

Request For Qualification (RFQ)
for
Two-Laning of Joda-Bamberi
Section of Expressway – II in the
State of Orissa

Government of Orissa

GLOSSARY

Applicant(s)	As defined in Clause 1.2.1
Application	As defined in the Disclaimer
Application Due Date	As defined in Clause 1.1.5
Associate	As defined in Clause 2.2.9
Bids	As defined in Clause 1.2.3
Bid Due Date	As defined in Clause 1.2.3
Bid Security	As defined in Clause 1.2.4
Bidders	As defined in Clause 1.1.1
Bidding Documents	As defined in Clause 1.2.3
Bidding Process	As defined in Clause 1.2.1
Bid Stage	As defined in Clause 1.2.1
BOT	Build, Operate and Transfer
Concessionaire	As defined in Clause 1.1.2
Concession Agreement	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.2.1(c)
Consortium	As defined in Clause 2.2.1(a)
DBFOT	As defined in Clause 1.1.1
Eligible Experience	As defined in Clause 3.2.1
Eligible Projects	As defined in Clause 3.2.1
Estimated Project Cost	As defined in Clause 1.1.4
Experience Score	As defined in Clause 3.2.6
Financial Capacity	As defined in Clause 2.2.2 (B)
Government	Government of Orissa
Grant	As defined in Clause 1.2.8
Jt. Bidding Agreement	As defined in Clause 2.2.6 (g)
Lead Member	As defined in Clause 2.2.6 (c)
LOA	Letter of Award
Member	Member of a Consortium
Net Worth	As defined in Clause 2.2.4(ii)
PPP	Public Private Partnership
Premium	As defined in Clause 1.2.8
Project	As defined in Clause 1.1.1
Qualification	As defined in Clause 1.2.1
Qualification Stage	As defined in Clause 1.2.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in Clause 1.2.1
RFQ	As defined in the Disclaimer
SPV	As defined in Clause 2.2.6
Technical Capacity	As defined in Clause 2.2.2 (A)
Threshold Technical Capability	As defined in Clause 2.2.2 (A) (iii)

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

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DISCLAIMER

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

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

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

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

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

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

The issue of this RFQ does not imply that the WD, GoO is bound to select and shortlist pre-qualified Applications for Bid Stage or to appoint the selected Bidder or Concessionaire, as

the case may be, for the Project and the WD, GoO reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

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

Works Department, Government of Orissa

1. INTRODUCTION

1.1 Background

1.1.1 The Works Department, Government of Orissa (the “**WD, GoO**”) has decided to undertake development of Joda-Bamberi Road Section of Expressway - II (the “**Project**”) through Public-Private/Public Partnership (PPP) on Design, Build, Finance, Operate and Transfer (the "DBFOT") basis, and has decided to carry out the bidding process for selection of the bidder to whom the Project may be awarded. Brief particulars of the Project are as follows:

S. No.	Name of the Highway/Road	Indicative Length in Km	Indicative Project Cost (In Rs. Cr.)
1	Two-Laning of Joda-Bamberi Road Section of Expressway-II (Concrete Pavement with Paved Shoulders)	19.00	110

The WD, GoO intends to pre-qualify and short-list suitable Applicants (the “**Bidders**”) who will be eligible for participation in the Bid Stage, for awarding the Project through an open competitive bidding process in accordance with the procedure set out herein

1.1.2 The selected Bidder, who is either a company incorporated under the Companies Act, 1956 or undertakes to incorporate itself as such prior to execution of the concession agreement (the “**Concessionaire**”), shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of a long-term concession agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and the WD, GoO in the form provided by the WD, GoO as part of the Bidding Documents pursuant hereto.

1.1.3 The scope of work will broadly include rehabilitation, upgradation and widening of the existing carriageway to two-lane standards with construction of new pavement, rehabilitation of existing pavement, construction and/or rehabilitation of major and minor bridges, culverts, road intersections, interchanges, drains, etc. and the operation and maintenance thereof.

1.1.4 Indicative capital costs of the Project (the “**Estimated Project Cost**”) will be revised and specified in the Bidding Documents of the Project. The assessment of actual costs, however, will have to be made by the Bidders.

1.1.5 The WD, GoO shall receive Applications pursuant to this RFQ in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the WD, GoO, and all Applications shall be prepared and submitted in

accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the “**Application Due Date**”).

1.2 Brief Description of Bidding Process

- 1.2.1 The WD, GoO has adopted a two-stage process (collectively referred to as the “**Bidding Process**”) for selection of the Bidder for award of the Project. The first stage (the “**Qualification Stage**”) of the process involves qualification (the “**Qualification**”) of interested parties/ consortia who make an Application in accordance with the provisions of this RFQ (the “Applicants”). At the end of this stage, the WD, GoO expects to announce a short-list of suitable pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the “**Bid Stage**”) comprising Request for Proposals (the “**Request for Proposals**” or “**RFP**”).

