list of qualified bidders	To be notified later
	Opening of Submission 2: Commercial Proposal	To be notified later
9.	Issuance of LOA	Within 180 days of Bid due date
10.	Signing of Concession Agreement	Within 30 days of award of LOA

1.4 Pre-Bid Conference

The date, time and venue of the Pre-Bid Conference shall be:

Date: 23.6.2023

Time: 15:00 hrs

Venue: 7th Floor, Conference room, Vijaydeep building, Shoorji Vallabhdas Road, Ballard estate, Mumbai – 400001.

2 INSTRUCTIONS TO BIDDERS

A) GENERAL

2.1 General terms of Bidding

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

2.2 Eligibility of applicant

- 2.2.1 For determining the eligibility of Applicants for their pre-qualification hereunder, the following shall apply:

- (a) The Applicant for pre-qualification may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no applicant applying individually or as a member of a Consortium, as the case may be, can be member of another Applicant. The term Applicant used herein would apply to both a single entity and a Consortium.
- (b) An Applicant may be a natural person, private entity, [government-owned entity] or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.55 below.
- (c) An Applicant shall not have a conflict of interest (the “Conflict of Interest”) that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified. An Applicant shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - i. the Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Applicant, its Member or an 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 Applicant, Member or Associate, as the case may be) in the other Applicant, its Member 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 section 4A of the Companies Act, 2013. For the purposes of this Clause 2.2.1(c) indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such

- shareholding shall be reckoned under this subclause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
- ii. a constituent of such Applicant is also a constituent of another Applicant; or
 - iii. such Applicant, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant, its Member or any Associate thereof; or
 - iv. such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - v. such Applicant, or any Associate thereof has a relationship with another Applicant, 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 Application of either or each other; or
 - vi. such Applicant, 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.
- (d) An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Applicant, its Member 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 Applicant, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Explanation: In case an Applicant is a Consortium, then the term Applicant as used in this Clause 2.2.1, shall include each Member of such Consortium.

2.2.2 Deleted

2.2.2.1 Deleted

2.2.3 The Applicants shall enclose with its application, to be submitted as per the format at Appendix-I, complete with its Annexes, the following:

- i. Certificate(s) from its statutory auditors or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 7 years in respect of the projects specified in paragraph 2.2.1 (a)above. In case a particular job/ contract has been jointly executed by the Applicant (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
- ii. certificate(s) from its statutory auditors specifying the net worth, turnover and cash accruals of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.33 (ii). For the purposes of this RFP, net worth (the "Net Worth") shall mean the sum of subscribed and paid up equity and reserves from which

shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

2.2.4 The Applicant should submit a Power of Attorney as per the format at Appendix- II, authorizing the signatory of the Application to commit the Applicant. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix- III.

2.2.5 Where the Applicant is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 1956/2013 (the "SPV"), to execute the Concession Agreement and implement the Project. In case the Applicant is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements.

- (a) Number of members in a consortium shall not exceed 6 (six), but information sought in the Application may be restricted to 4 (four) members in the order of their equity contribution;
- (b) subject to the provisions of sub-clause (a) above, the Application should contain the information required for each member of the Consortium;
- (c) members of the Consortium shall nominate one member as the lead member (the "**Lead Member**"), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;
- (d) the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) an individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;
- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the "**Jt. Bidding Agreement**"), for the purpose of making the Application and submitting a Bid in the event of being short-listed. The Jt. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:
 - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, inclearly outline the proposed roles and responsibilities, if any, of each member;
 - (ii) commit the minimum equity stake to be held by each member;
 - (iii) commit that each of the members, whose experience will be evaluated

- for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement
- (iv) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the first anniversary of the commercial operation date of the Project; and
 - (v) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and
- (h) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.

2.2.6 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 Application, would not be eligible to submit an Application, either individually or as member of a Consortium.

2.2.7 An Applicant including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Applicant, Consortium Member or Associate. Provided, however, that where an Applicant claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.77 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful 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.

2.2.8 In computing the Technical Capacity and Financial Capacity of the Applicant/ Consortium Members under Clauses 2.2.2, 2.2.3 and 3.4.4, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

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

corporation, the power to direct the management and policies of such person by operation of law.

2.2.9 The following conditions shall be adhered to while submitting an Application:

- (i) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
- (ii) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and/or constitution is identical to that at pre-qualification;
- (iii) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.4 below; and
- (iv) in case the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

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

- (a) Where, on the date of the Application, not less than 15% (fifteen per cent) of the aggregate issued, subscribed and paid up equity share capital in an Applicant or its Member is held by persons resident outside India or where an Applicant or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Application, there is an acquisition of not less than 15% (fifteen per cent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Applicant or its Member;

then the Qualification of such Applicant or in the event described in sub clause (b) above, the continued Qualification of the Applicant 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 Applicant.

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, 1997, or any substitute thereof, as in force on the date of such acquisition.

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

2.2.11 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within three months of the closing of the latest financial year of an Applicant, it shall ignore

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

- 2.2.12 The reports contained in the bidding documents are provided as preliminary reference documents by way of assistance to the bidders. The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Bidding Documents 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 Bidding Documents.
- 2.2.13 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the draft Concession Agreement.
- 2.2.14 The Bid should be furnished in the formats as specified in the RFP, clearly indicating the bid amount in both figures and words, in Indian Rupees, and signed by the Bidder's authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account. The Successful Bidder may be subsequently invited for award of the Concession. The Bidders should note that the formats specified in the RFP have been provided for the convenience of the Bidders and may not exhaustively enumerate or describe various information required to be provided by the Bidders under the Bidding Documents. The Bidders should ensure that all the information required to be provided by it in terms of the Bidding Documents is included in its Bid whether or not a particular format specified herein makes provision for submission of such information and/or whether or not a format for submission of such information is incorporated in the Bidding Documents.
- 2.2.15 Deleted
- 2.2.16 Deleted
- 2.2.17 Any condition or qualification or any other stipulation contained in the Bid which is inconsistent with the terms of the Bidding Documents shall render the Bid liable to rejection as a non-responsive Bid.
- 2.2.18 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.
- 2.2.19 The Bidding Documents including this RFP, draft Concession Agreement and other documents which may be issued at a later stage including replies to queries, addendum etc., provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance with the Bidding Documents. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.2.18-19, 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. However, this provision of confidentiality shall be subject to the relevant and prevailing laws, rules and regulations.

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

2.2.21 This RFP is not transferable.

2.2.22 Any award of Concession pursuant to this RFP shall be subject to the terms of Bidding Documents.

2.3 Change in composition of the Consortium:

2.3.1 Change in the composition of a Consortium will not be permitted by the Authority during the Qualification Stage.

2.3.2 Where the Selected Bidder is a Consortium, change in composition of the Consortium may be permitted by the Authority before signing of Concession Agreement:

- a. the application for such change is made prior to the formation of the SPV
- b. the Lead Member continues to be the Lead Member of the Consortium;
- c. the substitute is at least equal, in terms of Technical Capacity or Financial Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Bidders; and
- d. the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not a Bidder / Associate of any other Consortium bidding for this Project.

2.3.3 Approval for change in the composition of a Consortium shall be at the sole discretion of the Authority and must be approved by the Authority in writing.

- 2.3.4 The modified/ reconstituted Consortium shall submit a revised Jt. Bidding Agreement and a Power of Attorney, substantially in the form at Appendix-IV and Appendix-V, after approval of Authority and before formation of SPV.
- 2.3.5 Notwithstanding anything to contrary contained in sub-clause (c) (i) of Clause 2.2.1, an Applicant may, within 10 (ten) days after the Application Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest , and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

2.4 Change in Ownership

- 2.4.1 By submitting the Bid, the Bidder acknowledges that it was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members who shall, until the 1st (first) anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.4.1 shall apply only when the Bidder is a Consortium.
- 2.4.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise.

2.5 Cost of Bidding

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

2.6 Site visit and verification of information

- 2.6.1 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, baseline of assets, location, surroundings, climate, availability of

power, handling and storage of materials, applicable laws and regulations, and any other matter considered relevant by them.

- 2.6.2 It shall be deemed that by submitting a Bid, the Bidder has:
- a. made a complete and careful examination of the Bidding Documents;
 - b. received all relevant information requested from the Authority;
 - c. accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.6.1 above;
 - d. satisfied itself about all matters, things and information including matters referred to in Clause 2.6.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
 - e. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.6.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
 - f. acknowledged that it does not have a Conflict of Interest; and
 - g. agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.6.3 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data provided by the Authority.
- 2.6.4 The Bidder shall continue to be responsible for all claims and declarations made under its Bid for the entire Bidding Process and if selected under the Bid Process as Successful Bidder, throughout the Concession Period.

2.7 Verification and Disqualification

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

If the Bidder is a Consortium, then the entire Consortium and each Member may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Successful Bidder gets disqualified/ rejected, then the Authority reserves the right to:

- i. invite the remaining Bidders to submit their Bids in accordance with Clauses **Error! Reference source not found.** and **Error! Reference source not found.**; or
- ii. take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.7.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after their execution and during the period of subsistence thereof, including the Concession 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 Concessionaire either by issue of the LoA or entering into of the Concession Agreement, and if the Successful Bidder has already been issued the LoA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Successful Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Successful Bidder or the Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security (to the extent of the amount of the bid security), as the case may be, as liquidated damages, without prejudice to any other right or remedy that may be available to it under the Bidding Documents and/or the Concession Agreement, or otherwise.

2.7.4 The Bidder acknowledges and agrees that provisions of this RFP which by their nature or subject matter are intended to survive the completion of the Bidding or to apply throughout the Concession Period shall continue to survive and bind the Bidders throughout the Concession Period.

2.8 Other Provisions

The scanned copy of Integrity Pact (IP) Agreement signed by the employer is uploaded along with the tender document. The bidder has to download the IP Agreement, sign and shall upload the same scanned copy of signed IP Agreement along with the bid (as per Appendix X) . The unsigned scan copy of IP Agreement by the bidder shall be treated as invalid and the bid shall be considered as non-responsive bid. The scanned copy of the Integrity pact signed by the Employer is uploaded along with this tender document. The bidder has to download the Integrity Pact Agreement, sign and shall upload the same scanned copy (as per Appendix X) along with the bid.

The following officials have been nominated as Independent External Monitor (IEM) for the implementation of Integrity Pact whose address is as under

Shri Rajv IPS (Retd) Ex-Vigilance Commissioner, CVC
Bungalow No. 88, New Motibagh New Delhi 110021
Mobile:- 9818916161
Email:- shreerajiv1975@gmail.com

Shri. V. Kannan, Ex-CMD, Vijaya Bank,
TA-1, Krishna Regency,
Third Floor, Tata Sky Farm,
K.R. Road, Basavanagudi,
Bengaluru 560004.
Mobile:- 810530555

Integrity Pact essentially envisages an agreement between prospective vendors/bidders and Mumbai Port Authority, committing the person/officials of both sides to not to resort any corrupt practice in any aspect of the contract in any stage. Only those vendors/bidders who commit themselves to Integrity Pact with Authority will be considered for the evaluation of the bid. Integrity Pact will be implemented through Independent External monitor (IM), imminent person appointed by Authority with approval of Central Vigilance Commission. The IM would assess independently and objectively, as to whether and what extent the parties have complied with their obligation under the Integrity Pact. IM would have access to all contract document whenever required. The bidder may raise disputes/complaint if any with the IM. The IM would examine complain received by him and give his recommendation/views to the Authority.

