

Request for Qualification

Global Tender No. 2009/M(W)/Project/Majerhat

For

**Setting up a new factory at Majerhat,
Kolkata(West Bengal) (INDIA) for
manufacturing and supplying High Capacity
Freight Bogies to Indian Railways**

Ministry of Railways

Government of India

GLOSSARY

Agreement	As defined in Clause 1.2.3
Applicant(s)	As defined in Clause 1.3.1
Application	As defined in the Disclaimer
Application Due Date	As defined in Clause 1.2.9
Associate	As defined in Clause 2.2.8
Authority	As defined in Clause 1.1.4
Bids	As defined in Clause 1.3.4
Bid Due Date	As defined in Clause 1.3.4
Bid Security	As defined in Clause 1.3.10
Bidders	As defined in Clause 1.2.2
Bidding Documents	As defined in Clause 1.3.4
Bidding Process	As defined in Clause 1.3.1
Bid Stage	As defined in Clause 1.3.1
Conflict of Interest	As defined in Clause 2.2.1(c)
Consortium	As defined in Clause 2.2.1(a)
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 1.2.8
Experience Score	As defined in Clause 3.2.6
Financial Capacity	As defined in Clause 2.2.2 (B)
Government	Government of India or any State government
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 2.2.3(ii)
PPP	Public Private Partnership
Price	As defined in Clause 1.3.7
Project	As defined in Clause 1.2.1
Qualification	As defined in Clause 1.3.1

Qualification Stage	As defined in Clause 1.3.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposals	As defined in Clause 1.3.1
RFQ	As defined in the Disclaimer
Site	As defined in Clause 1.2.1
SPV	As defined in Clause 2.2.6
Supplier	As defined in Clause 1.2.3
Successful Bidder	As defined in Clause 1.2.3
Threshold Technical Capability	As defined in Clause 2.2.2 (A) (iii)
Technical Capacity	As defined in Clause 2.2.2 (A)

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.

TABLE OF CONTENTS

Sl. No.	Contents	Page No.
	Glossary	3
	Disclaimer	8
1	Introduction	10
1.1	Background	10
1.2	The Project	11
1.3	Brief description of Bidding Process	12
1.4	Schedule of Bidding Process	14
2	Instructions to Applicants	16
A	General	16
2.1	Scope of Application	16
2.2	Eligibility of Applicants	16
2.3	Change in composition of the Consortium	23
2.4	Number of Applications and costs thereof	23
2.5	Site visit and verification of information	24
2.6	Acknowledgement by Applicant	24
2.7	Right to accept or reject any or all Applications/ Bids	24
B	Documents	26
2.8	Contents of the RFQ	26
2.9	Clarifications	26
2.10	Amendment of RFQ	27
C	Preparation and Submission of Application	27
2.11	Language	27

2.12	Format and signing of Application	27
2.13	Sealing and marking of Applications	28
2.14	Application Due Date	29
2.15	Late Applications	30
2.16	Modifications/ substitution/ withdrawal of Applications	30
D	Evaluation Process	30
2.17	Opening and Evaluation of Applications	30
2.18	Confidentiality	31
2.19	Tests of responsiveness	31
2.20	Clarifications	32
E	Qualification and Bidding	32
2.21	Short-listing and notification	32
2.22	Submission of Bids	33
2.23	Proprietary data	33
2.24	Correspondence with the Applicant	33
3	Criteria for Evaluation	34
3.1	Evaluation parameters	34
3.2	Technical Capacity for purposes of evaluation	34
3.3	Details of Experience	35
3.4	Financial information for purposes of evaluation	36
3.5	Short-listing of Applicants	36
4	Fraud and Corrupt Practices	37
5	Pre-Application Conference	39
6	Miscellaneous	40

Appendices

I	Format for Application	41
	Annex – I Details of Applicant	45
	Annex – II Technical Capacity of Applicant	48
	Annex – III Financial Capacity of Applicant	50
	Annex – IV Details of Castings Manufactured	52
	Annex – V Statement of Legal Capacity	55
II	Format for Power of Attorney for signing of Application	56
III	Format for Power of Attorney for Lead Member of Consortium	58
IV	Guidelines of the Department of Disinvestment	61

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 Ministry of Railways, Government of India (the “**Authority**”) 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 Authority to the prospective Applicant(s) or any other person. The purpose of this RFQ is to provide interested parties with information that may be useful to them in the formulation of their application for qualification pursuant to this RFQ (the “**Application**”). This RFQ includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFQ may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFQ. The assumptions, assessments, statements and information contained in this RFQ may not be complete, accurate, adequate or correct. Each Applicant should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFQ and obtain independent advice from appropriate sources.

