



Request for Proposal

for

**PROVISION OF KAVACH (TRAIN COLLISION AVOIDANCE
SYSTEM) INCLUDING TOWER IN JOLARPETTAI TO ERODE
JUNCTION SECTION (179.29 Rkm) OF SALEM DIVISION IN
SOUTHERN RAILWAY**

on

**Engineering, Procurement and Construction
(EPC) Mode**

Ministry of Railways

October 2024

**Signal and Telecommunication Department,
Southern Railway (Projects)**

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Office of Chief Signal and Telecommunication Engineer, Projects, Southern Railway, Chennai, and having its principal offices at Headquarters Office, S & T Projects Wing, 3rd Floor, M.M.C. Park Town, Chennai-3

Notice Inviting Bid

Bid/ Package No : Proj1MS_KAVACH_JTJ-ED_01 Dated 19.10.2024

RFP for “Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway” on EPC mode

The President of India represented by the Ministry of Railways, Chief Signal and Telecommunication Engineer, Projects, Southern Railway, Chennai-600003 (the “**Authority**”), having its principal office at Moore Market Complex, Park town, Chennai – 600003, is engaged in the development of railways and related infrastructure, and as part of this endeavour, the Authority has decided to undertake the work of “**Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway** (the “**Project**”) through Engineering, Procurement and Construction (the “**EPC**”) Contract, and has decided to carry out the Bidding process for selection of a Bidder to whom the Project may be awarded. A brief description of the project may be seen in the Information Memorandum of the Project at the Authority’s website (www.ireps.gov.in). Brief particulars of the Project are as follows:

Name of the Project	Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway
Section	JOLARPETTAI TO ERODE JUNCTION of Salem Division
Length in RKM	179.29 RKM
Estimated Project Cost	Rs. 1,12,79,46,554/-

The complete Bid document can be viewed / downloaded from official portal of the Railway website www.ireps.gov.in from _____ to the last date of request for Bid Document as per Clause 1.3. Bidder must submit its Financial Bid and Technical Bid at www.ireps.gov.in on or before up to as per clause 1.3. Bids received online shall be opened on the date of opening of Technical Bids as per Clause 1.3.

Bid through any other mode shall not be entertained. However, scanned copy of Bank Guarantee, Power of Attorney, Joint Bidding Agreement etc. shall be submitted physically by the Bidder on or before the date of physical submission of all documents as per clause 1.3. Please note that the Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever.

CSTE /PROJECTS/SR,
S & T Projects Wing, 3rd Floor,
M.M.C. Park Town, Chennai-3
CHENNAI – 600 003,
SOUTHERN RAILWAY

DISCLAIMER

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

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

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

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

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

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

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation/ submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

GLOSSARY

Agreement	As defined in Clause 1.1.4
Authority	As defined in Clause 1.1.1
Bank Guarantee	As defined in Clause 2.20.1
Bid(s)	As defined in draft EPC agreement
Bidders	As defined in Clause 1.2.1
Bidding Documents	As defined in Clause 1.1.5
Bid Due Date	As defined in Clause 1.1.5
Bidding Process	As defined in Clause 1.2.1
Bid Security	As defined in Clause 1.2.4
Bid Price or Bid	As defined in Clause 1.2.6
Contractor	As defined in Clause 1.1.2
Construction Period	As defined in Clause 1.2.6
Conflict of Interest	As defined in Clause 2.2.1(c)
Defect Liability Period	As defined in Clause 1.2.6
Eligible Experience	As defined in Clause 2.2.2.4 (i)
Eligible Projects	As defined in Clause 2.2.2.4 (i)
EPC	As defined in Clause 1.1.1
EPC Contract	As defined in Clause 1.1.2
Estimated Project Cost	As defined in Clause 1.1.3
Feasibility Report	As defined in Clause 1.2.3
Financial Capacity	As defined in Clause 2.2.2.2 (i)
Government	Government of India
Consortium/Joint Venture	As defined in Clause 2.2.1(a)
Jt. Bidding Agreement	As defined in Clause 2.1.11(g)
Lead Member	As defined in Clause 2.1.11 (d)
Lowest Bidder	As defined in Clause 1.2.6
LOA	As defined in Clause 3.3.4
Net Worth	As defined in Clause 2.2.2.8 (ii)
Performance Security	As defined in Clause 2.21.1
Additional Performance Security	As defined in Clause 2.21.1
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in the Disclaimer
Selected Bidder	As defined in Clause 3.3.1
Technical Capacity	As defined in Clause 2.2.2.1 (i)
Tie Bids	As defined in Clause 3.3.2
Threshold Technical Capacity	As defined in Clause 2.2.2.1 (i)

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.

Office of Chief Signal and Telecommunication Engineer, Projects, Southern Railway, Chennai, and having its principal offices at Headquarters Office, S & T Projects Wing, 3rd Floor, M.M.C. Park Town, Chennai-3

SECTION 1

INTRODUCTION

1.1 Background

- 1.1.1 The President of India represented by the Ministry of Railways, Chief Signal and Telecommunication Engineer, Projects, Southern Railway, (the “Authority”), having its principal office at Moore Market Complex, Park town, Chennai – 600003 is engaged in the development of railways and related infrastructure, and as part of this endeavour, the Authority has decided to undertake the work of “**Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway**” (the “**Project**”) through an Engineering, Procurement and Construction (the “**EPC**”) Contract, and has decided to carry out an open, competitive. Bidding Process for selection of a Bidder to whom the Project may be awarded. A brief description of the Project may be seen in the Information Memorandum of the Project at the Railway website www.ireps.gov.in. Brief particulars of the Project are as follows:

Name of the Project	Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway
Section	JOLARPETTAI TO ERODE JUNCTION of Salem Division
Length in RKM	179.29 RKM
Estimated Project Cost	Rs. 1,12,79,46,554/-
Completion Period of Work	900 days

- 1.1.2 The Selected Bidder (the “**Contractor**”) shall be responsible for Engineering, Procurement and Construction of the Project under and in accordance with the provisions of an Engineering, Procurement and Construction agreement (the “**EPC Agreement**”) to be entered into between the Selected Bidder and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto. The scope of work will broadly include “**Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway**”.
- 1.1.3 The estimated cost of the Project (the “**Estimated Project Cost**”) has been specified in the clause 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.

- 1.1.4 The draft EPC Agreement sets forth the detailed terms and conditions for award of the Project to the Contractor, including the scope of the Contractor's services and obligations.
- 1.1.5 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the Bid Due Date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a single stage two packet system (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. The 1st part (the "**Technical Bid**") of the process involves qualification (the "**Qualification**") of the interested parties/Consortium/Joint Venture who submits a Bid in accordance with the provisions of this RFP (the "**Bidder**", which expression shall, unless repugnant to the context, include the members of the Consortium/Joint Venture). The 2nd part of the process involves opening of financial proposals (the "**Financial Bid**") of the bidders qualified in Technical Bid. The Technical and Financial Bid shall collectively be referred as Bid (the "**Bid**"). The Bidder would be required to furnish all information specified in this RFP. At the Qualification stage, the Technical Bids of Bidders would be evaluated and only those Bidders that are qualified by the Authority shall be eligible for the 2nd part of the Bidding Process comprising opening and evaluation of their Financial Bids. GOI has issued guidelines (see Annexure VI of Appendix-1A of RFP) for qualification of Bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority shall be entitled to disqualify any Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to Bid, and should give an undertaking to this effect in the form at Appendix I-A.
- 1.2.2 The Bid shall be valid for a period of 180 days from the date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").
- 1.2.3 The Bidding Documents including the draft EPC Agreement for the Project is enclosed for the Bidders. The Feasibility prepared by the Authority/ consultants of the Authority (the "**Feasibility Report**") is also enclosed. The Feasibility Report of the Project is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Feasibility Report shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Feasibility Report. The aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- 1.2.4 A Bidder is required to submit, along with its Bid, a Bid Security of **Rs.57,89,700** (the "**Bid Security**"), refundable not later than 200 (Two hundred) days from the Bid Due Date, except in the case of the Selected Bidder whose

Bid Security shall be retained till it has provided a Performance Security and Additional Performance Security (if any) as per the provision of this RFP and LOA. The Bidder will have to provide Bid Security through e-payment Gateway of Authority or submitted as Bank Guarantee Bond from a scheduled commercial bank of India. The Bank Guarantee Bond shall be as per Appendix - VII and shall be valid for a period of 90 days beyond the bid validity period. The Bid shall be summarily rejected if it is not accompanied by the prescribed amount of Bid Security. The Bid document shall be available free of cost through e-portal (www.ireps.gov.in).

- 1.2.5 Bidders are advised 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 contract including implementation of the Project.
- 1.2.6 Bids will be evaluated for the Project on the basis of the lowest cost required by a Bidder for implementing the Project (the "**Bid Price**"). The total time allowed for completion of construction under the Agreement (the "**Construction Period**") and the period during which the Contractor shall be liable for rectification of any defect or deficiency in the Project after completion of the Construction Period (the "**Defect Liability Period**") shall be pre-determined, and are specified in the draft EPC Agreement forming part of the Bidding Documents.

In this RFP, the term "**Lowest Bidder**" shall mean the Bidder who qualifies the Technical Bid criteria (Qualification Stage) and is quoting the lowest Bid Price, subject to the provisions of Clause 1.2.7, the Project will be awarded to the Lowest Bidder.

- 1.2.7 Generally, the Lowest Bidder shall be the selected Bidder. In case such Lowest Bidder withdraws or is not selected for whatsoever reason except the reason mentioned in Clause 2.1.12/ e, the Authority shall annul the Bidding Process and invite fresh Bids.
- 1.2.8 Other details of the process to be followed under this Bidding Process and the terms thereof are spelt out in this RFP.
- 1.2.9 Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/courier/special messenger or by e-mail, through IREPS.Gov.in, so as to reach the officer designated in Clause 2.11.4 by the specified date. The envelopes/ communication shall clearly bear the following identification/ title:

"Queries / Request for Additional Information: RFP for "**Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway**".

1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

Sl. No.	Event Description	Date
1.	Invitation of RFP (NIT)	As mentioned in NIT
2.	Last date for receiving queries	2 working days before Pre-Bid meeting
3.	Pre-Bid meeting at venue 2.11.4 (i)	As mentioned in NIT
4.	Authority response to queries latest by	Within 10 days from Pre-Bid Meeting date
5.	Last date of Request for Bid Document	As per Bid due date
6.	Bid Due Date	As mentioned in NIT
7.	Physical Submission of all documents listed in clause no 2.11.2	Within 5 days from Bid Due Date
8.	Opening of Technical Bids at venue 2.11.4 (i)	After 5 days from Bid Due Date
9.	Declaration of eligible / qualified Bidders	Will be intimated during bidding process
10.	Opening of Financial Bid	Will be intimated during bidding process
11.	Return of signed duplicate copy of LOA	Within 7 days of LOA issue
12.	Validity of Bid	180 days from Bid Due Date
13.	Submission of Performance Security and Additional Performance Security, if any	Within 30 days of issue of LOA.
14.	Signing of Agreement	Within 60 days of receipt of LOA.

