Request For Qualification (RFQ) for Development of Riverine Port on River Mahanadi

Directorate of Ports and Inland Water Transport, Paribahan Bhawan (2nd Floor), A.G. Square, Unit-II, Ashok Nagar, Bhubaneswar-751009, Odisha

May 2017
GOVERNMENT OF ODISHA
COMMERCE & TRANSPORT (COMMERCE) DEPARTMENT
DIRECTORATE OF PORTS AND INLAND WATER TRANSPORT,
ODISHA, BHUBANESWAR

Request for Qualification (RFQ)

Notice No. DPIWT-02/2017-18, dated 06-05-2017

Request for Qualification (RFQ) is invited to prequalify the Applicants who may be a natural person, private entity, government owned entity, foreign government / entity, or any combination of them for Development of a Riverine Port on River Mahanadi at Akhadasali village, Mahakalapada Block in Kendrapada district on Public Private Partnership (PPP) mode.

The proposed project is expected to be developed to cater to an approximate capacity of 44 million metric tonnes per annum (MMTPA). The first phase is expected to have a capacity of approx. 18 MMTPA.


A pre-bid conference will be held on 12-06-2017 at 11:30 hrs in the office of Directorate of Ports & Inland Water Transport, Odisha, Bhubaneswar.

For further details, please contact the following:

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Associate Vice President,
Ernst & Young LLP (Transaction &
Financial Advisor)
Cell: +91 88004 23399 |
Arun.Tuli@in.ey.com

Sd/-
Er. Subrat Kumar Rout
Director, Ports and Inland Water Transport,
Odisha, Bhubaneswar
### GLOSSARY

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<td>Re. or Rs. or INR</td>
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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.
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DISCLAIMER

The information contained in this Request for Qualification document (the “RFQ”) or subsequently provided to Applicant(s), whether verbally or in documentary or any other form, by or on behalf of the Authority or any of its employees or advisors, is provided to Applicant(s) on the terms and conditions set out in this RFQ and such other terms and conditions subject to which such information is provided.

This RFQ is not an agreement and is neither an offer nor invitation by the Authority to the prospective Applicants or any other person. The purpose of this RFQ is to provide interested parties with information that may be useful to them in the formulation of their application for qualification pursuant to this RFQ (the “Application”). This RFQ 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 Applicant may require. This RFQ 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 RFQ. The assumptions, assessments, statements and information contained in this RFQ may not be complete, accurate, adequate or correct. Each Applicant 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 RFQ and obtain independent advice from appropriate sources.

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

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

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

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 RFQ.
The issue of this RFQ does not imply that the Authority is bound to select and short-list pre-qualified Applications for Bid Stage or to appoint the selected Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Application 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 Application. All such costs and expenses will remain with the Applicant and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Application, regardless of the conduct or outcome of the Bidding Process.
1. INTRODUCTION

1.1 Background

1.1.1 The Governor of Odisha acting through the Commerce and Transport (Commerce) Department, Government of Odisha, and represented by the Director, Ports and Inland Water Transport, Odisha, Bhubaneswar (the “Authority”) is engaged in the development of ports and as part of this endeavour, the Authority has decided to undertake the development of a Port on River Mahanadi (the “Project”) through Public-Private Partnership (the “PPP”) on Build, Own, Operate, Share and Transfer (the “BOOST”) basis, and has decided to carry out the bidding process for selection of a private entity as the bidder to whom the Project may be awarded.

The project is proposed to be implemented as a BOOST model, where in the land shall be provided by the Authority to the Concessionaire on lease basis. The lease charges will in accordance with the notification of the Authority, details to be provided in the draft Concession Agreement. Details of the Project including the Master Plan and Detailed Project Report are available on the website of the Authority (http://odisha.gov.in/tenders, http://ct.odisha.gov.in/ & http://portsniwtodisha.in/ActiveTender.aspx). Brief particulars of the Project are as follows:

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<tr>
<th>Name of the Project</th>
<th>Indicative Project Cost (In INR Cr.)</th>
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<tr>
<td>Development of a Port on River Mahanadi</td>
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The Authority intends to pre-qualify and short-list suitable Applicants (the “Bidders”) who will be eligible for participation in the Bid Stage, for awarding the Project through an open competitive bidding process in accordance with the procedure set out herein.

Policy of Authority on Public Sector Participation in Ports

In order to bridge the gap between traffic handled and the net capacity of ports, it has been assessed by the Authority that major expansion will be required in the port infrastructure of the state of Odisha. For mobilizing requisite resources for this purpose and in order to provide efficient and quality services to port users, the Authority has decided to involve private sector in development and operation of minor ports of Odisha. It is expected that due to participation of the private sector, the gestation period for setting up of new facilities will be reduced and it will also help in introducing latest technology and improved management techniques.

In view of the same, the Authority has published a Port policy for development and operation of ports under the control of the Authority. As per this policy, Private Sector Participation in port projects will be according to the following terms:
A. The selection of Concessionaire for a port project would be either through international competitive bidding or through MOU route.

B. The projects will be awarded to Private Sector on Build-Own-Operate-Share and Transfer (BOOST) basis.

C. The land of the Government will be provided to the concessionaire on leases basis. The lease charges will be in accordance with notification of the Government in this regard.

D. If the private land is to be acquired for the project, it shall be in the name of Government, but the cost for the same shall be borne by the Concessionaire. However, this cost shall be compensated during the Concession period by adjusting the same against the future revenue stream that would accrue to the Government from the project.

E. Government may participate as equity partner in the Special Purpose Companies (SPCs) to be formed for port projects. However, the Government’s equity participation in the SPCs will be restricted to 11% and it will be in kind.

F. The Government will endeavour at all times to ensure that concerns of financial institutions are addressed in order to make port projects credit worthy and bankable.

G. The Government will ensure that the concessions/levies and charges are uniformly applicable to all port projects of the Government.

H. The Government would ensure that in evolving the revenue sharing mechanism it would safeguard the project’s viability and profitability.

A copy of Port Policy of the Government of Odisha is enclosed as Appendix – VIII.

As per rules and regulations of the Special Economic Zone (SEZ) Act, the concessions and facilities available in the said Act which will be granted by the Government from time to time will be applicable to the Concessionaire of Mahanadi port. A copy of the Government’s SEZ policy is enclosed as Appendix-IX.

1.1.2 The selected Bidder, 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”) shall be responsible for designing engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of a long - term 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 development and construction of the Port, including the container yard, terminal buildings, cargo handling equipment, construction of berths, facilities for cargo storage, and the operation and maintenance thereof.

1.1.4 Indicative capital cost of the Project (the “Estimated Project Cost”) will be revised and specified in the Bidding Documents of the Project. The assessment of actual costs, however, will have to be made by the Bidders.
1.1.5 The Authority shall receive Applications pursuant to this RFQ in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the “Application Due Date”).

1.2 Brief description of Bidding Process

1.2.1 The Authority has adopted a two-stage process (collectively referred to as the "Bidding Process") for selection of the bidder for award of the Project. The first stage (the "Qualification Stage") of the process involves qualification (the “Qualification”) of interested parties/ consortia who make an Application in accordance with the provisions of this RFQ (the "Applicant", which expression shall, unless repugnant to the context, include the Members of the Consortium). Prior to making an Application, the Applicant shall pay to the Authority a sum of Rs 2,10,000 (Rupees two lakh ten thousand only) as the cost of the RFQ process. At the end of this stage, the Authority expects to announce a short-list of up to 9 (nine) suitable pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the "Bid Stage") comprising Request for Proposals (the “Request for Proposals” or “RFP”).

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

1.2.2 In the Qualification Stage, Applicants would be required to furnish all the information specified in this RFQ. Only those Applicants that are pre-qualified and short-listed by the Authority shall be invited to submit their Bids for the Project. The Authority is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are, therefore, advised to visit the site and familiarise themselves with the Project.

1.2.3 In the Bid Stage, the Bidders will be called upon to submit their financial offers (the "Bids") in accordance with the RFP and other documents to be provided by the Authority (collectively the "Bidding Documents"). The Bidding Documents for the Project will be provided to every Bidder on payment of Rs. 8,50,000 (Rs. eight lakh fifty thousand only)⁵. The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of bids (the “Bid Due Date”).

⁵ The actual amount will be indicated in the RFP
1.2.4 Generally, the Highest Bidder shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the 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, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be.

1.2.5 During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the concession including implementation of the Project.

1.2.6 As part of the Bidding Documents, the Authority will provide a draft Concession Agreement and feasibility report prepared by the Authority/ its consultants and other information pertaining/ relevant to the Project available with it.

1.2.7 Bids will be invited for the Project on the basis of (i) an upfront fixed amount to be paid upon execution of Concession Agreement and (ii) a percentage of revenue share payable to the Authority each year, (collectively the “Premium”). The concession period shall be pre-determined, and will be indicated in the draft Concession Agreement forming part of the Bidding Documents. The Premium amount shall constitute the sole criteria for evaluation of Bids. The Project shall be awarded to the Bidder quoting the highest Premium.

In this RFQ, the term “Highest Bidder” shall mean the Bidder who is offering the highest Premium.

The bid parameters for the RFP stage are subject to change based on the detailed financial assessment, project structuring and pre-RFQ interactions.

1.2.8 The Concessionaire shall be entitled to levy and charge a pre-determined user fee from users of the Project.

1.2.9 Further and other details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.

1.2.10 Any queries or request for additional information concerning this RFQ shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.13.3 below. The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information: RFQ for Development of Riverine Port on River Mahanadi".
1.3 **Schedule of Bidding Process**

The Authority shall endeavour to adhere to the following schedule:

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<td>06-06-2017</td>
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<td>2. Last date for receiving queries</td>
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<tr>
<td>3. Pre-Bid meeting</td>
<td>[To be notified]</td>
</tr>
<tr>
<td>4. Authority response to queries latest by</td>
<td>[To be notified]</td>
</tr>
<tr>
<td>5. Bid Due Date</td>
<td>[To be notified]</td>
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<td>6. Opening of Bids</td>
<td>[To be notified]</td>
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<td>7. Letter of Award (LOA)</td>
<td>[To be notified]</td>
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<td>8. Validity of Bids</td>
<td>[To be notified]</td>
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<tr>
<td>9. Signing of Concession Agreement</td>
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1.4. **Environment Clearance**

The port developer will obtained the environmental and CRZ clearance from Ministry of Environment & Forest (MoEF), Government of India before starting of the project work.

1.5. **Phased Implementation**

The Applicants may, at their option, undertake the financing and construction of the Project in phases, in accordance with the terms to be specified in the Concession Agreement, with the first phase comprising Cargo Terminal Infrastructure, Port works (Quay & Trestle), Cargo Handling Equipment, Navigational Aids, Harbour Crafts, Rail & Road Infrastructure and other Common Infrastructure Development.
2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Application

2.1.1 The Authority wishes to receive Applications for Qualification in order to short-list experienced and capable Applicants for the Bid Stage.

2.1.2 Short-listed Applicants may be subsequently invited to submit the Bids for the Project.

2.2 Eligibility of Applicants

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 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 2.2.6 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 sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

(ii) a constituent of such 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 RFQ. 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 To be eligible for pre-qualification and short-listing, an Applicant shall fulfil the following conditions of eligibility:

(A) **Technical Capacity**: For demonstrating technical capacity and experience (the “Technical Capacity”), the Applicant shall, over the past 5 (five) financial years preceding the Application Due Date, have:
(i) paid for, or received payments for, construction of Eligible Project(s); and/or

(ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1; and/or

(iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1,

such that the sum total of the above is more than Rs.4,250 crore (Rs. four thousand two hundred and fifty crore only) (the “Threshold Technical Capacity”).