Information provided in this RFQ to the Applicant(s) is on a wide range of matters, some of which 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 Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

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

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

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

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

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

1.0 Introduction

1.1 Background Information

- 1.1.1 Indian Railways (IR) has been a dominant mode of bulk freight and long distance passenger transport in India. For more than 150 years, Indian IR has played a significant role in transportation of passengers and freight throughout the country. With a network spanning about 64,000 route kilometers, carrying more than 5 billion passengers and 830 million tons in freight annually, IR is the second largest railway network in the world and the largest in Asia under one management.
- 1.1.2 India has experienced rapid economic growth in the recent years. In-line with the overall economic growth in the country during the recent past, IR also witnessed a phenomenal growth in its freight and passenger business. It is estimated that, on an average, the freight loading (in terms of total tonnage) increased by 40%, net tonne kms (NTKM) increased by 35% and passenger kms. by 35% during the period of the Xth Five Year Plan (2002-2007).
- 1.1.3 In a bid to improve the trailing load of its freight trains, IR intends to operate freight wagons with higher axle load capacity of 25 / 32.5 tonnes. However, currently IR and other bogie manufacturers do not possess technology for higher axle load bogies (and some other components) which are critical for running high capacity freight wagons.
- 1.1.4 Therefore, the Ministry of Railways, Government of India (the “**Authority**”) has taken a decision to enable setting up a new factory for manufacturing High Capacity Freight Bogies at Majerhat, West Bengal. For developing the new factory, the Authority has decided to carry out the bidding process for selection of the bidder to whom the Project may be awarded.

1.2 The Project

- 1.2.1 The Project for which the Applications are being invited pursuant to this RFQ Document shall comprise of manufacture and supply of High Capacity Freight Bogies to the Authority by setting up a new High Capacity Freight Bogies factory at Majerhat (Kolkata, West Bengal) (hereafter referred as the “**Site**”).
- 1.2.2 The Authority intends to pre-qualify and short-list suitable Applicants (the “**Bidders**”) who will be eligible for participation in the Bid Stage, for

awarding the Project through an open competitive bidding process in accordance with the procedure set out herein.

- 1.2.3 The selected Bidder undertake to incorporate itself as a company under the Companies Act 1956 prior to execution of the agreement (the “**Supplier**” or the “**Successful Bidder**”), and shall be responsible for setting up a factory for manufacturing about 25,000 High Capacity Freight Bogies over a duration of around 5 years for supply thereof under and in accordance with the provisions of a procurement contract (the “**Agreement**”) to be entered into between the Supplier and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.
- 1.2.4 The scope of work will broadly include setting up the factory for manufacture and supply of about 25,000 High Capacity Freight Bogies over duration of about 5 years thereof in accordance with the Agreement. In addition to this, the weight of machined castings to be manufactured is estimated to be about 1.5 MT.
- 1.2.5 The Authority is currently in the process of acquiring the rights of a new technology through a Transfer of Technology (ToT), which includes detail designs, drawings etc. for the purpose of manufacturing high capacity freight bogies. Such ToT agreement has been entered into by the Authority. The Authority intends to pass on thus acquired rights and technology, non-exclusively, to the selected bidder by a suitable ToT arrangement, details of which will be provided in the RFP. Such technology will be required to be used by the selected bidder for manufacturing and supplying bogies to the Authority.
- 1.2.6 The rights of such technology will be for complete bogies, including wheel and axle assembly. Complete bogie mounted brake system and brake rigging will also be included in the proposed technology to be acquired and subsequently transferred to the Supplier. The technology may include alternative design of brake beam and brake linkages of conventional under frame mounted air brake system for both axle loads i.e. 25.0 tonnes and 32.5 tonnes. It is to be noted that above mentioned aspects of the proposed new technology to be acquired by the Authority are tentative and will be detailed out in the RFP.

