

Request for Proposal

for

Development of Amusement and  
Recreational Park on Public  
Private Partnership (PPP) format  
at Naya Raipur (Chhattisgarh)



nayaraipur  
नया रायपुर

**NAYA RAIPUR DEVELOPMENT  
AUTHORITY**



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- I. This Volume I of the RFP documents comprises the Disclaimer set forth hereinbelow, the contents as listed below, and will additionally include any Addenda issued by NRDA.

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## DISCLAIMER

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

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

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

The Concessing Authority, its employees and advisors make no representation or warranty

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

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

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

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

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

**SECTION I – INFORMATION TO BIDDERS**

## NAYA RAIPUR DEVELOPMENT AUTHORITY

### 1. INTRODUCTION

#### 1.1. BACKGROUND

1.1.1. Naya Raipur is being developed as a Greenfield city in close proximity to Raipur to serve as the administrative capital of the State of Chhattisgarh at an approximate distance of 20 km southeast of Raipur.

1.1.2. In accordance with the vision for developing the new city, Naya Raipur Development Authority (NRDA) (the “**Concessions Authority**”) proposes to develop a world class amusement park with state of the art facilities and services of international standards in an area earmarked for the central park

1.1.3. NRDA has decided to develop the Amusement and Recreational Park through Public Private Partnership (PPP) on Design, Finance, Build, Operate and Transfer (DFBOT) basis (the “**Project**”). Brief particulars of the Project are as follows:

S. No.	Location of the Amusement Park and Recreational park	Indicative Project Cost <sup>1</sup> (In Rs. cr.)
1.	Naya Raipur, in an area earmarked for the central park	22.61

1.1.4. The total land area available for the development of Project is ~40 Acres, out of which ~35 Acres shall be used for the development of Amusement Park, and ~5 acres shall be used for the development of Recreational Park.

1.1.5.

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*The details of the facilities, to be provided within the Amusement Park and Recreational Park, have been laid down in Schedule 4 of the draft Concession Agreement.*

- 1.1.6. The Successful Bidder, who is either a company incorporated under the Companies Act, 1956 or undertakes to incorporate itself as such prior to execution of the concession agreement (the "**Concessionaire**"), shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of the concession agreement (the "**Concession Agreement**") to be entered into between the Successful Bidder and the Concessions Authority in the form provided by the Concessions Authority as part of the Bidding Documents pursuant hereto.
- 1.1.7. The scope of work will broadly include design, finance & construction of Amusement Park and Recreational Park and procurement installation, commissioning and testing of equipment & machinery in accordance with the Project Completion Schedule set out in Schedule 6 of Draft Concession Agreement and the operation and maintenance thereof during the Concession Period of 30 years as specified in Article 2.7 of the draft Concession Agreement.
- 1.1.8. The estimated cost of the Project (the "**Estimated Project Cost**") has been specified in Clause 1.1.3 above. However, the assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.9. The draft Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire's services and obligations (the "**Concession**").
- 1.1.10. The statements and explanations contained in this RFP are intended to provide a proper understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the draft Concession Agreement

or the Concessing Authority's rights to amend, alter, change, supplement or clarify the scope of work, the concession to be awarded pursuant to this RFP or the terms thereof or modify the RFP and draft concession agreement prior to Bid Due Date. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by Concessing Authority.

- 1.1.11. The Concessing Authority shall receive Bids pursuant to the RFP in accordance with the terms set forth in the RFP and other documents provided by the Concessing Authority pursuant to RFP (collectively the "**Bidding Documents**"), as modified, altered, amended and clarified from time to time by the Concessing Authority by posting the same in its website, and all Bids shall be prepared and submitted in accordance with such terms.
- 1.1.12. The RFP document has been made available on the website [www.nayaraipur.com](http://www.nayaraipur.com); the document purchase fee (the "**Document Fee**") of Rs. 10,000 (Rupees ten thousand only) shall be paid to NRDA through demand draft drawn on a scheduled nationalised bank in favour of "Naya Raipur Development Authority" payable in a Bank at Raipur, in a manner, prescribed in the RFP document.

## **1.2. BRIEF DESCRIPTION OF BIDDING PROCESS**

- 1.2.1. The Concessing Authority has adopted single stage two step process (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. All Bidders shall submit their Technical Proposal and Financial Proposal against this RFP in a single stage ("the **Bidder**"). The first step of the process involves qualification on the basis of the Technical Proposal submitted by the Bidders in accordance with the provisions of RFP. At the end of the first step, the Concessing Authority shall shortlist pre-qualified Bidders. In the second step of the process, Financial Proposal of only these shortlisted pre-qualified Bidders shall be opened and evaluated for identification of the Successful Bidder.