(B) **Financial Capacity**: The Applicant shall have a minimum Net Worth (the “Financial Capacity”) of Rs. 600 crore (Rs. six hundred crore only) at the close of the preceding financial year.

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 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£.

2.2.3 **O&M Experience**: The Applicant shall, in the case of a Consortium, include a Member who shall subscribe and continue to hold at least 10% (ten per cent) of the subscribed and paid up equity of the SPV for a period of 5 (five) years from the date of commercial operation of the Project, and has either by itself or through its Associate, experience of 5 (five) years or more in operation and maintenance (O&M) of Category 1 projects specified in Clause 3.2.1, which have an aggregate capital cost equal to the Estimated Project Cost. In case the Applicant is not a Consortium, it shall be eligible only if it has equivalent experience of its own or through its Associates. In the event that the Applicant does not have such experience, it should furnish an undertaking that if selected to undertake the Project, it shall for a period of at least 5 (five) years from the date of commercial operation of the Project, enter into an agreement for entrusting its operation & maintenance (O&M) obligations to an entity having the aforesaid experience, failing which the Concession Agreement shall be liable to termination.

2.2.4 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

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

$ In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the
the payments made/ received or works commissioned, as the case may be, during the past 5 (five) years in respect of the projects specified in paragraph 2.2.2 (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 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 2.2.4 (ii). For the purposes of this RFQ, net worth (the “Net Worth”) shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

2.2.5 The Applicant should submit a Power of Attorney as per the format at Appendix-II, authorising 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.

2.2.6 Where the Applicant is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 2013 (the “SPV”), to execute the Concession Agreement and implement the Project. In case the 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;

Applicant may provide the certificates required under this RFQ
(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 RFQ, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;

(ii) clearly outline the proposed roles and responsibilities, if any, of each member;

(iii) commit the minimum equity stake to be held by each member;

(iv) commit that each of the members, whose experience will be evaluated for the purposes of this RFQ, 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;

(v) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the 2nd (second) anniversary of the commercial operation date of the Project; and

(vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and

(h) except as provided under this RFQ and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.

2.2.7 Any entity which has been barred by the Central / State Government, or any entity controlled by it, from participating in any project (BOOST 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.
2.2.8 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.

2.2.9 In computing the Technical Capacity and Net Worth of the Applicant/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

For purposes of this RFQ, 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.

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

(a) 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;

(b) 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;

(c) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and

(d) in case the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.11 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, 2011, 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.

2.2.12 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.

2.3 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 Bidder is a Consortium, change in the composition of a Consortium may be permitted by the Authority during the Bid Stage, only where:

(a) the application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date;

† The option of change in composition of the Consortium which is available under Clause 2.3.2 may be exercised by any Applicant who is pre-qualified either as a Consortium or as a single entity. In the case of a single entity Applicant adding a Consortium Member at the Bid Stage, the single entity Applicant shall be the Lead Member of the Consortium. Provided, however, that no member of such Consortium shall be an Applicant or the member of a Consortium which has been pre-qualified.
the Lead Member continues to be the Lead Member of the Consortium;

c) the substitute is at least equal, in terms of Technical 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 Applicants; 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 an Applicant/Member/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 before the Bid Due Date.

2.3.5 Notwithstanding anything to the 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 Number of Applications and costs thereof

2.4.1 No Applicant shall submit more than one Application for the Project. An applicant applying individually or as a member of a Consortium shall not be entitled to submit another Application either individually or as a member of any Consortium, as the case may be.

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

2.5 Site visit and verification of information

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

2.6 Acknowledgement by Applicant

2.6.1 It shall be deemed that by submitting the Application, the Applicant has:

(a) made a complete and careful examination of the RFQ;
(b) received all relevant information requested from the Authority;

(c) accepted the risk of inadequacy, error or mistake in the information provided in the RFQ or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5 above; and

(d) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

2.7 Right to accept or reject any or all Applications/ Bids

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

2.7.2 The Authority reserves the right to reject any Application and/ or Bid if:

(a) at any time, a material misrepresentation is made or uncovered, or

(b) the Applicant does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Application.

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

(i) invite the remaining Bidders to match the Highest Bidder/ submit their Bids in accordance with the RFP; or

(ii) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.7.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Authority, that one or more of the pre-qualification conditions have not been met by the Applicant, or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant 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 Applicant/SPV 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 RFQ, be liable to be terminated, by a communication in writing by the Authority to the Applicant, without the Authority being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Authority may have under this RFQ, the Bidding Documents, the Concession Agreement or under applicable law.

2.7.4 The Authority reserves the right to verify all statements, information and documents submitted by the Applicant in response to the RFQ. Any such verification or lack of such verification by the Authority shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

B. DOCUMENTS

2.8 Contents of the RFQ

This RFQ comprises the disclaimer set forth herein above, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

**Invitation for Qualification**
- Section 1. Introduction
- Section 2. Instructions to Applicants
- Section 3. Criteria for Evaluation
- Section 4. Fraud & Corrupt Practices
- Section 5. Pre Application Conference
- Section 6. Miscellaneous

**Appendices**
- I. Letter comprising the Application
- II. Power of Attorney for signing of Application
- III. Power of Attorney for Lead Member of Consortium
- IV. Joint Bidding Agreement for Consortium
- V. Guidelines of the Department of Disinvestment
- VI. List of Bid-specific clause
- VII. Details of Online Transfer for International Applicants
- VIII. Port Policy- Commerce & Transport Department, Govt. of Odisha
- IX. Policy for SEZ- Industries Department, Govt. of Odisha

2.9 Clarifications

2.9.1 Applicants requiring any clarification on the RFQ may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.11. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Application Due Date. The responses will be sent by fax and/or e-mail. The Authority will forward all the queries and its responses thereto, to all purchasers of the RFQ without identifying the source of queries.
2.9.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Applicants. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

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

2.10 Amendment of RFQ

2.10.1 At any time prior to the deadline for submission of Application, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ by the issuance of Addenda.

2.10.2 Any Addendum thus issued will be sent in writing to all those who have purchased the RFQ.

2.10.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Application Due Date.

C. PREPARATION AND SUBMISSION OF APPLICATION

2.11 Language

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

2.12 Format and signing of Application

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

2.12.2 The Applicant shall prepare 1 (one) original set of the Application (together with originals/copies of documents required to be submitted along therewith pursuant

5 While extending the Application Due Date on account of an addendum, the Authority shall have due regard for the time required by Applicants to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Application Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.
to this RFQ) and clearly marked “ORIGINAL”. In addition, the Applicant shall submit 1 (one) copy of the Application, alongwith documents required to be submitted along therewith pursuant to this RFQ, marked “COPY”. The Applicant shall also provide 2 (two) soft copies on Compact Disc (CD). In the event of any discrepancy between the original and the copy, the original shall prevail.

2.12.3 The Application and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Applicant 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 Application shall be initialled by the person(s) signing the Application. The Application shall contain page numbers and shall be bound together in hard cover.

2.13 Sealing and Marking of Applications

2.13.1 The Applicant shall submit the Application in the format specified at Appendix-I, together with the documents specified in Clause 2.13.2, and seal it in an envelope and mark the envelope as “APPLICATION”. The Applicant shall seal the original and the copy of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL” and “COPY”. The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.13.2 and 2.13.3.

2.13.2 Each envelope shall contain:

(i) Application in the prescribed format (Appendix-I) along with Annexes and supporting documents;
(ii) Power of Attorney for signing the Application as per the format at Appendix-II;
(iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
(iv) copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;
(v) 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; and
(vi) copies of Applicant’s duly audited balance sheet and profit and loss account for the preceding five years.

Each of the envelopes shall clearly bear the following identification:

“Application for Qualification: Development of Riverine Port on River Mahanadi”

and shall clearly indicate the name and address of the Applicant. In addition, the Application Due Date should be indicated on the right hand corner of each of the envelopes.
2.13.3 Each of the envelopes shall be addressed to:

ATTN. OF: Er. Subrat Kumar Rout
DESIGNATION: Director, Ports and Inland Water Transport, Odisha, Bhubaneswar
ADDRESS: Directorate of Ports and Inland Water Transport, Odisha, Paribahan Bhawan, (2nd Floor), A.G. Square, Unit-II, Ashok Nagar, Bhubaneswar-751009.
TELEPHONE NO: 0674-2390355
FAX NO: 0674-2396885
E-MAIL: portsniwt.od@nic.in

2.13.4 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Application and consequent losses, if any, suffered by the Applicant.

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

2.14 Application Due Date

2.14.1 Applications should be submitted before 1100 hours Indian Standard Time (IST) on the Application Due Date, at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFQ. A receipt thereof should be obtained from the person specified in Clause 2.13.3.

2.14.2 The Authority may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Applicants.

2.15 Late Applications

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

2.16 Modifications/ substitution/ withdrawal of Applications

2.16.1 The Applicant may modify, substitute or withdraw its Application after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to the Application Due Date. No Application shall be modified, substituted or withdrawn by the Applicant on or after the Application Due Date.

2.16.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.13, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
2.16.3 Any alteration/ modification in the Application or additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

D. EVALUATION PROCESS

2.17 Opening and Evaluation of Applications

2.17.1 The Authority shall open the Applications at 1130 hours IST on the Application Due Date, at the place specified in Clause 2.13.3 and in the presence of the Applicants who choose to attend.

2.17.2 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.

2.17.3 The Authority will subsequently examine and evaluate Applications in accordance with the provisions set out in Section 3.

2.17.4 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the Authority. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

2.17.5 Any information contained in the Application shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Project is subsequently awarded to it on the basis of such information.

2.17.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s) without assigning any reasons.

2.17.7 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant project from computation of the Eligible Score of the Applicant.

2.17.8 In the event that an Applicant claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from computation of the Eligible Score, and may also, while computing the aggregate Experience Score of the Applicant, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the Application and/or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.
2.18 Confidentiality

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

2.19 Tests of responsiveness

2.19.1 Prior to evaluation of Applications, the Authority shall determine whether each Application is responsive to the requirements of the RFQ. An Application shall be considered responsive only if:

(a) it is received as per format at Appendix-I.
(b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.14.2;
(c) it is signed, sealed, bound together in hard cover, and marked as stipulated in Clauses 2.12 and 2.13;
(d) it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);
(e) it contains all the information and documents (complete in all respects) as requested in this RFQ;
(f) it contains information in formats same as those specified in this RFQ;
(g) it contains certificates from its statutory auditors\(^5\) in the formats specified at Appendix-I of the RFQ for each Eligible Project;
(h) it contains an attested copy of the receipt for payment of Rs. 2,10,000 (Rupees two lakh ten thousand only) to Authority towards the cost of the RFQ document;
(i) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);
(j) it does not contain any condition or qualification; and
(k) it is not non-responsive in terms hereof.

\(^5\)In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.19.1 (g). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ.
2.19.2 The Authority reserves the right to reject any Application which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Application.

2.20 Clarifications

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

2.20.2 If an Applicant does not provide clarifications sought under Clause 2.20.1 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Authority may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Authority.

E. QUALIFICATION AND BIDDING

2.21 Short-listing and notification

After the evaluation of Applications, the Authority would announce a list of short-listed pre-qualified Applicants (Bidders) who will be eligible for participation in the Bid Stage. At the same time, the Authority would notify the other Applicants that they have not been short-listed. The Authority will not entertain any query or clarification from Applicants who fail to qualify.

2.22 Submission of Bids

The Bidders will be requested to submit a Bid in the form and manner to be set out in the Bidding Documents.

Only pre-qualified Applicants shall be invited by the Authority to submit their Bids for the Project. The Authority is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are therefore advised to visit the site and familiarise themselves with the Project by the time of submission of the Application. No extension of time is likely to be considered for submission of Bids pursuant to invitation that may be issued by the Authority.