- 1.2.7 Land for setting up the new factory at the Site is being acquired by the Authority and shall be leased to the Supplier on a long – term basis..
- 1.2.8 Indicative capital costs of the Project (the “**Estimated Project Cost**”) is about Rs. 100 crores and 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.
- 1.2.9 The Authority shall receive Applications pursuant to this RFQ in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority, and all Applications shall be prepared and submitted in accordance with such terms on or before the Application Due Date specified in Clause 1.4 (the “**Application Due Date**”)

1.3 Brief Description of the Bidding Process

- 1.3.1 The Authority has adopted a two-stage process (collectively referred to as the "**Bidding Process**") for selection of the bidder for award of the Project. The first stage (the "**Qualification Stage**") of the process involves qualification (the “**Qualification**”) of interested parties/ consortia who make an Application in accordance with the provisions of this RFQ (the "**Applicants**"). At the end of this stage, the Authority 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**”).
- 1.3.2 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 Authority shall be entitled to disqualify an Applicant in accordance with the aforesaid guidelines at any stage of the Bidding Process. Applicants must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.
- 1.3.3 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 Authority shall be invited to submit their Bids for the Project. The Authority is likely to provide a comparatively short time span for

submission of the Bids for the Project. The Applicants are, therefore, advised to visit the Site and familiarize themselves with the Project.

- 1.3.4 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 Authority, pursuant to the RFP (collectively the "**Bidding Documents**"). The Bidding Documents for the Project will be provided to every Bidder on payment of Rs. (Rs. twenty five thousand only). The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.4 for submission of bids (the "**Bid Due Date**").
- 1.3.5 As part of the Bidding Documents, the Authority will provide for the Project draft Agreement detailing terms and conditions for Procurement of High Capacity Freight Bogies and Lease of Land and shall provide other information pertaining/ relevant to the Project available with it. Drafts of the following agreements/contracts dealing with the terms and conditions for undertaking the Project shall be included with the RFP Documents:
- a) Procurement Agreement;
 - b) Land Lease Agreement;
 - c) Transfer of Technology (ToT) Agreement.
- 1.3.6 The period of the above Agreement shall be pre-determined, and will be indicated in the draft Agreement forming part of the Bidding Documents.
- 1.3.7 Bids will be invited for the Project on the basis of the lowest unit price of a High Capacity Freight Bogie for procurement thereof (the "**Price**").
- 1.3.8 The Supplier shall be entitled to manufacture and supply the High Capacity Freight Bogie in accordance with the Agreement and to recover the Price thereof from the Authority.
- 1.3.9 In terms of the RFP, a Bidder will be required to deposit, along with its Bid, a bid security of Rs. 5,000,000 (fifty lakhs) only (the "**Bid Security**"), refundable not later than 60 days from the Bid Due Date except in the case of the lowest Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 180

(one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 1.3.10 The Price shall constitute the sole criteria for evaluation of Bids. The Project shall be awarded to the Bidder quoting the lowest Price. Generally, the Successful Bidder shall be selected on the basis of the least total Price to the Authority for procurement of High Capacity Freight Bogies. 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 Bidder in case such lowest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the lowest Bidder, the Authority may, in its discretion, invite fresh Bids from all Bidders or annul the Bidding Process, as the case may be.
- 1.3.11 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 and implementation of the Project.
- 1.3.12 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.
- 1.3.13 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. The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/Request for Additional Information concerning RFQ for setting up a new factory at Majerhat for manufacturing and supplying High Capacity Freight Bogies to Indian Railways"

1.4 Schedule of the Bidding Process

- 1.4.1 The Authority shall endeavor to adhere to the following schedule :

Qualification Stage

S. No.	Event Description	Date
1	Issue of Request for Qualification (RFQ)	14 th August 2009
2	Last Date for Receiving Queries on RFQ	8 th September 2009

S. No.	Event Description	Date
3	Pre- Application Conference	14 th September 2009
4	Authority response to Queries latest by	18 th September 2009
5	Application Due Date	28 th September 2009
6	Announcement of Qualified Applicants	Within 15 days of Application Due Date

Bid Stage

To be specified later

2.0 Instructions to Applicant

A. General

2.1 Scope of Application

- 2.1.1 The Authority wishes to receive Applications for Qualification in order to short-list experienced and capable Applicants for the 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, government-owned 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 may be considered 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 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
- v. 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 Authority in the preparation of any documents, design or technical specifications of the Project.