SECTION-2

INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1. General terms of Bidding

- 2.1.1 No Bidder shall submit more than one Bid for the Project.
- 2.1.2 A Bidder bidding individually or as a member of a Consortium/Joint Venture shall not be entitled to submit another Bid either individually or as a member of any Consortium/Joint Venture, as the case may be.
- 2.1.3 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft EPC Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Agreement. Further, the statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Contractor set forth in the Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the work to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority
- 2.1.4 The Bid shall be furnished in the format exactly as per Appendix-IA and IB i.e. Technical Bid as per Appendix IA, Appendix I-B (as a part of Technical Bid) and Financial Bid and it shall be signed by the Bidder's authorised signatory. The Bid Price shall be quoted online at the e-procurement platform of the Authority at www.ireps.gov.in (the "**IREPS Website**"). In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.1.5 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bid to commit the Bidder.
- 2.1.6 In case the Bidder is a Consortium/Joint Venture, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix-III and Joint Bidding Agreement in the format at Appendix-IV
- 2.1.7 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid *liable to rejection* as a non-responsive Bid.
- 2.1.8 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.9 This RFP is not transferable.
- 2.1.10 Any award of Project pursuant to this RFP shall be subject to the terms of

Bidding Documents. The Bidding Documents including this RFP and all attached documents, provided by the Authority are and shall remain or becomes the property of Authority and are transmitted to the Bidders solely for the purpose of preparation and submission of the Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provision of this clause 2.1.10 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, documents or any information provided along therewith.

2.1.11 In case the Bidder is a Consortium/Joint Venture, it shall comply with the following additional requirements:

- (a) Number of members in a Consortium/Joint Venture shall not exceed 4 (Four);
- (b) Subject to the provisions of clause (a) above, the Bid should contain the information required for each member of the Consortium/Joint Venture;
- (c) Members of the Consortium/Joint Venture shall nominate one member as the Lead Member (the “**Lead Member**”). Lead Member shall have minimum 51% shareholding in Consortium/Joint Venture. Technical Capacity as per Clause 2.2.2.1(ii) is to be satisfied by any member of Consortium/Joint Venture having minimum 26% shareholding in Consortium/Joint Venture. The nomination of Lead Member shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium/Joint Venture. Consortium/Joint Venture as whole shall cumulatively/collectively fulfil the 100% Technical Capacity as per Clause 2.2.2.1(i) and 100% Financial Capacity as per Clause 2.2.2.2.
- (d) The Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and defect liability obligations;
- (e) The Lead Member shall carry out works directly under its own supervision and through its own personal for at least 30% of the total value of the project in accordance with provision of draft EPC Agreement.
- (f) Members of the Consortium/Joint Venture shall have entered into a binding Joint Bidding Agreement, substantially in the form specified at Appendix IV (the “**Jt. Bidding Agreement**”), for the purpose of making the Bid. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:
 - (i) convey the commitment(s) of the Lead Member in accordance with this RFP, in case the contract to undertake the Project is awarded to the Consortium/Joint Venture; and clearly outline the proposed roles and responsibilities, if any, of each member.
 - (ii) include a statement to the effect that all members of the Consortium/Joint Venture shall be liable jointly and severally for all obligations of the Contractor in relation to the Project until the Defect

Liability Period is achieved in accordance with the draft EPC agreement;

- (g) Approval for change of constitution of Consortium/Joint Venture shall be at sole discretion of the Authority. The constitution of the Consortium/Joint Venture shall not be allowed to be modified after submission of the Bid by the Consortium/Joint Venture, except when modification becomes inevitable due to Succession laws etc., provided further that there is no change in qualification of minimum eligibility criteria by Consortium/Joint Venture. However, the Lead member shall continue to be the Lead Member of the Consortium/Joint Venture. Failure to observe this requirement would render the offer invalid. Similarly, after the contract is awarded, the constitution of Consortium/Joint Venture shall not be allowed to be altered during the currency of contract except when modification becomes inevitable due to Succession laws etc., provided further that it does not change the minimum eligibility criteria. Failure to observe this stipulation shall be deemed to be breach of contract with all consequential penal action as per contract condition.

2.1.12 While Bidding is open to persons from any country, the following provisions shall apply:

- (a) Where, on the due date of the Bid, not less than 25% (twenty five percent) of the aggregate issued, subscribed and paid up equity share capital/capital contribution/partnership contribution in the Lowest Bidder or its member is held by persons resident outside India or where a Bidder or its member is controlled by persons resident outside India, then the eligibility and award of the project to such Lowest Bidder shall be subject to approval of the competent authority from national security and public interest perspective as per the instructions of the Government of India applicable at such time. The decision of the authority in this behalf shall be final and conclusive and binding on the Bidder.
- (b) Further, where the LOA of a project has been issued to an agency, not covered under the category mentioned above, and it subsequently wishes to transfer its share capital in favour of another entity who is a resident outside India or where a Bidder or its member is controlled by persons resident outside India and thereby the equity capital of the transferee entity exceeds 25% or above, any such transfer of equity capital shall be with the prior approval of the competent authority from national security and public interest perspective as per the instructions of the Government of India applicable at such point in time.
- (c) The holding or acquisition of equity 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.

- (d) The Bidder shall promptly inform the authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.
- (e) In case the Lowest Bidder under (a) above is denied the security clearance, for whatsoever reasons, then the Bidders emerging as second Lowest, third lowest eligible Bidders (in that order) may be given a counter-offer (one by one sequentially) to match the Bid of Lowest Bidder. In the event of acceptance of the counter-offer by another eligible Bidder, the project may be awarded to such Bidder. In case no Bidder matches the Bid of the Lowest Bidder, the Bid Process shall be annulled and fresh Bids invited.
- (f) Any bidder from the countries sharing a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority. The Competent Authority for registration will be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT), Government of India. For interpretation of this clause Department of Expenditure, Ministry of Finance, Government of India letter F.No.6/18/2019-PPD dated 23/07/2020 shall be referred.

2.1.13 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest Financial Completed Year of a Bidder, it shall ignore such Financial Year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest Financial Year. For the avoidance of doubt, Financial Year shall, for the purposes of a Bid hereunder, mean the Accounting Year followed by the Bidder in the course of its normal business.

Any certificate issued by Statutory Auditor/CA must include Unique Document Identification Number (UDIN).

- 2.1.14
- (a) Any entity which has been barred by the Central Government or any entity controlled by it, from participating in any project, and the bar subsists as on the date of Bid, would not be eligible to submit an Bid, either individually or as member of a Consortium/Joint Venture.
 - (b) A Bidder including any 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 or damages by a judicial authority or a judicial pronouncement against the Bidder, 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 Bidder, member or Associate.
 - (c) if Bidder's any constituent is entity incorporated in a country, where an entity incorporated in India does not have similar rights of bidding for contracts.

The Authority reserves the right to reject an otherwise eligible Bidder on the basis of the information provided under this clause 2.1.14. The decision of the Authority in this case shall be final.

- 2.1.15 Provisions of Make in India Policy 2017 issued by Govt. of India, as amended from time to time, shall be followed for consideration of tenders. In this regard, value of local content of total project in % has to be filled up in Mandatory fields of IREPS Portal. CA certificate giving value of local content of tender has to be submitted along with Bid to comply Make in India Policy requirement. Value filled up on IREPS portal will be treated as minimum value of local content. Normally, CA certificate shall mention same value of local content as filled up in mandatory field, however, certificate giving values in form of range (like more than 50% or 21 %-50%) to qualify as per relevant class will also be accepted. However, in case of difference in values in IREPS field and in certificate, value given in CA certificate will be final.

2.2. Eligibility and qualification requirements of Bidder

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

- (a) The Bidder may be a single entity or a group of entities (the “**Consortium**” or the “**Joint Venture**”), coming together to implement the Project. The term Bidder used herein would apply to both a single entity and a Consortium/Joint Venture.
- (b) Bidder may be a natural person, private entity, or any combination of them with a formal intent to enter into a Consortium/Joint Venture agreement or under an existing agreement to form a Consortium/Joint Venture. A Consortium/Joint Venture shall be eligible for consideration subject to the conditions set out in Clause 2.1.11 above.
- (c) A Bidder shall not have a conflict of interest (“**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified and liable for forfeiture of the Bid Security or Performance Security as the case may be. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - (i) the Bidder, its Consortium/Joint Venture member (or any constituent thereof) and any other Bidder, its member or any member of its Consortium/Joint Venture thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, or its Consortium/Joint Venture member thereof (or any shareholder thereof having a shareholding of more than 5% (five percent) of the paid up and subscribed share capital of such Bidder, or its Consortium/Joint Venture member, as the case may be), in the other Bidder, its Consortium/Joint Venture member is less than 5% (five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 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 Bidder is also a constituent of another Bidder; or
- (iii) such Bidder, or any of its Consortium/Joint Venture member thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any of its Consortium/Joint Venture member thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its member or any of its Consortium/Joint Venture member thereof; or
- (iv) such Bidder has the same legal representative for purposes of this RFP as any other Bidder; or
- (v) such Bidder, or any of its Consortium/Joint Venture member thereof has a relationship with another Bidder, or any of its Consortium/Joint Venture member thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each other’s’ information about, or to influence the Bid of either or each other; or
- (vi) such Bidder, or any of its Consortium/Joint Venture members thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

2.2.2 Qualification requirements of Bidders: To be eligible for Qualification an individual Bidder or a Consortium/Joint Venture as whole as per clause 2.1.11(c), shall fulfil the following conditions of eligibility:

2.2.2.1 Technical Capacity- For demonstrating Technical Capacity and experience (the “**Technical Capacity**”), the Bidder shall, **during the last 5 (five) previous financial years and the current financial year upto the Base month (not to be read with para 2.1.13),**

- (i) have received payments for Project of Eligible Project(s), or has undertaken project works by itself in a PPP project, such that the sum total thereof, as further adjusted in accordance with clause 2.2.2.4 (i) and (ii), is more than 2.5 (two and half) times the Estimated Project Cost (the “**Threshold Technical Capacity**”).

Provided that at least one fourth of the Threshold Technical Capacity shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 2.2.2.4 (i) and (ii)

- (ii) undertaken at least one Eligible Project of Railway Sector as mentioned in clause 2.2.2.4/iii of value of not less than 15% (fifteen per cent) of the Estimated Project Cost and have received payments for not less than 75% (seventy-five per cent) value of present Contract Value (excluding the payment made for adjustment of Price variation (PVC), if any) of such project.

Illustration for ‘received payments for not less than 75 (seventy-five) percent’:

For contract wherein there is provision for part payment on ‘**procurement of goods and equipment**’ on basis of **indemnity bond /Bank Guarantee**. In all such contract ‘**received payments for not less than 75% (seventy-five percent) value of present Contract Value payment**’ means not less than 75% payment received under ‘**procurement of goods and equipment**’ as well as not less than 75% payment received under ‘**execution/installation/commissioning**’.