2.23 Proprietary data

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

2.24 Correspondence with the Applicant

Save and except as provided in this RFQ, the Authority shall not entertain any correspondence with any Applicant in relation to the acceptance or rejection of any Application.
3. CRITERIA FOR EVALUATION

3.1 Evaluation parameters

3.1.1 Only those Applicants who meet the eligibility criteria specified in Clauses 2.2.2 and 2.2.3 above shall qualify for evaluation under this Section 3. Applications of firms/consortia who do not meet these criteria shall be rejected.

3.1.2 The Applicant’s competence and capability is proposed to be established by the following parameters:

(a) Technical Capacity; and

(b) Financial Capacity

3.2 Technical Capacity for purposes of evaluation

3.2.1 Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the "Eligible Experience") in relation to eligible projects as stipulated in Clauses 3.2.3 and 3.2.4 (the "Eligible Projects"):

Category 1: Project experience on Eligible Projects in ports sector that qualify under Clause 3.2.3

Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 3.2.3

Category 3: Construction experience on Eligible Projects in ports sector that qualify under Clause 3.2.4

Category 4: Construction experience on Eligible Projects in core sector that qualify under Clause 3.2.4

For the purpose of this RFQ:

(i) ports sector would be deemed to include ports and

(ii) 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$.

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

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

(a) It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOST, BOOT, DBFOT 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

$ 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.
case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;

(b) the entity claiming experience should have held, in the company owing the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed;

(c) the capital cost of the project should be more than Rs. 425 crore (Rs. four hundred twenty five crores); and

(d) the entity claiming experience shall, during the last 5 (five) financial years preceding the Application 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.

3.2.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Applicant should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Application Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, payments/receipts of less than Rs. 425 crore (Rs. four hundred twenty five crores) shall not be reckoned as payments/receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder.

3.2.5 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.

3.2.6 Subject to the provisions of Clause 3.2.7, an Applicant’s experience shall be measured and stated in terms of a score (the "Experience Score"). The Experience Score for an Eligible Project in a given category would be the eligible payments and/or receipts specified in Clause 2.2.2 (A), divided by one crore and then multiplied by the applicable factor in Table 3.2.6 below. In case the Applicant has experience across different categories, the score for each category would be computed as above and then aggregated to arrive at its Experience Score.
Table 3.2.6: Factors for Experience across categories

<table>
<thead>
<tr>
<th>Categories</th>
<th>Factor</th>
</tr>
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<tbody>
<tr>
<td>Category 1</td>
<td>1.25</td>
</tr>
<tr>
<td>Category 2</td>
<td>1.00</td>
</tr>
<tr>
<td>Category 3</td>
<td>0.75</td>
</tr>
<tr>
<td>Category 4</td>
<td>0.50</td>
</tr>
</tbody>
</table>

3.2.7 The Experience Score determined in accordance with Clause 3.2.6 in respect of an Eligible Project situated in a developed country which is a member of OECD shall be further multiplied by a factor of 0.5 (zero point five) and the product thereof shall be the Experience Score for such Eligible Project.

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

3.3 Details of Experience

3.3.1 The Applicant should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Application Due Date.

3.3.2 The Applicants must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.

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

3.4 Financial information for purposes of evaluation

3.4.1 The Application must be accompanied by the Audited Annual Reports of the Applicant (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Application is made.

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

3.4.3 The Applicant must establish the minimum Net Worth specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of Appendix-I.
3.5 Short-listing of Applicants

3.5.1 The credentials of eligible Applicants shall be measured in terms of their Experience Score. The sum total of the Experience Scores for all Eligible Projects shall be the ‘Aggregate Experience Score’ of a particular Applicant. In case of a Consortium, the Aggregate Experience Score of each of its Members, who have an equity share of at least 26% in such Consortium, shall be summed up for arriving at the combined Aggregate Experience Score of the Consortium.

3.5.2 The Applicants shall then be ranked on the basis of their respective Aggregate Experience Scores and short-listed for submission of Bids. The Authority expects to short-list upto 9 (nine) pre-qualified Applicants for participation in the Bid Stage. The Authority, however, reserves the right to increase the number of short-listed pre-qualified Applicants by adding additional Applicant.

3.5.3 The Authority may, in its discretion, maintain a reserve list of pre-qualified Applicants who may be invited to substitute the short-listed Applicants in the event of their withdrawal from the Bid Process or upon their failure to conform to the conditions specified herein; provided that a substituted Applicant shall be given at least 30 (thirty) days to submit its Bid.
4. **FRAUD AND CORRUPT PRACTICES**

4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the

4.2 Applicant 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.

4.3 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove, if an Applicant 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, such Applicant shall not be eligible to participate in any tender or RFQ issued by the Authority during a period of 2 (two) years from the date such Applicant 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, as the case may be.

4.4 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:

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

(b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, 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 Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.
5. **PRE-APPLICATION CONFERENCE**

5.1 A Pre-Application conference of the interested parties shall be convened at the designated date, time and place. Only those persons who have purchased the RFQ document shall be allowed to participate in the Pre-Application conference on production of valid receipt/document of such payment. Applicants who have downloaded the RFQ document from the Authority’s website ([http://odisha.gov.in/tenders](http://odisha.gov.in/tenders), [http://ct.odisha.gov.in/](http://ct.odisha.gov.in/) & [http://portsniwtodisha.in/ActiveTender.aspx](http://portsniwtodisha.in/ActiveTender.aspx)) should submit a Demand Draft of Rs. 2,10,000 (Rupees two lakh ten thousand only) in favour of “**Director, Ports and Inland Water Transport, Odisha, Bhubaneswar**” payable at Bhubaneswar, towards the cost of document, through their representative attending the conference. International applicants can also transfer the amount online as per details given in Appendix VII of the RFQ. A maximum of three representatives of each Applicant shall be allowed to participate on production of authorisation letter from the Applicant.

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

6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Bhubaneswar shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

(a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;

(b) consult with any Applicant in order to receive clarification or further information;

(c) pre-qualify or not to pre-qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;

(d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Applicant; and/ or

(e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.

6.3 It shall be deemed that by submitting the Application, the Applicant 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 and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
APPENDIX I

Letter Comprising the Application for Pre-Qualification
(Refer Clause 2.13.2)

Dated:

To,

The Director,
Directorate of Ports and Inland Water Transport, Odisha,
Paribahan Bhawan (2nd Floor), A.G. Square, Unit-II, Ashok Nagar,
Bhubaneswar-751009

Sub: Application for pre-qualification for Development of a Port on River Mahanadi through Public-Private Partnership on Build, Own, Operate, Share & Transfer (BOOST) basis.

Dear Sir,

1. With reference to your RFQ document dated …………., I/we, having examined the RFQ document and understood its contents, hereby submit my/our Application for Qualification for the aforesaid project. The Application is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Applicants for the aforesaid project, and we certify that all information provided in the Application and in Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.

3. This statement is made for the express purpose of qualifying as a Bidder for the development, construction, operation and maintenance of the aforesaid Project.

4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.

5. I/ We acknowledge the right of the Authority to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement 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.

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§ All blank spaces shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant.
7. I/ We declare that:

(a) I/ We have examined and have no reservations to the RFQ document, including any Addendum issued by the Authority;

(b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFQ document;

(c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFQ document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and

(d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFQ document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the RFQ document.

9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the Net Worth criteria and meet(s) all the requirements as specified in the RFQ document and are/ is qualified to submit a Bid.

10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their
14. I/We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bidding Process. A copy of the aforesaid guidelines form part of the RFQ at Appendix-V thereof.

15. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government or any entity controlled by it, from participating in any project (BOT or otherwise), and no bar subsists as on the date of Application.

16. I/We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFQ, we shall intimate the Authority of the same immediately.

17. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFQ document, and duly signed, is enclosed. The power of attorney for signing of Application and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFQ, are also enclosed.

18. I/ We understand that the selected 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.

19. I/ We hereby confirm that we are in compliance of/ shall comply with the O&M requirements specified in Clause 2.2.3.

20. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Applicants, selection of the Bidder, or in connection with the selection/Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

21. I/ We agree and undertake to abide by all the terms and conditions of the RFQ document.

22. I/ We certify that in terms of the RFQ, my/our Networth is Rs. ………………. (Rs. in words) and the Aggregate Experience Score is ………………. (number in words).

23. We agree and undertake to be jointly and severally liable for all the obligations of
In witness thereof, I/ we submit this Application under and in accordance with the terms of the RFQ document.

Yours faithfully,

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

Place: Name and seal of the Applicant/ Lead Member

Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.

\(^{5}\) Omit if the Applicant is not a Consortium
Annex-I
Details of Applicant

1. (a) Name:
   (b) Country of incorporation:
   (c) Address of the corporate headquarters and its branch office(s), if any, in India:
   (d) Date of incorporation and/or commencement of business:

2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:

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

4. Particulars of the Authorised Signatory of the Applicant:
   (a) Name:
   (b) Designation:
   (c) Address:
   (d) Phone Number:
   (e) Fax Number:

5. In case of a Consortium:
   (a) The information above (1-4) should be provided for all the Members of the Consortium.
   (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Application.
   (c) Information regarding the role of each Member should be provided as per table below:
### Appendix I

**Annex-I**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Member</th>
<th>Role {Refer Clause 2.2.6(d)}</th>
<th>Percentage of equity in the Consortium {Refer Clauses 2.2.6(a), (c) &amp; (g)}</th>
</tr>
</thead>
<tbody>
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<td>1</td>
<td></td>
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<td>4</td>
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</tbody>
</table>

(d) The following information shall also be provided for each Member of the Consortium:

**Name of Applicant/ member of Consortium:**

<table>
<thead>
<tr>
<th>No.</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Has the Applicant/ constituent of the Consortium been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise)?</td>
</tr>
<tr>
<td>2.</td>
<td>If the answer to 1 is yes, does the bar subsist as on the date of Application?</td>
</tr>
<tr>
<td>3.</td>
<td>Has the Applicant/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?</td>
</tr>
</tbody>
</table>

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

---

$^5$ All provisions contained in curly parenthesis shall be suitably modified by the Applicant to reflect the particulars relating to such Applicant.
## ANNEX-II

### Technical Capacity of the Applicant

*(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ)*

<table>
<thead>
<tr>
<th>Applicant type #</th>
<th>Member Code*</th>
<th>Project Code**</th>
<th>Category $</th>
<th>Experience $ (Equivalent Rs. crore)</th>
<th>Experience $§§</th>
<th>Payments made/received for construction of Eligible Projects in Categories 3 and 4</th>
<th>Payments made for development of Eligible Projects in Categories 1 and 2</th>
<th>Revenues appropriated from Eligible Projects in Categories 1 and 2</th>
<th>Experience Score £ (8)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single entity Applicant</td>
<td>a</td>
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<td>Consortium Member 3</td>
<td>3a</td>
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<tr>
<td>Consortium Member 4</td>
<td>4a</td>
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</tr>
</tbody>
</table>

**Aggregate Experience Score =**
Appendix I
Annex-II

* Provide details of only those projects that have been undertaken by the Applicant under its own name and/ or by an Associate specified in Clause 2.2.9 and/ or by a project company eligible under Clause 3.2.3(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 3.2.3(c) and for Categories 3 and 4, include only those projects where the payments made/received exceed the amount specified in Clause 3.2.4. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

# An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Applicant may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Applicant with such Associate, in terms of Clause 2.2.9, shall be provided.

* Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.

**Refer Annex-IV of this Appendix-I. Add more rows if necessary.

$ Refer Clause 3.2.1.