- 2.8.1 National Security ,the Bid shall be subject to clearance from National Security perspective in accordance with Appendix - XI.
- 2.8.2 Bidders are directed that the successful bidder will have to sign the Non-Disclosure Agreement – Appendix - XIII at the initiation of the project.

B) DOCUMENTS

2.9 Contents of the RFP

- 2.9.1 This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.111 and any clarifications and interpretations issued in accordance with Clause 2.1010.

Invitation for Bids

Section 1. Introduction

Section 2. Instructions to Bidders

Section 3. Evaluation of Bids

Section 4. Fraud & Corrupt Practices

Section 5. Pre Bid Conference

Section 6. Miscellaneous

Appendices

Appendix I

Annex I: Letter for Bid

Annex II: Details of Bidder

Annex III: Statement of Legal Capacity

Appendix II: Bank Guarantee for Bid Security

Appendix III: Power of Attorney for signing of Bid

Appendix IV: Power of Attorney for Lead Member of Consortium

Appendix V: Joint Bidding Agreement for Consortium

Appendix VI: Anti-Collusion Certificate

Appendix VII: Format for Qualification

Annex I: Format of Financial Capacity for purpose of evaluation

Annex II: Format of Technical Capacity for purpose of evaluation

Annex III: Details of Eligible Projects

Appendix VIII: Format of Commercial Proposal

Appendix IX: Guidelines of the Department of Disinvestment

Appendix X: Integrity Pact

Appendix XI: Information for Security clearance

Appendix XII: Instruction for online bid submission

Appendix XIII: Non Disclosure Agreement

Appendix XIV: Public Procurement policy of Government of India

Appendix XV – Public Procurement (Preference to Make in India)

Appendix XVI – Undertaking for entering into O&M Agreement

Appendix XVII - Policy for preventing private sector monopoly in Major Ports

Volume 2: Draft Concession Agreement

2.10 Clarifications

- 2.10.1 Bidders requiring any clarification on the RFP may notify the Authority in writing in accordance with Clause 5. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3.
- 2.10.2 Any queries or request for additional information concerning this RFP shall be submitted in writing through speed post/courier/ and by e-mail to the Chief Engineer, Mumbai Port Authority by the specified date. The envelopes/ communications shall clearly bear the following identification/title: **“Queries/Request for Additional Information: Design, Built, Finance, Operate and Transfer of Mumbai Marina at Prince’s Dock, Mumbai on PPP mode”**. The clarification should be sent to **The Chief Engineer, Mumbai Port Authority, Port Bhavan, Ballard Estate, Fort, Mumbai-400001. Ph: 022-6656 4031; Email: chiefengineer@mumbaiport.gov.in** The Authority shall

endeavor to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid due date.

- 2.10.3 The Authority shall endeavor 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 including within any specified time limit. All the queries and its responses thereto, shall be hoisted on the website of the Authority without identifying the source of queries.
- 2.10.4 The Authority however 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.
- 2.10.5 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued shall be deemed part of the Bidding Documents. Verbal clarifications and information given by the Authority or its employees or representatives/ advisors shall not in any way or manner be binding on the Authority.

2.11 Amendment of RFP

- 2.11.1 At any time prior to the Bid due date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of an addendum to the RFP.
- 2.11.2 Any addendum issued hereunder will be published on the websites of the Authority.
- 2.11.3 In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid due date.

C) PREPARATION AND SUBMISSION OF BIDS

2.12 Format and Signing of Bid

- 2.12.1 The Bidder shall in its Bid provide all the information sought under the Bidding Documents. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects.
- 2.12.2 The Bid shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid. The Bid shall contain page numbers.
- 2.12.3 Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient.; Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- 2.12.4 The information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member named in the Bid and not, unless specifically requested, to other associated companies or firms;

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

(a) Where, on the Bid due date , 15% (fifteen 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 Bid due date, there is an acquisition of 15% (fifteen 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 or its Member;

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.

2.13 Uploading of Bids

2.13.1 E-tender Notice

2.13.2 The interested bidders (“Bidders”) are being called upon to submit their technical and financial capacity details in Cover-1 at the CPPP website (“Qualification”) as per Appendix VII and financial proposals in the format at Appendix-VIII in Cover-2 at the CPPP website (“Commercial Proposal”) (both shall collectively have referred as “Bid”) in accordance with the terms specified in these Bidding Documents. The Bid shall be valid for a period of 180 (One Hundred Eighty) days from the Bid due date. The Bidders shall submit their respective Bids online (as per Annexure XII) at the CPPP website (<https://eprocure.gov.in/eprocure/app>) only. Any bid submitted in only physical form shall be rejected by the Authority. For the purpose of submission of the Bid online, a Bidder shall first register itself on the CPPP.

2.13.3 Each Bid shall have to be prepared and submitted in accordance with provisions of this RFP. Thus the Bid shall comprise of 2 (two) submissions:

Submission 1: Qualification

Submission 2: Commercial Proposal

The Bid shall be in accordance with Clause 2.13.

2.13.4 The following documents for each Submission as per Clause 2.13.3, should be uploaded by the Bidders in the form of PDF files in the same order as mentioned below, on the e-tendering website

during the online Bid Preparation stage. Also two physical copies of qualification documents required to be submitted at Mumbai Port Authority head office. In case of any discrepancy of information between online and physical submission, then online submission shall be final.

2.14 Submission 1: Qualification

- a. A Bidder is required to deposit, along with its Bid, a bid security of Rs. 5,75,00,000 (Rupees Five crores and Seventy five lakh only) (the "Bid Security/ EMD"), refundable no later than 180 (One hundred and Eighty) days from the Bid due date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have to provide Bid Security in the form of a bank guarantee acceptable to the Authority, in the format specified in Appendix- II. The validity period of bank guarantee shall not be less than 180 (one hundred eighty) days from the Bid due date, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security
- b. Bid in the prescribed format (Appendix I to Appendix XVII) along with Annexes and supporting documents;
- c. Power of Attorney for signing of Bid in the format at Appendix-III (to be submitted in hard copy);;
- d. If applicable, the Power of Attorney for Lead Member of Consortium in the format at Appendix-IV (to be submitted in hard copy);
- e. If applicable, the Joint Bidding Agreement between the Members of Consortium in the format at Appendix-V;
- f. Anti-Collusion Certificate in the format at Appendix VI;
- g. Deleted
- h. copy of Memorandum and Articles of Association, if the Applicant is a body corporate, and if a partnership then a copy of its partnership deed;
- i. Bidding Documents signed by the authorized signatory of the Bidder.
- j. If Bidder is willing to add any additional facilities for passengers, tourists or for revenue generation the same may submitted with detailed drawings and brief scheme.
- k. In case bidder is a subsidiary/SPV/Associate, it shall provide NOC from its holding company, lender and client whichever is applicable.
- l. A Bidder is required to deposit, along with its Bid non-refundable Bid fee/ Tender Fee of Rs. 2,52,000/- (Rupees Two Lakh Fifty Two thousand only) online .

Submission 2: Commercial Proposal

- a. The Commercial Proposal shall be submitted in the format specified at Appendix VIII. The bidder shall submit his offer in BOQ online in the format provided in the price bid. The bidders are requested to quote Annual Premium Amount in the excel file (.xls) published along with this tender. Price bid should not be submitted in hard copy or in any other format other than online submission in excel format in any case.

- b. It may be noted that Bids of Bidders, which do not contain the Commercial Proposal as specified in the RFP, would be considered as invalid and liable for rejection.
- 2.14.1 All eligible/interested Bidders are required to be enrolled on portal <https://eprocure.gov.in/eprocure/app> before downloading tender documents and participate in e-tendering.
- 2.14.2 Other instructions can be seen in the tender form. All or any one of the tender may be rejected by competent authority.
- 2.14.3 The Bidders are requested to familiarize themselves with the use of the e-Tendering portal (central procurement portal) of Government of India well in advance.
- 2.14.4 Bidders will have to pay cost of Tender Document through Demand Draft, of Rs. 2,52,000/- (Rupees Two Lakh Fifty Two thousand only) towards the non-refundable Bid fee/ Tender Fee .
- 2.14.5 Deleted
- 2.14.6 For a bidder, online bidding process consists of following 3 stages:
1. Online Tender Document Download
 2. Hard copy submission of bid security, 2 hard copies of qualification documents pursuant to clause 2.13.4, bid fee and hard copy submission of Power of Attorneys in the form of Appendix III and Appendix IV. The same shall be submitted to the Chief Engineer, Imprest Office, Civil Engineering Department, Mumbai Port Authority, Port Bhavan, 3rd Floor, S.V.Marg, Fort, Mumbai 400001 on or before due date and time.
 3. Online Bid Preparation and Submission.
- All of 3 stages are mandatory in order for Bidders to successfully complete Online Bidding Process.
- 2.14.7 Tender Document Purchase and Download
- a. The Bid documents will uploaded / released on Government of India, CPP portal <https://eprocure.gov.in/eprocure/app> Bid document and supporting documents can be downloaded from this website
- 2.14.8 The Bidder is expected to submit the prescribed bid document fee and bid security without which, the submitted bid will be summarily rejected
- 2.14.9 Subsequently, Bid has to be prepared and submitted online ONLY as per the schedule and clauses mentioned in the RFP.
- 2.14.10 The Bid documents will be available online only. Bid documents will not be sold / issued manually from office.
- 2.14.11 The Bidders are required to download the RFP Document/bid documents within the prescribed date & time mentioned in online tender schedule. After expiry of the date and time for tender document download, Department / Authority will not be responsible for any such failure on account of Bidders for not downloading the document within the schedule even though they have paid the cost of the

tender to the Department Authority. In such case the cost of the RFP document/bid document paid by the Bidders will not be refunded.

2.14.12 Tenderer shall visit <https://eplatform.MbPAedi.gov.in> for making the payment for Tender Fee and choose the option "Latest Tenders" on the dashboard. After selecting the relevant tender, the tenderer can make online payment after entering the basic details of bank for refund purpose, the receipt generated as PDF file of Tender Fee shall be uploaded by the tenderer on CPP Portal under relevant option as a proof for the payment, failing which Tender will not be opened. The details of bank payment reference number and payment date also need to be entered while uploading in the relevant fields.

2.15 Bid due date

2.15.1 Bids should be submitted as per the schedule provided in Clause 1.3 and in the manner provided in Clause 2.12 and Clause 2.13 and in form as detailed in the Bidding Documents.

2.15.2 The Authority may, in its sole discretion, extend the Bid due date by issuing an addendum in accordance with Clause 2.11 uniformly for all Bidders.

2.16 Late Bids

2.16.1 Bids will not be accepted by the e-tendering system (or the Authority) after the specified time on the Bid due date and the same shall not be eligible for consideration and shall be summarily rejected.

2.17 Contents of the Bid

2.17.1 Without prejudice to the other provisions of the Bidding Documents, the Bid shall be furnished in the format at Appendix-VIII, and shall consist of a Annual Premium Amount which will be annually escalated at the rate of 2% (Two percent) to be quoted by the Bidder to undertake the Project in accordance with this RFP and the provisions of the Concession Agreement.

2.17.2 Deleted

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

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

2.17.5 The proposed Concession Agreement enclosed with this RFP (to be issued as Volume 2, after the issue of Volume 1 of the RFP) shall be deemed to be part of the Bid.

2.18 Substitution/Withdrawal of Bids

2.18.1 The Bidder may substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to the Bid due date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid due date.