(d) An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Applicant in any manner for matters related to or incidental to the Project till one month after Financial Close.

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

- (A) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Applicant shall, over the past five (5) financial years preceding the Application Due Date have:

- i. manufactured and supplied single piece steel castings weighing more than 400 kg of which at least 25% (by weight) or more should have been of radiographic quality comprising Eligible Projects; and/or
- ii. manufactured and supplied intricate castings using cores made out of “Sodium Silicate-Carbon Dioxide Sand System” comprising Eligible Projects; and/or
- iii. manufactured and supplied single piece steel castings weighing more than 100 kg comprising Eligible Projects

such that the sum total of the weight of above castings is more than twenty five thousand (25,000) MT (the “**Threshold Technical Capability**”).

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

(B) Financial Capacity: The Applicant shall have a minimum Net Worth (the “**Financial Capacity**”) of Rs. twenty five (25) crore 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 The Applicants shall enclose with its application, to be submitted as per the format at Appendix-I, complete with its Annexes, the following:

- i. certificate(s) from its statutory auditors or the concerned customer(s) stating the number of castings designed, manufactured and supplied, during the past 5 years as 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 concerned customer(s); 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 2.2.3 (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.

- 2.2.4 The Applicant should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Application to commit the Applicant.
- 2.2.5 Any entity which has been barred by the Central/a State Government of India or any entity controlled by them from participating in any project, 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.
- 2.2.6 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 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 2 (two) members in the order of their equity contribution;
 - 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 51% 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. For the avoidance of doubt, 51% equity hereunder shall be computed with reference to the equity remaining after subscription by the Authority;
 - 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 Agreement and subsequently carry out all the responsibilities as the Successful Bidder, in case the 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 such time they incorporate an SPV and provide the specified performance security or bond, be liable jointly and severally for execution of the Project in accordance with the terms of the Agreement.

(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 fulfil the above requirements, failing which the Application shall be considered non-responsive).

- 2.2.7 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.

- 2.2.8 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 hereof, 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.

- 2.2.9 The following conditions shall be adhered to while submitting an Application:
- i. Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
 - ii. information supplied by an Applicant (or other constituent member if the Applicant is a Consortium) must apply to the Applicant or constituent member 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 Section 3.0 below; and

- iv. in case the Applicant is a consortium, each member of the Consortium should substantially satisfy the pre-qualification requirements to the extent specified herein.

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

- i. Where, on the date of the Application, not less than 15% (fifteen percent) 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
- ii. if at any subsequent stage after the date of the Application, there is an acquisition of not less than 15% (fifteen percent) 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 sub clause (ii) above, the continued Qualification of the Applicant shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Applicant.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

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

- 2.2.11 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 Qualified Applicant

- 2.3.1 Change in the composition of a Consortium will not be permitted by the Authority during the Qualification Stage.
- 2.3.2 Where the Bidder is a Consortium, change in the composition of a Consortium may be permitted by the Authority during the Bid Stage, only where:
- a) the 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 pre-qualification 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 Authority and must be approved by the Authority in writing.
- 2.3.4 The modified/ reconstituted Consortium shall be required to submit a revised Jt. Bidding Agreement before the Bid Due Date.

2.4 Number of Applications and cost 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 Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site Visit and verification of information

- 2.5.1 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 Acknowledgment by Applicant

- 2.6.1 It shall be deemed that by submitting the Application, Applicant has:
- a) made a complete and careful examination of the RFQ Document;
 - b) received all relevant information requested from the Authority;
 - 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 Authority relating to any of the matters referred to in Clause 2.5 above; and
 - d) agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.6.2 The Authority shall not be liable for any omission, mistake or error 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 Authority.

2.7 Right to Accept any Application and to Reject any or all Applications

- 2.7.1 Notwithstanding anything contained in this RFQ, the Authority reserves the right to accept or reject any Application and or to annul the Bidding Process

and reject all Applications, at any time without any liability whatsoever or any obligation for such acceptance, rejection or annulment, without assigning any reasons therefor.

2.7.2 The Authority also reserves the right to reject any Application, if :

- a) at any time, a material mis-representation is made or uncovered.
- b) the Applicant does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Application.