Government of India has issued guidelines (see Appendix-IV) 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 WD, GoO shall be entitled to disqualify an Applicant in accordance with the aforesaid guidelines at any stage of the Bidding Process.

Applicants must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.

- 1.2.2 In the Qualification Stage, Applicants would be required to furnish the information specified in this RFQ. Only those Applicants that are pre-qualified and short-listed by the WD, GoO shall be invited to submit their Bids for the Project. The WD, GoO is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are, therefore, advised to visit the site and familiarize themselves with the Project.
- 1.2.3 In the Bid Stage, the Bidders will be called upon to submit their financial offers (the “**Bids**”) in respect of the Project, in accordance with the RFP and other documents to be provided by the WD, GoO, pursuant to the RFP (collectively the “**Bidding Documents**”). The Bidding Documents for the Project will be provided to every Bidder on payment of Rs. 100,000 (Rs. One Lakh only) in shape of demand draft drawn in favour of Executive Engineer, PMU, OSRP payable at Bhubaneswar. The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of bids (the “**Bid Due Date**”).
- 1.2.4 In terms of the RFP, a Bidder will be required to deposit, along with its Bid, a bid security equivalent to about 1% (one per cent) of the Estimated Project Cost (the “**Bid Security**”), refundable not later than 60 days from the Bid Due Date except in the case of the lowest/ highest Bidder (Highest in case of quoting Premium, or lowest in case of seeking Grant, as the case may be) whose Bid Security shall be retained till it has provided a Performance Security under the Concession

Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee from any Nationalised Bank and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the WD, GoO and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 1.2.5 Generally, the selected Bidder shall be the lowest/ highest Bidder (Highest in case of quoting Premium, or lowest in case of seeking Grant, as the case may be). The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the RFP, be invited to match the Bid submitted by the lowest/ highest Bidder (Highest in case of quoting Premium, or lowest in case of seeking Grant, as the case may be) in case such lowest/ highest Bidder (Highest in case of quoting Premium, or lowest in case of seeking Grant, as the case may be) withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the lowest/ highest Bidder (Highest in case of quoting Premium, or lowest in case of seeking Grant, as the case may be), the WD, GoO may, in its discretion, invite fresh Bids from all Bidders or annul the Bidding Process, as the case may be.
- 1.2.6 During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the concession including implementation of the Project.
- 1.2.7 As part of the Bidding Documents, the WD, GoO will provide for the Project a draft Concession Agreement and project report/ feasibility report prepared by the WD, GoO/ its consultants and other information pertaining/ relevant to the Project available with it.
- 1.2.8 Bids will be invited for the Project on the basis of the Concession Period required by a Bidder for implementing the Project without any financial grant (the "**Grant**"). The Concession Period for no grant option shall constitute the sole criteria for evaluation of Bids. The Project shall be awarded to the Bidder quoting the lowest Concession Period.
- 1.2.9 The Concessionaire shall be entitled to levy and charge a pre-determined user fee from users of the Project.
- 1.2.10 The Concessionaire shall bear the Stamp Duty @ 2% and Registration Fee @ 2% of the Project Cost which are leviable considering the fact that Concession Agreement is a lease agreement as defined in section 2(16-c) of the Indian Stamp Act , 1899 and section 17 of the Indian Registration Act provides that lease of immovable property is to be registered compulsorily.
- 1.2.11 Further and other details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.

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

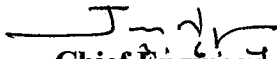
"Queries/ Request for Additional Information: RFQ for Joda-Bamberi Road Project".

1.3 Schedule of Bidding Process

The WD, GoO shall endeavour to adhere to the following schedule:

Event Description	Date
Qualification Stage	
1. Last date for receiving queries	03 July 2009
2. Pre-Application Conference	08 July 2009
3. WD, GoO response to queries latest by	13 July 2009
4. Application Due Date	23 July 2009
5. Announcement of short-list	Within 15 days of Application Due Date

Bid Stage	Estimated Date
1. Sale of Bid Documents	To be specified
2. Last date for receiving queries	To be specified
3. Pre-Bid meeting - 1	To be specified
4. WD, GoO response to queries latest by	To be specified
5. Pre-Bid meeting - 2	Not Applicable
6. Bid Due Date(s)	To be specified
7. Opening of Bids	On Bid Due Date
8. Letter of Award (LOA)	Within 30 days of Bid Due Date
9. Validity of Bids	120 days of Bid Due Date
10. Signing of Concession Agreement	Within 30 days of award of LOA


Chief Engineer,
World Bank Projects, Orissa

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Application

- 2.1.1 The WD, GoO wishes to receive Applications for Qualification in order to shortlist experienced and capable Applicants for the Bidding Stage.
- 2.1.2 Short-listed Applicants may be subsequently invited to submit the Bids for the Project.

2.2 Eligibility of Applicants

- 2.2.1 (a) The Applicant for pre-qualification may be a single entity or a group of entities (the "Consortium"), coming together to implement the Project. However, no applicant applying individually or as a member of a Consortium, as the case may be, can be member of another Applicant Consortium. The term Applicant used herein would apply to both a single entity and a Consortium.