2.18.2 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid due date, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.19 Rejection of Bids

- 2.19.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. 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.
- 2.19.2 The Authority reserves the right not to proceed with the Bidding Process or to modify the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.20 Validity of Bids

- 2.20.1 The Bids shall be valid for a period of not less than **180 (one hundred and eighty) days from the Bid due date**. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority, provided that the Successful Bidder shall extend the validity of the Bid until the execution of the Concession Agreement.

2.21 Confidentiality

- 2.21.1 Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the Bidding Process or is not a retained professional advisor advising the 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.

2.22 Correspondence with the Bidder

- 2.22.1 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.

2.23 Bid Security

- 2.23.1 The Bidder shall furnish as part of its Bid, the Bid Security of Rs. 5,75,00,000/- (Rupees Five Crore Seventy Five lakhs only) must be submitted to the Authority in the form of Bank Guarantee / Demand Draft issued by one of the Nationalized bank/ or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. one thousand crore) in India in favour of "The Board of Mumbai Port Authority" payable at Mumbai (the "Bid Security") in the format at Appendix-II (the "**Bank Guarantee for Bid Security / EMD**") in a sealed envelope and having a validity period of not less than 180 (one hundred and eighty) days, exclusive of the claim period as per Applicable Laws, from the Bid due date and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized 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.

- 2.23.2 In case the Bid Security is furnished in the form of a 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.
- 2.23.3 Any Bid not accompanied by the Bid Security shall be summarily rejected as non-responsive.
- 2.23.4 The Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority, and in any case within 180 (One Hundred and Eighty) days from the Bid due date. Where Bid Security has been paid by demand draft, the refund thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said demand draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.
- 2.23.5 The Successful Bidder's Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority shall retain the Bid Security of the Successful Bidder until the execution of the Concession Agreement and furnishing of the Performance Security.
- 2.23.6 The Authority shall be entitled to forfeit and appropriate the Bid Security as liquidated damages inter alia in any of the events specified in Clause 2.22.7 herein below and pursuant to other provisions of this RFP providing for a forfeiture of Bid Security. 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.
- 2.23.7 The Bid Security shall be forfeited as damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Concession Agreement, or otherwise, under the following conditions:
- a. Bidder submits a non-responsive Bid;
 - b. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
 - c. In the case of Successful Bidder, if within the specified time limit –
 - i it fails to sign and return the duplicate copy of LoA;
 - ii it fails to incorporate the SPV or such Bidder fails or refuses to sign the Concession Agreement;
 - iii the Bidder fails to provide the Performance Security within the period prescribed therefor in the Concession Agreement.
 - d. 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;

- e. the Successful Bidder fails or refuses to provide any documents required to be provided by it after its selection;
- f. the Successful Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

2.23.8 **National Security**

The list of pre-qualified bidders shall be subject to clearance from National Security perspective.

2.23.9 **Prevention of Private Sector Monopoly in Major Ports**

Ministry of Shipping, Government of India vide its letter No. PD-24018/8/2009-PD.III dated 2nd August , 2010 has issued the policy (see Appendix – XVII) to be followed by all Major Ports while awarding projects to private parties through Public Private Partnership (PPP) route so as to avoid private sector monopoly in the Major Ports. The aforesaid policy or any other * applicable policy shall apply mutatis mutandis to this Bidding Process and the Authority shall be entitled to disqualify any Bidder in accordance with aforementioned policy.

3 EVALUATION OF BIDS

3.1 Opening and Evaluation of Bids

- 3.1.1 The Authority will examine and evaluate the Bids in accordance with the provisions set out in this Section 3.
- 3.1.2 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid and such Bidder shall provide its response within the time specified by the Authority in this regard.

3.2 Tests of responsiveness

- 3.2.1 Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of this RFP. A Bid shall be considered responsive only if:
- a. it is received as per the format at Appendix-I to Appendix-X;
 - b. it is received by the Bid due date including any extension thereof pursuant to Clause 2.15.2;
 - c. it is signed, marked and uploaded as stipulated in Clauses 2.12, 2.13 and 2.14;
 - d. the Bid Security is paid as specified in Clause 2.23;
 - e. it is accompanied by the Power(s) of Attorney as specified in Clauses 2.2.44 and 2.2.55, as the case may be;
 - f. it contains certificates from its statutory auditors/chartered accountant in the formats specified at Appendix of the RFP;
 - g. it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (and if formats have been specified, then in those formats);
 - h. it is accompanied by joint bidding agreement in the format specified in Appendix V
 - i. it contains the Bidding Documents signed by the authorized signatory of the Bidder;
 - j. it does not contain any condition or qualification; and
 - k. it is not non-responsive or inconsistent in terms of the Bidding Documents.
- 3.2.2 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid. Provided, however, that the Authority may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.

3.3 Evaluation of Bidder

- 3.3.1 The evaluation of Bids shall be undertaken in the following sequence:
1. Evaluation of Submission 1: Qualification;
 2. Evaluation of Submission 2: Commercial Proposal

3.4 Evaluation of Submission 1: Qualification

- 3.4.1 For the purpose of qualifying under Submission 1, the Bidder shall have to demonstrate the minimum Technical Capacity and minimum Financial Capacity as stipulated under Clause 3.4.3 and Clause 3.4.4 of this RFP document respectively.
- 3.4.2 In computing the eligibility under Clauses 3.4.3, 3.4.4 of the Bidder/ Consortium Members, which is a company or a corporation, the Technical Capacity, Financial Capacity of their respective Associates would be eligible hereunder.

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

3.4.3 Eligibility Criteria – Technical Capacity

- 3.4.3.1 The bidding firm / consortium or any member in the Consortium shall meet the following eligibility criteria for Technical Qualification. Certification in support of qualification criteria may be submitted along with details in Appendix VII

- Bidder can be single entity or consortium of not more than 6 members

- 3.4.3.2 Bidder who fulfill the following requirements shall be eligible to apply:

- a. The bidder either itself or through its Design and Engineering Consultant (“**Management Contractor**”) shall demonstrate successful experience of design and engineering of at least 1 (One) Marina project of 150 yacht capacity in past 7 (seven) years ending 31st March 2023. In the event that the bidder does not have the requisite design and engineering experience, it shall submit to the Authority, a Memorandum Of Understanding at the time of bidding with the entity having desired design and engineering experience failing which the bid shall be liable to be rejected.

The Design and Engineering Consultant may not have equity contribution in the SPV. Upon selection of the Successful Bidder, an agreement (“**Management Contract**”) with the entity having desired design and engineering experience should be furnished as a Condition Precedent.

For the avoidance of doubt, the requirement of having Design and Engineering Consultant shall be a continuing obligation of the concessionaire throughout the construction phase. The Successful Bidder will be permitted to substitute such Design and Engineering Consultant provided the new Design and Engineering Consultant fulfills the eligibility criteria and the Authority approves such appointment.

and

- b. The bidder either itself or through its O&M Partner (“**Management Contractor**”) shall demonstrate successful experience of Operation & Maintenance of Marina Operation & Maintenance of Marina for a period of at least past 5 (five) years ending 31st March 2023. In the

event that the bidder does not have the requisite Operation & Maintenance experience, it shall submit to the Authority the Memorandum Of Understanding at the time of bidding with the entity having desired Operation & Maintenance experience failing which the bid shall be liable to be rejected.

Or

The bidder either itself or through its O&M Partner (“**Management Contractor**”) shall demonstrate successful experience of past 10 year ending 31st March 2023 in yacht sales, management and maintenance. In the event that the bidder does not have the requisite yacht sales, management and maintenance, it shall submit to the Authority the Memorandum Of Understanding at the time of bidding with the entity having desired experience failing which the bid shall be liable to be rejected.

And

- c. **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall, over the past 7 (Seven) financial years preceding the 31st March 2023, have:

Category 1: Development and/or Construction experience in Marina of at least 1 no. of 150 yachts Marina.

Category 2: Experience in Development/Construction of Marine projects:

Development and/or Construction experience in Marine Sector projects such that

1. The sum total of all the payment made **or** payment received is more than Rs. 1150 Crore
2. The capital cost of each individual project should be more than 115 Crore
3. Only the payment actually made **or** received as the case may be shall be considered and the cost of land shall not be included hereunder.
4. The marine sector shall mean and include projects in marine environment and seawater such as construction of ports, cofferdams, jetty, bridges over sea, sea port terminals, berths, permanent breakwaters, dry and wet docks, Wharves, piers, under water pipelines, lock gate and marina.
5. entity claiming experience should have held, in the company owning/executing the Project, a minimum of 26% equity.

Category 3: Experience in Development/Construction of Core projects.

Development and/or Construction experience in Core Sector projects such that

1. The sum total of all the payment made **or** received is more than Rs. 1150 Crore
2. The capital cost of each individual project should be more than 115 Crore
3. Only the payment actually made **or** received as the case may be shall be considered and the cost of land shall not be included hereunder.
4. The core sector shall mean and include projects in Highways, power, telecom, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation, water supply, sewerage and real estate development.
5. entity claiming experience should have held, in the company owning/executing the Project, a minimum of 26% equity

For the purpose of this RFP:

1. **Marine sector** would be deemed to include projects in marine environment and seawater such as construction of ports, cofferdams, jetty, bridges over sea/river, sea port terminals, berths, permanent breakwaters, dry and wet docks, wharves, piers, under water pipelines, lock gate and marina.
2. **Core sector** would be deemed to include highways, power, telecom, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation, water supply, sewerage and real estate development

Note: "Real estate development shall not include residential flats unless they form part of a real estate complex or township which has been built by the Applicant"

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

3.4.3.4 For a project to qualify as an Eligible Project under Categories 2 and 3:

- (a) Under Development of project, it should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be.
- (b) Under Construction of Project, the Bidder should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 7 (Seven) financial years immediately preceding the Bid due date,
- (c) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed;
- (d) the entity claiming experience shall, during the last 7 (Seven) financial years preceding the Bid due date, have (i) paid for development of the project (excluding the cost of land), and/ or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from highways, airports, ports and railway infrastructure, but shall not include revenues from sale or provision of goods or services such as electricity, gas, petroleum products, telecommunications or fare/freight revenues and other incomes of the company owning the Project.

3.4.3.5 The Applicant shall quote experience in respect of a particular Eligible Project under any one category only, even though the Applicant (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.

3.4.3.6 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

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

3.4.3.8 The Technical Capacity of the Bidder shall be assessed under this category, In the case of a

Consortium, the Members, who have and shall continue to have an equity share of at least 26% (twenty six percent) each in the Consortium, shall be considered for the purpose of evaluation. Such Members who have been evaluated under this category shall until the 1st (First) anniversary of date of commercial operations of the Project, hold equity share capital representing not less than 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire.

3.4.3.9 Deleted

3.4.3.10 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience for a particular category shall be permitted in any manner whatsoever.

3.4.3.11 The Bidder must furnish the details of experience of the Eligible Project for the last 7 (seven) Financial Years immediately preceding the Bid due date. This will include certificate(s) from its statutory auditors¹ or its concerned client stating the payments made/ received or works commissioned, as the case may be, during the past 7 (seven) years in respect of the project submitted for evaluation of Technical Capacity as per Clause 3.4.3; In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or from the client.

3.4.3.12 The Bidder should furnish the required information and evidence in support of its claim of Technical Capacity, as per format specified at Annex II of Appendix-VII. The information and evidence in support of Technical Capacity as per format at Annex III of Appendix VII shall form part of the Submission I.