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 Bidder gets disqualified/ rejected, then the Authority reserves the right to:

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

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

2.7.4 The Authority reserves the right to verify all statements, information and documents submitted by the Applicant in response to the RFQ. Failure of the Authority to undertake such verification shall not relieve the Applicant of its

obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

B. Documents

2.8 Contents of RFQ

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

Sections

Section 1.0	Introduction
Section 2.0	Instructions to Applicants
Section 3.0	Criteria for Evaluation
Section 4.0	Fraud and Corrupt Practices
Section 5.0	Pre Application Conference
Section 6.0	Miscellaneous

Appendices

1. Letter comprising the Application
2. Power of Attorney for signing of Application
3. Power of Attorney for Lead Member of Consortium
4. Guidelines of the Department of Disinvestment

2.9 Clarifications

- 2.9.1 Applicants requiring any clarification on the RFQ may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.3.13. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.4. The Authority shall endeavour to respond to the queries within the period specified therein. The responses will be sent by fax or e-mail. The Authority will forward all the queries and its responses thereto, to all purchasers of the RFQ without identifying the source of queries.
- 2.9.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Applicants. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or

requiring the Authority to respond to any question or to provide any clarification.

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

2.10 Amendment of RFQ

- 2.10.1 At any time prior to the Application Due Date, the Authority for any reason, whether on their own initiative or in response to clarifications requested by an Applicant, may modify the RFQ by the issuance of Addenda.
- 2.10.2 Any Addenda thus issued shall be part of the RFQ and shall be communicated in writing to all those who have purchased the RFQ Document.
- 2.10.3 To give Applicants reasonable time in which to take Addenda into account in preparing their applications, the Authority reserves the right to extend the Application Due Date.

C. Preparation and Submission of Application

2.11 Language

- 2.11.1 The Application and all related correspondence and documents should be written in the English language. Supporting documents and printed literature furnished by Applicant with the Application may be in any other language provided that they are accompanied by appropriate translations thereof in English and duly certified or sworn to and notarised. Supporting materials, which are not translated into English, shall not be considered for Qualification. For the purpose of interpretation and evaluation of the Application, translated documents in English duly certified or sworn to and notarised shall prevail.

2.12 Format and Signing of Application

- 2.12.1 The Applicant would provide all the information as per this RFQ. For the purpose of Qualification, the Authority would evaluate only those Applications that are received in the required format and complete in all respects. Incomplete and / or conditional Applications may be liable to rejection.

- 2.12.2 The Applicant shall prepare and submit **one original document** comprising the Application (together with original documents required to be submitted along therewith pursuant to this RFQ) and clearly mark the original document as "**ORIGINAL**". In addition, the Applicant shall submit **2 (two)** copies of the Application clearly 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 Authorised 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

Each of the envelopes shall clearly bear the following identification:

“Application for Qualification: for the High Capacity Freight Bogies 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.

2.13.3 Each of the envelopes shall be addressed to:

ATTN. OF:	Mr. S. S. Gavane
DESIGNATION	Group General Manager, RITES Ltd.
ADDRESS:	Room No. R-02-08, RITES Bhawan
	Plot No. 1, Sector 29
	Gurgaon – 122001 (India)
	Tel No.: +91 124 2571637
FAX NO:	+91 124 2571693
E-MAIL ADDRESS:	gavane@rites.com

2.13.4 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Application 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 1100 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 Authority may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Applicants.

2.15 Late Applications

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

2.16 Modifications/ Substitution/ Withdrawal of Applications

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

2.16.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.13, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.

2.16.3 Any alteration/ modification in the Application or additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

D. Evaluation Process

2.17 Opening of Application

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

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

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

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

- 2.17.5 Any information contained in the Application shall not in anyway be construed as binding on the Authority, 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 Authority 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

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

2.19 Test of Responsiveness

- 2.19.1 Prior to evaluation of Applications, the Authority shall determine whether each Application is responsive to the requirements of the RFQ. An Application shall be considered responsive only if:
- a) it is received as per format at Appendix-I.
 - b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.14.2;
 - c) it is signed, sealed, hard bound and marked as stipulated in Clause 2.13;
 - d) it is accompanied by the Power(s) of Attorney as specified in Clause 2.2.4 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 Authority reserves the right to reject any Application which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Application.