(b) An Applicant may be a natural person, private entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.

(c) An Applicant shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified. An Applicant shall be deemed to have a Conflict of Interest that affects the Bidding Process, if:

- (i) the Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, its Member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than five percent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its Member or Associate, as the case may be, is less than one per cent of the paid up and subscribed share capital thereof; provided further that this disqualification shall not apply to a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956; or

- (ii) a constituent of such Applicant is also a constituent of another Applicant; or
- (iii) such Applicant receives or has received any direct or indirect subsidy from any other Applicant, its Member or Associate or has provided any such subsidy to any other Applicant; or
- (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
- (iv) such Applicant has a relationship with another Applicant, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Application of either or each other; or
- (vi) such Applicant has participated as a consultant to the WD, GoO in the preparation of any documents, design or technical specifications of the Project.
- (d) An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the WD, GoO in relation to the Project is engaged by the Applicant during the pre-bid stage for matters related to or incidental to the Project.

2.2.2 To be eligible for pre-qualification and short-listing, an Applicant shall fulfill the following conditions of eligibility:

- (A) Technical Capacity: For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Applicant shall, over the past 5 (five) financial years preceding the Application Due Date, have:
 - (i) paid for, or received payments for construction of Eligible Project(s); and/ or
 - (ii) paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1; and/ or
 - (iii) collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.1, such that the sum total of the above is more than Rs.55 Crores (Rs. Fifty Five Crores) (the “**Threshold Technical Capability**”).

Provided that at least one fourth of the Threshold Technical Capability shall be from the Eligible Projects in Category 1 and/ or Category 3 specified in Clause 3.2.1.

- (B) **Financial Capacity:** The Applicant shall have a minimum Net Worth (the “**Financial Capacity**”) of Rs. 28 Crores (Rs. Twenty Eight Crores) as at the close of the preceding financial year.

In case of a Consortium, the combined technical capability and net worth of those Members, who have an equity share of at least 26% each in such Consortium, should satisfy the above conditions of eligibility.

- 2.2.3 **O&M Experience:** The Applicant shall engage an experienced O&M Contractor or hire qualified and trained personnel from operation and maintenance of the Project in conformity with the provisions of the Concession Agreement.

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

(i) Certificate(s) from its statutory auditors¹ or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 years in respect of the projects specified in paragraph 2.2.2(A) above. In case a particular job/ contract has been jointly executed by the Applicant (as part of a consortium), he should further support his claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and

(ii) certificate(s) from its statutory auditors specifying the net worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFQ, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and Accrued liabilities.

- 2.2.5 The Applicant should submit a Power of Attorney as per the format at Appendix- II, authorizing the signatory of the Application to commit the Applicant.

- 2.2.6 Where the Applicant is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 1956 (the “**SPV**”), to execute the Concession Agreement and implement the Project. In case the Applicant is a Consortium, it should comply with the following additional requirements:

(a) Number of members in a consortium should be limited to 6 (six), but information sought in the Application may be restricted to 4 (four) members in the order of their equity contribution;

¹ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4 (i).

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- (b) subject to the provisions of clause (a) above, the Application should contain the information required for each member of the Consortium;
 - (c) members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share of at least 26% in the Consortium. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;
 - (d) the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, and technical obligations;
 - (e) an individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;
 - (f) the parties to a Consortium shall form an appropriate SPV to execute the Project if awarded to the Consortium; and
 - (g) members of the Consortium shall enter into a binding Joint Bidding Agreement (the “**Jt. Bidding Agreement**”) for the purpose of making the Application and submitting Bid in the event of being short-listed. The Jt. Bidding Agreement shall, inter alia:
 - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFQ, which would enter into the Concession Agreement and subsequently carry out all the responsibilities as Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
 - (ii) clearly outline the proposed roles and responsibilities of each member at each stage;
 - (iii) commit the minimum equity stake to be held by each member; and
 - (iv) include a statement to the effect that all members of the Consortium shall, till the occurrence of the Appointed Date/ Financial Close under the Concession Agreement, be liable jointly and severally for all obligations of the Concessionaire in relation to the Project.

(Note: A copy of the Jt. Bidding Agreement should be submitted along with the Application. The Jt. Bidding Agreement entered into between the members of the Consortium should be specific to the Project and should fulfill the above requirements, failing which the Application shall be considered non-responsive).