3.4.3.13 Notwithstanding anything to the contrary contained herein, for the purposes of its Bid and technical qualification under Clause 3.4, the last the 7 (Seven) Years would mean preceding 7 (Seven) years prior to 31st March 2023.

3.4.4 **Eligibility Criteria – Financial Capacity**

3.4.4.1 Under this category, the Bidder shall have to demonstrate the minimum Net Worth and positive cash flows (the “**Financial Capacity**”):

- a) Minimum Net worth of Rs. 145.00 crores (Rs One Hundred and Forty Five Crores Only) at the close of the preceding 31st March 2023.
- b) Minimum Annual Average Turnover of Rs. 175.00 crores (Rs. One Hundred and Seventy Five Crores Only) in the last three financial years preceding 31st March 2023
- c) Positive Net Cash Accruals in any 3 (Three) years in last 5 (Five) years preceding 31st March 2023.
- d) In case of a Consortium, the combined technical capacity and net worth of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less

¹ Jurisdictions that do not have statutory auditor, the firm of auditors (Chartered Accountant) which audits the annual accounts of the Bidder may provide the certificates required under this RFP

than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement.

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.

The Net Cash Accruals refers to the difference between the company’s cash inflows and outflows in a given period. However, for avoidance of doubt, the calculation of Net Cash Accruals shall mean Profit After Tax + Depreciation.

3.4.5 **Financial Information for Purpose of evaluation**

3.4.5.1 The Bidder shall provide a audited balance sheet, profit and loss statements and certificate from its statutory auditor specifying the Net Worth, financial turnover and net cash accruals of the Bidder.

3.4.5.2 The Bid must be accompanied by the audited annual reports of the Bidder (or Members who are to be evaluated for Financial Capacity in case of a Consortium) for the last 3 (three) Financial Years, preceding the year in which the Bid is made.

3.4.5.3 In case the annual accounts for the latest Financial Year are not audited and therefore the Bidder could not 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 3(three) years preceding the year for which the audited annual report is not being provided.

3.4.5.4 The Bidder must establish a minimum Net Worth and positive cash accruals as per format at Annex-I of Appendix-VII.

3.4.5.5 Notwithstanding anything to the contrary contained herein, in the event that the Bid due date falls within 3 (three) months of the closing of the latest Financial Year of a Bidder, it shall ignore such Financial Year for the purposes of its Bid and furnish all its information and certification with reference to the 7 (Seven) Financial Years for Technical Capacity or 3 (three) Financial years for Financial Capacity, as the case may be, preceding its latest Financial Year. For the avoidance of doubt, the Financial Year shall, for the purposes of a Bid hereunder, mean accounting year followed by the Bidder in the course of its normal business. If the Bid due date falls after three months of the closing of the latest Financial Year of the Bidder, and in case the annual accounts for the latest Financial Year are not audited and therefore the Bidder could not 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 3(three) years preceding the year for which the audited annual report is not being provided.

3.4.6 **Short listing of Bidders**

3.4.6.1 The bidder must meet eligibility criteria as specified in Clause 3.4.3, Clause 3.4.4 and Clause 3.4.5, The Bidders qualifying as per the conditions above shall be shortlisted as pre-qualified Bidder and shall be considered for next step.

- 3.4.6.2 In the second step of evaluation, Financial Proposals of only those Bidders who have passed the first step shall be opened in presence of the nominees of the Bidders, who choose to attend the same All the Bidders satisfying the Financial Capacity and the Technical Capacity (“Qualified Bidder”) shall then be invited for the proposal presentation and commercial bid opening as per the Bidding Process mentioned in the RFP.
- 3.4.6.3 The Bidder shall meet the minimum Technical Capacity and Financial Capacity as mentioned in Clause 3.4.3 and 3.4.4 only those bidders who are qualified as per terms mentioned in the RFP will have their Commercial Proposals evaluated.
- 3.4.6.4 If the Bidder does not meet the minimum Technical Capacity and Financial Capacity as specified, then the Bidder shall be disqualified from the Bidding Process and the Bid Security of the Bidder shall be returned as per Clause 2.23.4 and their Commercial Proposals shall not be opened.

3.5 Bid Parameter

- 3.5.1 The Bid shall comprise of Annual Premium Amount which will be annually escalated at the rate of 2% (Two percent) to be quoted by the Bidder in accordance with the provisions of the Concession Agreement. The Bidder who offers the highest Annual Premium Amount shall ordinarily be the Successful Bidder. The Annual Premium Amount comprising the Bid shall be offered in accordance with the provisions of Clause 3.5.2 and 3.5.3
- 3.5.2 The Bid for the Project shall comprise of a Annual Premium Amount which will be annually escalated at the rate of 2% (Two percent) as defined in Clause 1.2.6 that shall be payable by the Bidder to the Authority which shall commence from the 1st anniversary of the Commercial Operation Date.
- 3.5.3 It is to be noted that in addition to the Annual Premium Amount which will be annually escalated at the rate of 2% (Two percent), the Bidder shall also have to pay an Annual Concession Fee with applicable taxes as per Article 9 of Volume 2:
- In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 3.5.4 **Evaluation of Submission 2: Commercial Proposal**
- 3.5.5 The Commercial Proposal evaluation seeks to select the Bidder offering the best commercial terms. The information requirements and guidelines for submission of the Commercial Proposal are detailed in Appendix VIII of this RFP document.
- 3.5.6 Subject to the provisions of Clause 2.19, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 and is short-listed as per Clause and who quotes the **highest** Annual Premium Amount which will be annually escalated at the rate of 2% (Two percent) offered to the Authority, shall ordinarily be declared as the successful Bidder (the “**Successful Bidder**”). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all Bidders to submit fresh Bids hereunder.
- 3.5.7 Bidders are requested to note that the Upfront Premium Amount quoted in the Commercial Proposal shall not have any conditionality attached or deviations from the Concession Agreement or RFP. Bids with conditions attached shall be treated as non-responsive.

- 3.5.8 In the event that two or more Bidders quote the same Annual Premium Amount (the “**Tie Bidders**”), the Successful Bidder shall be identified by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 3.5.9 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “**first round of bidding**”), all the remaining Bidders may be invited to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Successful 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 Successful Bidder. For example, if the third and fifth lowest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third Highest Bidder shall be the Successful Bidder.
- 3.5.10 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.5.9, the Authority may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.5.11 After selection, a Letter of Award (“**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 3.5.12 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

3.6 Contacts during Bid Evaluation

- 3.6.1 Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award 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.

4 FRAUD AND CORRUPT PRACTICES

4.1 Fraud and Corrupt Practices

- 4.1.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LoA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, in the LoA, the Concession Agreement, the Authority as the case may be may reject a Bid, withdraw the LoA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, 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 and/or Performance Security, as the case may be, as liquidated damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement or otherwise.
- 4.1.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LoA or the Concession Agreement, or otherwise, if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LoA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by any Department or Undertaking of Government of India during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.1.3 For the purposes of this Clause 4.1.3, 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 directly or indirectly the actions of any person connected with the Bidding Process (for the avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official, legal adviser, financial adviser, technical adviser of the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LoA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (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) acting contrary to applicable anti-bribery or anti-corruption laws;
 - (b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

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

5 PRE-BID CONFERENCE

5.1 Pre Bid Conference

- 5.1.1 Pre-Bid conferences of the Bidders shall be convened at the designated date, time and place. Only duly authorized representatives of the Bidders shall be allowed to participate in the Pre-Bid conference. A maximum of 2 (two) representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.1.2 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process. The Authority shall provide clarifications to only those queries which Authority has received in writing from the Bidders. The Authority will not provide clarifications to queries received orally.

6 MISCELLANEOUS

6.1 Miscellaneous

- 6.1.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the State of Maharashtra and Court at Mumbai only shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bidding Documents and/or the Bidding Process.
- 6.1.2 The Authority, in its sole discretion and without incurring any obligation or liability or assigning any reason, reserves the right, at any time, to:
- (a) suspend, withdraw and/or cancel the Bidding Process and/or amend and/or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to the Authority by, on behalf of, and/or in relation to any Bidder; and/or
 - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder
- 6.1.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.1.4 All statutory charges relating to registration of the agreement including Stamp Duty as per the prevailing rates published by Government of Maharashtra shall be borne by Successful Bidder/Concessionaire.
- 6.1.5 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.
- 6.1.6 Bidder (including the term 'tenderer', 'consultant', or 'service provider' in certain context) 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 procurement process.
- 6.1.7 All the provision of the Appendix XIV will be followed and abided by the Selected Bidder
- 6.1.8 All the provision of the Appendix XV will be followed and abided by the Selected Bidder

Appendix I
Annex I: Letter for Bid

(Refer Clause 2.14 of the RFP)

[On the letter head of the Bidder/lead Member]

Original or copy No: Dated:

To,

Sub: Bid for “**Design, Built, Finance, Operate and Transfer of Marina at Prince’s Dock, Mumbai on PPP mode**”.

Dear Sir,

With reference to your RFP dated -----, I/we, having examined the RFP and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.

1. I/We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Bidders for the aforesaid Project and I/we certify that all information provided in the Bid and in Appendices to this Letter of Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
2. The Bid is being submitted and submissions in this letter are being made for the express purpose of our selection as Operator for the aforesaid Project.
3. I/We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the submissions.
4. I/We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive my/our right to challenge the same on any account whatsoever.
5. I/We certify that in the last 3 (three) years, I/we/any of the Members have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. I/ We certify that we are not barred by Government of Maharashtra (GoM), any other State Government in India (SG) or Government of India (GoI), or any of the agencies of GoM/SG/GoI from participating in similar projects as on(Bid due date).
7. I/We declare that:
 - (a) I/We have examined and have no reservations to the RFP, including any addendum issued by the Authority;

- (b) I/We do not have any Conflict of Interest in accordance with Clauses 2.2.1 of the RFP;
- (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 Section 4.1.3 of the RFP, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State;
- (d) I/We hereby certify that I/we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP, no person acting for me/ us or on my/our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
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, without incurring any liability to the Bidders, in accordance with Clause 2.19 of the RFP.
9. I/ We understand that the Authority or its representatives shall have the right to physically verify project facilities that are part of the project experience claimed by us. I/ We agree to abide by the decision of the Authority in this regard and hereby waive my/our right to challenge the same on any account whatsoever.
10. I/We believe that I/we/our Consortium satisfy(s) and meet(s) all the requirements as specified in the RFP and are/is qualified to submit a Bid.
11. I/We declare that I/we/any Member or Associate, am/are not a member of a/any other Consortium applying for the Project.
12. I/We certify that in regard to matters other than security and integrity of the country, I/we or any Member 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.
13. I/We further certify that in regard to matters relating to security and integrity of the country, I/we have not been charge-sheeted by any Government Instrumentality or convicted by a court of law.
14. I/We further certify that no investigation by a regulatory authority is pending either against me/us/any Member or against our chief executive officer or any of my/our directors/managers/employees.
15. I/We undertake that in case due to any change in facts or circumstances during the Bidding Process, I/we am/are attracted by the provisions of disqualification in terms of the provisions of this RFP, I/we shall intimate the Authority of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annex-III in Appendix-I of the RFP, duly signed, is enclosed. The Power of Attorney for signing of Bid and the Power of Attorney for Lead Member of Consortium, as per format provided at Appendix III and IV respectively of the RFP, are also enclosed.
17. I/ We understand that the Successful Bidder shall either be an existing Company incorporated under the Indian Companies Act, 2013, or shall incorporate as such prior to execution of the Concession Agreement.