2.20 Clarifications

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

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

E. Qualification and Bidding

2.21 Shortlisting and notification

2.21.1 After the evaluation of Applications for Qualification, the Authority would announce a list of Applicants who have been qualified for participating further in the Bid Stage. At the same time the Authority would notify the other Applicants that they have not been qualified for the Bid Stage. The Authority will not entertain any query or clarification from Applicants who fail to qualify.

2.22 Submission of Bids/Proposals

- 2.22.1 The Bidders will be requested to submit a Bid in the form and manner to be set out in the Bidding Documents.
- 2.22.2 Only pre-qualified Applicants shall be invited by the Authority to submit their Bids for the Project. The Authority is likely to provide a comparatively short time span for submission of the Bids for the Project. The Applicants are therefore advised to visit the site and familiarise themselves with the Project by the time of submission of the Application. No extension of time is likely to be considered for submission of Bids pursuant to invitation that may be issued by the Authority.

2.23 Proprietary Data

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

2.24 Correspondence with the Applicant

- 2.24.1 The Authority shall not entertain any correspondence with any Applicant in relation to the acceptance or rejection of any Application.

3.0 Criteria for Qualification

3.1 Evaluation Parameters

- 3.1.1 Only those Applicants who meet the eligibility criteria specified in Clauses 2.2.2 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: Single piece castings weighing more than 400 kg of which at least 25% (by weight) or more should have been of radiographic quality

Category 2: Intricate castings using cores made out of “Sodium Silicate-Carbon Dioxide Sand System”

Category 3: Single piece steel castings weighing more than 200 kg

Category 4: Single piece steel castings weighing more than 100 kg

- 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, 2, 3 and 4, the entity claiming experience should have held, in the company supplying the castings comprising the Eligible Project, a minimum of 26% equity during the period for which Eligible Experience is being claimed.
- 3.2.4 For Qualification, the Applicant shall provide details of two (2) or more Eligible Projects.

- 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 one point for each MT of the casting manufactured and supplied included in an Eligible Project 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	1.0
Category 2	1.0
Category 3	0.75
Category 4	0.75

- 3.2.7 Experience for any activity relating to the above criteria 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 five (5) 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 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. twenty five (25) crore, 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 Applicants shall then be ranked on the basis of their respective Aggregate Experience Scores and short-listed for submission of Bids. The Authority expects to short-list upto 5 (five) pre-qualified Applicants for participation in the Bid Stage. The Authority, however, reserves the right to increase the number of shortlisted pre-qualified Applicants ("Bidders") by adding an additional Applicant.

4.0 Fraud and Corrupt Practices

- 4.1.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority 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.
- 4.1.2 Without prejudice to the rights of the Authority under Clause 4.1.1 hereinabove, if an Applicant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFQ issued by the Authority during a period of 2 (two) years from the date such Applicant is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.1.3 For the purposes of this Section 4.0, the following terms shall have the meaning hereinafter respectively assigned to them:
- a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LoA or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding

Process) or (ii) engaging in any manner whatsoever, till one month after Financial Close, whether during the Bidding Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

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

5.0 Pre-Application Conference

- 5.1.1 The Authority proposes to hold a Pre-Application Conference to address queries, if any, raised by the interested parties. The Pre-Application Conference shall be held on the date specified in the Schedule of Bidding Process in Clause 1.4 at 1400 hrs and at the venue specified below:

Conference Hall,
Ministry of Railways
Rail Bhawan, New Delhi – 110001

- 5.1.2 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 Authority's website should submit a Demand Draft of Rs. 25,000 (Rs. twenty thousand only) towards the cost of document, through their representative attending the conference. A maximum of two (2) representatives of each Applicant shall be allowed to participate on production of authority letter from the Applicant.
- 5.1.3 During the course of Pre-Application conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6.0 Miscellaneous

6.1 Other Provisions

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

(Refer Clause 2.13.2)

[Date]

Shri S. S. Gavane
Group General Manager, RITES Ltd.
Room No. R-02-08, RITES Bhawan,
Plot No. 1, Sector 29,
Gurgaon – 122001 (India)

Dear Sir,

Sub: Application for pre-qualification for setting up a new factory at Majerhat for manufacturing and supplying High Capacity Freight Bogies to Indian Railways (“Project”)

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.