Note:

1. The project involves the Civil work of tower erection as per item No. 2 of Annexure –I of Schedule -B value as mentioned in Annexure-G, the scope involves supply, fabrication, erection and commissioning of towers in the schedule. The selected bidder can himself execute the work of towers only in case he has experience as mentioned in clause 2.2.2.1(ii) to the value of estimated tower work after taking approval from Authority. Otherwise selected bidder shall execute tower work involved in project by engaging sub-contractor as per contract agreement having experience of supply, fabrication, erection and commissioning of Telecom/ Electric/spun concrete/spun electric towers or execution of bridge work consisting of construction and launching of steel girders.

2.2.2.2 Financial Capacity: The Bidder shall have a minimum Net Worth¹ (the “**Financial Capacity**”) of 5% (five per cent) of estimated project cost at the close of the preceding Financial Year.

2.2.2.3 Technical Capacity as per Clause 2.2.2.1(ii) is to be satisfied by any member of Consortium/Joint Venture having minimum 26% shareholding in Consortium/Joint Venture.

2.2.2.4 Categories and factors for evaluation of Technical Capacity:

Subject to the provisions of Clause 2.2.2, 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 2.2.2.5 (i) and 2.2.2.5 (ii) (the “**Eligible Projects**”):

Category 1: Project experience on Eligible Projects in Railways sector that qualify under Clause 2.2.2.5 (i)

¹ Net worth has been adopted as the criterion for assessing financial capacity since it is a comprehensive indication of the financial strength of the Applicant.

- Category 2: Project experience on Eligible Projects in core sector that qualify under Clause 2.2.2.5 (i)
- Category 3: Project experience on Eligible Projects in Railways sector that qualify under Clause 2.2.2.5 (ii)
- Category 4: Project experience on Eligible Projects in core sector that qualify under Clause 2.2.2.5 (ii)

- (i) In case the Bidder has experience across different categories, the experience for each category would be computed as per weight of following factors to arrive at its aggregated Eligible Experience:

Category	Project experience on Eligible Projects	Factors
1	Project in Railway sector that qualify under Clause 2.2.2.5 (i)	1
2	Project in core sector that qualify under Clause 2.2.2.5 (i)	0.75
3	Project in Railway sector that qualify under Clause 2.2.2.5 (ii)	1
4	Project in core sector that qualify under Clause 2.2.2.5 (ii)	0.75

- (ii) The Technical capacity 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 technical capacity for such Eligible Project.

- (iii) For the purpose of this RFP:

- a) **Railway sector** would deemed to include Supply, Installation, Testing and Commissioning of Signaling and/or Telecommunication(S&T) system like Relay based Interlocking, Electronic Interlocking, S&T works pertaining to RE modification, Centralized Traffic Control system, Train Management system, Indian Railway Automatic Train Protection system (IRATP/KAVACH/TCAS), Automatic Block Signaling, Mobile Train Radio Communication system. OFC based communication system, Passenger Information Display system, Control communication system, Information Communication and Technology (ICT) system, any other work of voice/data communication system with/without tower works, supply and commissioning of Electronic/Computer based system on Railway Rolling Stock for Indian Railways/Metro/Suburban Transit/High Speed Railway or Central/State Government departments/Organization/PSUs as a stand-alone work or as a pat of composite work.
- b) Core sector would be deemed to include Railways / Power / Telecom/ Defence / Ports / Airports /Highways/Thermal steel/Cement plants/ Metro Rail / Oil and Gas pipelines and power transmission lines.
- c) The successful bidder shall submit an undertaking from RDSO approved Kavach OEM, before the supply of material to confirm compliance with extant RDSO guidelines and to meet contract specific requirements.

Note: -

- (i) In case of projects executed by Bidder under category 1, 2, 3 and 4 as a member of Consortium/Joint Venture, the project cost should be restricted to the share of the applicant in the Consortium/Joint Venture for determining eligibility as per provision under clause 2.2.2.1 (i). **For determination of % share in the project bidder have to submit Joint Venture/Consortium agreement for each Project for which he is claiming credential.**
- (ii) Maintenance works are not considered as eligible project for evaluation.
- (iii) In case both the estimated cost of project and revised cost of project are provided, the revised cost of project shall be considered for evaluation.

2.2.2.5 Eligible Experience on Eligible Projects in respect of each category:

- (i) For a project to qualify as an Eligible Project under Categories 1 and 2:
 - (a) It should have been undertaken as a PPP project for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;
 - (b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed; and
 - (c) the capital cost of the project should be more than 10% (ten per cent) of the Estimated Project Cost.
 - (d) The value of self-construction during the last 5 (five) previous Financial Years and the current financial year up to the Base month (not to be read with para- 2.1.13)., in projects which are considered as eligible projects in terms of Clause (a) to (c) above will be considered for the purpose of experience.
- (ii). For a project to qualify as an Eligible Project under Categories 3 and 4 :-
 - A. The Bidder should have received cumulative payments from its client(s) for project works executed, fully or partially, during the 5 (five) previous Financial Years and the current financial year upto the Base month (not to be read with para 2.1.13) and only-the amounts (gross) actually received, during such 5 (five) Financial years shall qualify for purpose of computing the Technical Capacity.

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.

2.2.2.6 Submission in support of Technical Capacity

- (i) The Bidder should furnish the details of Eligible Experience for, the last 5 (five) previous Financial Years and the current financial year upto the Base month (not to be read with para- 2.1.13).
- (ii) The Bidder must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-IA.
- (iii) The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex -IV of Appendix-IA.

2.2.2.7 Submission in support of Financial Capacity

- (i) The Technical Bid shall be accompanied by the Audited Annual Reports which includes Balance sheets and P & L Accounts of the Bidder (of each member in case of a Consortium / Joint Venture and also of associates if any, whose financial capacity is being claimed) for the last 5 (five) completed Financial Years, preceding the year in which the Bid is submitted. Any certificate issued by Statutory Auditor/CA must include UDIN.
- (ii) In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- (iii) The Bidder must establish the minimum Net Worth specified in Clause 2.2.2.2, and provide details as per format at Annex-III of Appendix-IA.

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

- (i) Certificate(s) from its statutory auditors^s or the concerned client(s) stating the payments received or in case of a PPP project, the construction carried out by itself, during the past 5 years, in respect of the Eligible Projects. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium/Joint Venture), it should further support its claim for the payments received or construction carried out by itself in PPP Projects as applicable the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and

^s 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 2.2.2.8 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder provide the certificates required under this RFP.

- (ii) Certificate(s) from its statutory auditors specifying the net worth of the Bidder (including associates, if any), 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 2.2.2.8 (ii)*. For the purposes of this RFP, net worth (the “Net Worth”) shall mean the capital/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.

2.2.2.9 In computing the Technical Capacity and Net Worth of the Bidder/ Member of Consortium/Joint Venture under Clauses 2.2.2.1, 2.2.2.2, 2.2.2.3 and 2.2.2.4, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder. For purposes of this RFP, Associate means, in relation to the Bidder/ Member of Consortium/Joint Venture, a person who controls, is controlled by, or is under the common control with such Bidder/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.

2.3 Proprietary data

All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.3 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.

2.4 Cost of Bidding

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

2.5 Site visit and verification of information

2.5.1 Bidders are encouraged to submit their respective Bids 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. Bidders are advised to visit the site and familiarise themselves with the Project within the stipulated time of submission of the Bid. No extension of time is

likely to be considered for submission of Bids.

2.5.2 It shall be deemed that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents, Schedules annexed to draft EPC agreement;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above. No claim shall be admissible at any stage on this account.
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Agreement by the Contractor;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

2.6 Verification and Disqualification

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

2.6.2 The Authority reserves the right to reject any Bid and appropriate the Bid Security if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium/Joint Venture, then the entire

Consortium/Joint Venture and each member of the Consortium/Joint Venture may be disqualified/ rejected. If such disqualification/rejection occurs after the Bids have been opened and the lowest Bidder gets disqualified / rejected, then the Authority reserves the right to annul the Bidding Process and invites fresh Bids.

- 2.6.3 In case it is found during the evaluation or at any time before signing of the EPC Agreement or after its execution and during the period of defect liability subsistence thereof, that one or more of the eligibility and /or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the contractor either by issue of the LOA or entering into of the Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Contractor, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Contractor. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and / or the draft EPC Agreement, or otherwise.
- 2.6.4 A Bidder shall be liable for disqualification and forfeiture of Bid Security, if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the EPC Agreement. In the event any such adviser is engaged by the selected Bidder or Contractor, as the case may be, after issue of the LOA or execution of the Agreement for matters related or incidental to the project, then notwithstanding anything to the contrary contained herein or in the LOA or the Agreement and without Prejudice to any other right or remedy or the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have there under or otherwise, the LOA or the Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Contractor for the same. For the avoidance or doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

B. DOCUMENTS

2.7 Contents of the RFP

- 2.7.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with clause 2.9.

Part –I

Invitation for BIDs

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

Appendices

- IA. Letter comprising the Technical Bid including Annexure I to VII
- IB. Letter comprising the Financial Bid
- II. Format of Power of Attorney for signing of Bid
- III. Format of Power of Attorney for Lead Member of Consortium/Joint Venture
- IV. Format of Joint Bidding Agreement for Joint Venture/Consortium
- V List of Bid specific clauses
- VI List of Project Specific Clauses
- VII Format for Bid Security

Part –II

Draft EPC Agreement Document with schedules

Part – III

Feasibility Report

- 2.7.2 The draft EPC Agreement and the Feasibility Report provided by the Authority as part of the Bid Documents shall be deemed to be part of this RFP.

2.8 Clarifications

- 2.8.1 Bidders requiring any clarification on the RFP may notify the Authority in writing by e-mail in accordance with Clause 1.2.9. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be sent by fax or e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.
- 2.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in

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

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

2.9 Amendment of RFP

- 2.9.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.9.2 Any addendum issued hereunder will be hosted on the Railway e-Tendering Portal (www.ireps.gov.in).
- 2.9.3 In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date².

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

- 2.10.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received online in the required formats and complete in all respects and Original Copy of Power of Attorney and Joint Bidding Agreement etc. are received in hard copies within time mentioned in clause 1.3 of this RFP.
- 2.10.2 The Bid shall be typed and signed by the authorised signatory of the Bidder. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.

2.11 Documents comprising Technical and Financial Bid

- 2.11.1 The Bidder shall first upload all the project details including Technical Capacity, Financial Capacity, Net Worth details, turnover details, and all other details required in this RFP for technical qualification. The Bidder shall ensure that all the details are updated as on the due date of submission of this Bid.

The Bidder shall then apply for the RFP on the website www.ireps.gov.in by submitting the documents mentioned below along with the supporting documents which shall comprise of the Technical Bid on the e-portal:

²While extending the Bid Due Date on account of an addendum, the Authority shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Bid Due Date .

Technical Bid

- (a) Appendix-IA (Letter comprising the Technical Bid) including Annexure I-VII and supporting certificates / documents.
- (b) Power of Attorney for signing the Bid as per the format at Appendix-II;
- (c) if applicable, Power of Attorney for Lead Member of Consortium/Joint Venture as per the format at Appendix-III;
- (d) if applicable, Joint Bidding Agreement for Consortium/Joint Venture as per the format at Appendix-IV;
- (e) An undertaking from the person having Power of Attorney referred to in Sub-Clause(b) above that they agree and abide by the Bid Documents uploaded by Authority and amendments uploaded, if any; and
- (f) Copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed.
- (g) Copies of duly audited complete annual accounts of the Bidder or of each member (in case of Joint Venture/Consortium) for preceding 5 years.
- (h) Appendix I-B (Letter comprising the Financial Bid) shall be submitted online through e-procurement portal on or before the date and time mentioned in clause 1.3.
- (i) CA certificate certifying local content value of tender as per requirement given in Make in India Policy order 2017 or latest to be submitted.