18. I/ We hereby confirm that we [are in compliance of/ shall comply with] the O&M requirements specified in Clause 3.4.3.
19. I/We hereby irrevocably waive any right, 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 Bidders or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. In the event of my/ our being declared as the Successful Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/ us prior to the Bid due date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
21. I/ We have studied all the Bidding Documents carefully and also surveyed the Project. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
22. I/ We offer a Bid Security of Rs. 5,75,00,000/- (Rupees Five crore and Seventy Five lakhs only) to the Authority in accordance with the RFP Document.
23. The Bid Security in the form of a bank guarantee has been submitted in original to the authority and a scanned copy of the same has been attached with this submission.
24. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
25. The Upfront Premium Amount which will be annually escalated at the rate of 2% (Two percent) has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.
26. In addition to Upfront Premium Amount mentioned in above clause 25, the I/We agree to pay an Annual Concession Fee with applicable taxes as per table under Article 9.2.a of Volume 2

The said Annual Concession fee shall be payable on or before Date of Award of Concession and at each subsequent anniversary of the same. 2% (Two) percent escalation per annum on the Annual Concession Fee of the immediate preceding year shall be applicable from 13th year onwards as shown in the table above.
27. I/We agree and undertake to abide by all the terms and conditions of the RFP.
28. We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement in accordance with the Concession Agreement.
29. I/We agree and undertake to be jointly and severally liable for all our obligations under the Concession Agreement as per the provisions set out therein.
30. I/ We shall keep this offer valid for 180 (one hundred eighty) days from the Bid due date specified in this RFP.

31. I/ We hereby give an undertaking that the Authority shall not be responsible to procure any approvals for the project. It shall solely be our responsibility to get all necessary approvals.
32. I have read the clause regarding restriction 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 Competent Authority. I hereby certify that this bidder fulfills all requirement in this regards and is eligible to be considered. I shall also abide to all other provisions of Appendix XIV.
33. 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 regards and is eligible to be considered. [Where ever applicable, evidence of valid registration by the Competent Authority shall be attached.]. I shall also abide to all other provisions of Appendix XIV.
34. I have read and shall abide by the Public Procurement order no. P-45021/2/2017-PP (BE-II), dated 16th September 2020 and modified time to time attached as Appendix XV.

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

Yours faithfully,

Date: (Signature of the authorised signatory)

Place:

(Name and designation of the authorised signatory)

(Name and seal of the Bidder/lead Member of the Consortium)

Appendix I
Annex II: Details of Bidder

[On the letter head of the Single Entity/Members of Consortium]

(Refer clause no. 2.13 of the RFP)

Original or copy No:

Dated:

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 (Please provide a true copy of the incorporation certificate):

2. Brief description of the Bidder including details of its main lines of business and proposed role and responsibilities in [this/these Project(s)]:

3. Details of individual(s) who will serve as the point of contact/communication for the Authority:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone number:
 - (f) E-Mail Address:
 - (g) Fax number:

4. Particulars of the authorized signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone number:
 - (e) Fax number:

5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members.

(b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.14(e) should be attached to the Bid.

(c) Information regarding role of each Member should be provided as per table below:

S No.	Name of Member	Role*	Percentage of equity in the Consortium
1.			
2.			

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

(d) The following information shall also be provided by Bidder/for each Member:

Name of Bidder/ member of Consortium:

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

6. A statement by the Bidder and each of its Members (where applicable) 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):

Appendix I: Annex III
Statement of Legal Capacity

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

Original or copy No:

Ref. Date:

To,

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorized signatory)

For and on behalf of

*Please strike out whichever is not applicable.

Appendix II: Bank Guarantee for Bid Security / EMD

B.G. No. Dated:

1. In consideration of you, Mumbai Port Authority having its office at Port Bhavan, Ballard Estate, Fort, Mumbai 400001 (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, 2013) and having its registered office at (and acting on behalf of its Consortium) (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for **Design, Build, Finance, Operate and Transfer of Mumbai Marina at Prince’s Dock, Mumbai on PPP mode** (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 O&M 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 1.2.4 read with Clause 2.23 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. _____ Crores (Rupees _____ only) (hereinafter referred to as the “**Guarantee**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill 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 fulfillment 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 fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. _____ crores (Rupees _____ only)
4. This Guarantee shall be irrevocable and remain in full force for a period of 240 (Two hundred and Forty) days from the Bid due date inclusive of 60 days of claim period as per Applicable Laws 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 fulfillment 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 fulfillment 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. _____ Crores (Rupees _____ only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before *** (indicate date falling 180 days after the Bid due date).

Signed and Delivered by Bank

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

(Signature of the Authorised Signatory) (Official Seal)

Appendix – III: Power of Attorney for signing of Bid (Single Entity)
(To be executed On Non-Judicial Stamp Paper of Rs 100/-)

(Refer Clause 2.2.4 of the RFP)

Know all persons by these presents, [We (name of the company) incorporated under the laws of India and having its registered office at [.....] “**Company**”] do hereby irrevocably constitute, nominate, appoint and authorize Mr. /Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us 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, matters and things as are necessary or required in connection with or incidental to submission of our Bid for **Bid for “Design, Built, Finance, Operate and Transfer of Marina at Prince’s Dock, Mumbai on PPP mode ”** pursuant to the RFP dated [.....] (“RFP”) issued by the Mumbai Port Authority (the “**Authority**”) and for our selection as Successful Bidder including but not limited to signing and submission of all Bids and other documents and writings, participate in pre-bid conferences and other conferences and providing information/responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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

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

IN WITNESS WHEREOF,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 2.....

For

(Signature)

(Name, Title and Address)

Witnesses:

(Notarised)

Accepted

..... (Signature)

(Name, Title and Address of the Attorney)

Notes:

- 1. The Power of Attorney for signing of Bid must be submitted in original*
- 2. 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.*
- 3. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- 4. For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

Appendix – IV: Power of Attorney for Lead Member of Consortium

(To be executed On Non-Judicial Stamp Paper of Rs 100/-)

(Refer Clause 2.2.4 of the RFP)

Whereas the Authority has invited proposals from interested parties for Bid for “**Design, Built, Finance, Operate and Transfer of Marina at Prince’s Dock, Mumbai on PPP mode**”.

Whereas, _____, _____ and _____ (collectively the “Consortium) being Members of the Consortium are interested in bidding for the Project and implementing the Project in accordance with the terms and conditions of the Request for Proposal (RFP) Document and other connected documents in respect of the Project, and

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

NOW THIS POWER OF ATTORNEY WITNESSETH THAT;

We, M/s. _____ (Lead Member) and M/s _____ (*the respective names and addresses of the registered office*) do hereby designate M/s. _____ being one of the members of the Consortium, as the Lead Member of the Consortium, to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the Consortium’s bid for the Project, including submission of application/proposal, participating in conferences, responding to queries, submission of information/ documents and generally to represent the Consortium in all its dealings with the Authority, any other Government Agency or any person, in connection with the Project until culmination of the process of bidding and thereafter till the Concession Agreement is entered into with the Authority.

We hereby agree to ratify all acts, deeds and things lawfully done by Lead Member, our said attorney pursuant to this Power of Attorney and that all acts deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us/Consortium.

Dated this the _____ day of _____, 20_____

(Executants)

Notes:

- 1. This Power of Attorney must be submitted in original.*
- 2. 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.*
- 3. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- 4. 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 V - Joint Bidding Agreement
(for Consortium)**

(Refer Clause 2.3 and 2.14 (e) of the RFP)
(To be executed on stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of 20... (the "Agreement")

AMONGST

1. {..... Limited, a company incorporated under the (Indian) Companies Act, 2013²} and having its registered office at (hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns);

AND

2. Limited, a limited liability company incorporated under the (Indian) Companies Act, 2013} and having its registered office at (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns);

AND

3. Limited, a limited liability company incorporated under the (Indian) Companies Act, 2013 and having its registered office at (hereinafter referred to as the "**Third Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)} *

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

WHEREAS,

- A. The Mumbai Port Authority, represented by its Chief Engineer and having its principal offices at Mumbai Port Authority, Port Bhavan, Ballard Estate, Fort, Mumbai- 400001 (hereinafter referred to as "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids by its Request for Proposal No. dated (the "**RFP**") for qualifying and selecting bidders for "**Design, Built, Finance, Operate and Transfer of Marina at Prince's Dock, Mumbai on PPP mode**".
- B. The Parties are interested in jointly bidding for the Project as 3of a Consortium (as defined below) and in accordance with the terms and conditions of the Bidding Documents including the RFP; and
- C. It is a necessary condition under the RFP that the members of the Consortium shall enter into a joint

² A Bidder who is registered abroad may substitute the words, viz "a company registered under the Companies Act, 2013" by the words, viz "a company duly organised and validly existing under the laws of the jurisdiction of its incorporation". A similar modification may be made in Recital 2, as necessary.

* The number of Parties will be shown here, as applicable

bidding agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. Consortium

The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.

The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/or through any other consortium constituted for the Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate the SPV under the (Indian) Companies Act 2013 as required by and in accordance with the Bidding Documents for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

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

a) Party of the First Part shall be the Lead Member of the Consortium and shall have the Power of Attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Date of Award of Agreement under the Concession Agreement when all the obligations of the Bidder shall become effective;

b) {Party of the Second Part shall be _____{the Technical Member of the Consortium} }

5. Joint and Several Liability

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

6. Shareholding in the SPV

- (a) The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:
- First Party:
- Second Party:
- (b) Subject to the terms of the Concession Agreement, the lead Member shall during the term of the Concession Agreement hold equity share capital not less than 26% (fifty one percent) of the subscribed, paid up and voting equity share capital of the SPV until the 1st (first) anniversary of date of commercial operations of the Harbour Wall bert as defined in Clause 1.1;
- (c) Subject to the terms of this Concession Agreement, members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the 1st (first) anniversary of date of signing of concession agreement of the Project; and
- (d) Subject to the terms of the Concession Agreement, the Member (other than the Lead Member) whose financial and technical capacities has been utilized for the purposes of qualification and in the Bid shall, at all times till the 1st (first) anniversary of date of signing of concession agreement of the Project, hold equity share capital not less than 26% (twenty six percent) of the subscribed, paid up and voting equity share capital of the SPV.

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

7. Representation of the Parties

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

- a. such Party is duly organised, validly existing and in GoM standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- b. the execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Member of Consortium is annexed to this Agreement, and will not, to the best of its knowledge:
- i. require any consent or approval not already obtained;
- ii. violate any applicable law presently in effect and having applicability to it;
- iii. violate the memorandum of association and articles of association, by-laws or other

applicable organisational documents thereof;

- iv. violate any clearance, permit, Concession, grant, Concession or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; and
 - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or any other encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- c. this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d. there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect till the full and final satisfaction of all obligations under the Concession Agreement in accordance with the terms thereof, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project as the Successful Bidder, the Agreement will stand terminated, in accordance with the mutual agreement of the Parties.

9. Miscellaneous

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

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SECOND PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THIRD PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1. _____ 2. _____

Notes:

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

Appendix VI - Anti-Collusion Certificate

(Refer Clause 2.13.4 of the RFP)

(To be executed on Rs. 100 stamp paper)

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely "Prevention of Corruption Act, 1988" and its subsequent amendments thereof.

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

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

Dated thisDay of, 20.....

.....

(Name of the Bidder)

.....