1. All information provided in the Application and in the Annexures is true and correct and all documents accompanying such Application are true copies of their respective originals.
2. This statement is made for the express purpose of qualifying as a Bidder for undertaking the aforesaid Project.
3. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
4. I/ We acknowledge the right of the Authority to reject our Application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

5. 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.
6. I/ We declare that:
 - a. I/We have examined and have no reservations to the RFQ document, including any Addendum issued by the Authority;
 - b. I/We do not have any conflict of interest in accordance with Clause 2.2.1 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 Section 4.0 of the RFQ document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4.0 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.
7. 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.
8. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) the requirements as specified in the RFQ document and are/ is 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.

9. I/We declare that we/ any Member of the Consortium are/ is not a Member of a/ any other Consortium applying for pre-qualification.
10. 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.
11. 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.
12. 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.
13. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFQ.
14. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFQ, we shall intimate the Authority of the same immediately.
15. The Statement of Legal Capacity as per format provided at Annex V in Appendix I of the RFQ document, and duly signed, is enclosed
16. 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 agreement(s)/ contract(s).
17. I/We, hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of 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.

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

19. I/we certify that in terms of the RFQ, my/our Networth is Rs. _____ (Rs. in words).

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

Thanking you,

Yours faithfully,

Date: _____ (Signature of the Authorised Signatory of the Applicant)

Place: _____ (Name and designation of the Authorised Signatory of the Applicant)

(Name of the Applicant/Lead Firm)

Appendix I

Annex – I

Details of Applicant

1. Details of Applicant:
 - (a) Name
 - (b) Country of incorporation
 - (c) Address of corporate headquarters and its branch office(s), in India, if any
 - (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. (Not Exceeding 2 A4 Pages)
3. Details of individual (s) who will serve as the point of contact / communication within the Company:
 - (a) Name :
 - (b) Designation :
 - (c) Company :
 - (d) Address :
 - (e) Telephone Number :
 - (f) E-Mail Address :
 - (g) Fax Number :
4. Name, Designation, Address and Phone Numbers of Authorised Signatory of the Applicant:
 - (a) Name :
 - (b) Designation :
 - (c) Address :
 - (d) Telephone Number :
 - (e) E-Mail Address :
 - (f) Fax Number :
5. In case of a Consortium:

- 5.1 The information above (1-4) should be provided for all the members of the Consortium.
- 5.2 A copy of Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached.
- 5.3 Information regarding role of each member should be provided as per table below:

Sr. No.	Name of Member	Role* (refer Clause 2.2.6 (d))	Percentage of equity to be held in the Consortium (refer Clause 2.2.6 (a))
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*

6. The following information shall also be provided by the Applicant (in case the Applicant is a Consortium, this information must be provided for each member of the Consortium):

Name of the Applicant/member of the Consortium

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

	<i>last three years?</i>		
--	--------------------------	--	--

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

Appendix I

Annex – 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¥ (Technical Experience in manufacturing and supplying castings)				Experience Score£
				Weight of each of single piece steel castings weighing more than 400 Kg. of which at least 25% (by weight) or more should have been of radiographic quality manufactured and supplied	Weight of each of intricate castings using core made out of “Sodium Silicate – Carbon Dioxide Sand System” manufactured and supplied	Weight of each of single piece steel castings weighing more than 200 Kgs. manufactured and supplied	Weight of each of single piece steel castings weighing more than 100 Kgs. manufactured and supplied	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Single Entity Applicant		a						
		b						
		c						
		d						
Consortium Member 1		1a						
		1b						
		1c						
		1d						
Consortium Member 2		2a						
		2b						

		2c						
		2d						
Aggregate Experience Score								

® Provide details of only those castings that have been manufactured and supplied by the Applicant under its own name and/ or by an Associate specified in Clause 2.2.8 and/or by a project company eligible under Clause 3.2.3 . In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Applicant with such Associate, in terms of Clause 2.2.8, shall be provided. In case the Application Due Date falls within three months of the close of the latest financial year, refer to Clause 2.2.11.

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.

*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, OM means Other Member.

**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.

\$ Refer Clause 3.2.1.