¥ In the case of Eligible Projects in Categories 1 and 2, the figures in columns 6 and 7 may be added for computing the Experience Score of the respective projects. In the case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included while computing the Experience Score of an Eligible Project.

$$ For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 65 (fifty) 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 Application Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

$ Divide the amount in the Experience column by one crore and then multiply the result thereof by the applicable factor set out in Table 3.2.6 to arrive at the Experience Score for each Eligible Project. In the case of an Eligible Project situated in an OECD country, the Experience Score so arrived at shall be further multiplied by 0.5, in accordance with the provisions of Clause 3.2.7, and the product thereof shall be the Experience Score for such Eligible Projects.
ANNEX-III

Financial Capacity of the Applicant

(Refer to Clauses 2.2.2(B), 2.2.4 (ii) and 3.4 of the RFQ)

<table>
<thead>
<tr>
<th>Applicant type $</th>
<th>Member Code £</th>
<th>Net Cash Accruals</th>
<th>Net Worth €</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Year 1</td>
<td>Year 2</td>
</tr>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>Year 7</td>
<td>Year 8</td>
</tr>
</tbody>
</table>

- **Single entity Applicant**
  - Member 1
  - Member 2
  - Member 3
  - Member 4
  - TOTAL

**Name & address of Applicant’s Bankers:**

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

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

€ The Applicant should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.9.

$$ For conversion of other currencies into rupees, see note below Annex-II of Appendix-I.
Instructions:

1. The Applicant/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Application Due Date. The financial statements shall:
   (a) reflect the financial situation of the Applicant or Consortium Members and its/ their Associates
   (b) where the Applicant is relying on its Associate’s financials;
   (c) be audited by a statutory auditor;
   (d) be complete, including all notes to the financial statements; and
   (e) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. Net Cash Accruals shall mean Profit After Tax + Depreciation.

3. Net Worth shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFQ document.

6. The applicant shall also provide the name and address of the Bankers to the Applicant.

7. The Applicant shall provide an Auditor’s Certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.4 (ii) of the RFQ document.
ANNEX-IV
Details of Eligible Projects
(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ)

Project Code:
Member Code:

<table>
<thead>
<tr>
<th>Item</th>
<th>Refer Instruction</th>
<th>Particulars of the Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td></td>
<td>(2)</td>
</tr>
<tr>
<td>Title &amp; nature of the project</td>
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<td></td>
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<tr>
<td>Category</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or (c) revenues appropriated</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Entity for which the project was constructed/ developed</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>Location</td>
<td></td>
<td></td>
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<tr>
<td>Project cost</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>Date of commencement of project/ contract</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date of completion/ commissioning</td>
<td></td>
<td>9</td>
</tr>
<tr>
<td>Equity shareholding (with period during which equity was held)</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)</td>
<td></td>
<td>15</td>
</tr>
</tbody>
</table>

Instructions:

1. Applicants are expected to provide information in respect of each Eligible Project in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.2.3 and 3.2.4 of the RFQ, as the case may be. Information provided in this section is intended to serve as a back up for information provided in the Application. Applicants should also refer to the Instructions below.
2. For a single entity Applicant, the Project Codes would be a, b, c, d etc. In case the Applicant is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.

3. A separate sheet should be filled for each Eligible Project.

4. Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Applicant or its Member, write “Associate” along with Member Code.

5. Refer to Clause 3.2.1 of the RFQ for category number.

6. The total payments received/made and/or revenues appropriated for each Eligible Project are to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Application Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.2.12). For Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.2.3(c). In case of Categories 3 and 4, payments made/received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 3.2.4. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.

7. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/Authority/Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.

8. Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.2.3 and 3.2.4.

9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.

10. For Categories 1 and 2, the equity shareholding of the Applicant, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.2.3).

11. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
12. Certificate from the Applicant’s statutory auditor or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Applicant/Member/Associate may provide the requisite certification.

13. If the Applicant is claiming experience under Categories 1 & 2, it should provide a certificate from its statutory auditor in the format below:

**Certificate from the Statutory Auditor regarding PPP projects**

Based on its books of accounts and other published information authenticated by it, this is to certify that …………………. (name of the Applicant/Member/Associate) is/ was an equity shareholder in …………………. (title of the project company) and holds/ held Rs. ……… cr. (Rupees …………………. crore) of equity (which constitutes …………% of the total paid up and subscribed equity capital) of the project company from …………. (date) to ………………. (date). The project was/is likely to be commissioned on ………………. (date of commissioning of the project).

We further certify that the total estimated capital cost of the project is Rs. ……… cr. (Rupees …………………. crore), of which Rs. ……… cr. (Rupees …………………. crore) of capital expenditure was incurred during the past five financial years as per year-wise details noted below:

………. 
………. 
………. 
………. 
………. 

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clauses 3.2.1 and 3.2.3 (d) of the RFQ during the past five financial years were Rs. ……… cr. as per year-wise details noted below:

………. 
………. 
………. 
………. 
………. 

Name of the audit firm:

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

Date:

---

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

6 Refer Clause 3.2.1 of the RFQ

7 Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary.

8 Statutory auditor means the entity that audits and certifies the annual accounts of the company

9 Refer instruction no. 10 in this Annex-IV

10 In case the project is owned by the Applicant company, this language may be suitably modified to read: 
“It is certified that ………………. (name of Applicant) constructed and/ or owned the ………………. (name of project) from ………………. (date) to ………………. (date).”

Appendix I
Annex-IV
14. If the Applicant is claiming experience under Category 3 & 4\(^a\), it should provide a certificate from its statutory auditors or the client in the format below:

**Certificate from the Statutory Auditor/ Client regarding construction works\(^a\)**

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

We further certify that the total estimated capital cost of the project is Rs. ……… cr. (Rupees ………………….. crore), of which the Applicant/Member/Associate received/paid Rs. …………… cr. (Rupees ………………….. crore), in terms of Clauses 3.2.1 and 3.2.4 of the RFQ, during the past five financial years as per year-wise details noted below:

\[\text{…………………….}\\\text{…………………….}\]

\(\text{[It is further certified that the payments/ receipts indicated above are restricted to the share of the Applicant who undertook these works as a partner or a member of joint venture/ consortium.]}\)\(^b\)

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

\(^{a}\) Refer Clauses 3.2.1 and 3.2.4 of the RFQ
\(^{b}\) Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary.
Statutory auditor means the entity that audits and certifies the annual accounts of the company
\(^{b}\) In case the Applicant owned the Eligible Project and engaged a contractor for undertaking the construction works, this language may be modified to read: “this is to certify that …………… (name of Applicant/Member/Associate) held 26% or more of the paid up and subscribed share capital in the……………. (name of Project company) when it undertook construction of the ……………… (name of Project) through ………………… (name of the contractor)"
\(^{a}\) This certification should only be provided in case of jobs/ contracts, which are executed as part of a partnership/ joint venture/ consortium. The payments indicated in the certificate should be restricted to the share of Applicant in such partnership/ joint venture/ consortium. This portion may be omitted if the contract did not involve a partnership/ joint venture/ consortium. In case where work is not executed by partnership/ joint venture/ consortium, this paragraph may be deleted
15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.9, the Applicant should also provide a certificate in the format below:

**Certificate from Statutory Auditor/ Company Secretary regarding Associate**

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of ………………. *(name of the Applicant/ Consortium Member/ Associate)* is held, directly or indirectly⁵, by ………………. *(name of Associate/ Applicant/ Consortium Member)*. By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.9 of the RFQ.

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

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

Name of the audit firm:

Seal of the audit firm:  

(Signature, name and designation of the authorised signatory).

---

⁵ In the event that the Applicant/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

⁶ In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of “control” is not broken.

16. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score⁴.
ANNEX-V

Statement of Legal Capacity

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

Ref. Date:

To,

The Director,
Directorate of Ports and Inland Water Transport, Odisha,
Paribahan Bhawan (2nd Floor), A.G. Square, Unit-II, Ashok Nagar,
Bhubaneswar-751009.

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of……………………………..

*Please strike out whichever is not applicable.
APPENDIX II
Power of Attorney for signing of Application
(Refer Clause 2.2.5)

Know all men by these presents, We…………………………………………….
(name of the firm and address of the registered office) do hereby irrevocably
constitute, nominate, appoint and authorise Mr/ Ms (name), …………………
son/daughter/wife of ………………………… and presently residing at
………………………. , who is presently employed with us/ the Lead Member of our
Consortium and holding the position of …………………………… , as our true and
lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on
our behalf, all such acts, deeds and things as are necessary or required in connection
with or incidental to submission of our Application for pre-qualification and
submission of our bid for the Development of a Port on River Mahanadi through
Public-Private Partnership on Build, Own, Operate, Share & Transfer (BOOST) basis
being developed by the Governor of Odisha acting through the Commerce and
Transport (Commerce) Department, Government of Odisha, and represented by the
Director, Ports and Inland Water Transport, Odisha, Bhubaneswar (the “Authority”)
including but not limited to signing and submission of all applications, bids and
other documents and writings, participate in Pre-Applications and other conferences
and providing information/ responses to the Authority, representing us in all
matters before the Authority, signing and execution of all contracts including the
Concession Agreement and undertakings consequent to acceptance of our bid, and
generally dealing with the Authority in all matters in connection with or relating
to or arising out of our bid for the said Project and/ or upon award thereof to us
and/or till the entering into of the Concession Agreement with the Authority.

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

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

For
…………………………

(Signature, name, designation and address)

Witnesses:

1. ……………………………….. (Notarised)

2. ………………………………..
Accepted

……………………………
(Signature)

(Name, Title and Address of the Attorney)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

- Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders’ resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.

- 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 Applicants 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 III

Power of Attorney for Lead Member of Consortium

(Refer Clause 2.2.5)

Whereas the Governor of Odisha acting through the Commerce and Transport (Commerce) Department, Government of Odisha, and represented by the Director, Ports and Inland Water Transport, Odisha, Bhubaneswar (“the Authority”) has invited applications from interested parties for the development of Development of a Port on River Mahanadi through Public-Private Partnership on Build, Own, Operate, Share & Transfer (BOOST) basis (the “Project”).

Whereas, …………………….., …………………….., …………………….. and …………………….. (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Qualification document (RFQ), Request for Proposal (RFP) and other connected documents in respect of the Project, and

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

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

For .........................
    (Signature)

                    .........................
    (Name & Title)

For .........................
    (Signature)

                    .........................
    (Name & Title)

For .........................
    (Signature)

                    .........................
    (Name & Title)
Witnesses:

1.

2.

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

(Executants)

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

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

- Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders’ resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.

- 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 Applicants 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

Joint Bidding Agreement
(Refer Clause 2.13.2)
(To be executed on Stamp paper of appropriate value)

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

AMONGST

1. {.......... Limited, a company incorporated under the Companies Act, 2013} 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 company incorporated under the 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 company incorporated under the 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)}

AND

4. {.......... Limited, a company incorporated under the Companies Act, 2013 and having its registered office at .......... (hereinafter referred to as the “Fourth Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

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

WHEREAS,

(A) The Governor of Odisha acting through the Commerce and Transport (Commerce) Department, Government of Odisha, and represented by the Director, Ports and Inland Water Transport, Odisha, Bhubaneswar (hereinafter referred to as the “Authority” which expression

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8 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”.

8 The number of Parties will be shown here, as applicable, subject however to a maximum of 6 (six)
shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the Applications”) by its Request for Qualification No. ............ dated ............ (the “RFQ”) for pre-qualification and short-listing of bidders for development and operation/ maintenance of Port on River Mahanadi on Build, Own, Operate, Share & Transfer (BOOST) basis (the “Project”) through public private partnership.

(B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFQ document and other bid documents in respect of the Project, and

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

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 RFQ.