- 2.2.7 Any entity which has been barred by the Central/ State Government, or any entity controlled by them, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Application, would not be eligible to submit an Application, either individually or as member of a Consortium.
- 2.2.8 An Applicant/ Consortium Member should, in the last three years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract nor have had any contract terminated for breach by such Applicant/ Consortium Member.
- 2.2.9 In computing the Technical Capacity and Net Worth of the Applicant/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder. For purposes of this RFQ, Associate means, in relation to the Applicant/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Applicant/ Consortium Member (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.
- 2.2.10 The following conditions shall be adhered to while submitting an Application:
- (i) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
 - (ii) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification;
 - (iii) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and
 - (iv) in case the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.
- 2.2.11 While Qualification is open to persons from any country, the following provisions shall be applicable:
- (a) Where on the date of Application, not less than 15% of the aggregate issued, subscribed and paid up equity share capital in an Applicant or any of the constituents of a Consortium is held by persons resident outside India or where an

Applicant or any of the Constituents of a Consortium is controlled by persons resident outside India; or

- (b) If at any subsequent stage after the date of the Application, there is an acquisition of not less than 15% of the aggregate issued, subscribed and paid-up equity share capital or control by persons resident outside India in or of the Applicant or any of the Constituents of a Consortium, then the Qualification of such Applicant or in the event described in (b) above, the Continued Qualification of the Applicant shall be subject to approval of the WD, GoO from national security and public interest perspective

2.2.12 In the event that the Application Due Date falls within three months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the five years preceding its latest financial year.

2.3 Change in Composition of the Consortium

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

2.3.2 Where the Bidder is a Consortium, change in the composition of a Consortium may be permitted by the WD, GoO during the Bid Stage, only where:

- (a) the Lead Member continues to be the Lead Member of the Consortium;
- (b) the substitute is at least equal, in terms of Technical Capacity and Financial Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the prequalification and short-listing criteria for Applicants; and
- (c) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not an Applicant/Member/Associate of any other Consortium bidding for this Project.

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

2.3.4 The modified/ reconstituted Consortium shall be required to submit a revised Joint Bidding Agreement before the Bid Due Date.

2.4 Number of Applications and Costs thereof

2.4.1 An Applicant is eligible to submit only one Application for the Project. An applicant applying individually or as a member of a Consortium shall not be entitled

to submit another application either individually or as a member of any Consortium, as the case may be.

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

2.5 Site Visit and Verification of Information

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

2.6 Acknowledgement by Applicant

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

- (a) made a complete and careful examination of the RFQ;
- (b) received all relevant information requested from the WD, GoO;
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFQ or furnished by or on behalf of the WD, GoO relating to any of the matters referred to in Clause 2.5 above; and
- (d) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

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

- 2.7.1 Notwithstanding anything contained in this RFQ, the WD, GoO reserves the right to accept or reject any Application and to annul the Bidding Process and reject all Applications/ Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor.

- 2.7.2 The WD, GoO reserves the right to reject any Application and/ or Bid if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Applicant does not provide, within the time specified by the WD, GoO, the supplemental information sought by the WD, GoO for evaluation of the Application. Such misrepresentation/ improper response shall lead to the disqualification of the Applicant/Bidder. If the Applicant/Bidder is a

Consortium, then the entire Consortium shall be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the lowest/ highest Bidder gets disqualified/ rejected, then the WD, GoO reserves the right to:

- (i) invite the remaining Bidders to submit their Bids in accordance with the RFP; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the WD, GoO, including annulment of the Bidding Process.

2.7.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the WD, GoO, that one or more of the pre-qualification conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Applicant has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ, be liable to be terminated, by a communication in writing by the WD, GoO to the Applicant, without the WD, GoO being liable in any manner whatsoever to the Applicant.

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

B. DOCUMENTS

2.8 Contents of the RFQ

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

Invitation for Qualification

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

Appendices

- I. Letter comprising the Application
- II. Power of Attorney for signing of Application
- III. Power of Attorney for Lead Member of Consortium
- IV. Guidelines of the Department of Disinvestment
- V. Format of Statutory Auditor certificate confirming the Associate Status

2.9 Clarifications

- 2.9.1 Applicants requiring any clarification on the RFQ may notify the WD, GoO in writing or by fax and e-mail in accordance with Clause 1.2.12. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The WD, GoO shall endeavor to respond to the queries within the period specified therein. The responses will be sent by fax or e-mail. The WD, GoO will forward all the queries and its responses thereto, to all purchasers of the RFQ without identifying the source of queries.
- 2.9.2 The WD, GoO shall endeavor to respond to the questions raised or clarifications sought by the Applicants. However, the WD, GoO 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 WD, GoO to respond to any question or to provide any clarification.
- 2.9.3 The WD, GoO may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicants. All clarifications and interpretations issued by the WD, GoO shall be deemed to be part of the RFQ. Verbal clarifications and information given by WD, GoO or its employees or representatives shall not in any way or manner be binding on the WD, GoO.

2.10 Amendment of RFQ

- 2.10.1 At any time prior to the deadline for submission of Application, the WD, GoO may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ by the issuance of Addenda.
- 2.10.2 Any Addendum thus issued will be sent in writing to all those who have purchased the RFQ.
- 2.10.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the WD, GoO may, in its sole discretion, extend the Application Due Date.

C. PREPARATION AND SUBMISSION OF APPLICATION

2.11 Language

The Application and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Applicant with the Application may be in any other

language provided that they are accompanied by appropriate translations of the pertinent passages in the English language. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Application, the English language translation shall prevail.