Financial Bid

- (l) Appendix-IB (Letter comprising the Financial Bid) shall be submitted online through e-procurement portal as per clause 1.3.

2.11.2 The Bidder shall submit the following documents physically within time as mentioned in clause 1.3:

- (a) Original Power of Attorney for signing the Bid as per format at Appendix-II;
- (b) if applicable, Original Power of Attorney for Lead Member of Consortium/Joint Venture as per the format at Appendix-III;
- (c) if applicable, Original Joint Bidding Agreement for Consortium/Joint Venture as per the format at Appendix-IV;
- (d) Bid Security, if submitted as Bank Guarantee, in the format at Appendix-VII from a Bank;

2.11.3 The documents listed at clause 2.11.2 shall be placed in an envelope, which shall be sealed. The envelope shall clearly bear the identification **“Bid for the Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway”** and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the righthand top corner of the envelope.

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

- (i) Office : O/o Dy.CSTE/Projects/I/MS
ADDRESS : Office of Deputy Chief Signal and Telecommunication Engineer, Projects/I, 1st Floor, G.C Building, No.25, Mc Nichols Road, Chetpet, Chennai-600031
PHONE NO: +91-9003160834

E-MAIL ADDRESS: dycsteproj1ms@sr.railnet.gov.in

2.11.5 If the envelope is not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

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

2.12 Bid Due Date

Bid comprising of the documents listed at clause 2.11.1 of the RFP shall be submitted online through e-procurement website www.ireps.gov.in on or before the Bid due date as per clause 1.3. Documents listed at clause 2.11.2 of the RFP shall be physically submitted as per clause 1.3, at the address provided in Clause 2.11.4 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.4.

2.13 Late Bids

E-procurement portal website www.ireps.gov.in shall not allow submission of any Bid after the prescribed date and time at clause 2.12. Physical receipt of documents listed at clause 2.11.2 of the RFP after the prescribed date as mentioned in clause 1.3 and time at clause 2.12 shall not be considered and the Bid shall be **summarily rejected**.

2.14 Procedure for e-tendering

2.14.1 Accessing/ Purchasing of Bid Documents

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

DSC should be in the name of the authorized signatory as authorized in Appendix II of this RFP or person executing/delegating such Appendix III in favour of Authorized Signatory. It should be in corporate capacity (that is in Bidder capacity / in case of Consortium/Joint Venture in the Lead Member capacity, as applicable). The Bidder shall submit document in support of the class III DSC. In other cases, the Bid shall be considered Non-responsive.

2.14.1.2 To participate in the Bidding, it is mandatory for the Bidders to get registered their firm / Consortium / Joint Venture with e-procurement portal www.ireps.gov.in to have user ID and password which has to be obtained free of cost. Following may kindly be noted:

- (a) registration with e-procurement portal should be valid at least up to the date of submission of Bid.

- (b) Bids can be submitted only during the validity of registration.

It is also mandatory for the Bidders to get their firms registered with e-tendering portal. The Bidders shall update their project and other details on the portal on a regular basis and apply to the tenders via the portal.

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

- 2.14.1.4 The complete Bid Document can be viewed / downloaded by the Bidder from e-procurement portal www.ireps.gov.in as per clause 1.3.

2.14.2 Preparation and Submission of Bids:

- 2.14.2.1 The Bidder may submit his Bid online following the instructions appearing on the screen. The detailed guidelines for e-procurement are also available on e-procurement portal.

- 2.14.2.2 The documents listed at clause 2.11.1 shall be prepared and scanned in different files/sub files (duly adhering to the guidelines of www.ireps.gov.in portal) and uploaded during the on-line submission of Bid.

- 2.14.2.3 Bid must be submitted online only through e-procurement portal www.ireps.gov.in using the digital signature of authorized representative of the Bidder as per clause 1.3.

2.14.3 Modifications/ Substitution/ withdrawal of Bids

- 2.14.3.1 The Bidder may modify, substitute or withdraw its e- Bid after submission prior to the Bid Due Date. No Bid can be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date and Time.

- 2.14.3.2 For modification of e-Bid, Bidder has to detach its old Bid from e-procurement portal and upload / resubmit digitally signed modified Bid. For withdrawal of Bid, Bidder has to click on withdrawal icon at e-procurement portal and can withdraw its e-Bid. Before withdrawal of a Bid, it may specifically be noted that after withdrawal of a Bid for any reason, Bidder cannot re-submit e-Bid again.

2.15 Online Opening of Bids.

- 2.15.1 Opening of Bids will be done through online process.

2.16 Rejection of Bids

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

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

2.17 Validity of Bids

The Bids shall be valid for a period of not less than 180 (one hundred and Eighty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

2.18 Confidentiality

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

2.19 Correspondence with the Bidder

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

D. BID SECURITY

2.20 Bid Security

- 2.20.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clause 1.2.4 hereinabove through e- payment Gateway of Authority or submitted as Bank Guarantee Bond from a scheduled commercial bank of India. A scanned copy of the e-payment receipt /Bank Guarantee shall be uploaded on e-procurement portal while applying to the tender.
- 2.20.2 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.20.3 The Selected Bidder's Bid Security will be returned, without any interest, upon the Bidder signing the Contract Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Agreement.
- 2.20.4 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.20.5 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.20.5 The Bid Security shall be forfeited and appropriated by the Authority as damages payable to the Authority for, inter-alia, time cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority under the Bidding documents and / or under the Agreement, or otherwise, under the following conditions:
- (a) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
 - (b) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
 - (c) In the case of Selected Bidder, if it fails within the specified/extended time limit by Authority -
 - (i) to sign and return the duplicate copy of LOA;
 - (ii) to furnish the Performance Security /Additional Performance Security (if any) as per Article 7 of draft EPC Agreement; or
 - (iii) to sign the EPC Agreement within 60 Days of LAO issue;
- 2.20.6 In case, submission of Bid Security in the form of Bank Guarantee, following shall be ensured:

- i. A scanned copy of the Bank Guarantee shall be uploaded on e-Procurement Portal (www.ireps.gov.in) while applying to the tender.
- ii. The original Bank Guarantee should be delivered in person to the official nominated as indicated in the tender document within 5 working days of the deadline of submission of bids.
- iii. Non-submission of scanned copy of Bank Guarantee with the bid on e-tendering portal (www.ireps.gov.in) and / or non-submission of original Bank Guarantee within the specified period shall lead to summary rejection of bid.
- iv. The Bid Security shall remain valid for a period of 90 days beyond the validity period for the Tender.
- v. The details of the BG, physically submitted should match with the details available in the scanned copy and the data entered during bid submission time, failing which the bid will be rejected.
- vi. The Bank Guarantee shall be placed in an envelope, which shall be sealed. The envelope shall clearly bear the identification Bid for the “**Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway**” and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right-hand top corner of the envelope.
- vii. The envelope shall be addressed to the officer and address as mentioned in the tender document.
- viii. If the envelope is not sealed and marked as instructed above, the Railway assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

2.21 **Performance Security**

- 2.21.1 Within 30 (thirty) days of issue of LOA, the selected Bidder shall furnish to the Authority an irrevocable and unconditional guarantee from a Bank in the form set forth in draft EPC agreement (the “Performance Security”) for an amount equal to 3% (Three percent) of its Bid Price.
- 2.21.2 For detailed provisions of Performance Security and Additional Performance Security refer Article 7 of draft EPC agreement.

2.22 **Preference to Make in India**

Preference to Make in India: The provisions of revised ‘Public Procurement (preference to Make in India) order 2017’ issued by Department of Industrial Policy and promotion under Ministry of Commerce and Industry vide Lr.No.P-45021/2/ 2017- PP (VE-II) dtd:16.09.2020, as amended from time to time up to Bid due date, shall be applicable to the bidding process and award of the contract shall be done accordingly.

SECTION-3

EVALUATION OF TECHNICAL BIDS AND OPENING and EVALUATION OF FINANCIAL BIDS

3.1 Evaluation of Technical Bids

- 3.1.1 The Authority shall open the Bids received online at the date of opening of Technical Bids as per clause 1.3, at the place specified in Clause 2.11.4 (i); and in the presence of the Bidders who choose to attend. The Authority shall prepare minutes of the Bid opening, including information disclosed to those present at the time of Bid opening.
- 3.1.2 Technical Bids of those Bidders, who have not submitted their Bid online, shall not be considered for opening and evaluation.
- 3.1.3 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant information for consideration of eligibility and Qualification of the Bidder.
- 3.1.4 To facilitate evaluation of Technical Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Technical Bid. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing. The Bids will be examined and evaluated in accordance with the provisions set out in this Section 3. The Authority will subsequently flag issues, if any with the data updated by the Bidders.
- 3.1.5 If a Bidder does not provide clarifications sought under Clause 3.1.4 above within the prescribed time, its Bid may be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.
- 3.1.6 Tests of responsiveness
- 3.1.6.1 As a first step towards evaluation of Technical Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFP. A Technical Bid shall be considered responsive only if:
- (a) Bid is received online as per the format at Appendix-IA including Annexure I, II, III, IV, V, VI VII and Appendix-1B;
 - (b) All Documents listed at clause 2.11.2 are received physically within time as mentioned in clause 1.3;
 - (c) Technical Bid is accompanied by the Bid Security as specified in Clause 1.2.4 and 2.20;
 - (d) The Power of Attorney is uploaded on e-procurement portal as specified in Clauses 2.1.5;
 - (e) Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium/Joint Venture and the Joint Bidding Agreement as specified in Clause 2.1.6, if so required;

- (f) Technical Bid contains all the information (complete in all respects);
- (g) Technical Bid does not contain any condition or qualification; and

- 3.1.6.2 The Authority reserves the right to reject any Technical Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.
- 3.1.7 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority may reject / correct such claim for the purpose of qualification requirements.
- 3.1.8 The Authority will evaluate the Technical Bids for their compliance to the eligibility and qualification requirements pursuant to clause 2.2.1 and 2.2.2 of this RFP.
- 3.1.9 After evaluation of Technical Bids, the Authority will publish a list of technically responsive Bidders whose Financial Bids shall be opened. The Authority shall notify other Bidders that they have not been technically responsive. The Authority will not entertain any query or clarification from Bidders who fail to qualify.

3.2 Opening and Evaluation of Financial Bids

The Authority shall inform the venue and time of online opening of the Financial Bids to the technically responsive Bidders through e-procurement portal and e-mail. The Authority shall open the online Financial Bids of the technically responsive Bidder only on scheduled date and time in the presence of the authorised representatives of the Bidders who may choose to attend.