¥ Details submitted in respect of Eligible Projects shall include 2 (two) or more Eligible Projects comprising of castings, such that the sum total of the weight of the castings manufactured and supplied is at least twenty five thousand (25,000) MT, in terms of the Clause 2.2.2 A

£ The Experience Score for a given category would be one point for each MT of casting included in an Eligible Project and then multiplied by applicable factor set out in Table 3.2.6. 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.

Appendix I

Annex – III

Financial Capacity of the Applicant

(Refer to Clauses 2.2.2(B), 2.2.3 (ii) and 3.4 of the RFQ)

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

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

Name & address of Applicant's Bankers:

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

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

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

^{\$\$} For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 40 (forty) 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.

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 2.2.11.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFQ document.
6. The Applicant shall also provide the name and address of the Bankers to the Applicant.
7. The Applicant shall provide an Auditor's Certificate specifying the net worth of the Applicant and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.3 (ii) of the RFQ document.

Appendix I

Annex – IV

Details of Castings Manufactured

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

Project Code:

Member Code:

Item	Refer Instruction	Particulars of the Project
(1)	(2)	(3)
Title and nature of Project		
Category	5	
Yearwise a) Weight of each of single piece steel castings weighing more than 400 Kg. (of which at least 25% (by weight) or more are of radiographic quality) manufactured and supplied, b) Weight of each of intricate castings using core made out of “Sodium Silicate – Carbon Dioxide Sand System” manufactured and supplied, c) Weight of each of single piece steel castings weighing more than 200 Kgs. manufactured and supplied, d) Weight of each of single piece steel castings weighing more than 100 Kgs. manufactured and supplied	6	
Customer to which the above castings were supplied	7	
Location of the Customer		
Date of completion of project/contract	8	

Equity shareholding in the company which supplied the castings (with period during which equity was held)	9	
--	---	--

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 2.2.2 (A) and 3.2 of the RFQ. 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 of the 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 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 sum total of the weight of the castings supplied 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 2.2.11). Details submitted here shall also include 2(two) or more Eligible Projects comprising manufacturing and supplying castings.

7. In case of projects in all Categories, particulars such as name, address and contact details of the client/customer need to be provided.
8. For all Categories, the date of commissioning of the project, upon completion, should be indicated.
9. For all Categories, 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).
10. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
11. Certificate from the client or the Applicant's statutory auditor must be furnished as per format below. Provide certificate in this format only and please attach explanatory notes to the Certificate, if necessary.

Certificate from the Statutory Auditor regarding Eligible Projects

This is to certify that _____ (*name of the Applicant/Member/Associate*) is/ was an equity shareholder in _____ (*title of the castings supply company*) and holds/ held Rs. *** cr. of equity (which constitutes ____%[€] of the total paid up and subscribed equity capital) of the supply company from _____ (*date*) to _____ (*date*)[¥]. The supply of castings comprising an Eligible Project was/is likely to be completed on _____ (*date of completion of supply*).

Authorised Signatory

Name:

Designation:

Signature of the Authorised
Signatory and date

12. It may be noted that in the absence of any detail in the above certificate, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score (refer Clause 3.2.6)

[€] Refer instruction no. 9 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*)."

Appendix I
Annex – V
Statement of Legal Capacity

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

Ref. Date:

To,
[Name and Address]

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 Format for Power of Attorney for signing of Application

POWER OF ATTORNEY

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 “Setting up a new factory at Majerhat for manufacturing and supplying High Capacity Freight Bogies to Indian Railways” (the “Project”) proposed or being developed by the Ministry of Railways, Government of India (the “Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Agreement with the Authority.

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.

[Notarised]

2.

Accepted

(Signature)

(Name, Title and Address
of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *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 from countries that have signed the Hague Legalisation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate."*

Appendix III Format for Power of Attorney for Lead Member of Consortium

POWER OF ATTORNEY

WHEREAS the Ministry of Railways, Government of India (the "Authority") has invited Applications from interested parties for "Setting up a new factory at Majerhat for manufacturing and supplying High Capacity Freight Bogies to Indian Railways" (the "Project").

WHEREAS,.....(mention names and addresses of all Consortium members including the Lead Member)....., 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) Document 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.....,[the respective names and addresses of the registered office] (hereinafter
collectively referred to as the "Principals") do hereby designate, nominate, constitute,
appoint and authorise M/s.....(name of Lead Member) 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").

(Name & Title)

For-

(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 from countries that have signed the Hague Legalisation 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

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