(Signature of the Bidder / Authorised Person)

.....

(Name of the Authorised Person)

Appendix VII: Annex I

**Format of Financial Capacity for purpose of evaluation
[On the letter head of the Single Entity/lead Member]**

(In Rs. crore)

	Net Cash Accruals					Net Worth	Annual Turnover		
	Year 1	Year 2	Year 3	Year 4	Year 5		Year 1	Year 2	Year 3
Single Entity									
Consortium Member 1									
Consortium Member 2									
Consortium Member 3									
TOTAL									

Name & address of Bidder's Bankers:

Instructions:

1. *The Bidder/ its constituent Consortium Members shall attach copies of the audited balance sheets, financial statements and Annual Reports. The financial statements shall:*
 - a) reflect the financial situation of the Bidder or Consortium Members;
 - b) be audited by a statutory auditor;
 - c) be complete, including all notes to the financial statements; and
 - d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. *Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).*
3. *Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid due date falls within 3 (three) months of the close of the latest financial year.*
4. *In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.3 and 2.14(e) of the RFP document.*
5. *The Bidder shall also provide the name and address of the Bankers to the Authority.*

6. *The Bidder, except in the case of publicly listed companies, shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 3.4.5 of the RFP document.*

**Appendix VII: Annex II: Format of Technical Capacity for purpose of evaluation
Technical Capacity of the Bidder@**

(Refer to Clause 3.4.3 and 3.4.4 of the RFP)

[On the letter head of the Single Entity/Members of Consortium]

Sl .No.	Name of Entity claiming experience (Sole bidder/ Lead Member/ Consortium)	Eligible projects / Capacity of project	Brief Activity performed by the entity claiming experience	Location (India/ Abroad)	Duration (Start and End date)	Task Performed by the entity claiming experience	Salient features of the Project	Project Cost (in Rs. Crores)\$	Name of Entity and % shareholding of member of consortium whose experience is been evaluated for technical capacity (if applicable)
Sole Bidder – [Name of the firm]									
1									
2									
3									
Lead Member – [Name of the Lead member]									
1									
2									
3									
4									

Consortium Member - [Name of the Consortium member other than the Lead Member]									
1									
2									
3									
Design and Engineering of Port experience member									
1									
2									
Operation and maintenance of Port experience									
1									
2									

- Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.1.13. In case of Categories 1 and 2, include only those projects which meet the requirements as specified in Clause 3.4.3.3 and Clause 3.4.3.4 will be considered
- A Bidder consisting of a single entity should fill in details as per the row titled Single entity and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, shall be provided
- Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member
- Eligible Projects in Categories 1, 2 and 3 will be studied to determine the eligibility of the bidder.

- For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 70 to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid due date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

\$Multiply the result thereof by the applicable factor set out in this RFP (i.e 0.5) to arrive at the Project cost for each Eligible Project. In the case of an Eligible Project situated in an The Organisation for Economic Co-operation and Development (OECD) country, the Experience Score so arrived at shall be further multiplied by 0.5 and the product thereof shall be the Project cost for such Eligible Projects.

Appendix VII: Annex III: Details of the Eligible Project

Sr. No. [*Please mention the serial No. of the project as mentioned in Annex II of Appendix VII*]

Item		Particulars
Details of Eligible Projects under Category 1 or 2		
Title of the project/Agency		
Nature of the project		
Entity for which the project was operated/ maintained		
Location		
Date of commencement of project/ contract		
Date of completion/ commissioning		
Date of start of operations and end of operations		
Key Features of the project (Capacity handled/staff/ area/ mode of revenue generation etc.)		
Equity shareholding (with period during which equity was held)		
Details of project of Design and Engineering of Port experience		
Title of the project/Agency		
Nature of the project		
Entity for which the project was designed		
Location		
Date of start of design and end of design		
Key Features of the project (Capacity handled/staff/ area/ mode of revenue generation etc.)		
Details of Operation and maintenance of Port experience		
Title of the project/Agency		
Nature of the project		
Entity for which the project was operated/ maintained		
Location		
Date of start of operations and end of operations		
Key Features of the project (Capacity handled/staff/ area/ mode of revenue generation etc.)		

Note: Please fill separate sheet for each project

Instructions:

1. *Bidders are expected to provide information of Eligible Project as per Clause 3.4 in this Annex. The project cited must comply with the eligibility criteria specified. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.*
2. *Particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided.*
3. *The date of commencement of the project must be mentioned.*
4. *The date of commissioning of the project, upon completion, should be indicated.*
5. *The equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which experience is claimed, needs to be given*
6. *Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever. However, a single project conducted by a single member and classifying under Category 1 & Category 2 may be accepted as an eligible assignment.*
7. *Certificate from the Bidder's statutory auditor or its respective clients must be furnished for each Eligible Project. In case of Bidders that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member may provide the requisite certification.*
8. *It may be noted that in the absence of any detail in the above certificate, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Technical Capacity.*

Appendix VIII: Format of Commercial Proposal

ORIGINAL

[To be submitted online in Excel file under Financial Cover on eprocure.gov.in only. No Hard copy to be submitted]

Below is excel file template. Bidders are required to quote their Annual Premium Amount in the highlighted portion only in excel file online under Financial cover.

NUMBER #	TEXT #	NUMBER #	NUMBER #	TEXT #
Sl. No.	Item Description	Quantity	Annual Premium Amount (in INR)	TOTAL APA In Words
1	Annual Premium Amount. (APA)			
1.01	Annual Premium Amount (APA), payable to the Authority every year from the 1st anniversary of the commercial operation date which will be annually escalated at the rate of 2% (Two percent) from the previous year APA.)	1.000		INR Zero Only
Total in Figures				INR Zero Only
Quoted APA in Words				

Appendix -IX - Guidelines of the Department of Disinvestment

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

OFFICE MEMORANDUM

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

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

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

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.

[Note: In this particular project, for the purposes of above mentioned guidelines, EOI shall be synonymous with RFP.]

Appendix -X - INTEGRITY PACT**BETWEEN
MUMBAI PORT AUTHORITY (MbPA) hereinafter referred to as "The Principal"
AND**

.....hereinafter referred to as **"The Bidder/Contractor"**

Preamble

The Principal intends to award, under laid down organizational procedures, contract/s for **Tender No. CE.34/2023 -DESIGN, BUILT, FINANCE, OPERATE AND TRANSFER OF MUMBAI MARINA AT PRINCE'S DOCK, MUMBAI ON PPP MODE**

The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources, and of fairness / transparency in its relations with its Bidder(s) and /or Contractor(s).

In order to achieve these goals, the principal will appoint an Independent External Monitor (IEM), who will monitor the tender process and the execution of the contract for compliance with the principal mentioned above.

Section 1 - Commitments of the Principal.

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

Section 2 - Commitments of the Bidder(s) / Contractor(s)

- (1) The Bidder (s)/Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
- a. The Bidder(s)/Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit, which he/she is not legally entitled to, in order to obtain in exchange any advantage or during the execution of the contract.
 - b. The Bidder(s) /Contractor(s) will not enter with other Bidders in to any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids, or any other actions to restrict competitiveness, or to introduce cartelization in the bidding process.
 - c. The Bidder(s)/Contractor(s) will not commit any offence, under the relevant IPC/PC Act; further the Bidder(s)/Contractor(s) will not use improperly, for purposes of competition, or personal gain, or pass on to others, any information or document provided by the Principal, as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - d. The bidder(s)/contractor(s) of foreign origin shall disclose the name and address of the agents / representatives in India if any. Similarly, the bidder(s)/contractor(s) of Indian Nationality shall furnish the name and address of the foreign principle if any. Further details as mentioned in the "Guidelines on Indian agents of Foreign Suppliers" shall be disclosed by the Bidder(s)/ Contractor(s). Further, as mentioned in the guidelines all the payments made to the Indian agents/ representative have to be in Indian rupees only. Copy of the "Guidelines on Indian agents of Foreign Suppliers "as Annexed and marked as Annex- "A".
 - e. The Bidder(s)/Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries, in connection with the award of the contract.
- (2) The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section-3 Disqualification from Tender process and exclusion from future contracts.

If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression, through a violation of Section-2, above or in any other form, such as to put his reliability or credibility in question, the principal is entitled to disqualify the Bidder(s)/contractor(s), from the tender process, or take action as per the procedure mentioned in the "Guidelines on Banning of Business dealings". Copy of the "Guidelines on Banning of Business dealings" is annexed and marked as Annexure "B".

Section-4 Compensation for damages.

1. If the Principal has disqualified the Bidder(s), from the tender process prior to the award, according to Section-3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/Bid Security.
2. If the Principal has terminated the contract according to Section-3, or if the Principal is entitled to terminate the contract according to Section-3, the Principal shall be entitled to demand and recover from the Contractor, liquidated damages of the contract value, or the amount equivalent to Performance Bank Guarantee.

Section-5 Previous transgression

1. The Bidder declares that, no previous transgressions occurred in the last 3 years, with any other company, in any country, confirming to the anti-corruption approach or with any other Public Sector Enterprise in India, that could justify his exclusion from the tender process.
2. If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process for action can be taken as per the procedure mentioned in "Guidelines on Banning of Business dealings".

Section-6 Equal treatment of all Bidders/Contractors/Subcontractors

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

3. The Principal will disqualify from the tender process all Bidders, who do not sign this pact or violates its provisions.

Section-7 Criminal charges against violation Bidder(s)/Contractor(s)/Sub-contractor(s)

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

Section-8 Independent External Monitor / Monitors

1. The principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor, is to review independently and objectively, whether and to what extent, the parties comply with the obligations under this agreement.
2. The Monitor is not subject to instructions, by the representative of the parties and performs his functions neutrally and independently. He reports to the Chairman, MbPT.
3. The Bidder(s)/Contractor(s) accepts that, the monitor has the right to access, without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access, to the project documentation. The same is applicable to Subcontractors. The monitor is under contractual obligation, to treat the information and documents of the Bidder(s)/Contractor(s)/Subcontractor(s) with confidentiality.
4. The Principal will provide to the Monitor, sufficient information about all meetings, among the parties related to the Project, provided such meetings could have an impact, on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
5. As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the management to discontinue, or take corrective action, or to take other relevant action. The Monitor can in this regard submit non- binding recommendations. Beyond this, the Monitor has no right to demand from the parties, that they act in a specific manner, refrain from action or tolerate action.

6. The Monitor will submit a written report, to the Chairman, MbPT within 8 to 10 weeks, from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
7. Monitor shall entitle to compensation on the same terms as being extended to / provided to Independent Directors on the MBPT Board.
8. If the Monitor has reported to Chairman, MbPT, a substantiate suspension of an offence, under relevant IPC/PC Act, and the Chairman, MbPT has not, within reasonable time, taken visible action to proceed against such offence, or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
9. The word 'Monitor' would include both singular and Plural.

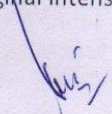
Section-9 - Pact Duration

This Pact begins when both parties have legally signed it. It expires for the contractor 10 months after the last payment under the contract, and for all other bidders & three months the contract has been awarded.

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

Section-10 Other Provisions

- This agreement is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Mumbai, Maharashtra.
- Changes and supplements as well as termination notices, need to be made in writing. Side agreements have not been made.
- If the Contractor is a partnership or a consortium, this agreement must be, signed by all partners or consortium members.
- Should one or several provisions of this agreement, turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement, to their original intentions.