GOI has issued guidelines (see Appendix-VI of RFP) for qualification of bidders seeking to

acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Concessions Authority shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.

- 1.2.2. The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of bids (the “**Bid Due Date**”).
- 1.2.3. The Bidding Documents include the draft Concession Agreement for the Project. The aforesaid documents and any addenda issued subsequent to this RFP Document, or modified RFP documents but before the Bid Due Date, will be deemed to form part of the Bidding Documents.
- 1.2.4. A Bidder is required to deposit, along with its Bid, a Bid Security equivalent to Rs. 23 lakhs (Rupees twenty three lakhs only) refundable not later than 60 days from the Bid Due Date or from the date of execution of agreement with the Successful Bidder, whichever is later, except in the case of the highest Bidder. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Concessions 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 which may be extended as may be mutually agreed between the Concessions Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5. Generally the highest Bidder shall be the Successful Bidder. . The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of the RFP, be invited to match the Bid submitted by the highest Bidder in case such highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the highest Bidder, the Concessions Authority may, in its discretion, invite fresh Bids from all Bidders or annul the Bidding Process, as the case may be.

- 1.2.6. Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.
- 1.2.7. Bids are invited for the Project on the basis of the highest Annual Concession Fee (the "**Annual Concession Fee**") to be paid by the Bidder during the period of concession. The Concession Period is pre-determined, as indicated in the draft Concession Agreement. The Annual Concession Fee shall constitute the criteria for evaluation of Bids. Subject to this RFP the Project will be awarded to the Bidder quoting the highest Annual Concession Fee.
- 1.2.8. The Concessionaire will be entitled to levy and charge an appropriate User Charges from users of the Project, as prescribed in the RFP document.
- 1.2.9. Further, other details of the process and the terms thereof are spelt out in this RFP.
- 1.2.10. Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax and e-mail to the Chief executive Officer, NRDA. The envelopes/ communication shall clearly bear the following identification/ title:

**"Queries/ Request for Additional Information: RFP for Development of Amusement and Recreational Park on Public Private Partnership (PPP) basis at Naya Raipur (Chhattisgarh)".**

### 1.3. SCHEDULE OF BIDDING PROCESS

The Concessioneing Authority shall endeavor to adhere to the following schedule:

Event Description	Date
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Issue of RFP Notice on website <a href="http://www.nayaraiipur.com">www.nayaraiipur.com</a>	28-12-2010
Last date for receiving queries	18-01-2011
Pre-Bid meeting	18-01-2011 at 11.30 hours
Concessioning Authority response to queries latest by	20-01-2011
Bid Due Date	31-01-2011 upto 15.00 hours
Opening of Technical Proposals	On Bid Due Date at 16:00 hours or thereafter
Opening of Financial Proposals	To be intimated
Notice of Award (NOA)	Within 21 working days of Bid Due Date
Validity of Bids	120 days of Bid Due Date
Signing of Concession Agreement	Within 45 working days of date of NOA

## 2. INSTRUCTIONS TO BIDDERS

### A. GENERAL

#### 2.1. ELIGIBILITY OF BIDDERS

2.1.1. Bids are invited from single or group of entities; for determining the eligibility of Bidders for their pre-qualification hereunder, the following shall apply:

(a) The Bidder may be a single entity or a group of entities (the “**Consortium**”), joining together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.

(b) A Bidder may be a natural person, private entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.1.2 below.

(c) Where the Bidder is a single entity or a Consortium, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 1956 (the “**SPV**”), to execute the Concession Agreement and implement the Project.