2.12 Format and Signing of Application

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

2.12.2 The Applicant shall prepare one original set of the documents comprising the Application (together with originals/ copies of documents required to be submitted along therewith pursuant to this RFQ) and clearly marked "ORIGINAL". In addition, the Applicant shall submit 2 (two) copies of the Application, marked "COPY". In the event of any discrepancy between the original and the copies, the original shall prevail.

2.12.3 The Application and its copies shall be typed or written in indelible ink and signed by the authorized signatory of the Applicant who shall also initial each page in blue ink. All the alterations, omissions, additions or any other amendments made to the Application shall be initialed by the person(s) signing the Application. The Application shall contain page numbers and shall be hard bound.

2.13 Sealing and Marking of Applications

2.13.1 The Applicant shall submit the Application in the format specified at Appendix-I, and seal it in an envelope and mark the envelope as "APPLICATION". The Applicant shall seal the original and each copy of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as "ORIGINAL" and "COPIES". The envelopes shall then be sealed in an outer envelope.

2.13.2 Each envelope shall contain:

- (i) Application in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- (ii) Power of Attorney for signing the Application as per the format at Appendix-II;
- (iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
- (iv) copy of the Jt. Bidding Agreement, in case of a Consortium;
- (v) copy of Memorandum and Articles of Association, if the Applicant/ Consortium Member is a body corporate, and if a partnership then a copy of its partnership deed;

- (vi) copies of Applicant's/ each Consortium Member's duly audited balance sheet and profit and loss account for the preceding five years; and
- (vii) any other sector or project-specific requirement that may be specified by the WD, GoO.

Each of the envelopes shall clearly bear the following identification:

“Application for Qualification: Joda-Bamberi Road Project” and shall clearly indicate the name and address of the Applicant. In addition, the Application Due Date should be indicated on the right hand corner of each of the envelopes.

Each of the envelopes shall be addressed to:

ATTN. OF: Er Jayamangal Nayak
DESIGNATION: Chief Engineer, World Bank Projects, Orissa
ADDRESS: Office of the Engineer-in-Chief (Civil), Orissa,
Nirman Soudha, Keshari Nagar, Unit – V,
Bhubaneswar – 751 001, Orissa, INDIA
FAX NO: +91 674 – 239 1476
E-MAIL ADDRESS: pmuosrp@gmail.com

2.13.4 If the envelopes are not sealed and marked as instructed above, the WD, GoO assumes no responsibility for the misplacement or premature opening of the contents of the Application submitted.

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

2.14 Application Due Date

2.14.1 Applications should be submitted before 1600 hours IST on the Application Due Date, at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFQ. A receipt thereof should be obtained from the person specified in Clause 2.13.3.

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

2.15 Late Applications

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

2.16 Modifications/ Substitution/ Withdrawal of Applications

- 2.16.1 The Applicant may modify, substitute or withdraw its Application after submission, provided that written notice of the modification, substitution or withdrawal is received by the WD, GoO prior to Application Due Date. No Application shall be modified, substituted or withdrawn by the Applicant on or after the Application Due Date.
- 2.16.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.13, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- 2.16.3 Any alteration/ modification in the Application or additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the WD, GoO, shall be disregarded.

D. EVALUATION PROCESS

2.17 Opening and Evaluation of Applications

- 2.17.1 The WD, GoO shall open the Applications at 1630 hours IST on the Application Due Date, at the place specified in Clause 2.13.3 and in the presence of the Applicants who choose to attend.
- 2.17.2 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.
- 2.17.3 The WD, GoO will subsequently examine and evaluate Applications in accordance with the provisions set out in Section 3.
- 2.17.4 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the WD, GoO. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.17.5 Any information contained in the Application shall not in anyway be construed as binding on the WD, GoO, its agents, successors or assigns, but shall be binding against the Applicant if any Project is subsequently awarded to it under the Bidding Process on the basis of such information.
- 2.17.6 The WD, GoO reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any Application without assigning any reasons.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the WD, GoO in relation to or matters arising out of, or concerning the Bidding Process. The WD, GoO will treat all information,

submitted as part of Application, in confidence and will require all those who have access to such material to treat the same in confidence. The WD, GoO 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 WD, GoO.

2.19 Tests of Responsiveness

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

- (a) it is received as per format at Appendix-I.
- (b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.14.2;
- (c) it is signed, sealed, hard bound and marked as stipulated in Clause 2.13;
- (d) it is accompanied by the Power(s) of Attorney as specified in Clause 2.2.5 and Clause 2.2.6 (c);
- (e) it contains all the information (complete in all respects) as requested in this RFQ;
- (f) it contains information in formats same as those specified in this RFQ;
- (g) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);
- (h) it does not contain any condition or qualification; and
- (i) it is not non-responsive in terms hereof.

2.19.2 The WD, GoO reserves the right to reject any Application which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the WD, GoO in respect of such Application.