CHIEF ENGINEER(I/c)

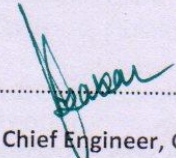
MUMBAI PORT AUTHORITY

(For & on behalf of the Principal)

Place: Mumbai

Date:

Witness-1: (for Principal)


Dy. Chief Engineer, GWND

Mumbai Port Authority

.....
.....
(For & On behalf of Bidder/ Contractor)

Office seal

Place: Mumbai

Date:

Witness-2:(for Bidder/ Contractor)

Name and Address

Appendix XI: Information for security clearance

(Applicants to provide information in the formats provided below)

(Refer Clause 2.8.1)

Format 1: Details of companies/Bidders/Consortium Partner(s)

- i. Name of the Company/Consortium Members and their address, including Address of Indian subsidiary or branch/liaison office, etc.
- ii. List of Promoters/Board of Directors of bidders/consortium members with particulars like, Name, Address – Permanent & Present, Nationality, etc.
- iii. Nature of the Company, whether private or State-owned entity.
- iv. Share holding details with particulars or entities/individuals having more than 5% stake with ownership details to the last layer indicating the promoting individuals time.
- v. Parental organisation and sister concerns.
- vi. Number of foreign national likely to be required for the execution of the project and their likely locations / deployment.
- vii. Presence of the investing companies/ Bidders/Consortium Partners and shareholders in the countries across the world, including collaborations with other foreign companies.

Format 2

(i) Proposed – For individuals (Board of Directors)

S. No.	Full name of Board of Directors/ News editor	Date of Birth	Parentage	Complete Present & Permanent Address	Nationality	Passport Nos. and issue date, if any	Contact Address & telephone number, if any,
1	2	3	4	5	6	7	8

(ii) For Companies/firms

S. No.	Full name of Companies and its foreign collaborator if any; Including details of board of Director as in (i) above	Date of Registration	Present & Permanent Address including address of head office, Regional offices and Registered Office.	Link with Other firm	Activities and other Business owned	Name of CEOs/ Partners (with details)	Shareholding pattern for Applicant Company and investing company.	Details of earlier approvals, if any (Ref. No. & date)	Ultimate ownership of shareholding companies and the investing company along with detailed particular of owners.	Presence of investing Companies and shareholders in countries across the worlds, including collaborations with other foreign companies.
1	2	3	4	5	6	7	8	9	10	11

(iii) Parental Organization and sister concerns

Format 3: Project work details

- i. Nature and scope of the project work – types of civil / engineering works required, Project cost etc.
- ii. Location and coverage area of the project site with info regarding sensitive/vital/defence installation in the vicinity (5kms radius area).
- iii. Model of project allocation – PPP, BOT, BOOT etc.
- iv. Duration of the project – completion, commissioning, lease period.
- v. Machineries or heavy/sophisticated equipment needed for the project.
- vi. Total Manpower projection for the execution of the project.
- vii. Number of foreigners' likely/necessary to be involved for the project completion.
- viii. Earmarked place for stay of foreigners with details.

ADDITIONAL PERFORMA – SECURITY CLEARANCE DEVELOPMENT OF MAJOR AND MINOR PORT (as provided by Ministry of Shipping vide letter No. PD-24018/4/2010-PD.I dated 14th August 2012).

- i. Details of the firms (Indian/Foreign) including foreign Consortium involved in the development

ADDITIONAL PERFORMA – SECURITY CLEARANCE DEVELOPMENT OF MAJOR AND MINOR PORT (as provided by Ministry of Shipping vide letter No. PD-24018/12/2014-SCC dated 12th February 2016).

You are also requested to kindly ensure that 12 sets of the details of the applicants/bidders as per the revised proforma for whom security clearance is sought is sent to Authority along with the covering letter.

Annexure 1 - Appendix XI: Information for security clearance
(Applicants to provide information in the formats provided below)
(Refer Clause 2.8.1)

(I) Details in respect of the Company/Firm (Indian/foreign).

Sl. No.	Name of Firms/Bidders	Date of registration of the company	Address of Head Office, Regional Office and Registered Office	Previous name of the company if any	Details of earlier approvals, if any (ref. No. & date)

(II) Details in respect of Director.

Sl. No.	Full Name of Board of Directors	Present position held with date (since when)	Date of Birth	Parentage	Present & Permanent Address	Nationality	Passport No. and issue date if any	Contact Address & telephone number

(III) Details of Shareholders of applicant company (All firms/companies/entities/individuals having shareholding more than 10%)

Sl. No.	Full Name	Parentage Father/Mother	Date of Birth	Permanent Address	Present Address	Present position held in the company if any	Nationality (if holding dual nationality, both must be clearly mentioned)	% of shares held in the Company

(IV) Details of criminal cases, if any against the Company/Director(s) as per Annexure.

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SECRET

Annexure

Self declaration for company of Director(s) for whom security clearance is sought

- a. Name and address and registration number of the company :
- b. Name and address of owners, promoters and directors of the company :
1. _____
 2. _____
 3. _____
 4. _____
- c. Is the company owners, promoters or directors listed above the subject of any
1. Preventive detention proceedings (PSA NSA etc) : Yes/No
 2. Criminal proceedings : Yes/No
- d. If Yes, please provide following details
1. Detention/Case/FIR/warrant number :
 2. Police station/District/Agency :
 3. Section of law :
 4. Name and place of the court :

e. The above mentioned details are in respect of both India and any other foreign country.

Note: The above self declaration is required to be filled and signed by the authorized signatory of the company.

Appendix XII – Instructions for Online Bid Submission

The bidders are required to submit soft copies of their bids electronically on the CPP Portal, using valid Digital Signature Certificates. The instructions given below are meant to assist the bidders in registering on the CPP Portal, prepare their bids in accordance with the requirements and submitting their bids online on the CPP Portal.

More information useful for submitting online bids on the CPP Portal may be obtained at: <https://eprocure.gov.in/eprocure/app>.

REGISTRATION

- 1) Bidders are required to enroll on the e-Procurement module of the Central Public Procurement Portal (URL:<https://eprocure.gov.in/eprocure/app>) by clicking on the link "Online bidder Enrollment" on the CPP Portal which is free of charge.
- 2) As part of the enrolment process, the bidders will be required to choose a unique user name and assign a password for their accounts.
- 3) Bidders are advised to register their valid email address and mobile numbers as part of the registration process. These would be used for any communication from the CPP Portal.
- 4) Upon enrolment, the bidders will be required to register their valid Digital Signature Certificate (Class II or Class III Certificates with signing key usage) issued by any Certifying Authority recognized by CCA India (e.g. Sify/ nCode/e Mudhra etc.), with their profile.
- 5) Only one valid DSC should be registered by a bidder. Please note that the bidders are responsible to ensure that they do not lend their DSC's to others which may lead to misuse.
- 6) Bidder then logs in to the site through the secured log-in by entering their user ID/password and the password of the DSC/e-Token.

SEARCHING FOR TENDER DOCUMENTS

- 1) There are various search options built in the CPP Portal, to facilitate bidders to search active tenders by several parameters. These parameters could include Tender ID, Organization Name, Location, Date, Value, etc. There is also an option of advanced search for tenders, wherein the bidders may combine a number of search parameters such as Organization Name, Form of Contract, Location, Date, Other keyword set to search for a tender published on the CPP Portal.
- 2) Once the bidders have selected the tenders they are interested in; they may download the required documents/ tender schedules. These tenders can be moved to the respective 'My Tenders' folder. This would enable the CPP Portal to intimate the bidders through SMS/e-mail in case there is any corrigendum issued to the tender document.
- 3) The bidder should make a note of the unique Tender ID assigned to each tender, in case they want to obtain any clarification/help from the Help desk.

PREPARATION OF BIDS

- 1) Bidder should take into account any corrigendum published on the tender document before submitting their bids.
- 2) Please go through the tender advertisement and the tender document carefully to understand the documents required to be submitted as part of the bid. Please note the number of covers in which the bid documents have to be submitted, the number of documents-including the names and content of each of the document that need to be submitted. Any deviations from these may lead to rejection of the bid.
- 3) Bidder, in advance, should get ready the bid documents to be submitted as indicated in the tender document/schedule and generally, they can be in PDF/XLS/RAR/DWF/JPG formats. Bid documents may be scanned with 100 dpi with black and white option which helps in reducing size of the scanned document.
- 4) To avoid the time and effort required in uploading the same set of standard documents which are required to be submitted as a part of every bid, a provision of uploading such standard documents (e.g. PAN card copy, annual reports, auditor certificates etc.) has been provided to the bidders. Bidders can use "MySpace "or" Other Important Documents" area available to them to upload such documents. These documents may be directly submitted from the "My Space" area while submitting a bid, and need not be uploaded again and again. This will lead to a reduction in the time required for bid submission process.

SUBMISSION OF BIDS

- 1) Bidder should log into the site well in advance for bid submission so that they can upload the bid in time i.e. on or before the bid submission time. Bidder will be responsible for any delay due to other issues.
- 2) The bidder has to digitally sign and upload the required bid documents one by one as indicated in the tender document.
- 3) Bidder has to select the payment option as "offline" to pay the tender fee/EMD as applicable and enter details of the instrument.
- 4) Bidder should prepare the EMD as per the instructions specified in the tender document. The original should be submitted in the sealed cover as specified in the tender document in person latest by the last date of bid submission. The details of the DD/any other accepted instrument, physically sent, should tally with the details available in the scanned copy and the data entered during bid submission time. Otherwise the uploaded bid will be rejected.
- 5) Bidders are requested to note that they should necessarily submit their financial bids in the format provided and no other format is acceptable. If the price bid has been given as a standard financial offer format with the tender document, then the same is to be downloaded and to be filled by all the bidders. Bidders are required to download the financial offer file, open it and complete the white colored (unprotected) cells with their respective financial quotes and other details (such as name of the bidder). No other cells should be changed. Once the details have been completed,

the bidder should save it and submit it online, without changing the file name. If the financial offer file is found to be modified by the bidder, the bid will be rejected.

- 6) The server time (which is displayed on the bidder's dashboard) will be considered as the standard time for referencing the deadlines for submission of the bids by the bidders, opening of bids etc. The bidders should follow this time during bid submission.
- 7) All the documents being submitted by the bidders would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered cannot be viewed by unauthorized persons until the time of bid opening. The confidentiality of the bids is maintained using the secured Socket Layer 128 bit encryption technology. Data storage encryption of sensitive fields is done. Any bid document that is uploaded to the server is subjected to symmetric encryption using a system generated symmetric key. Further this key is subjected to asymmetric encryption using buyers/bid openers public keys. Overall, the uploaded tender documents become readable only after the tender opening by the authorized bid openers.
- 7) The uploaded tender documents become readable only after the tender opening by the authorized bid openers.
- 8) Upon the successful and timely submission of bids (i.e. After Clicking "Freeze Bid Submission" in the portal), the portal will give a successful bid submission message & a bid summary will be displayed with the bid no. and the date & time of submission of the bid with all other relevant details.
- 9) The bid summary has to be printed and kept as an acknowledgement of the submission of the bid. This acknowledgement may be used as an entry pass for any bid opening meetings.

ASSISTANCE TO BIDDERS

- 1) Any queries relating to the tender document and the terms and conditions contained therein should be addressed to the Tender Inviting Authority for a tender or the relevant contact person indicated in the tender.
- 2) Any queries relating to the process of online bid submission or queries relating to CPP Portal in general may be directed to the 24 x 7 CPPP Portal Help desk. The contact number for the help desk is 180030702232. Foreign bidder can get help at +91-79-40007451 to 460.