2.1.2. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

(a) Number of members in a consortium shall not exceed 3 (three);

(b) subject to the provisions of clause (a) above, the Proposal should contain the

information required for each member of the Consortium;

- (c) members of the Consortium shall nominate one member as the lead member (the "**Lead Member**"), who shall have an equity share holding of at least 51% (fifty one per cent) of the paid up and subscribed equity of the SPV till a period of 5 (five) years from the Project Construction Completion Date and 26% (twenty six percent) during the remaining Concession Period . The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-V, signed by all the other members of the Consortium;
- (d) All other members of the Consortium shall legally and beneficially hold not less than 26 % (twenty six percent) of the paid up & subscribed equity share capital of the Concessionaire till a period of 5 (five) years from the Project Construction Completion Date.
- (e) the Proposal should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (f) an individual Bidder cannot at the same time be member of a Consortium applying for qualification. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for qualification;
- (g) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (h) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-VII (the "**Jt. Bidding Agreement**"), for the purpose of submitting a Bid. The Jt. Bidding Agreement, to be submitted along with the Proposal, shall, *inter alia*:
  - i. convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the

- Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
- ii. clearly outline the proposed roles and responsibilities, if any, of each member;
  - iii. commit the minimum equity stake to be held by each member;
  - iv. commit that each of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe for 26 % (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 5 (five) years from the Project Construction Completion Date, hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV;
  - v. members of the Consortium undertake that they shall collectively hold at least 100% (hundred per cent) of the subscribed and paid up equity of the SPV at all times until the fifth anniversary of the Project Construction Completion Date; and
  - vi. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and
- (i) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Concessioneering Authority.

2.1.3. **Technical Qualification:** To be eligible for pre-qualification and short-listing, the Bidders shall have to satisfy the following conditions of eligibility:

**(a) Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall have, over the past 7 (seven) financial years preceding the Bid Due Date:

- i)** Operated and maintained atleast 1 (one) Amusement Park/ Fun Park/ Water Park/ Theme Park/ Recreational Park, built on minimum 10 (ten) acres of land with a minimum project cost of INR 10 (Ten) crores, for atleast 2 (two) years; and
- ii)** Completed development of project(s) in any one of the following categories:
  - a. Amusement Park/ Fun Park/ Water Park/ Theme Park/ Recreational Park on minimum 10 (ten) acres of land with minimum project cost of INR 10 (ten) crores (excluding cost of land);

**OR**

- b. A At least 1 (one) real estate project with minimum project cost of INR 100 (one hundred) crores (excluding cost of land) completed during the last seven financial years ended as on 31<sup>st</sup> March 2010;

**OR**

- c. At least 1 (one) infrastructure project (as defined by Department of Economic Affairs, Ministry of Finance) with minimum project cost of INR 200 (Indian Rupees one hundred crores) (excluding cost of land) completed during the last seven financial years ended as on 31<sup>st</sup> March 2010

**iii) Financial Capacity:** The Bidder shall have a minimum Average Net Worth (the “**Financial Capacity**”) of Rs. 5 crore (Rs. five crore) in last three financial years till March 2010.

In case of a Consortium, the combined technical capability and financial capability of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that

each such Member shall, for a period of 5 (five) years from the Project Construction Completion Date, hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid up equity of the SPV.

- 2.1.4. In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

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

- 2.1.5. The Bidders shall enclose with its letter comprising the bid, as per the format at Appendix-I, complete with its Annexes, the following:

- a. Certificate(s) from its statutory auditors<sup>2</sup> or the concerned client(s) stating the project cost (excluding the cost of land) in projects commissioned during the past 7 (seven) years in respect of the projects specified in paragraph 2.1.3 (a) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
- b. certificate(s) from its statutory auditors specifying the average net worth of the Bidder (for FY 2009-10, FY 2008-09, FY 2007-08),

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<sup>2</sup> In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.1.4 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under this RFP

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specifying clearly the net worth truly and fully represents the sum of subscribed and paid up equity and reserves from which the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders have been deducted

## **2.2. GENERAL TERMS OF BIDDING**

2.2.1. A Bidder is eligible to submit only one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.

2.2.2. Notwithstanding anything to the contrary contained in the RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.

2.2.3. The Financial Proposal should be furnished in the format at Appendix – II, clearly indicating the bid amount in both figures and words, and signed by the Bidder's authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

### **3. The Financial Proposal:**

The Financial Proposal shall be the Annual Concession Fee (exclusive of service tax as applicable thereon, which shall be paid extra by the Concessionaire) to be quoted by the Bidder. Annual Concession Fee shall be payable by the Concessionaire to the Concessions Authority, as the case may be, as per the terms and conditions of the RFP and the provisions of the Concession Agreement.