2.20 Clarifications

- (i) To facilitate evaluation of Applications, the WD, GoO may, at its sole discretion, seek clarifications from any Applicant regarding its Application. Such clarification(s) shall be provided within the time specified by the WD, GoO for this purpose. Any request for clarification(s) and all clarification(s) shall be in writing.
- (ii) If an Applicant does not provide clarifications sought under Sub-Clause (i) above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the WD, GoO may proceed to evaluate the Application by construing the particulars requiring

clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the WD, GoO.

E. QUALIFICATION AND BIDDING

2.21 Short-Listing and Notification

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

2.22 Submission of Bids

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

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

2.23 Proprietary Data

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

2.24 Correspondence with the Applicant

The WD, GoO shall not entertain any correspondence with any Applicant in relation to the acceptance or rejection of any Application.

3. CRITERIA FOR EVALUATION

3.1 Evaluation Parameters

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

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

- (a) Technical Capacity; and
- (b) Financial Capacity

3.2 Technical Capacity for Purposes of Evaluation

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

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

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

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

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

For the purpose of this RFQ:

- (i) Highways sector would be deemed to include highways, expressways, bridges, tunnels and airfields; and
- (ii) Core sector would be deemed to include power, telecom, ports, airports, railways, industrial parks, petroleum and natural gas, pipelines, irrigation, water supply, sewerage and real estate development.

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

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

- (a) It should have been undertaken on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or

- for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be;
- (b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% equity during the period for which Eligible Experience is being claimed;
 - (c) the capital cost of the project should be more than Rs. 10 Crores (Rs. Ten Crores); and
 - (d) the entity claiming experience shall, during the past 5 (five) financial years preceding the Application Due Date, have (i) paid for development of the project (excluding the cost of land), and/ or (ii) collected and appropriated the revenues from users availing of non-discriminatory access to or use of fixed project assets, such as revenues from highways, airports, ports and railway infrastructure, but shall not include revenues from sale or provision of goods or services such as electricity, gas, telecommunications or fare/freight revenues and other incomes of the company owning the Project.
- 3.2.4 For a project to qualify as an Eligible Project under Categories 3 and 4, the Applicant should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Application Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, payments/receipts of less than Rs. 10 Crores (Rs. Ten Crores only) shall not be reckoned as payments/receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. Further, the cost of land shall not be included in works.
- 3.2.5 The Applicant shall quote experience in respect of a particular Eligible Project under any one category only, even though the Applicant (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.
- 3.2.6 Applicant's experience shall be measured and stated in terms of a score (the "**Experience Score**"). The Experience Score for a given category would be the eligible payments and/or receipts specified in Clause 2.2.2(A), divided by one crore and then multiplied by the applicable factor in Table 3.2.6 below. In case the Applicant has experience across different categories, the score for each category would be computed as above and then aggregated to arrive at his Experience Score.

Table 3.2.6: Factors for Experience across Categories

	Factor
Category 1	1.67
Category 2	0.67
Category 3	1.00
Category 4	0.33

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

3.3 Details of Experience

3.3.1 The Applicant should furnish the details of Eligible Experience for the past 5 (five) years preceding the Application Due date.

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

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

3.4 Financial Information for Purposes of Evaluation

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

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

3.4.3 The Applicant must establish a minimum Net Worth of Rs. 28 Crores (Rs. Twenty Eight Crores), as specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of Appendix-I.

3.5 Short-listing of Applicants

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

3.5.2 The WD, GoO shall prepare a list of those Applicants who meet the minimum threshold Technical Capability and Financial Capacity as specified in Clause 2.2.2 (A) and 2.2.2 (B) respectively. Such Applicants included in the list would be declared as qualified for Bid Stage.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the WD, GoO shall reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2 Without prejudice to the rights of the WD, GoO under Clause 4.1 hereinabove, if an Applicant is found by the WD, GoO to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFQ issued by the WD, GoO during a period of 2 (two) years from the date such Applicant is found by the WD, GoO to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the WD, GoO who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the WD, GoO, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the WD, GoO 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 WD, GoO with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-APPLICATION CONFERENCE

- 5.1 A Pre-Application Conference of the interested parties shall be convened at the designated date, time and place. Only those persons who have purchased the RFQ document shall be allowed to participate in the Pre-Application conference. Applicants who have downloaded the RFQ document from the WD, GoO's website should submit a Demand Draft of Rs. 20,800 (Rupees Twenty Thousand Eight Hundred only) in shape of demand draft drawn in favour of Executive Engineer, PMU, OSRP payable at Bhubaneswar towards the cost of document, through their representative attending the conference. A maximum of two representatives of each Applicant shall be allowed to participate on production of authorisation letter from the Applicant.
- 5.2 During the course of Pre-Application Conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the WD, GoO. The WD, GoO shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Bhubaneswar shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The WD, GoO, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Applicant in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the WD, GoO by, on behalf of, and/ or in relation to any Applicant; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the WD, GoO, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

APPENDIX I

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

Dated:

To,
Chief Engineer, World Bank Projects, Orissa
Office of the Engineer-in-Chief (Civil), Orissa,
Nirman Soudha,
Keshari Nagar, Unit – V,
Bhubaneswar – 751 001,
Orissa, INDIA

Sub: Application for Pre-Qualification for Joda-Bamberi Road Project

Dear Sir,

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

2. All information provided in the Application and in Annexes I to IV is true and correct and all documents accompanying such Application are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the development, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the WD, GoO any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
5. I/ We acknowledge the right of the WD, GoO to reject our Application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
7. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the RFQ document, including any Addendum issued by the WD, GoO.