3.3 Selection of Bidder

- 3.3.1 Subject to the provisions of Clause 2.16.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.1.6 and who quotes lowest price shall be declared as the selected Bidder (the “**Selected Bidder**”).
- 3.3.2 In the event that two or more Bidders quote the same Bid Price (the “**Tie Bids**”), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 3.3.3 In the event that the Lowest Bidder is not selected for any reason except the reason mentioned in Clause 2.1.12 (e), the Authority shall annul the Bidding Process and invite fresh Bids.
- 3.3.4 After selection, a Letter of Acceptance (the “**LOA**”) shall be issued in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder and Original copy of Joint Venture/Consortium Agreement is/or not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA.

- 3.3.5 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Bidder to submit Performance Security and Additional Performance Security (if any) within the period prescribed/extended by Authority and then execute the Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement.
- 3.3.6 The Bid security of other than selected Bidders shall be returned within 7 working days of issue of LOA. The Authority shall be responsible to return the Bid Security, as above, and the Bidders shall not be required to ask for the same.
- 3.3.7 In case, Selected Bidder is Consortium, then Selected Bidder have to deposit the Original copy of Consortium Agreement duly registered as per prevailing Law within 45 days of the receipt of the LOA to Authority.
- 3.3.8 In case, Selected Bidder is a Joint Venture, then on issue of LOA, the Joint Venture Agreement between members of the Joint Venture to whom work has been awarded, with the same shareholding pattern as was declared in the Joint bidding agreement document submitted along with RFP, shall be got registered before the Registrar/Sub- Registrar under “The Indian Company Act-2013 (in case of Company) or before the Registrar/Sub- Registrar under the “ The Indian Partnership Act-1932 (in case of Partnership firm) or under LLP Act-2008 (in case of LLP) and deposit the Original copy of Joint Venture Agreement within 45 days of the receipt of the LOA to Authority.

3.4 Contacts during Bid Evaluation

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

- 3.5 Correspondence with Bidder** Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.
- 3.6 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.

SECTION-4

FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, or otherwise if a Bidder or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Agreement, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder, or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) “Corrupt practice” means

(i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the EPC Contract or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or

(ii) save and except as permitted under Clause 2.6.4, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the EPC Contract, as the case may be, any person in respect of any matter relating to the Project or the LOA or the EPC Contract,

who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

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

SECTION-5

PRE-BID CONFERENCE

- 5.1 Pre-Bid conference of the Bidders shall be convened at the designated date, time and place as stipulated in Para 1.3 and at CSTE Project office, Moore Market complex, 3rd floor, Park town, Chennai-03. A maximum of two representatives of prospective Bidders shall be allowed to participate on production of authority letter from the Bidder.
- 5.2 During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.
- 5.3 Clarifications provided during the conference will be documented and issued if considered necessary as an addendum/corrigendum to the special condition of contractor or revised tender document will be uploaded on the website www.ireps.gov.in. No clarifications will be entertained after the pre-bid conference. It is desirable but not mandatory on the part of the Tenderers to attend the pre-bid conference.
- 5.4 Remarks and explanations at the meeting will not qualify the terms of the tender or specifications. All attendees must be advised that unless the tender is amended in writing, it will remain unchanged, and that if an amendment or addendum is issued, normal procedures relating to the acknowledgment and receipt will apply.
- 5.5 Bidders intending to participate in the pre-bid conference via an online platform must submit a formal request by email no later than two (2) days prior to the scheduled date of the pre-bid conference. This request must be sent to the email address specified in Paragraph 2.11.4 of this document. Upon receipt of such a request, the online access link for the pre-bid conference will be provided via email one (1) day prior to the conference date.

SECTION-6

MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Chennai shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDIX –IA

LETTER COMPRISING THE TECHNICAL BID

(Refer Clause 2.1.4, 2.11 and 3.1.6)

DATE:

**Chief Signal and Telecom Engineer, Projects
3rd Floor, MMC Building,
Southern Railway, Chennai – 600 003**

Sub: Bid for “Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway”

Dear Sir,

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

2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Contractor for the aforesaid Project, and we certify that all information provided in the Bid and it's the Annexure I to VII along with the supporting documents are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as EPC Contractor for the development, construction of the aforesaid Project and rectification of defects in Project during the Defect Liability Period.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the {Consortium/Joint Venture} partners have neither failed to perform for the works of Railways, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against us, nor been expelled or terminated by Ministry of Railway or its implementing agencies for breach on our part.
7. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and

- (b) I/We do not have any conflict of interest in accordance with Clauses 2.2.1 (c) and 2.6.4 of the RFP document; and
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any Agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, 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; and
 - (e) the undertakings given by us along with the Bid in response to the RFP for the Project were true and correct as on the date of making the Bid and are also true and correct as on the Bid Due Date and I/we shall continue to abide by them.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16.2 of the RFP document.
 9. I/We believe that we/our {Consortium/Joint Venture} satisfy(s) the Technical Capacity, Net Worth criteria and meet(s) the requirements as specified in the RFP document.
 10. I/ We declare that we/ any member of the {Consortium/Joint Venture} or our/{Consortium/Joint Venture member}, are not a member of any other Consortium/Joint Venture submitting a Bid for the Project.
 11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any member of the {Consortium/Joint Venture} or any of our/their { Consortium/Joint Venture } member have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
 12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any member of the { Consortium/Joint Venture } or any of our/their { Consortium/Joint Venture } member 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 {Consortium/Joint Venture} or against our CEO or any of our directors/ managers/ employees.
 14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated 13.7.01, a copy of which forms part of the RFP at Annexure VI of

Appendix I-A thereof.

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
16. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Agreement upto its validity. It would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
17. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
18. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into an Agreement in accordance with the draft EPC Agreement that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft EPC agreement and agree to abide by the same.
19. I/ We have studied all the Bidding Documents carefully and also surveyed the project – **“Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway”**. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Agreement.
20. I/ We offer a Bid Security of Rs.57,89,700/- (Rupees Fifty-Seven Lakhs Eighty-Nine Thousand Seven Hundred only) to the Authority in accordance with the RFP Document.
21. The Bid Security in the form of a e-payment receipt/ scan copy of Bank Guarantee is attached.
22. The documents accompanying the Technical Bid, as specified in Clause 2.11.1 of the RFP, have been submitted in separate files.
23. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Contract is not awarded to me/us or our Bid is not opened or rejected.
24. The Bid Price has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft EPC Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.

25. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
26. I/We, the {Consortium/Joint Venture } agree and undertake to be jointly and severally liable for. all the obligations of the EPC Contractor under the Contract Agreement}.
27. I/ We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
28. I/ We hereby submit our Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the draft EPC Agreement.
29. I / We have read the clause regarding restriction on procurement from a bidder of a country which shares a land border with India and certify that I am / We are not from such a country or, if from such a country, have been registered with the competent authority. I / We hereby certify that I / we fulfil all the requirements in this regard and am / are eligible to be considered (evidence of valid registration by the competent authority is enclosed).
30. I/we certify that I/we the tenders(s) is/are not blacklisted or debarred by Railways or any other Ministry/Department of Govt of India from participation in tender on the date of submission of bids, either in individual capacity or as a HUF/member of the partnership firm/LLP/Joint Venture/Society/Trust.
31. I/We also understand that if the contents of the Appendix-IA submitted by us are found to be forged/false at any time during the process for evaluation of tenders, it shall lead to forfeiture of the Bid Security and may also lead to any other action provided in the contract including banning of business for a period of up to two years. Further, I/we _____(insert the name of the tenderer) and all my/our constituents understand that my/our offer shall be summarily rejected.
32. I/We also understand that if the contents of the Appendix-IA submitted by us are found to be forged/false or incorrect at any time after the award of the contract, it will lead to termination of the contract, along with forfeiture of the Bid Security/Security Deposit and Performance Guarantee and may also lead to any other action provided in the contract including banning of business for a period of upto two year.

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

Date:

Place:

(Signature, name and designation
of the Authorised signatory)

Name and seal of Bidder/Lead Member

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there.

APPENDIX – IB
Letter comprising the Financial Bid
(Refer Clauses 2.1.4, 2.11 and 3.1.6)

Date:

Chief Signal and Telecom Engineer, Projects
3rd Floor, MMC Building,
Southern Railway, Chennai – 600 003

Sub: Bid for “Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway”

Dear Sir,

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

1. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Contractor for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
2. The Bid Price has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft EPC Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.
3. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
4. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into an Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
5. I/ We shall keep this offer valid for 180 (one hundred and Eighty) days from the Bid Due Date specified in the RFP.
6. I/ We have quoted Bid Price on e-portal for undertaking the aforesaid Project in accordance with the Bidding Documents and the draft EPC Agreement.

Date:
Place:

Yours faithfully,
(Signature, name and designation of the
Authorised Signatory)
Name and seal of Bidder/Lead Member:.....
Class III DSC ID of Authorised Signatory:.....

ANNEX-I of Appendix I-A **Details of Bidder**

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Bidder including details of its main lines of Business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:
 - (f) Class III Digital Signature Certificate ID number
5. In case of a {Consortium/Joint Venture}:
 - (a) The information above (1-4) should be provided for all the Members of the {Consortium/Joint Venture}
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.1.11(f) should be attached to the Application.
 - (c) Information regarding the role of each Member should be provided as per table below:

Sl.	Name of Member	Role {Refer Clause 2.1.11(d)} ^{\$}	Shareholding of members in Consortium/Joint Venture {Refer Clauses 2.1.11(a), (f) }
1.			
2.			
3.			

The role of each member, as may be determined by the Bidder, should be indicated.

.....contd

^{\$} All provisions contained in curly parenthesis shall be suitably modified by the Bidders to reflect the particulars relating to such Bidder.

- (d) The following information shall also be provided w.r.t para 2.1.14 for each member of the {Consortium/Joint Venture}:

Name of Bidder/ member of Consortium/Joint Venture:

Sl. No.	Criteria	Yes/No
1.	Has the Bidder/ constituent of the {Consortium/Joint Venture} been barred by the Ministry of Railway or its implementing agencies for the works of Railway, from participating in Bidding.	
2	If the answer to 1 is yes, does the bar subsist as on Bid due date.	

- 6 (a) I/ We certify that in the last three years, we/ any of the {Consortium/Joint Venture} partners have neither failed to perform for the works of Railways as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitral award against us, nor been expelled or terminated by Ministry of Railway or its implementing agencies for breach on our part.

- (b) I/ We certify that we/ any of the {Consortium/Joint Venture } partners do not fall in any of the categories of being a Non-Performing entity given at Clause 2.1.14 of Instructions to Bidders in the projects of Ministry of Railways or its implementing agencies and furnished the complete details.

- 7 (a) I/ We further certify that no investigation by a regulatory authority is pending either against us/any member of {Consortium/Joint Venture} or our sister concern or against our CEO or any of our directors/managers/employees.

- (b) I/ We further certify that no investigation by any investigating agency in India or outside is pending either against us/ any member of {Consortium/Joint Venture} or our sister concern or against our CEO or any of our directors/managers/employees.

I/ We certify that the list is complete and covers all the projects of Railways or its implementing agencies and that we/ any of the {Consortium/Joint Venture} partners do not fall in any of the above categories of being a Non-Performing entity.