**A Financial Proposal with an offer of Annual Concession Fee of less than Indian Rupees Fifteen Lakhs (Rs. 15,00,000) for 40 acres of project land shall be treated as non-responsive.**

The Concessionaire shall pay service tax (as applicable) over and above the quoted Concession Fee to the Concessions Authority. All duties and taxes in consequence of its obligations under this Concession Agreement, including customs and excise duties, advertisement tax, VAT, any

cess, levy, duty, tax or charge etc shall be directly borne by the Concessionaire. The Concession Fee shall not be reduced for such costs.

The Annual Concession Fee shall be increased, after every 3 years, at the rate of 15% (fifteen percent), over the previous Annual Concession Fee.

- 3.1.1. The Bidder shall deposit a Bid Security equivalent to Rs. 23 lakhs (Rupees twenty three lakhs only) in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a Demand draft or in the form of a Bank Guarantee, acceptable to the Concessing Authority, as per format at Appendix – III.
- 3.1.2. The validity period of the Bank Guarantee or Demand Draft, as the case may be, shall not be less than 120 days from the Bid Due Date, which shall be extended by the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable not later than 60 days from the Bid Due Date or from the Date of signing of agreement with the Successful Bidder, whichever is later, except in the case of the highest Bidder.
- 3.1.3. The Bidder should submit a Power of Attorney as per the format at Appendix – IV, authorising the signatory of the Bid to commit the Bidder.
- 3.1.4. In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix – V.
- 3.1.5. Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 3.1.6. The Proposal and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 3.1.7. The Bidding Documents including the RFP and all attached documents are and shall remain the property of the Concessing Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for

any purpose other than for preparation and submission of their Bid. The Concessioneing Authority will not return any Bid or any information provided along therewith.

3.1.8. A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Concessioneing Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Concessioneing Authority for, inter alia, the time, cost and effort of the Concessioneing Authority, including consideration of such Bidder’s proposal, without prejudice to any other right or remedy that may be available to the Concessioneing Authority hereunder or otherwise. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Bidding Process, if:

- (i) such Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding in a Bidder or a constituent thereof in the other Bidder(s) (or any of its constituents) is less than 1% of its paid up and subscribed capital; or
- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder receives or has received any direct or indirect subsidy from any other Bidder, or has provided any such subsidy to any other Bidder; or
- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each others’ information about, or to influence the Bid of either or each of the other Bidder; or
- (vi) such Bidder has participated as a consultant to the Concessioneing Authority in the

preparation of any documents, design or technical specifications of the Project.

- 3.1.9. A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Concessions Authority in relation to the Project is engaged by the Bidder in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the NOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Successful Bidder or Concessionaire, as the case may be, after issue of the NOA or execution of the Concession Agreement, then notwithstanding anything to the contrary contained herein or in the NOA or the Concession Agreement and without prejudice to any other right or remedy of the Concessions Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Concessions Authority may have thereunder or otherwise, the NOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Concessions Authority being liable in any manner whatsoever to the Successful Bidder or Concessionaire for the same.
- 3.1.10. The RFP is not transferable.
- 3.1.11. Any award of Concession pursuant to the RFP shall be subject to the terms of Bidding Documents.
- 3.1.12. Not used
- 3.1.13. Not used
- 3.1.14. Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Proposal, would not be eligible to submit an Proposal, either individually or as member of a Consortium.
- 3.1.15. A Bidder including any Consortium Member or Associate should, in the last 3 (three)

years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Bidder, Consortium Member or Associate.

- 3.1.16. In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members under Clauses 2.1.2, 2.1.4 and 3.3, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

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

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

(a) Where, on the date of the Bid, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or

(b) if at any subsequent stage after the date of the Bid, 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 Bidder or its Member;

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

the continued Qualification of the Bidder shall be subject to approval of the Concessioneing Authority from national security and public interest perspective. The decision of the Concessioneing Authority in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Concessioneing 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 Bidder shall promptly inform the Concessioneing Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

### **3.2. CHANGE IN COMPOSITION OF THE CONSORTIUM**

- 3.2.1. Change in the composition of a Consortium will not be permitted by the Concessioneing Authority during the Bidding process.

### **3.3. CHANGE IN OWNERSHIP**

- 3.3.1. By submitting the Bid, the Bidder acknowledges and undertakes that the Lead Member shall continue to hold minimum 51% of the equity and each of the other Consortium Members shall continue to hold at least 26% of the equity of the Concessioneaire until the fifth anniversary of the Project Construction Completion Date is achieved under and in accordance with the provisions of the Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession

Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder.