2. Consortium

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

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

3. Covenants

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

4. Role of the Parties

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

(a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding
Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;

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

{(c) Party of the Third Part shall be the Financial Member of the Consortium; and}

{(d) Party of the Fourth Part shall be the Operation and Maintenance Member/ Other Member of the Consortium.}

5. **Joint and Several Liability**

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

6. **Shareholding in the SPV**

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

First Party:

Second Party:

{Third Party:}

{Fourth Party:}

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and networth have been reckoned for the purposes of qualification and short-listing of Applicants for the Project in terms of the RFQ.

6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost. The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operation date of the Project.
6.4 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

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

7. Representation of the Parties

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

(a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

(i) require any consent or approval not already obtained;

(ii) violate any Applicable Law presently in effect and having applicability to it;

(iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;

(iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

(v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

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

8. Termination

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

9. Miscellaneous

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

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.
IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED
For and on behalf of LEAD MEMBER by:
(Signature) (Signature)
(Name) (Name)
(Designation) (Designation)
(Address) (Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of SECOND PART
(Signature) (Signature)
(Name) (Name)
(Designation) (Designation)
(Address) (Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of THIRD PART
(Signature) (Signature)
(Name) (Name)
(Designation) (Designation)
(Address) (Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of FOURTH PART
(Signature) (Signature)
(Name) (Name)
(Designation) (Designation)
(Address) (Address)

In the presence of:
1. 2.
Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executants (s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.

3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.
OFFICE MEMORANDUM

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

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

(a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.

(b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/persons.

(c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
(d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

(e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.

(f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

(g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/Managers/employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India
APPENDIX- VI

LIST OF BID-SPECIFIC CLAUSES

A. Clauses and appendices with non-numerical footnotes

1. Clause 1.2.3 & 1.2.4: Brief description of Bidding Process
2. Clause 2.2.2 (B): Eligibility of Applicants: Financial Capacity
3. Clause 2.2.4 (i): Eligibility of Applicants
4. Clause 2.3.2: Change in composition of the Consortium
5. Clause 2.10.3 : Amendment of RFQ
6. Clause 2.19.1 (g): Tests of responsiveness
7. Clause 3.2.1 (ii): Technical Capacity for purposes of evaluation
8. Appendix I: Letter Comprising the Application for Pre-Qualification: Para 1, 13 and 23
9. Appendix I, Annex-I: Details of Applicant (Table to Para 5(c))
10. Appendix I, Annex-II: Technical Capacity of the Applicant
12. Appendix I, Annex-IV: Details of Eligible Projects: Instructions 12, 13, 14 and 16
13. Appendix I, Annex-IV: Details of Eligible Projects:
   (i) Certificate from the Statutory Auditor regarding PPP projects
   (ii) Certificate from the Statutory Auditor/ Client regarding construction works, and
   (iii) Certificate from Statutory Auditor/ Company Secretary regarding Associate
14. Appendix IV: Joint Bidding Agreement: Para 1 and 4
15. Appendix VI: List of Bid-specific clauses

B. Clauses and appendices with curly brackets

1. Clause 1.2.3: Brief description of Bidding Process
2. Appendix I: Letter Comprising the Application for Pre-Qualification: Para 23
3. Appendix I, Annex I: Details of Applicant (Table to Para 5(c), Columns 3 and 4)
4. Annex-IV, Appendix I: Form of Certificate from the Statutory Auditor/ Client regarding construction works and Certificate from the Statutory Auditor/ Company Secretary regarding Associate
5. Appendix IV: Joint Bidding Agreement: Recitals, Paras 4 (b), 4 (c), 4( d), 6.1, 6.2 and 9.1

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5 This Appendix-VI contains a list of clauses and appendices that would need to be suitably modified for reflecting applicant-specific provisions. This Appendix-VI may, therefore, be included in the RFQ document to be issued to prospective Applicants. The blank spaces in Appendices may be filled up by the Applicant and the footnotes may be deleted when it submits its Application.
C. **Clauses and appendices with blank spaces**

1. Appendix I: Letter Comprising the Application for Pre-Qualification: Para 1 and 22.
APPENDIX VII
Details of Online Transfer for International Applicants
(Refer Clause 5.1)

Bank Details

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank Name</td>
<td>State Bank of India, Govt. Treasury Branch, Bhubaneswar, Odisha</td>
</tr>
<tr>
<td>Account Holder Name</td>
<td>P.A. Technical to Director, Ports and Inland Water Transport, Bhubaneswar</td>
</tr>
<tr>
<td>Account Number</td>
<td>30187790342</td>
</tr>
<tr>
<td>Address</td>
<td>PT. Jawaharlal Nehru Marg Kharvel Nagar, Bhubaneswar-751001</td>
</tr>
<tr>
<td>RTGS/IFSC Code</td>
<td>SBIN0009025</td>
</tr>
<tr>
<td>MICR No.</td>
<td>751002006</td>
</tr>
</tbody>
</table>
APPENDIX VIII
Port Policy-Commerce and Transport
Department, Government of Odisha

(Refer Clause 1.1)

ODISHA PORT POLICY
PORT POLICY

DEPARTMENT OF COMMERCE & TRANSPORT (COMMERCE)

GOVERNMENT OF ODISHA
PORT POLICY

1. INDIAN SCENARIO:

The major ports are under the control of Government of India. The intermediate and minor ports are under the control of respective maritime State Governments, which look after their development and management.

Traffic & Capacity (Million Tonnes)

<table>
<thead>
<tr>
<th>Year</th>
<th>Traffic handled</th>
<th>Net Capacity of Port</th>
<th>Traffic to Capacity gap in percentage terms</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998–1999</td>
<td>272</td>
<td>245</td>
<td>11%</td>
</tr>
<tr>
<td>1999–2000</td>
<td>334</td>
<td>285</td>
<td>17%</td>
</tr>
<tr>
<td>2000–2001</td>
<td>347</td>
<td>305</td>
<td>14%</td>
</tr>
<tr>
<td>2001–2002</td>
<td>386</td>
<td>340</td>
<td>14%</td>
</tr>
<tr>
<td>2002–2003</td>
<td>429 (Apprx.)</td>
<td>358 (Apprx.)</td>
<td>20%</td>
</tr>
<tr>
<td>2006</td>
<td>650</td>
<td>540</td>
<td>20%</td>
</tr>
</tbody>
</table>

(Source: Annual Report-2002-2003, Government of India, Ministry of Shipping)

2. The net capacity of Indian Ports increased from 245 MT in 1998–1999 to 358 MT in 2002–2003. The net capacity is expected to further increase to 540 MT by 2006-2007. The Indian Ports are expected to handle cargo to the tune of 650 MT by 2006–2007. The traffic to capacity gap percentage has increased from 11% in the year 1998-1999 to 20% for 2002–2003. Even into the year 2006, it is projected that this 20% gap would persist. This gap between traffic handled and the net capacity of ports needs to be bridged. There is a need to develop and upgrade the minor ports.

INVESTMENT:

3. Augmentation of cargo handling capacity to 540 MT by 2006 would involve substantial investments. In order to achieve this target, private sector investment would have to be leveraged. This would facilitate not only the development of the port infrastructure but would also yield efficiency and technology gains in the management of ports.

PORT PROFILE OF ODISHA:

4. The port profile of the State of Odisha is indicated below:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of the Port</th>
<th>District</th>
<th>Year</th>
<th>Traffic handled</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Major Port—Paradeep</td>
<td>Jagatsinghpur</td>
<td>1999–2000</td>
<td>13.63 MT</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2000–2001</td>
<td>19.90 MT</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2002–2003</td>
<td>23.90 MT</td>
</tr>
<tr>
<td>2</td>
<td>Minor Ports—</td>
<td>Ganjam</td>
<td>1999–2000</td>
<td>1.34 lakhs</td>
</tr>
<tr>
<td></td>
<td>Gopalpur Port (Fair-</td>
<td></td>
<td>2000–2001</td>
<td>1.04 lakhs</td>
</tr>
<tr>
<td></td>
<td>weather Anchorage Port operating from Mid</td>
<td></td>
<td>2001–2002</td>
<td>0.14 lakh</td>
</tr>
<tr>
<td></td>
<td>October to Mid March)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>2</td>
<td>Dhamra</td>
<td>Bhadrak</td>
<td>Preliminary development works are in progress.</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Palur</td>
<td>Ganjam</td>
<td>Yet to be developed.</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Bali-Harichandi</td>
<td>Puri</td>
<td>Yet to be developed.</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Astarang</td>
<td>Puri</td>
<td>Yet to be developed.</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Bahuda Muhan (Sonepur)</td>
<td>Ganjam</td>
<td>Yet to be developed.</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Chudamani</td>
<td>Ganjam</td>
<td>Yet to be developed.</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Indhuri</td>
<td>Balasore</td>
<td>Yet to be developed.</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Chandipur</td>
<td>Balasore</td>
<td>Yet to be developed.</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Subamarekha Mouth (Kirtania)</td>
<td>Balasore</td>
<td>Yet to be developed.</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Bahabaipur</td>
<td>Balasore</td>
<td>Yet to be developed.</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Jatadhar Muhan</td>
<td>Jagatsinghpur</td>
<td>Yet to be developed.</td>
<td></td>
</tr>
</tbody>
</table>

**FUTURE VISION OF THE PORT SECTOR:**

5. Odisha, a principal maritime State has a coastline of 480 Kms. extending from Bahuda Mouth in Ganjam District to Subarnarekha Mouth in Balasore District. It is endowed with conducive, unique, natural and strategic port locations. Maritime States in India have already advanced in the development of minor ports whereas development of minor ports in Odisha is in its infant stage. Though potential sites have already been identified for the phased future development of minor ports, Government's own budgetary constraints, coupled with lack of an integrated, investor-friendly port policy has inhibited development.

6. Odisha will have to play a vital role in the overall development of Eastern region of the country, if its natural maritime endowments are to be optimally utilised.

7. Sea-bound transport is the most cost-efficient as well as economical means of transport for the conveyance of raw materials, as well as finished products, in bulk. Such an infrastructure could be the necessary backbone for attracting large-scale industries.
8. An integrated port policy for the State would encourage and lay down the pathway for the development of ports and other associated infrastructure, for promoting industry, trade and commerce.

Firstly, the logic of locating major industries near ports is clear, since the large business establishments want to import industrial raw materials and export their finished products and require easy access to the international markets, through viable and economic sea routes.

The second major advantage is that Odisha has a vast hinterland generating cargo, comprising of the developing Eastern and Central Indian States. Exports and imports of foodgrains, mineral sands, raw materials, finished goods, fertilizers and edible oils and petroleum products, by the large industrial houses located in the hinterland offer long term potential for cargo. Any economic development taking place in the hinterland States would have a direct bearing on the ports in Odisha.

In the recent past, new and improved technological developments have occurred in the global shipping scenario, especially in the field of container handling equipment and in the new port layout to accommodate container traffic. These technological developments demand new institutional set-up to capture the flow of major investments in the State’s port sector.

The port locations and the perennial riverine systems of Odisha are ideally situated to adapt to the current developments in technology, in the areas of communication, automation, cargo handling and ship technology. It is in this perspective that the Government of Odisha, by evolving an integrated strategy, intends to implement its vision.

Dhamra Port, a green field project has already been handed over to a private developer, International Seaports Company (ISP), Singapore, for the establishment of a major port of international standards and the preliminary works are in progress.

The Government of Odisha intends to develop Gopalpur Port, with private participation, from a seasonal lighterage port, into an all weather port of international standards. The process of identifying a strategic partner is in progress.