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

ANNEX-II

Technical Capacity of the Bidder^{@3}
(Refer to Clauses 2.2.2.1, 2.2.2.4 and 2.2.2.6 of the RFP)

Bidder type ^{#4}	Project Code ^{*5}	Category ^{\$6}	% Share	Experience ^{**7} (Equivalent Rs. crore) ^{\$\$8}		Technical capacity ^{£9}
				Payments received for construction of Eligible Projects in Categories 3 and 4 duly multiplied by factor mentioned in clause 2.2.2.4(i)	Value of self-construction in Eligible Projects in Categories 1 and 2 duly multiplied by factor mentioned in clause 2.2.2.4(i)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)=4*(5 or 6)*0.5 (for OECD)/1 (non OECD)
Single entity Bidder or Members of the Consortium / Joint Venture	a					
	b					
	c					
	d					
	e					
	f					
Aggregate Technical capacity =						

^{@3} Provide details of only those projects that have been undertaken by the Bidder, or its member in case of Consortium/Joint Venture, under its own name and/ or by an Associate specified in Clause 2.2.2.9 and/ or by a project company eligible under Clause 2.2.2.5(i)/(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 2.2.2.5(i)/(c) and for Categories 3 and 4, include only those projects where the payments received exceed the amount specified in Clause 2.2.2.5(ii). In case the Bid Due Date falls within 3 (three) months of the close of the latest Financial Year, refer to Clause 2.1.13.

^{#4} In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.2.9, shall be provided.

^{*5} Refer Annex-IV of this Appendix-IA. Add more rows if necessary.

^{\$6} Refer Clause 2.2.2.4.

^{**7} 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.

^{\$\$8} The conversion rate of USD into Rupees shall be the daily representative exchange rates published by the Reserve Bank of India for the relevant date. Where relevant date should be as on the date 60 (Sixty) days prior to the Bid Due Date. In case of any other currency, the same shall first be converted

to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

£9 *In the case of an Eligible Project situated in an OECD country, the Technical Experience so arrived at shall be further multiplied by 0.5, in accordance with the provisions of Clause 2.2.2.4(ii), and the product thereof shall be the Technical Capacity for such Eligible Projects.*

NOTE:

- i) In case of a {Consortium/Joint Venture}, information in Annex-II of Appendix-IA shall be provided separately for all members so as to establish Threshold Technical Capacity. (Refer Clause 2.1.11 (c)).*
- ii) Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there*

ANNEX-III
Financial Capacity of the Bidder
(Refer to Clauses 2.2.2.2, 2.2.2.8(i), 2.2.2.7(iii) of the RFP)
(In Rs. crore^{§10})

Bidder type ^{§§11}	Net Cash Accruals					Net Worth ^{£12}
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
Single entity Bidder or Member of the Consortium/Joint Venture						
TOTAL						

NOTE: In case of a {Consortium/Joint Venture}, information in Annex-III of Appendix-IA shall be provided separately for all Members so as to establish the Financial Capacity. (Refer Clause 2.1.11 (c)).

Name and address of Bidder's Bankers:

Instructions:

- The Bidder shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
 - reflect the financial situation of the Bidder and its Associates where the Bidder is relying on its Associate's financials;
 - be audited by a statutory auditor;
 - be complete, including all notes to the financial statements; and
 - correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
- Net Cash Accruals shall mean Profit after Tax + Depreciation.
- 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.
- Year 1 will be the latest completed Financial Year, preceding the Bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest Financial Year, refer to Clause 2.1.13.

^{§10} For conversion of other currencies into rupees, see note below Annex-II of Appendix-IA.

^{§§11} In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.2.9, shall be provided.

^{£12} The Bidder should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.2.9.

5. In the case of a {Consortium/Joint Venture}, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.1.11 (f) of the RFP document.
6. The Bidder shall also provide the name and address of the Bankers to the Bidder.
7. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.2.8 (ii) of the RFP document.

ANNEX-IV

Details of Eligible Projects

(Refer to Clauses 2.2.2.1, 2.2.2.4 and 2.2.2.6 of the RFP)

Project Code:

Entity: Bidder/ Member (including associates if any) of Consortium/Joint Venture

Item (1)	Refer Instruction (2)	Particulars of the Project (3)
Title and nature of the project		
Category	5	
Year-wise (a) payments received for construction, or (b) expenditure on construction works undertaken by itself in a PPP project	6	
Entity for which the project was constructed	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	16	

Note: *In case of a {Consortium/Joint Venture}, information in Annex-IV of Appendix-IA shall be provided separately for all Members so as to establish the Threshold Technical Capacity. (Refer Clause 2.1.11 (c)).*

Instructions:

- Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 2.2.2.5 of the RFP, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.
- The Project Codes would be a, b, c, d etc.

3. A separate sheet should be filled for each Eligible Project.
4. In case the Eligible Project relates to an Associate, write “Associate”.
5. Refer to Clause 2.2.2.4(i) of the RFP for category number.
6. The total payments received and/ or expenditure incurred on construction works undertaken by itself in a PPP project are to be stated for each Eligible Project in Annex-II of this Appendix-IA. The figures to be provided here should indicate the break-up for the past 5 (five) previous financial years and the current financial year upto the Base month (not to be read with para 2.1.13). For Categories 1 and 2, expenditure on construction of the project by the Applicant itself should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 2.2.2.5(i)/(c). In case of Categories 3 and 4, payments received only in respect of construction should be provided, but only if the amount received exceeds the minimum specified in Clause 2.2.2.5(ii). Receipts 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 concession, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
8. Provided the estimated capital cost of Eligible Project. Refer to Clauses 2.2.2.5.
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
10. For Categories 1 and 2, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 2.2.2.5(i)).
11. Deleted.
12. Certificate from the Bidder’s statutory auditor^{\$13} or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Associate may provide the requisite certification.
13. If the Bidder is claiming experience under Categories 1 and 2 it should provide a certificate from its statutory auditor in the format below:

^{\$13} In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

Certificate from the Statutory Auditor regarding PPP projects^{F14}

Based on its books of accounts and other published information authenticated by it, this is to certify that (name of the Bidder/ Associate) is/ was an equity shareholder in (title of the project company) and holds/ held Rs. cr. (Rupees crore) of equity (which constitutes%^{€15} of the total paid up and subscribed equity capital) of the project company from (date) to (date)^{¥16}. 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. (Rupeescrore), of which Rs. cr. (Rupees crore) of capital expenditure was incurred on construction work undertaken by the aforesaid Bidder/ Associate itself, during the past five Financial Year s 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:

14. If the Bidder is claiming experience under Category 3 and 4 ^{17*}, 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^{F18}

Based on its books of accounts and other published information authenticated by it, {this is to certify that (name of the Bidder/ Associate) was engaged by (title of the project company) to execute (name of project) for (nature of project)}. The construction of the project commenced on (date) and the project was/ is likely to be commissioned on (date, if any). It is certified that (name of the Bidder/ Associate) received 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. (Rupeescrore), of which the Bidder/ Associate received Rs. cr. (Rupees crore), in terms of Clauses 2.2.2.1/i and 2.2.2.5/ii of the RFP, during the last 5 (five) previous financial years and the current financial year upto the Base month (not to be read with para 2.1.13) i.e. [date], as per year wise details noted below:

.....
.....

Φ14 Maximum effort should be done to Provide Certificate as per this format only. However any additional format containing all of the desired information and also complying with Accounting Standards of ICAI can also be furnished. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

€15 Refer instruction no. 10 in this Annex-IV.

¥16 In case the project is owned by the Bidder company, this language may be suitably modified to read: "It is certified that (name of Bidder) constructed and/ or owned the (name of project) from (date) to (date)."

Φ18 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.

*{It is further certified that the receipts indicated above are restricted to the share of the Bidders who undertook these works as a partner or a member of Consortium/Joint Venture.}*¹⁹

Name of the audit firm:

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

Date:

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.2.9, the Bidder should also provide a certificate in the format below:

Certificate from Statutory Auditor/ Company Secretary regarding Associate²⁰

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 Associate*) is held, directly or indirectly²¹, by (*name of Bidder*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.2.9 of the RFP.

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

{Describe the share-holding of the Bidder in the Associate}

Name of the audit firm:

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

Date:

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 Technical and Financial capacity²².

♠19 This certification should only be provided in case of jobs/ contracts, which are executed as part of a partnership/ Consortium. The payments indicated in the certificate should be restricted to the share of Bidder in such partnership/ Consortium/Joint Venture. This portion may be omitted if the contract did not involve a partnership/ Consortium/Joint Venture". In case where work is not executed by partnership/ Consortium/Joint Venture, this paragraph may be deleted.

\$20 In the event that the Bidder/Consortium/Joint Venture members 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.

£21 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.

©22 Refer Clause 2.2.2.4(i) of the RFP.

ANNEX-V
Statement of Legal Capacity

(On the letter head of the Bidder/Lead Member of {Consortium/Joint Venture})

Ref. Date:

To,
Chief Signal and Telecom Engineer, Projects
3rd Floor, MMC Building,
Southern Railway, Chennai – 600 003

Name of the work- **“Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway”-reg**

Dear Sir,

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

We have agreed that (insert member's name) will act as the Lead Member of our {Consortium/Joint Venture}.*

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

**Please strike out whichever is not applicable.*

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

Guidelines of the Department of Disinvestment

(Refer Clause 1.2.1)

No. 3/9/2016-DoD-II-B

Government of India

Department of Disinvestment & Public Asset Management

Block 14, CGO Complex
New Delhi.

Dated 28th September, 2017.

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. "Grave Offence" would include the below noted cases:
 - a. Only those orders of SEBI are to be treated as coming under the category of "Grave Offences" which directly relate to "Fraud" as defined in the SEBI Act and / or regulations.
 - b. Only those orders of SEBI that cast a doubt on the ability of the bidder to manage the public-sector unit, when it is disinvested, are to be treated as adverse.
 - c. Any conviction by Court of Law.
 - d. In cases in which SEBI also passes a prosecution order, disqualification of the bidder should arise only on conviction by the Court of Law.
- (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 its Associate Company as defined in Companies Act, 2013 would result in disqualification. The decision in regard to the relationship between the 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 bidder, 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 bidder, a Show Cause Notice as to why it should not be disqualified, would be issued to it and it would be given an opportunity to explain its position.
- (g) 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, which if decided against the bidder, may disqualify the bidder in terms of (a) & (b) above or the eligibility criteria prescribed in the EOI, is pending against them. In case any investigation is pending in case which if decided against the bidder, may disqualify the bidder in terms of (a) & (b) above or the eligibility criteria prescribed in the EOI against the bidder or the concern in which the bidder has substantial interest or against its CEO or any of its Directors/Managers, 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/-
(Aseem Kumar Jha)
Under Secretary to the Government of India

**ANNEXURE VII
OF APPENDIX I-A**

GUIDELINES OF THE DEPARTMENT OF EXPENDITURE

(Refer Clause 2.1.12(f))

F.No. 6/18/2019-PPD

Ministry of Finance

Department of Expenditure

Public Procurement Division

161, North Block,
New Delhi.