- 3.3.2. By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity is being taken into consideration for the purposes of evaluation of eligibility conditions under and in accordance with the RFP, the Bidder shall inform the Concessions Authority forthwith along with all relevant particulars about the same and the Concessions Authority may, in its sole discretion, disqualify the Bidder or withdraw the NOA from the Successful Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach thereof, and the Concession Agreement shall be liable to be terminated without the Concessions Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Concessions Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Concessions Authority for, inter alia, time, cost and effort of the Concessions Authority, without prejudice to any other right or remedy that may be available to the Concessions Authority hereunder or otherwise.

### **3.4. COST OF BIDDING**

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

### **3.5. SITE VISIT AND VERIFICATION OF INFORMATION**

3.5.1. Bidders are advised to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, 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.

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

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Concessioneing Authority;
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Concessioneing Authority relating to any of the matters referred to in Clause 2.6.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.6.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.6.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Concessioneing Authority, or a ground for termination of the Concession Agreement; and
- (f) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

### **3.6. RIGHT TO ACCEPT AND TO REJECT ANY OR ALL BIDS**

3.6.1. Notwithstanding anything contained in the RFP, the Concessioneing Authority reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore.

3.6.2. The Concessioneing Authority reserves the right to reject any Bid and appropriate the Bid Security if:

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

(c) the Bidder does not provide, within the time specified by the Concessioneing Authority, the supplemental information sought by the Concessioneing Authority for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the 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 highest Bidder gets disqualified / rejected, then the Concessioneing Authority reserves the right to:

(i) invite the remaining Bidders to submit Bids in accordance with this RFP; or

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

- 3.6.3. In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by the Concessing Authority, that one or more of the pre-qualification conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the NOA or entering into of the Concession Agreement, and if the Bidder has already been issued the NOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Concessing Authority to the Bidder, without the Concessing Authority being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be. In such an event, the Concessing Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as compensation and damages payable to the Concessing Authority for, inter alia, time, cost and effort of the Concessing Authority, without prejudice to any other right or remedy that may be available to the Concessing Authority.
- 3.6.4. The Concessing Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents. Failure of the Concessing Authority to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Concessing Authority thereunder.

## **B. DOCUMENTS**

### **3.7. NOT USED**

### **3.8. CLARIFICATIONS**

- 3.8.1. Bidders requiring any clarification on the RFP may notify the Concessing Authority in writing or by fax and e-mail in accordance with Clause 1.2.10. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Concessing Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be uploaded in the website [www.nayaraipur.com](http://www.nayaraipur.com) without identifying the source of queries.
- 3.8.2. The Concessing Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Concessing 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 Concessing Authority to respond to any question or to provide any clarification.
- 3.8.3. The Concessing Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Concessing Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Concessing Authority or its employees or representatives shall not in any way or manner be binding on the Concessing Authority.

### **3.9. AMENDMENT MODIFICATION OF RFP**

- 3.9.1. At any time prior to the deadline for submission of Bids, the Concessing Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 3.9.2. Any Addendum/Modification thus issued will be uploaded in the website [www.nayaraipur.com](http://www.nayaraipur.com).
- 3.9.3. In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Concessing Authority may, at its own discretion, extend the Bid Due Date.

**C. PREPARATION AND SUBMISSION OF BIDS****3.10. LANGUAGE**

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

**3.11. FORMAT AND SIGNING OF BID**

- 3.11.1. The Bidder shall provide all the information sought under this RFP. The Concessioneering Authority will evaluate only those Bids that are received in the required formats and complete in all respects.
- 3.11.2. The Bid shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published Documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid. The Bid shall contain page numbers and shall be hard bound.

**3.12. SEALING AND MARKING OF BIDS**

- 3.12.1. The documents of Technical Proposal shall be placed in a Two separate envelopes and marked as prescribed hereunder -

**"Envelope 1: Key Submission"**

- a) Document fee Rs. 10,000/- in the form of crossed Bank Draft payable to CEO,

- NRDA, of a bank at Raipur
- b) Bid Security in the prescribed format (Appendix – III);
  - c) Power of Attorney for signing of Bid in the prescribed format (Appendix – IV);
  - d) If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix – V);
  - e) Certified copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-VII;
  - f) Certified copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
  - g) Certified copies of Bidder's duly audited balance sheet and profit and loss account for the preceding three years; and
  - h) A copy of the Concession Agreement with each page initialled by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (c) hereinabove.

Proposal should contain information and details about each Member of the Consortium, wherever required as per the RFP.