Appendix XIII - Non-Disclosure Agreement

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT ("Agreement") made at Mumbai the _____, day of _____, 2023

By and between :

BOARD OF MUMBAI PORT AUTHORITY, an autonomous body constituted under the provisions of the Major Port Authorities Act, 2021 having its Office at Port House/Vijaydeep, Soorji Vallabhdas Marg, Ballard Estate, Mumbai - 400001 (hereinafter referred to as "PRINCIPAL") which expression shall unless repugnant to the context or meaning hereof, be deemed to include its successors and assigns of the First Part;

And

_____ (hereinafter referred to as "Bidder/Concessionaire" which term shall include its successors and assigns), of the Second Part.

(PRINCIPAL and Bidder/Concessionaire are individually referred to as a "Party" and collectively as "Parties")

WHEREAS:

1. PRINCIPAL is engaged in execution of Contract of Civil Engineering and related works of Mumbai Port Authority.
2. BIDDER/CONCESSIONAIRE is engaged in implementation of Civil/ Labor intensive/ Housekeeping works at MbPA.
3. PRINCIPAL is desirous of execution of Civil/Labor intensive/Housekeeping works at MbPA from BIDDER/CONCESSIONAIRE. In course of discussion, implementation and providing the Services, Parties will have access to the confidential and / or proprietary data / information of each other. In consideration thereof parties undertake to respect the confidentiality of this confidential information under the terms and conditions set out hereunder.
4. The party disclosing the confidential information is hereinafter referred to as the "Furnishing Party" and the party receiving the confidential information is hereinafter referred to as "Recipient/Receiving Party".

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY & BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. The proprietary and confidential information to be accessed by and received by the parties shall be subject to the terms and conditions set out herein below:

Any and all oral, written, electronic, graphic or machine – readable information including, but not limited to, that which relates to patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, business plans, agreements with third parties, services, customers, business, financial, and operational and any other information or data, or a combination of any of them accessed by or supplied to the "Receiving Party" by, or at the direction of the

“Furnishing Party” including any copies, excerpts, notes, memoranda, summaries, analysis or compilations or a combination of two or more of these generated by the Receiving Party (collectively, the “Information”), will be treated as confidential as provided in this Agreement.

2. For purposes hereof, “Information” shall not include:

(a) Information in the public domain at the time that it was provided by the Furnishing Party or which subsequently came into the public domain other than as a result of breach of this Agreement;

(b) Information obtained from a third party who is authorized to do so;

(c) Information independently developed by the Receiving Party without reference to the Information; or

(d) Information in the possession of the Receiving Party prior to its disclosure by the Furnishing Party to the Receiving Party.

3. All Information:

(a) Shall remain the property of the Furnishing Party;

(b) shall be treated as confidential by the Receiving Party, and the Receiving Party shall take such action as shall be necessary or desirable to preserve and protect the confidentiality of the Information and in any event using means not less than those used to protect its own confidential information;

(c) Shall be used solely for purposes as provided in this Agreement, and for no other purpose;

and

(d) shall not be disclosed to any third party other than the Receiving Party and such of its officers, directors, employees, financial advisors, accountants or attorneys necessary on a “need to know” basis (each an “Authorized Person”) without the Furnishing Party’s prior written consent, and provided that each such employees/personnel/consultants has agreed to maintain the confidentiality of the Information in accordance with the terms hereof;

Provided however, that prior to disclosing the Information, the Receiving Party shall require each person who receives the Information to be cognizant of and to comply with the terms and conditions of this Agreement.

4. In the event that the Receiving Party or any of its Authorized Persons becomes legally compelled (including, without limitation, by law, rule, regulation or governmental regulatory or administrative or similar agency as part of a judicial or administrative proceeding including, without limitation, by deposition, interrogatory, request for information or documents, subpoena, civil or criminal investigative demand or otherwise) to disclose any of the

Information, the Receiving Party shall provide the Furnishing Party with immediate written notice of such requirement so that the Furnishing Party may seek a protective order or other appropriate remedy or waive compliance with this paragraph. If Furnishing Party fails to obtain injunction or protective order and the Receiving Party provides information due to statute, regulation, Court directive or order of a statutory authority, Receiving Party shall not be held liable to the Furnishing Party for any loss or damage or otherwise.

5. The Receiving Party will only disclose the Information to the personnel / consultants of the Receiving party who have a need to know the Information for their work in connection with the Transaction, provided that each such employees/personnel/consultants has agreed to maintain the confidentiality of the Information in accordance with the terms hereof.

6. The Receiving Party recognizes that a breach of this Agreement may cause irreparable harm to the Furnishing Party and that actual damages may be difficult to ascertain and in any event may be inadequate. Accordingly, the Receiving Party agrees that in the event of such breach, the Furnishing Party may be entitled to injunctive relief in addition to such other legal including criminal prosecution for such breach or equitable remedies as may be available.

Receiving party shall be responsible and liable to the Furnishing party for any unauthorized disclosure or any breach of the terms and conditions herein contained. Receiving party hereby indemnifies and agrees to keep the Furnishing party saved, defended, harmless and indemnified from and against all costs, charges, expenses and damages whatsoever except exponential or consequential damages.

7. The Receiving Party will not use nor permit the use of the Furnishing Party's names, logos, trademarks or other identifying data, or otherwise discuss or make reference to the Furnishing Party, in any notices to third parties or in any press release or other public announcement or advertisement, however characterized, without the Furnishing Party's prior written consent.

8. This Agreement shall terminate on the earlier occurrence of (a) Parties entering into a definitive agreement for or (b) parties decide not to enter into business relation for the document management solutions services. Upon termination of this Agreement, the Receiving Party shall, as per the direction of the Furnishing Party either, return or destroy all Information, and no Information shall be stored by the Receiving Party in any form. Notwithstanding the return or destruction of the Information or the termination of this Agreement, the Receiving Party shall continue to be bound by its obligations of confidentiality hereunder for two (2) years from the date hereof.

9. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, and all prior agreements, understandings, writings, or negotiations, whether written or oral, are hereby superseded. No failure or delay by either party in exercising its rights hereunder shall operate as a waiver thereof. This Agreement may not be waived or amended except by written agreement of both parties.

10. If any provision of this Agreement is held to be invalid, void or unenforceable, all other provisions shall remain valid and be enforced and construed as if such invalid provision were never a part of this Agreement.

11. The parties agree that any dispute, controversy or claim arising out of or relating to this Agreement or any related agreement or other document or the validity, interpretation, breach or termination thereof, including claims seeking redress or asserting rights under applicable law, shall, be governed by and interpreted in accordance with the laws of India and that any action in any way arising out of this Agreement shall be commenced in an appropriate court having jurisdiction in Mumbai. The prevailing party in any suit hereunder shall recover all related costs, expenses and reasonable legal fees.

12. The parties warrant that the signatory signing the Agreement on behalf of the respective parties is duly authorized to do so and irrevocably bind the parties.

**IN WITNESS WHEREOF,
BIDDER/CONCESSIONAIRE** _____

The duly constituted Attorney of and on behalf of **BIDDER/CONCESSIONAIRE** has hereunto
subscribed and set their hands and common seal of **BIDDER/CONCESSIONAIRE** and
the _____

Of the Board of Mumbai Port Authority for and on behalf of the Board has set his hand seal and
common seal of the Board hath has been hereunto affixed on the day and year first above written.

SIGNED, SEALED AND DELIVERED

By the above named

Shri _____

In presence of

SIGNED, SEALED AND DELIVERED

By the above named

Shri _____

For and on behalf of the Board of
Mumbai Port Authority

The presence of _____

The Common seal of the Board

Of Mumbai Port Authority

Was affixed in the presence of

Shri _____

Secretary MBPA

Appendix XIV – Public Procurement Policy of Government of India

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 of 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 of 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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Appendix XV – Public Procurement (Preference to Make in India)

Bidder to refer to Public Procurement **Policy No. P-45021 /2/2017-PP (BE-II)** dated 16th September 2020 issued by Ministry of Commerce and Industry

**APPENDIX XVI: Undertaking for entering into Management Contract
(To be submitted on the letter head of the Applicant/ lead member of the consortium)
UNDERTAKING**

Ref:-

Date:

To,
The Chief Engineer
Mumbai Port Authority
3rd Floor, Port Bhavan
S.V.Marg, Ballard Estate
Mumbai – 400 001
India

Sub: Design, Built, Finance, Operate and Transfer of Marina at Prince's Dock, Mumbai on
PPP mode

Dear Sir,

We hereby agree that we _____ (name of the Applicant/ Lead Member of Consortium and address of registered office) will irrevocably enter into an Management Contract with an entity having Design and Engineering / O & M experience as per the terms of the RFP document dated _____ for a period as stated in this RFP in accordance with the clause no.3.4.3.2.a / 3.4.3.2.b of RFP document.

We also confirm that the Management Contractor shall meet with the experience as set forth in clause no. 3.4.3.2.a / 3.4.3.2.b of RFP document.

We shall further ensure that the Name and qualifications of the Operation & Maintenance Contractor shall be provided to Mumbai Port Authority when required to be done so by Mumbai Port for the purposes of evaluation and Security Clearance.

Thanking you

For and on behalf of (Applicant/ Lead Member):

Signature:

(Authorised Representative and Signatory)

Name of Person:

Designation:

APPENDIX XVII: Policy for preventing private sector monopoly in Major Ports

Government of India

Ministry of Shipping

(Ports Wing)

No.PD-24018/8/2009 – PD.III New Delhi-1, dated 2nd August, 2010

To

The Chairman, All Port Trusts

Sub:-Policy for preventing private sector monopoly in Major Ports.

Sir,

In pursuance of private sector participation guidelines, 1996 for the Port Sector and with a view to ensure healthy competition and smooth award of the projects for capacity augmentation at the Major Ports, the Central Government hereby directs all Major Ports under Section 111 of the Major Port Trusts Act, 1963, to follow the following Policy while awarding projects to private parties through Public Private Partnership (PPP) route so as to avoid private sector monopoly in the Major Ports. This policy is in supersession of this Ministry's letters No.PD-25021/13/2002-Pvt dated 11th November, 2002, No.PD-12013/2/2005-JNPT dated 26th September, 2007 and No.PD-11015/2/2006-VPT dated 1st October, 2008.

2. Policy

If there is only one private terminal/berth operator in a port for a specific cargo, the operator of that berth or his associates shall not be allowed to bid for the next terminal/berth for handling the same cargo in the same port.

For the purpose of this policy, the terms

(i) "Operator" includes consortium members of the bidder:

(ii) "Associates" means, in relation to the Applicant/Consortium member, a person who controls, is controlled by, or is under common control with such Applicant/Consortium Member (the Associate). As used in the definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, or 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.

(iii) "Berth" shall have the same meaning as "Wharf" given in Section 2 (za) of the MPT Act, 1963.

(iv) "Specific Cargo" means (i) containers (ii) liquid bulk, (iii) dry bulk or (iv) multipurpose/other general cargo.

3. The policy shall be applicable with immediate effect and shall apply to Request for Proposal
4. It is also directed that the above provisions may be incorporated by the Major Ports in the Request for Qualification & Request for Proposal to give effect to the policy in relevant cases.
5. This issues with the concurrence of the Ministry of Law and Justice, Department of Legal Affairs and approval of Hon'ble Minister of Shipping.

Yours faithfully,
(XXX)
Director