-
- (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFQ document; 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 RFQ document, in respect of any tender or request for proposal issued by or any agreement entered into with the WD, GoO 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 Clause 4 of the RFQ document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the RFQ document.
9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFQ document and are/ is qualified to submit a Bid.
10. I/ We declare that we/ any Member of the Consortium are/ is not a Member of a/ any other Consortium applying for pre-qualification.
11. I/ We certify that in regard to matters other than security and integrity of the country, we 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 have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/ Managers/ employees.
14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bidding Process. A copy of the aforesaid guidelines forms part of the RFQ at Appendix-IV thereof.

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFQ, we shall intimate the WD, GoO of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFQ document, and duly signed, is enclosed. The power of attorney for signing of application and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFQ, are also enclosed.
17. I/ We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate itself as such prior to execution of the Concession Agreement.
18. I/ We, hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the WD, GoO in connection with the selection of Applicants, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
19. I/ We agree and undertake to abide by all the terms and conditions of the RFQ document.
20. I/ We certify that in terms of the RFQ, my/our Net Worth is Rs.
(Rs. in words) and Experience Score is (Number in words).

In witness thereof, I/We submit this application under and in accordance with the terms of the RFQ document.

Yours faithfully,

Date: (Signature of the Authorized Signatory)

Place: (Name and designation of the Authorized Signatory)

Name and seal of the Applicant/ Lead Member

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

ANNEX-I

Details of Applicant

1. (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the WD, GoO:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:
4. Particulars of the Authorized Signatory of the Applicant:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:
5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Application.
 - (c) Information regarding role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role* {Refer clause 2.2.6(d)}	Percentage of equity in the Consortium {Refer Clauses 2.2.6(a) & (c)}
1			
2			
3			
4			

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

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

Name of Applicant/ Member of Consortium:

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

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

Appendix I
Annex-II

ANNEX-II

Technical Capacity of the Applicant @

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

Applicant type [#]	Member Code [*]	Project Code ^{**}	Category [§]	Experience* (Equivalent Rs. Crore) ^{§§}			Experience Score [£]	
				Payments made/received for construction of Eligible Project in Categories 3 and 5	Payments made for development of Eligible Projects in Categories 1 and 2	Revenues appropriated from Eligible Projects in Categories 1 and 2		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
Single entity Applicant		a						
		b						
		c						
		d						
Consortium Member 1		1a						
		1b						
		1c						
		1d						
Consortium Member 2		2a						
		2b						
		2c						
		2d						
Consortium Member 3		3a						
		3b						
		3c						
		3d						
Consortium Member 4		4a						
		4b						
		4c						
		4d						
Aggregate Experience e Score =								

Appendix I
Annex-II

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

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

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

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

\$ Refer Clause 3.2.1.

¥ In case of projects in Categories 1 and 2, expenditure on development of a project shall not include the cost of land. In case of Categories 3 and 4, construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of land be included.

\$\$ For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 45 (forty five) to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Application Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the average of buying and selling rates prevailing in New York on the relevant date.

£ Divide the amount in the Experience column by one crore and then multiply the product by applicable factor set out in Table 3.2.6. In case of projects in Categories 1 and 2, the figures in columns 6 and 7 may be added for computing the Experience Score of the respective projects.

ANNEX-III

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

(In Rs. crore^{\$\$})

Applicant type ^{\$}	Member Code [£]	Net Cash Accruals					Net Worth [€]
		Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Single entity Applicant							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
Consortium Member 4							

Name & address of Applicant's Bankers:

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

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

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

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

Appendix I
Annex-III

Instructions:

1. The Applicant/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Application Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Applicant and its Associates where the Applicant is relying on its Associate's financials;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + accrued liabilities).
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Application Due Date falls within three months of the close of the latest financial year, refer to Clause 2.2.12.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFQ document.
6. The applicant shall also provide the name and address of the Bankers to the Applicant.
7. The Applicant shall provide a Statutory Auditor's Certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.4 (ii) of the RFQ document.

ANNEX-IV

Details of Eligible Projects

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

Project Code:

Member Code:

Item (1)	Refer Instruction (2)	Particulars of the project (3)
Title & nature of the project	5	
Category	6	
Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or (c) revenues appropriated		
Entity for which the project was constructed/ developed	7	
Location	8	
Project cost Date of commencement of project/ contract Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	

Instructions:

1. Applicants are expected to provide information in respect of Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.2.3 and 3.2.4 of the RFQ, as the case may be. Information provided in this section is intended to serve as a back up for information provided in the Application. Applicants should also refer to the Instructions below.