The proposed Odisha Maritime Board (OMB) will act as a single window agency for development of ports and inland waterways. The OMB would interact and facilitate the development and implementation of an integrated maritime development plan for the State. A Directorate of Ports and Inland Waterways, to be created, by merging the offices of Chief Construction Engineer and the Directorate of Inland Waterways, would function as the Secretariat for the OMB.

OBJECTIVES:

The following objectives are identified for the new port policy:

1. To increase Odisha’s share in the export and import sector in national and international trade and commerce, by taking advantage of the liberalisation and globalisation process.

2. To decongest the existing major ports, by developing minor ports, on the Eastern coastal region, so as to cater to the needs of increasing volumes of international and domestic traffic.

3. To handle 70–80 MT of Cargo by 2006 in the port sector in Odisha as envisaged by the Government of India, Ministry of Shipping.

4. To provide port facilities to promote export-oriented and port-based industries, which constitute the major chunk of industrial investment.

5. To encourage ship building, ship repairing and ship breaking and to establish manufacturing facilities for heavy industries in and around ports.
6. To provide facilities for coastal shipping of passengers and inter-State cargo traffic and further extension of these services to West Bengal, Andhra Pradesh, Tamil Nadu, etc.

7. To take up suitable facilitating measures as well as policy initiatives for attracting private sector investments in the development and operation of existing and new minor ports.

8. To establish connectivity of the ports with the riverine systems so as to increase the transportation of cargo through inland waterways.

STRATEGY:

All this envisages an integrated port development strategy, consisting of creation of port facilities and development of infrastructure facilities like roads, railways and inland waterways, in the hinterland. Large-scale financial outlays would be required to create these new facilities along with matching infrastructure. In view of the fact that cape size ships are used in the transportation, to capture the economics of scale, ports would be developed, with direct berthing and speedy mechanical handling facilities, so as to improve turn around of ships.

ODISHA MARITIME MASTER PLAN:

With the liberalisation of trade and industrial policies, sufficient cargo is likely to be generated by 2006 A.D., in the hinterland States of North-East and Central India. The establishment of Special Economic Zone (S.E.Z.) for facilitating export led growth, near Paradeep and Gopalpur Ports is a good augury. Further industrialisation of Odisha will coincide with port development and both these activities would be synchronised, so that the ports have the assured cargo, right from the beginning. As indicated earlier, Odisha ought to be in a position to handle 70–80 MT of Cargo by 2006. A major chunk of the cargo will be imports of crude oil, finished petroleum products, L.P.G., L.N.G., cooking coal, edible oil, fertilizers, raw materials for the proposed mega steel plants. Exports of mineral sands, granite, processed fish, finished goods of proposed port based steel plants, allied manufacturing units are also potential sources.

In order to evolve an integrated and sustainable maritime master plan, it is necessary to have an institutional mechanism that has the authority, resources and the mandate to draw upon the expertise, whenever necessary. It is seen that Gujarat and Tamil Nadu have developed such an institutional mechanism, in the shape of a Maritime Board.

ODISHA MARITIME BOARD:

It is proposed to establish an Odisha Maritime Board (O.M.B.) through a State legislation. It is proposed that the O.M.B. be vested with the authority and powers to plan, direct and implement the maritime development in the State with private sector participation.

(a) O.M.B., in consultation with experts, will evolve an integrated ‘Maritime Master Plan’

(b) It will have a technical wing, to assess the likely new cargo generation from time to time and to look for new investment avenues in the ports and inland waterways.

(c) The O.M.B. will evolve an integrated approach covering port and infrastructural development

(d) The O.M.B. will be empowered to receive funds from Government of India. It will be authorised to enter into contracts with consultants, developers and financial institutions. It will enter into MoUs and Concession Agreements, with the approval of Government of Odisha.
(e) The O.M.B. will vested with powers to impose, review and modify the existing port charges in the minor ports, subject to approval of the Government.

(f) O.M.B. will be authorised to enter into agreements for capital participation with Government of India Ministries and other major ports, subject to the approval of Government of Odisha.

(g) O.M.B. would undertake ‘traffic studies’ to identify the likely cargo from the hinterland States, in co-ordination with the Ministries of Government of India, such as, Shipping, Agriculture, Fertilisers, Petroleum, Mines, Steel, Coal and the Director-General of Foreign Trade.

(h) O.M.B. would plan and implement the process of attracting private sector investments, in inland waterways, in tune with the policies of the Ministry of Shipping, Government of India.

IDENTIFIED AREAS FOR INVESTMENT:

To encourage private investment in the existing and proposed minor ports and in the inland waterways, the following guidelines are indicated:

(a) Incomplete wharf/jetty/quay projects would be privatised.

(b) Entrepreneurs/Investors will be given ‘ousting priority’ for a period of five years, from the date on which the contract is awarded, with the approval of Government.

(c) For projects with an investments of Rs. 25 crores, O.M.B. will be authorised to increase the period of concession.

(d) Government of India had introduced a policy of parallel marketing of petroleum products. With this, the demand for port facilities for handling L.P.G., L.N.G., Kerosene, HSD and other petroleum products, including liquefied chemicals had increased. Specific new port locations would be identified and developed by O.M.B for this purpose.

(e) O.M.B. will also co-ordinate with the Ministry of Defence, Indian Navy and the Coast Guard to evolve a mutually agreed maritime safety and security plan for the entire coast of Odisha.

DEVELOPMENT OF NEW PORT SITES:

The Government in Commerce & Transport (Commerce) Department had identified twelve Green Field sites for the development as minor ports. Preliminary feasibility, hydrographic and Bathymetric surveys are to be conducted to identify and specify the contours of the port, to be developed, in these locations. Various factors like availability of draft, general marine conditions, optimum utilisation of the existing or the new infrastructure and proximity to the hinterland cargo will be taken into consideration in finalising the development. Basing on location and the likely generation of cargo, each port would be earmarked for specific commodities, for the easy movement of cargo and also to ensure financial viability.

Looking to the strategic maritime location of Odisha coast, one of the new port locations will be developed as a 'Free Port'.

PRIVATE PARTICIPATION IN PORT DEVELOPMENT:

The private participation in the ports will be facilitated either through I.C.B. (International Competitive Bidding) or M.o.U. O.M.B. will commission preliminary techno-economic feasibility reports, of identified location, to facilitate private investment. Arrangement for private investment shall be on the basis of the following guidelines:

(1) Port locations are to be given on Build, Own, Operate, Share and Transfer (BOOST), or on Build, Own, Operate and Transfer (BOOT) or on Build, Own and Operate (BOO) basis.
(2) O.M.B. will facilitate private investment in projects that are profitable since these projects are capital intensive with long gestation period.

(3) After the BOOST/BOOT/BOO concession period is over, the ownership of the port and its assets would get transferred to O.M.B.

CAPTIVE JETTIES FOR INDUSTRIES:

To ensure that the new port projects are economically viable, permission for captive jetties would be given only in viable projects, looking to the quantum of investment and the need for specialised facilities.

PRIVATISATION OF SERVICES:

Privatisation of services would be done in the following areas:

- Lighterage
- Dredging
- Piloting
- Tug Towing Service
- Other essential utility services

COASTAL SHIPPING:

With the development of new ports with modern handling facilities, some minor ports of Odisha can function as 'Transhipment Ports'. It is assumed that in future, 30 to 35% of the total cargo would be transported through coastal shipping. Proposals will also be mooted for the provision of 'Terminal facilities' within the State.

In consultation with the Government of India, Ministries of Defence and Shipping, the O.M.B. would make sufficient investment in the development of management of 'Navigational Aids' in the coast so as to facilitate maritime safety and national security.

IMPLEMENTATION:

The port policy envisages an integrated approach, covering ports, industrial and infrastructure development, including inland waterways. O.M.B. will act as the single window agency, in facilitating and developing the availability of land, water, power and the associated infrastructure. It would facilitate the clearances to be obtained from the Government of Odisha and Government of India, in close collaboration with the private investors.

CONCESSIONS AND INCENTIVES

The Government Odisha in the Industries Department, vide the Resolution No. 2020—XIV-III-12/2002(Pt.-I), dated the 28th January 2003 and No. 10027—XIV-HI-12/02 (Pt.)-I., dated the 3rd June 2003, had initiated a policy of 'leasing Government land for execution of infrastructure projects on BOT mode'. This resolution shall be applicable in respect of lease of Government land to port projects also. The above cited resolution is placed at Annexures I and II.

2. The existing infrastructure in the Gopalpur lighterage port shall be valued by a mutually agreed valuer and this value would form the Government's equity, in the Special Purpose Vehicle (SPV) to be formed, for the development of an all weather port.

3. For green field projects, the cost of private land acquisition shall be borne by the developer. However, this cost shall be compensated during the concession period, by adjusting the same, against the future revenue streams that would accrue to the Government/O.M.B.
4. Odisha Maritime Board will have the authority to permit the developer for fixation of port tariffs

5. Government of Odisha/Odisha Maritime Board’s equity participation will be restricted to 11% in order to insulate port managements from interference.

6. O.M.B. will endeavour at all times to ensure that the concerns of financing institutions are addressed, in order to make these projects creditworthy and bankable.

7. O.M.B. will ensure that the concessions, levies and charges are uniformly applicable to all port projects.

8. The O.M.B. would ensure that in evolving revenue sharing mechanisms with the developer, it would safeguard the project’s viability and profitability.
ANNEXURE I


GOVERNMENT OF ODISHA

INDUSTRIES DEPARTMENT

RESOLUTION

The 28th January 2003


In order to facilitate rapid establishment and growth of Industries and Industrial Infrastructure projects in the State and bring clarify into prevailing situation regarding price of Government land rates, Government after careful consideration have been pleased to amend the provisions of the Industrial Policy Resolution, 2001 in the manner indicated below :

(1) Paragraph 18.2 is substituted as follows :

“For the purpose of rates of Government land, different areas of the State have been divided into following zones :

Zone-A—Revenue Subdivisions of Angul, Balasore, Baragarh, Berhampur, Bhubaneswar, Champua, Cuttack, Jajpur, Jharsuguda, Panposh, Rayagada, Sambalpur, Talcher and Paradeep NAC Area.

Zone-B—All Revenue Subdivisions of the State except those covered under Zone-A.”

(2) Paragraph 18.3 is substituted in the following manner :

“Government land earmarked for the Land Bank Scheme and other Government land wherever available will be allotted for new industrial projects at pre-determined rates as notified from time to time. The following rates for Government land shall apply until further orders :

<table>
<thead>
<tr>
<th>Category</th>
<th>Rate for land located within Municipal/NAC Area (Per acre)</th>
<th>Rate for land located outside Municipal/NAC Area (Per acre)</th>
<th>Ground Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zone-A</td>
<td>3,00,000</td>
<td>1,00,000</td>
<td>1% of the Land Value</td>
</tr>
<tr>
<td>Zone-B</td>
<td>1,00,000</td>
<td>25,000</td>
<td>1% of the Land Value</td>
</tr>
</tbody>
</table>

ORDER—Ordered that the Resolution be published in next issue of the Official Gazette and copy thereof be forwarded to all Departments of Government/all Heads of Departments and Accountant-General, Odisha.

By order of the Governor

S. P. NANDA

Principal Secretary to Government
ANNEXURE II

No. 10027—XIV-HI-12/2002(Pl)-I.

GOVERNMENT OF ODISHA
INDUSTRIES DEPARTMENT

RESOLUTION

The 3rd June 2003

SUBJECT—Amendment of I.P.R. 2001—Policy of leasing Government land for execution of Infrastructure Projects on BOT mode.