23rd July, 2020

OFFICE MEMORANDUM

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

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

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

(sd/-)

(Sanjay Prasad)

Joint Secretary (PPD)

Email ID: js.pfc2.doe@gov.in

Telephone: 011-23093882

To,

(1) Secretaries of All Ministries / Departments of Government of India

(2) Chief Secretaries / Administrators of Union Territories / National Capital Territory of Delhi

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

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

OFFICE MEMORANDUM

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

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

Requirement of registration

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

Transitional cases

3. Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -
 - a) In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed: No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are non-compliant with the tender conditions and the tender shall be processed accordingly.
 - b) If the tendering process has crossed the first exclusionary qualificatory stage: If the qualified bidders include bidders from such countries, entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in this Order.
 - c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph 1, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted, in terms of paras 8, 9 and 10 read with para 1 of this Order.

Incorporation in tender conditions

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

Applicability

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

Definitions

6. “Bidder” for the purpose of this Order (including the term ‘tenderer’, ‘consultant’ ‘vendor’ or ‘service provider’ in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
7. “Tender” for the purpose of this Order will include other forms of procurement, except where the context requires otherwise.
8. “Bidder from a country which shares a land border with India” for the purpose of this Order means
- a) An entity incorporated, established or registered in such a country; or
 - b) A subsidiary of an entity incorporated, established or registered in such a country; or
 - c) An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d) An entity whose beneficial owner is situated in such a country; or
 - e) An Indian (or other) agent of such an entity; or
 - f) A natural person who is a citizen of such a country; or
 - g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
9. “Beneficial owner” for the purpose of paragraph 8 above will be as under:
- (i) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.

Explanation—

- a. “Controlling ownership interest” means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;

- b. “Control” shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
- (ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
- (iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
- (iv) Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
- (v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
10. “Agent” for the purpose of this Order is a person employed to do any act for another, or to represent another in dealings with third persons.

Sub-contracting in works contracts

11. In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of “contractor from a country which shares a land border with India” shall be as in paragraph 8 above. This shall not apply to sub-contracts already awarded on or before the date of this Order.

Certificate regarding compliance

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

Validity of registration

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

Government E-Marketplace

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

Model Clauses/ Certificates

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

(sd/-)

(Sanjay Prasad)

Joint Secretary (PPD)

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Telephone: 011-23093882

To,

(1) Secretaries of All Ministries / Departments of Government of India for information and necessary action. They are also requested to inform these provisions to all procuring entities.

(2) Secretary, Department of Public Enterprises with a request to immediately reiterate these orders in respect of Public Enterprises.

(3) Secretary DPIIT with a request to initiate action as provided under Annex I

(4) Chief Secretaries/ Administrators of Union Territories/ National Capital Territory of Delhi

Annex I: Competent Authority and Procedure for Registration

- A. The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)*.
- B. The Registration Committee shall have the following members*:
 - i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- C. DPIIT shall lay down the method of application, format etc. for such bidders as stated in para 1 of this Order.
- D. On receipt of an application seeking registration from a bidder from a country covered by para 1 of this Order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- E. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- F. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- G. Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur*.
- H. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but **also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.**
- I. The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
- J. For national security reasons, the Competent Authority shall not be required to give reasons for rejection / cancellation of registration of a bidder.
- K. In transitional cases falling under para 3 of this Order, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity

to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.

- L. Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

[*Note:

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

Annex II: Special Cases

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

Annex III

Model Clause /Certificate to be inserted in tenders etc.

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

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. “Bidder” (including the term ‘tenderer’, ‘consultant’ or ‘service provider’ in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. “Bidder from a country which shares a land border with India” for the purpose of this Order means: -
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose *beneficial owner* is situated in such a country; or
 - e. An Indian (or other) agent of such an entity; or
 - f. A natural person who is a citizen of such a country; or
 - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The *beneficial owner* for the purpose of (iii) above will be as under:
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation–

- a. “Controlling ownership interest” means ownership of or entitlement to more than twenty-five per cent of shares or capital or profits of the company;
- b. “Control” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.
- VI. *[To be inserted in tenders for Works contracts, including Turkey contracts]* The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

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

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

Model Certificate for Tenders

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

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

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

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

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

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

Order (Public Procurement No. 2)

Subject: Exclusions from restrictions under Rule 144 (xi) in the General Financial Rules (GFRs), 2017—regarding.

1. In Order (Public Procurement No. 1) dated 23rd July 2020, orders have been issued requiring registration of bidders from a country sharing a land border with India in order to be eligible to bid in public procurement.
2. Notwithstanding anything contained therein, it is hereby clarified that the said Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects.
3. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs.

(sd/-)
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To,

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

Order (Public Procurement No. 3)

Subject: Clarification to Order (Public Procurement No. 1) dated 23rd July 2020

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

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

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

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

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

Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.

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

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

(sd/-)
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To,

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

No. P-45021/2/2017-PP (BE-II)
Government of India
Ministry of Commerce and Industry
Department for Promotion of Industry and Internal Trade
(Public Procurement Section)

Udyog Bhawan, New Delhi
Dated: 16th September, 2020

To

All Central Ministries/Departments/CPSUs/All concerned

ORDER

Subject: Public Procurement (Preference to Make in India), Order 2017– Revision; regarding.

Department for Promotion of Industry and Internal Trade, in partial modification [Paras 2, 3, 5, 10 & 13] of Order No.P-45021/2/2017-B.E.-II dated 15.6.2017 as amended by Order No.P-45021/2/2017-B.E.-II dated 28.05.2018, Order No.P-45021/2/2017-B.E.-II dated 29.05.2019 and Order No.P-45021/2/2017-B.E.-II dated 04.06.2020, hereby issues the revised 'Public Procurement (Preference to Make in India), Order 2017" dated 16.09.2020 effective with immediate effect.

Whereas it is the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, and

Whereas procurement by the Government is substantial in amount and can contribute towards this policy objective, and

Whereas local content can be increased through partnerships, cooperation with local companies, establishing production units in India or Joint Ventures (JV) with Indian suppliers, increasing the participation of local employees in services and training them,

Now therefore the following Order is issued:

1. This Order is issued pursuant to Rule 153 (iii) of the General Financial Rules 2017.
2. **Definitions:** For the purposes of this Order:

'Local content' means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under this Order.

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'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under this Order.

'Non - Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under this Order.

'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

'Margin of purchase preference' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference.

'Nodal Ministry' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

'Procuring entity' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.

'Works' means all works as per Rule 130 of GFR- 2017, and will also include *'turnkey works'*.

3. Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement

(a) In procurement of all goods, services or works in respect of which the Nodal Ministry / Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', as defined under the Order, shall be eligible to bid irrespective of purchase value.

(b) Only 'Class-I local supplier' and 'Class-II local supplier', as defined under the Order, shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para 3(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.

(c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

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3A. Purchase Preference

(a) Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.

(b) In the procurements of goods or works, which are covered by para 3(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
- ii. If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

(c) In the procurements of goods or works, which are covered by para 3(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
- ii. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
- iii. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.

.....Contd. p/4

- (d) "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

3B. Applicability in tenders where contract is to be awarded to multiple bidders -

In tenders where contract is awarded to multiple bidders subject to matching of L1 rates or otherwise, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- a) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
- b) In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of this Order.
- c) If 'Class I Local suppliers' qualify for award of contract for at least 50% of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50% of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers'/'Non local suppliers' provided that their quoted rate falls within 20% margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50% of the tendered quantity.
- d) First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20% margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20% margin of purchase preference, and so on.
- e) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.

4. **Exemption of small purchases:** Notwithstanding anything contained in paragraph 3, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.
5. **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50%. For 'Class-II local supplier', the 'local content' requirement is minimum 20%. Nodal Ministry/ Department may prescribe only a higher

.....Contd. p/5

percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50% and 20% for 'Class-I local supplier'/ 'Class-II local supplier' respectively.

6. **Margin of Purchase Preference:** The margin of purchase preference shall be 20%.
7. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
8. **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
9. **Verification of local content:**
 - a. The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
 - b. In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
 - c. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
 - d. Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
 - e. Nodal Ministries and procuring entities may prescribe fees for such complaints.
 - f. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.

.....Contd. p/6

- g. A supplier who has been debarred by any procuring entity for violation of this Order shall not be eligible for preference under this Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph 9h below.
- h. The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
 - i. The fact and duration of debarment for violation of this Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;
 - ii. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
 - iii. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

10. Specifications in Tenders and other procurement solicitations:

- a. Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b. Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c. Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.

d. Reciprocity Clause

- i. When a Nodal Ministry/Department identifies that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies under their administrative control and GeM for appropriate reciprocal action.

.....Contd. p/7

- ii. Entities of countries which have been identified by the nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
 - iii. The stipulation in (ii) above shall be part of all tenders invited by the Central Government procuring entities stated in (i) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
 - iv. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
 - v. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e. Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.
- f. "All administrative Ministries/Departments whose procurement exceeds Rs. 1000 Crore per annum shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website."

10A. Action for non-compliance of the Provisions of the Order: In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

11. Assessment of supply base by Nodal Ministries: The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.

12. Increase in minimum local content: The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.

.....Contd. p/8

13. Manufacture under license/ technology collaboration agreements with phased indigenization: While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.

13A. In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.

14. Powers to grant exemption and to reduce minimum local content: The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,

- a. reduce the minimum local content below the prescribed level; or
- b. reduce the margin of purchase preference below 20%; or
- c. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

15. Directions to Government companies: In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.

16. Standing Committee: A standing committee is hereby constituted with the following membership:

Secretary, Department for Promotion of Industry and Internal Trade—Chairman
Secretary, Commerce—Member
Secretary, Ministry of Electronics and Information Technology—Member
Joint Secretary (Public Procurement), Department of Expenditure—Member
Joint Secretary (DPIIT)—Member-Convenor

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The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

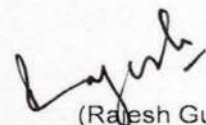
17. Functions of the Standing Committee: The Standing Committee shall meet as often as necessary, but not less than once in six months. The Committee

- a. shall oversee the implementation of this order and issues arising therefrom, and make recommendations to Nodal Ministries and procuring entities.
- b. shall annually assess and periodically monitor compliance with this Order
- c. shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
- d. may require furnishing of details or returns regarding compliance with this Order and related matters
- e. may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
- f. may examine cases covered by paragraph 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization
- g. may consider any other issue relating to this Order which may arise.

18. Removal of difficulties: Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order.

19. Ministries having existing policies: Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of this Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.

20. Transitional provision: This Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.



(Rajesh Gupta)

Director

Tel: 23063211

rajesh.gupta66@gov.in

APPENDIX-II

Format for Power of Attorney for signing of Bid

(Refer Clause 2.1.5)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr./ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our { **Consortium/Joint Venture** } and holding the position of, as our true and lawful attorney (hereinafter referred to as the “**Attorney**”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the Project proposed or being developed by the *Chief Signal and Telecommunication Engineer, Projects, Southern Railway* (the “**Authority**”) including but not limited to signing and submission of all Bids and other documents and writings, participate in Pre-Bid 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 EPC 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 until the entering into of the EPC Contract 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)
of person authorized by Board Resolution
(in case of Firm/ Company)/ partner in case of
Partnership firm

Witnesses:

1.