2. For a single entity Applicant, the Project Codes would be a, b, c, d etc. In case the Applicant is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each Eligible Project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Applicant or its Member, write "Associate" along with Member Code.
5. Refer to Clause 3.2.1 of the RFQ for category number.
6. The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Application Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.2.12). For Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.2.3(c). In case of Categories 3 and 4, payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 3.2.4.
7. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
8. Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.2.3 and 3.2.4
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated.
10. For Categories 1 and 2, the equity shareholding of the Applicant, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.2.3).
11. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
12. Certificate from the Client or the Applicant's statutory auditor^s must be furnished as per format below.

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

Certificate from the Statutory Auditor regarding PPP Projects

This is to certify that (name of the Applicant/Member/Associate) is/was an equity shareholder in (title of the project company) and holds/ held Rs. cr. (Rupees crore) of equity (which constitutes%[€] of the total paid up and subscribed equity capital) of the project company from (date) to (date)[¥]. The project was/is likely to be commissioned on (date of commissioning of the project).

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

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

..... Authorised Signatory

Name:

Designation:

Signature of the Authorised Signatory and date

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

£ Refer Clause 3.2.1 of the RFQ.

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

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

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

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

Certificate from the Statutory Auditor/ Client regarding Construction Works

This is to certify that (name of the Applicant/Member/Associate) was engaged by (title of the project company) to execute (name of project) for (nature of project)^o. The construction of the project commenced on (date) and the project was/ is likely to be commissioned on (date, if any). It is certified that (name of the Applicant/ Member/ Associate) received/paid Rs. cr. (Rupees crore) by way of payment for the aforesaid construction.

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

.....

It is further certified that the payments/ receipts indicated above are restricted to the share of the Applicant who undertook these works as a partner or a member of joint venture/ consortium.[▲]

(Authorised Signatory)

Name:

Designation:

Signature of the Authorised Signatory
and date.

♣ Refer Clauses 3.2.1 and 3.2.4 of the RFQ.

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

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

▲ This certification should be provided in case of jobs/ contracts, which are executed as part of a partnership/ joint venture/ consortium. The payments indicated in the certificate should be restricted to the share of Applicant in such partnership/ joint venture/ consortium. This portion may be omitted if the contract did not involve a partnership/ joint venture/ consortium.

15. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score[£].

£.Refer Clause 3.2.6 of the RFQ.

ANNEX-V

Statement of Legal Capacity

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

Ref. Date:

To,
Chief Engineer, World Bank Projects, Orissa
Office of the Engineer-in-Chief (Civil), Orissa,
Nirman Soudha,
Keshari Nagar, Unit – V,
Bhubaneswar – 751 001,
Orissa, INDIA

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

Authorised Signatory
For and on behalf of

*Please strike out whichever is not applicable.

APPENDIX II

Power of Attorney for Signing of Application

(Refer Clause 2.2.5)

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

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

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

For
.....

(Signature)
(Name, Title and Address)

Witnesses:

1.

(Notarized)

2.

Accepted

.....
(Signature)

(Name, Title and Address
of the Attorney)

Notes:

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

APPENDIX III

Power of Attorney for Lead Member of Consortium

(Refer Clause 2.13.2)

Whereas the Works Department, Government of Orissa (“WD, GoO”) has invited applications from interested parties for the Joda-Bamberi Road Project (the “Project”).

Whereas,,, and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Qualification document (RFQ), Request for Proposal (RFP) and other connected documents in respect of the Project, and Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and

things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF2.....

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

Witnesses:

- 1.
- 2.

.....
(Executants)

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

Notes:

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

APPENDIX IV

Guidelines of the Department of Disinvestment

(Refer Clause 1.2.1)

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment

Block 14, CGO Complex

New Delhi.

Dated 13th July, 2001.

OFFICE MEMORANDUM

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

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

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

- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

APPENDIX-V

STATUTORY AUDITORS CERTIFICATE*
(Ref. RFQ Clause 2.2.9)

Dated:-----**

We-----Statutory Auditor of -----(the Applicant/
member of Consortium Applicant) hereby certify as under:-

M/s----- (Associate) is a Company/ Corporation and -----
(the Applicant/ member of Consortium Applicant) owns directly/ indirectly more than 50%
of the voting shares of----- (Associate)

OR

M/s----- (Associate) is neither a Company nor Corporation and -----
----- (the Applicant/ member of Consortium Applicant) has the power to directly control
the management and policies of----- (Associate)

The----- (the Applicant/ member of Consortium Applicant) derives the
aforesaid power based on the following documents:-

- 1.
- 2.
- 3.

* Note: Separate Statutory Auditor's Certificate is required for each Associate

** The date shall be between date of issue of RFQ by WD, GoO and the date of submission
of RFQ by (Applicant/ Consortium)