In the liberalised regime, private investment opportunities have been created for establishment of large scale infrastructure projects like ports, power, highways, water supply, etc. Typically, Private Sector participation is structured in such projects through Build-Operate-Transfer (BOT) mode or its variants such as BOOT/BOOST/BOLT. The private developer is granted the exclusive rights to develop the project, operate and maintain it and collect fees/tariffs or charges for cost recovery for a finite period of 25—30 years. The rights and obligations of the developer, the Government and other Stake holders are precisely laid down in the form of a concession agreement. The State Government provides land required for such infrastructure projects to the private developers which reverts back to the Government at the end of the concession period. The land lease policy for such projects contemplated for development under the BOT mode or its variants has, therefore, to be necessarily different from the policy envisaged for other industrial projects where land is required to be leased out to entrepreneurs/project promoters for a period of 99 years. It would be inequitable to lease out land for infrastructure projects being developed through the BOT mode (or its variants) by charging premium prescribed for other industrial projects in the I.P.R.-2001.

In view of reasons mentioned above, Government after careful consideration have been pleased to decide that the following provisions be incorporated as Paragraph 18.3A in between Paragraph 18.3 & 18.4 (Part-C) of the I.P.R.-2001 issued in Industries Department Resolution No. 26115—XIV-HI-26/2001-I., dated the 3rd December 2001:—

18.3A—"Government land required for Infrastructure Projects identified for development through the BOT mode or its variants (where the land reverts back to the State Government on expiry of the concession period) would be leased out on payment annual lease rental of 6% (including 1% ground rent) during the concession period. The annual lease rental may be subjected to revision every three years with reference to the cost inflation index used by the Income Tax Authorities (For assessment of capital gains). Lease premium for Government land for the relevant zone laid down in the I.P.R. would be the reference price for fixing annual lease rental in these cases."

ORDER—Ordered that the Resolution be published in next issue of the Official Gazette and copy thereof be forwarded to all Departments of Government/all Heads of Departments and Accountant-General, Odisha, Bhubaneswar.

By order of the Governor

S. P. NANDA
Principal Secretary to Government

OGP—MP—PTS(U-IV) (Commerce) 10—300 Bks.—31-8-2012
DEPARTMENT OF COMMERCE & TRANSPORT (COMMERCE)

GOVERNMENT OF ODISHA

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APPENDIX IX
Policy for Special Economic Zones-Industries
Department, Government of Odisha

(Refer Clause 1.1)

SEZ POLICY-2015
GOVERNMENT OF ODISHA
INDUSTRIES DEPARTMENT

RESOLUTION

No. 3971 / I,
XIX-HI-53/2015

Bhubaneswar, the 18th June, 2015

Subject: Policy for Special Economic Zones - 2015
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1.0 INTRODUCTION:

1.1. Government of India (GoI) initially introduced the Special Economic Zone (SEZ) Scheme in the year 2000 through an amendment to the Export-Import Policy, 1997-2002 and later enacted 'The Special Economic Zones Act, 2005' (hereinafter referred to as "Act") and 'The Special Economic Zones Rules, 2006' (hereinafter referred to as "Rules"). The SEZ Act and Rules provide a conducive legal framework and fiscal regime to attract qualitative domestic and foreign capital investments with a high degree of export orientation.

1.2. An SEZ is specifically designated as a duty-free enclave and treated as a foreign territory for the purposes of trade operations and duties and tariffs. Under the Act and Rules, SEZs enjoy attractive fiscal incentives and an effective investment facilitation framework with simplified approval procedures for creating an internationally competitive business environment. SEZs are expected to promote establishment of large self-contained economic areas supported by high quality infrastructure, which would make them internationally competitive in terms of cost, quality, technology, productivity and efficiency resulting in greater export earnings and a positive impact on the domestic economy in terms of additional economic activity, employment generation, vendor development, value addition, technology development, etc.

1.3. As per the Act and Rules, SEZs can be developed in public, private or joint sectors or by the State Governments themselves.

1.4. The SEZs in Odisha will be developed both by public and private sector developers individually or jointly. The Developer will plan, develop, finance, manage, market and maintain the Zones. The State Government will facilitate the SEZ Developers and the units and establishments set up
in the SEZs by providing them a conducive policy framework aligned with the Act and Rules.

1.5. International trends show that economic activities across countries and continents are integrating globally at a rapid pace. Hence, in the globalising scenario, factors like availability of resources including quality manpower, markets, ease of doing business and infrastructure will determine the nature and magnitude of flow of investments into a region. Private sector investments in creating SEZs and establishing units therein are expected to trigger significant growth impulses in the domestic economy apart from making exports from India globally competitive.

1.6. The SEZ approach has played a significant role in the economic growth of several countries like China, Hong Kong, Taiwan and other parts of the world. For a State like Odisha, which is rich in natural and mineral resources and has huge potential for development, the SEZ approach offers a robust strategy to expand its industrial and economic base. SEZs would bring large dividends to Odisha by way of catalysing infrastructural, industrial and general economic activities and result in incremental employment opportunities.

1.7. The Government of India has advised State Governments to formulate a Policy or an Act for development of SEZs to provide a policy framework for the comfort of investors. Hence, this SEZ Policy formulated by Government of Odisha which will apply to the SEZs set up within the State.

2.0 OBJECTIVES:

2.1. To promote SEZs as internationally competitive growth centres, in accordance with Government of India’s SEZ Act and Rules, the SEZs will operate as deemed-foreign enclaves for trade operations and duties and tariffs.

2.2. To stimulate more efficient use of local resources and further value addition.
2.3. To attract domestic and overseas/foreign investments in strategic and desired sectors.

2.4. To fuel the growth of the local economy through increased economic activities and export of goods and services.

2.5. To catalyse development of world class infrastructure in selected areas and to create centres of excellence for manufacturing, services and other economic activities.

2.6. To increase employment opportunities, improve the skills of local workforce and facilitate transfer of technology and modern management skills to local enterprises.

2.7. To provide for need-based incentive package to SEZ Developers, SEZ Units and other such entities.

2.8. To enable investors to engage in approved industrial, commercial and service activities in the SEZs.

2.9. To enable interested parties to develop, operate, maintain and manage Special Economic Zones notified by Government of India.

3.0 **CONDUCTIVE BUSINESS ENVIRONEMENT:**

3.1. The State Government will make all efforts to create a conducive business environment to enable SEZs set up within the State become globally competitive.

3.2. Government of India shall appoint a Development Commissioner (DC) for each SEZ as envisaged under the SEZ Act, 2005. The DC will be the designated Authority representing both the Central Government and the State Government and their Agencies. The D.C. will be responsible for regulation and facilitation activities within the SEZ.

3.3. GoI shall constitute an Approval Committee for each SEZ under the D.C. to provide single window clearance facility to the SEZ Developer(s), SEZ unit(s) and authorised service provider(s).
4.0 **ENVIRONMENT MANAGEMENT:**

4.1. The Developer, Co-Developers and the units shall adopt global best practices in environment management and obtain requisite clearances, approvals as required from the Competent Authority.

5.0 **POWER:**

5.1. The State Government would create an enabling environment to facilitate un-interrupted supply of quality power to the SEZ(s) and units therein.

5.2. The SEZ Developer shall be authorized to generate power, if it complies with the technical standards relating to grid connectivity referred in clause (b) of section 73 of the Electricity Act, 2003, transmit and distribute power within the SEZ subject to OERC Regulations.

5.3. The SEZ Developer shall have freedom to fix power tariff for the consumers within the SEZ as per the guidelines adopted and approved by OERC in consultation with the State Government.

5.4. The Developer, Co-Developer and the units may procure power from any source through Open Access as per extant rules & regulations.

5.5. The units within the SEZ would be permitted to set up Captive Power Plants (CPPs) to meet their power requirements.

5.6. The CPPs in the SEZ will also be permitted to establish grid connectivity for drawal / evacuation of power subject to their entering into a separate agreement with the State Transmission Utility and by following other relevant provisions of GRID code.

6.0 **WATER:**

6.1. The State Government would facilitate for allocation of water available at nearby source for use in the SEZ on payment of usual charges. In case an alternate water source is to be developed due to shortage of water availability at the source near the SEZ, the developer may be allowed to develop alternate source and develop water transportation projects in...
consultation with the Department of Water Resources. The developer in partnership with State Government will put in place a feasible and appropriate facility.

6.2. Government of Odisha shall facilitate for obtaining necessary approvals required from Statutory Authorities for the project.

6.3. Both, the Developer and the unit(s) will be allowed to make his/their independent arrangements for sourcing and transportation of water, subject to water use policy of the State Government.

6.4. Both, the Developer and the units shall incorporate rain water harvesting mechanism as an integral part of their constructions in both processing and non-processing zones.

7.0 **Land:**

7.1. The Government land, Odisha Industrial Infrastructure Development Corporation (IDCO) land and private land acquired by the Government or any of its agency (ies) shall be transferred to the SEZ Developer on lease hold basis. The Developer of the SEZ will be competent to transfer the land by way of sub-lease to persons/ entrepreneurs who hold a valid letter of approval issued by the Development Commissioner. The lessor shall have the right of resumption if the land is not used for the purpose it was leased out within a period of five years and there shall be no extension or it cannot be diverted for other purposes by the lessee.

7.2. Government Land shall be provided to SEZ Developers at concessional rates as per prevailing IPR rates and IDCO Land shall be leased as per the applicable rates. However, for SEZ proposal within limits of Bhubaneswar Municipal Corporation & Cuttack Municipal Corporation, Government land shall be provided as per the applicable rates notified by Government.

7.3. The Government will enable availability of required land for a SEZ through direct purchase by the Developer or lease of Government land or that of any of its agencies or through acquisition under the applicable Act/Rules.
or a combination of any of these and while doing so, direct purchase and acquisition through consent will be the first recourse.

7.4. When private agricultural land is purchased or acquired, the approach shall be to purchase or acquire the least agriculturally productive land.

7.5. The use of land for a SEZ will be permitted by ensuring that the project causes minimum displacement and other forms of adverse impact on the human livelihood.

7.6. The State Government shall recommend on priority those applications proposing to set up SEZs using barren, waste land and non-forest Government land.

7.7. Those proposing to set up SEZ on surplus land owned / possessed by either private or public sector undertakings will also be considered by the State Government on priority for recommendation.

7.8. The State shall give preferential treatment to SEZs dedicated to Thrust and Priority sectors as per extant of Industrial Policy Resolution as well as large employment generating sectors such as shipbuilding, heavy & light engineering goods etc.

8.0 **INFRASTRUCTURE LINKAGES:**

The State Government will make best efforts to facilitate provisioning of infrastructure linkages including transport connectivity like road and rail required for the SEZ on priority basis. For the SEZs located in the coastal locations, connectivity through inland waterways may also be provisioned by the State subject to its feasibility. Infrastructure Linkages projects by the State shall be provided either on its own or through the Central Government schemes (like ASIDE, etc) or on Public Private Partnership basis or through any other appropriate feasible route.
9.0 **STATE TAXES, DUTIES, LOCAL TAXES AND LEVIES:**

9.1. All sales and transactions for carrying out Authorised Operations by Developers, Co-Developers & Units within the Processing Area shall be exempted from taxes, cess, duties, fees, levies under any State law as specified below:

a) Stamp duty and registration fees payable on transfer of land and / or built up space;

b) Stamp duty and registration fees on loan agreements, credit deeds and mortgage executed by the Developer, Co-Developer, SEZ Unit, industry or establishment.

c) VAT, Entry Tax, Electricity Duty and other cess payable on sales and transactions.

9.2. Sales of Inputs and Capital goods \(^1\) to SEZ units located within the Processing Area from DTA shall be subjected zero rate of VAT and Levy of Entry Tax shall be exempted subjected to such conditions and exemptions as will be notified by the Government in the Finance Department.