2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

(Notarized)

Person identified by me/ personally appeared before me/
Attested/ Authenticated

(Notary to specify as applicable)

(Signature Name and Address of the Notary)

Seal of the Notary

Registration No. of the Notary

Date:.....

Notes:

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

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

APPENDIX-III

Format for Power of Attorney for Lead Member of {Consortium/Joint Venture}

(Refer Clause 2.1.6)

Whereas the **Chief Signal and Telecommunication Engineer, Projects, Southern Railway** (the “**Authority**”) has invited Bids for the **Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway** (the “**Project**”).

Whereas,, and (collectively the “**{Consortium/Joint Venture}**”) being Members of the **{Consortium/Joint Venture}** are interested in Bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other Bid documents including agreement in respect of the Project, and

Whereas, it is necessary for the Members of the **{Consortium/Joint Venture}** to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the **{Consortium/Joint Venture}**, all acts, deeds and things as may be necessary in connection with the **{Consortium’s/Joint Venture}** 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 authorize M/s having its registered office at, being one of the Members of the **{Consortium/Joint Venture}**, as the Lead Member and true and lawful attorney of the Consortium/Joint Venture (hereinafter referred to as the “**Attorney**”). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the **{ Consortium/Joint Venture }** and any one of us during the Bidding process and, in the event the **{Consortium/Joint Venture}** is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the **{ Consortium/Joint Venture }**, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the **{ Consortium/Joint Venture }** and submission of its Bid for the Project, including but not limited to signing and submission of all applications, Bids and other documents, signing bank Guarantee for Bid security and writings, participate in pre Bid and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the **{ Consortium/Joint Venture }** and generally to represent the **{ Consortium/Joint Venture }** 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/Joint Venture }** Bid for the in all respect Project and/ or upon award thereof till the EPC Contract is entered into with the Authority and Completed.

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

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

For (Signature) (Name and Title)	For (Signature) (Name and Title)	For (Signature) (Name and Title)
---	---	---

(Executants)

(To be executed by all the Members of the {Consortium/Joint Venture})

Witnesses:

- 1.
- 2.

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 Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Apostille certificate.*

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there

APPENDIX IV

Format for Joint Bidding Agreement for {Consortium/Joint Venture}

(Refer Clause 2.1.11)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

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

AND

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

AND

3. {..... Limited, and having its registered office at} (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)
4. {..... Limited, 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 President of India represented by the Ministry of Railways, *Chief Signal and Telecommunication Engineer, Projects, Southern Railway, Chennai* (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) (the “**Authority**”), having its principal office at *S&T Projects Wing, 3rd Floor, M.M.C. Park Town, Chennai-3 CHENNAI – 600 003, SOUTHERN RAILWAY* is engaged in the development of railways and related infrastructure, and as part of this endeavour, has invited Bids (the **Bids**) by its Request for Proposal No. dated(the “**RFP**”) for award of contract for “**Provision of KAVACH (Train**

collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway” (the “Project”) through an Engineering, Procurement and Construction (the “EPC”) Contract.

- (B) The Parties are interested in jointly Bidding for the Project as members of a { Consortium/Joint Venture } and in accordance with the terms and conditions of the RFP document and other Bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the {Consortium/Joint Venture} 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 capitalized terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. {Consortium/Joint Venture}

- 2.1 The Parties do hereby irrevocably constitute a Consortium/Joint Venture (the “{Consortium/Joint Venture}”) 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/Joint Venture} and not individually and/ or through any other {Consortium/Joint Venture} constituted for this Project, either directly or indirectly.

3. Covenants

The Parties hereby undertake that in the event the {Consortium/Joint Venture} is declared the Selected Bidder and awarded the Project, it shall enter into an EPC Contract with the Authority for performing all its obligations as the Contractor in terms of the EPC Contract 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/Joint Venture} and shall have the power of attorney from all Parties for conducting all business for and on behalf of the {Consortium/Joint Venture} during the Bidding Process and for performing all its obligations as the Contractor in terms of the EPC Contract for the Project;
- (b) Party of the Second Part shall be {the member of the Consortium/Joint Venture}; and

- (c) Party of the Third Part shall be {the member of the Consortium/Joint Venture.}
- (d) Party of the 4th Part shall be {the member of the Consortium/Joint Venture.}

5. Joint and Several Liability

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

6. Share of work in the Project

The Parties agree that the proportion of construction in the EPC Contract to be allocated among the members shall be as follows:

- {First Party:}
- {Second Party:}
- {Third Party:}
- {Fourth Party:}

Further, the Lead Member shall itself undertake and perform at least 30 (thirty) per cent of the total length of the project highway if the Contract is allocated to the {Consortium/Joint Venture}

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 organized, 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 authorized 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/Joint Venture} 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 organizational documents thereof;

- (iv) violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
- (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the 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 Project completion (the “Defects Liability Period”) is achieved under and in accordance with the EPC Contract, in case the Project is awarded to the {Consortium/Joint Venture} However, in case the {Consortium/Joint Venture} 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)

(Name)

(Designation)

(Address)

SECOND PART

(Signature)

(Name)

(Designation)

(Address)

THIRD PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

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/Joint Venture} Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

APPENDIX-V

LIST OF BID-SPECIFIC CLAUSES^s

A. Clauses and appendices with non-numerical footnotes

1. Clause 2.2.2.4/iii: Qualification requirement
2. Clause 2.2.28: Qualification requirement
3. Appendix IA: Letter Comprising the Bid for –Qualification.
4. Appendix IA, Annex-I
5. Appendix IA, Annex-II
6. Appendix IA, Annex-III
7. Appendix IA, Annex-IV and V
8. Appendix II, and III
9. Appendix IV and V
10. Appendix VI

B. Clauses and appendices with curly brackets

1. Appendix IA: Letter Comprising the Bid for Qualification: Para's 6, 9, 10, 11, 12, 13, 26
2. Appendix IA, Annex I
3. Appendix IA Annex-II, III, IV and V

C. Clauses and appendices with blank spaces

1. NIT
2. Clause 2.2.2.4/iii, 2.11.1, 2.12. 2.14.1.2, 2.14.2.3
3. Appendix IA, Annex-I, IV, V and VII
4. Appendix II, III, IV

^s This Appendix-V contains a list of clauses and appendices that would need to be suitably modified for reflecting applicant-specific provisions. This Appendix-V may, therefore, be included in the RFP document to be issued to prospective Bidders. The blank spaces in Appendices may be filled up by the Bidders and the footnotes may be deleted when it submits its Bid.

APPENDIX-VI

LIST OF PROJECT-SPECIFIC CLAUSES
(Not Attached)

APPENDIX VII

APPENDIX-VII (BID SECURITY) (Refer Clause 1.2.4)

Bank Guarantee Bond from any Scheduled Commercial Bank of India
(On Non-Judicial Stamp Paper, which should be in the name of the Executing Bank)

Name of the Bank:
The President of India,
Acting through FA&CAO/CN/MS,
Southern Railway

Beneficiary: FA&CAO/CN/MS, Egmore, Southern Railway
Bank Guarantee Bond No.:

Date:

In consideration of the President of India acting through the Ministry of Railways, Chief Signal and Telecommunication Engineer, Projects, Southern Railway, Chennai- (hereinafter called “the Railway”) having invited the bid for “**Provision of KAVACH (Train collision avoidance system) including tower in Jolarpettai to Erode Junction section (179.29 Rkm) of Salem division in Southern Railway**” through Notice Inviting Tender (NIT) No. Proj1MS_KAVACH_JTJ-ED_01 Dated 19.10.2024, we have been informed that **[Insert Name of the Bidder]** (hereinafter called “the Bidder”) intends to submit its bid (hereinafter called “the Bid”).

WHEREAS, the Bidder is required to furnish Bid Security for the sum of ____ (insert required value of Bid security), in the form of Bank Guarantee, according to conditions of Bid.

AND

WHEREAS, **[Insert Name of the Bank]**, with its Branch **[Insert Address]** having its headquarters office at **[Insert Address]**, hereinafter called “the Bank”, acting through **[Insert Name and Designation of the authorised persons of the Bank]**, have, at the request of the bidder, agreed to give guarantee for Bid Security as hereinafter contained, in favour of the Railway:

1. KNOW ALL MEN that by these present that I / We the undersigned **[Insert Name(s) of authorised representatives of the Bank]**, being fully authorised to sign and incur obligations for and on behalf of the Bank, confirm that the Bank, hereby, unconditionally and irrevocably guarantee to pay to the Railway full amount in the sum of **(insert required value of Bid security)** as above stated.
2. The Bank undertakes to immediately pay on presentation of demand by the Railway any amount up to and including aforementioned full amount without any demur, reservation or recourse. Any such demand made by the Railway on the Bank shall be final,

conclusive and binding, absolute and unequivocal on the Bank notwithstanding any disputes raised / pending before any Court, Tribunal, Arbitration or any Authority or any threatened litigation by the Bidder or Bank.

3. The Bank shall pay the amount as demanded immediately on presentation of the demand by Railway without any reference to the Bidder and without the Railway being required to show grounds or give reasons for its demand of the amount so demanded.
4. The guarantee hereinbefore shall not be affected by any change in the constitution of the Bank or in the constitution of the Bidder.
5. The Bank agrees that no change, addition, modifications to the terms of the Bid document or to any documents, which have been or may be made between the Railway and the Bidder, will in any way absolve the Bank from the liability under this guarantee; and the Bank, hereby, waives any requirement for notice of any such change, addition or modification made by Railway at any time.
6. This guarantee will remain valid and effective from..... **[Insert Date of issue]** till **[Date, which should be minimum 90 days beyond the expiry of validity of bid]**. Any demand in respect of this Guarantee should reach the bank within the validity period of Bid Security.
7. This Bank Guarantee is unconditional and irrevocable.
8. The expressions Bank and Railway herein before used shall include their respective successors and assigns.
9. The Bank hereby undertakes not to revoke the guarantee during its currency, except with the previous consent in writing of the Railway. This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.
10. The Bank hereby confirms that it is on the SFMS (Structured Financial Messaging System) and shall invariably send the advice of this Bank Guarantee to the following bank details:
IFSC Code SBIN000RAIL
IFSC Type BRANCH
Bank Name STATE BANK OF INDIA
Branch Name RAIL
City Name NAVI MUMBAI
Address SECTOR-11, CBD BELAPUR, NAVI MUMBAI
District NAVI MUMBAI
State MAHARASHTRA
BG Enables YES
11. The Guarantee shall be valid in addition to and without prejudice to any other security Guarantee(s) of Bidder in favour of the Railway. The Bank, under this Guarantee, shall be deemed as Principal Debtor of the Railway.

Date:
Place:

Bank's Seal and Authorised Signature(s)
[Name in Block Letters]
[Designation with Code No.]
[P/Attorney] No.

Witness:

1. Signature, Name, Address and Seal
2. Signature, Name, Address and Seal

Bank's Seal

[P/Attorney] No. _____

Note: All italicised text is for guidance on how to prepare this Bank Guarantee and shall be deleted from the final document.

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