9.3. All concessions and exemptions as stated above and allowed to a Developer or Co Developer or Unit, shall also be available to the contractors including subcontractors appointed by such Developer or Co-developer or Unit, and all the documents in such cases shall bear the name of the Developer or Co-Developer or Unit along with the contractor or sub-contractor and these shall be filed jointly in the name of the Developer or Co-developer and the contractor or sub-contractor, as the case may be.

10.0 **LABOUR REGULATIONS:**

10.1. All the Labour Laws of the land exercised both by Central and State Governments and agencies there under shall apply to all the activities within the SEZ and Units located therein.

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\(^1\) The terms ‘Input’ and ‘Capital goods’ shall have the same meaning as has been assigned in Clause (8) and Clause (25) of Section 2 of the Odisha VAT Act respectively.
10.2. The SEZs and units therein may be declared as Public Utility Service under section 2(n)(vi) under the Industrial Disputes Act, 1947 (No.14 of 1947).

10.3. Clearances under labour laws shall be sought independently by the Developer, Co-Developer and Units within the SEZ as the case may be, from the Directorate of Factories & Boilers and / or from the Directorate of Labour as the case may be.

11.0 **MICRO, SMALL AND MEDIUM ENTERPRISES (MSME) AND THEIR REGISTRATION:**

The authority to register Micro, Small and Medium Enterprises (MSME) will be delegated to the Development Commissioner or other designated authority in respect of units in the SEZs.

12.0 **LAW AND ORDER:**

The State Government, on the request of the Developer or otherwise, may consider making appropriate and exclusive arrangements for prevention and control of crime and maintenance of law and order within the SEZ.

13.0 **SCREENING OF SEZ APPLICATIONS:**

13.1. The State Level Single Window Clearance Authority (SLSWCA) constituted under OIFA, 2004 shall be the competent Authority to screen and recommend SEZ proposals, provided, projects proposals with investment proposal of more than Rs. 1,000.00 Crores shall be placed before the High Level Clearance Authority (HLCA) for approval before making any recommendation to Government of India.

13.2. Industries Department shall be the Nodal Department for all SEZs in the State and IPICOL shall be the Nodal Agency for processing all SEZ application.
13.3. IPICOL shall function as the State level nodal agency for receipt, scrutiny and placement of the applications before the SLSWCA / HLCA as the case may be.

13.4. For sector-specific SEZ proposals, IPICOL may scrutinise them in consultation with line departments / agencies like Odisha Computer Application Center, Director-Biotechnology, APICOL and IDCO.

13.5. The criteria for screening of SEZ proposals shall be guided by:

a) Level of preparedness such as identification/availability of land including the nature of land, power, water, anchor tenant(s) and preliminary identification of products in case of multi-product SEZ.

b) Extent of Rehabilitation and Resettlement, diversion of forest land, etc. involved.

c) Extent of linkages with domestic economy in terms of use of local resources including manpower, value addition, vendor development, technology transfer and such other positive growth impulses.

d) Net-worth adequacy of Promoter Company or the consortium and their experience, track record and reputation.

e) Environmental concerns, if any.

f) Thrust and Priority sectors status as per IPR plus the sectors identified as Thrust sector in Section 17 of this Policy.

g) Export orientation.

h) Foreign Direct Investment.

i) Quantification of expected gains from the proposed gains of the SEZ and comparison with the overall concessions being accorded by the State as well as Central Government agencies.

j) Possibilities of de-industrialisation of the already established industries or the units being placed at a comparative disadvantage vis-à-vis units within SEZ.

k) Any other relevant aspect.
14.0 **SINGLE WINDOW CLEARENCE AND DEVELOPMENT OF SEZ:**

14.1. The State Level Single Window Clearance Authority (SLSWCA) constituted under OIFA, 2004 shall be the competent Authority to provide Single Window facilities to the SEZ proposals for approvals and clearances. Industries Department shall be the Nodal Department for all SEZs in the State and IPICOL shall be the Nodal Agency for all SEZ projects.

14.2. Other than concerned officials of State Government in the SLSWCA, for SEZ matters representatives of SEZ authorities / promoters shall be invited as and when necessary and it may also opt any other expert/ officer(s) as a member or invitee.

14.3. **REVIEW AND MONITORING:**

The implementation of the policy as well as the development of SEZs will be periodically reviewed by SLSWCA. Representatives of SEZ Authorities, Developers / Promoters, will be invited to participate for review of the projects and resolve various issues pertaining to the promotion, development and functioning of SEZs in the State.

15.0 **SEZ DEVELOPER:**

15.1. The SEZ Developer will be an entity as authorised by the Board of Approval, Government of India.

15.2. The SEZ Developer shall prepare the SEZ Master Plan in accordance with international best practices in town planning, environment and social management planning and get the same approved from the competent authority(ies).

15.3. The SEZ Developer shall be authorised to levy and collect user charges for both common and unit specific utility services provided in the SEZ area by the Developer.

15.4. The SEZ developer of Industries processing prime metal like Steel, Aluminium and Ferro Alloys and having investment proposal of minimum
of Rs 1000 crores should mandatorily setup downstream parks of 200 Ac each. For metal processing industries such a downstream park should be located adjoining the metal producing plant with arrangement for supply of molten metal. The basic infrastructure of downstream park such as road, power, water supply, drainage and other common utilities shall be provided by the SEZ Developer.

16.0 **LAND USE:**

16.1. The regulation of land use within the SEZ shall be in accordance with the guidelines stipulated under the SEZ Act and Rules, the SEZ Master Plan approved by the competent authority subject to the condition that minimum 50 percent of the SEZ notified area is utilised as processing area in respect of both sector-specific and multi-product SEZs.

16.2. The non-processing area shall be used appropriately for creating activity related social infrastructure for the SEZ units and their employees. Further, the activities those shall be permissible in the non-processing area shall be in accordance with the specific approval granted by the Board of Approval constituted under Section 8 of the SEZ Act, 2005 subject to the Master Plan approved by the competent authority.

16.3. On request of the Developer, the State Government may consider to take appropriate steps to enable the SEZ to function as a self-governing industrial township with suitable linkages with the relevant Panchayat(s) / Urban local body(ies) / Development or Town Planning Authority(ies).

17.0 **THRUST SECTORS:**

17.1. Though Government of Odisha will promote all SEZs in general, investments in SEZs in following sectors would be given preference while recommending the proposals:

a) Information Technology (IT); Information Technology Enabled Services (ITES), and Knowledge base Industries.
b) Bio-Technology (BT);

c) Electronics System Designing & and related Hardware manufacturing;

d) Automobile & Auto-component manufacturing;

e) Heavy and Light Engineering goods;

f) Leather, Handlooms & Handicrafts including Coir;

g) Textiles including garments and apparels;

h) Agro & Food Processing Industries including that of Marine Products;

i) Ship repairing & ship building;

j) Gems and Jewellery;

k) Downstream and ancillary industries based on primary metals;

l) Petroleum, Chemical and Petrochemical and their downstream Industries;

m) Pharmaceuticals; and

n) Tourism;

17.2. Preference shall also be given to those SEZs which have well established external Infrastructure Linkages including requisite infrastructure connectivity.

17.3. The State shall not encourage SEZs based on mining and minerals like iron ore, bauxite, chrome etc. However, SEZs based on use of intermediate products like Alumina for smelting, primary metals (Steel, Aluminium etc.) for further processing on the value chain and rare minerals like tin, limonite, nickel, platinum, vanadium, etc. may be considered and recommended.

17.4. The mineral based SEZs already approved shall undertake to develop/promote related downstream industrial complex over a minimum
area as prescribed by Government. In the event of non-compliance of the condition, all state concessions shall be withdrawn.

17.5. The State shall not encourage SEZs based on activities like mineral, mining etc. that causes pollution hazards. OSPCB shall prepare a list of such industries and the same would be notified by the State Government as a negative list.

18.0 GENERAL PROVISIONS:

18.1. This SEZ policy is formulated in accordance with the provisions laid-down under para 9.4 of IPR-2007.

18.2. Operational guidelines, wherever necessary for implementation of the various provisions of this Policy, will be issued by the concerned Administrative Department in consultation with the Industries Department, which will function as the Nodal Department for SEZs.

18.3. The definitions, expressions, terms and conditions, and functions of different clearance authorities, unless and otherwise explained in this Policy shall have the same meaning as defined under Odisha Industries (Facilitation) Act, 2004 extant IPR of Government of Odisha, SEZ Act, 2005 and SEZ Rules, 2006 of Government of India as amended from time to time.

18.4. The Development Commissioner and Approval Committee are at liberty to adopt the documents and procedures as under the Odisha Industries (Facilitation) Act, 2004 in respect of Combined Application Form, Self Certification, Deemed Approval, etc. They may also evolve and adopt alternative documents and procedures for ease of business.

18.5. Industrial units within SEZ & SEZ itself shall be eligible for package of assistance/incentives/facilities as envisaged in this Policy and shall not be eligible for fiscal incentives under IPR-2007 as stated under Para-14.1 of IPR-2007.
18.6. A special package of incentives over and above what has been enumerated in this Policy document may be considered for new industrial projects on case to case basis taking into account the benefits to the State. The Cabinet on the recommendations of the SLSWCA and the HLCA and concurrence of Finance Department may consider such proposal.

18.7. Doubts relating to interpretation of any term and/or dispute relating to the operation of any provision under this Policy shall be referred to the Industries Department, Government of Odisha for clarification/resolution and the decision of Government in this regard shall be final and binding on all concerned.

18.8. Benefits proposed under this Policy shall be applicable prospectively from the date the SEZ Policy is notified by the Government to all SEZ both existing and proposed.

18.9. This Policy shall remain in force until substituted by another one. The State Government may at any time amend any provision of this Policy.

ORDER: Ordered that the Resolution be published in next extraordinary issue of the Odisha Gazette and copies thereof be forwarded to all Departments of Government, all Heads of Departments and Accountant General, Odisha.

By Order of Governor,
Sanjeev Chopra
Principal Secretary to Government,
Industries Department

Memo No.3972 /I., Bhubaneswar, dated 18th June, 2015
Copy forwarded to the Director, Printing, Stationery and Publication, Odisha, Cuttack with request to kindly publish the Resolution in the extra ordinary issue of the Odisha Gazette and supply 500 copies to this Department immediately.

Joint Secretary to Government
Memo No.3973/I., Bhubaneswar, dated 18th June, 2015
Copy forwarded to the Heads of Portal Group, IT Centre, Odisha Secretariat for information and necessary action.

He/ She is requested to host this Resolution in the website of Industries Department for general information.

Joint Secretary to Government

Memo No.3974/I., Bhubaneswar, dated 18th June, 2015
Copy forwarded to all Departments/ All Heads of Departments/ all Revenue Divisional Commissioners/ all Collectors/ All District Industries Centers/ All Regional Industries Centers/ All Public Sector Undertakings/ Accountant General (A&E), Odisha, Bhubaneswar for information.

Joint Secretary to Government

Memo No.3975/I., Bhubaneswar, dated 18th June, 2015
Copy forwarded to Additional Chief Secretary to Chief Minister, Odisha/ PS to all Ministers/ PS to Chief Secretary, Odisha/ PS to Development Commissioner-cum- Additional Chief Secretary, Odisha/ OSD to Principal Secretary, Industries Department for kind information of Hon’ble Chief Minister, Odisha/ Hon’ble Ministers/ Chief Secretary, Odisha/ DC-cum-ACS, Odisha and Principal Secretary to Government, Industries Department.

Joint Secretary to Government

Memo No.3976/I., Bhubaneswar, dated 18th June, 2015
Copy forwarded to all Sections of Industries Department/ Guard File (20 copies) for information.

Joint Secretary to Government