**" Envelope 2 : "Qualification Submissions**

Letter comprising the Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents

3.12.2. The Bidder shall submit the Financial Proposal in the format specified at Appendix-II, and seal it in an envelope and mark the envelope as "Envelope 3: **Financial Proposal**".

3.12.3. **Envelope 4 : "Soft Copy of Technical Proposal"**A true copy of the Technical Proposal in Soft version in CD, as specified in Clause 2.13.2 above, shall be placed in a separate envelope and marked "**Soft Copy of Technical Proposal**".

3.12.4. All the envelopes specified above shall be placed in an outer envelope, which shall be sealed. Each of the four envelopes shall clearly bear the following identification:

**"Bid for Development of Amusement Park and Recreational Park on Public Private Partnership (PPP) Basis at Naya Raipur (Chhatisgarh)"**

and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

3.12.5. Each of the envelopes shall be addressed to:

Chief Executive Officer, Naya Raipur Development Authority Gate No. 2, DKS Bhavan, In front of Mahanadi Dwar of Mantralaya Raipur – 492001, Chhatisgarh	Email – <a href="mailto:ceo@nayaraipur.com">ceo@nayaraipur.com</a> / <a href="mailto:psc@nayaraipur.com">psc@nayaraipur.com</a> TEL/FAX - +91 771 4066011/ 4066188
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3.12.6. If the envelopes are not sealed and marked as instructed above, the Concessioneing Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted.

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

### **3.13. BID DUE DATE**

3.13.1. Bids should be submitted before 1500 hours IST on the Bid Due Date at the address provided herein in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person in charge of the Receipt-Dispatch section of NRDA.

3.13.2. The Concessioneing Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum only in its website [www.nayaraipur.com](http://www.nayaraipur.com)

### **3.14. LATE BIDS**

3.14.1. Bids received by the Concessions Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

### **3.15. CONTENTS OF THE BID**

3.15.1. **A Financial Proposal with an offer of Annual Concession Fee of less than Indian Rupees Fifteen Lakhs (Rs. 15,00,000) for 40 acres of project land shall be treated as non-responsive.**

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

3.15.3. The proposed Concession Agreement shall be deemed to be part of the Bid.

### **3.16. MODIFICATIONS/ SUBSTITUTION/ WITHDRAWAL OF BIDS**

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

3.16.2. The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered , with the envelopes being additionally marked **“MODIFICATION”**, **“SUBSTITUTION”** or **“WITHDRAWAL”**, as appropriate.

3.16.3. Any alteration/ modification in the Bid or additional information supplied subsequent to

the Bid Due Date, unless the same has been expressly sought for by the Concessioneing Authority, shall be disregarded.

### **3.17. REJECTION OF BIDS**

3.17.1. The Concessioneing Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever. It is not obligatory for the Concessioneing Authority to accept any Bid or to give any reasons for their decision.

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

### **3.18. VALIDITY OF BIDS**

3.18.1. The Bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Concessioneing Authority.

### **3.19. CONFIDENTIALITY**

3.19.1. Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Concessioneing Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Concessioneing Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Concessioneing 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 Concessioneing Authority.

### 3.20. CORRESPONDENCE WITH THE BIDDER

3.20.1. The Concessing Authority shall not entertain any correspondence with from any Bidder in relation to acceptance or rejection of any Bid.

## D. BID SECURITY

### 3.21. BID SECURITY

~~3.21.1.~~ The Bidder shall furnish as part of its Bid, a Bid Security in the form of a bank guarantee issued by a nationalised bank, or a Scheduled Bank in India in favour of the Concessing Authority in the format at Appendix – III (the “**Bank Guarantee**”) and having a validity period of not less than 180 days from the Bid Due Date, as may be extended by the Bidder from time to time.

3.21.2. Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Concessing Authority and payable at Raipur (the “**Demand Draft**”). The Concessing Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

3.21.3. Any Bid not accompanied by the Bid Security shall be rejected by the Concessing Authority as non-responsive.

3.21.4. Save as provided in Clauses 1.2.4 and 1.2.5 above, the Bid Security of unsuccessful Bidders will be returned by the Concessing Authority, without any interest, as promptly as possible on acceptance of the Bid of the Successful Bidder or when the Bidding process is cancelled by the Concessing Authority. Where Bid Security has been paid by deposit, the refund thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Concessing Authority give the name and address of the person in whose favour the said demand draft shall be drawn by the Concessing Authority for refund,

failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

3.21.5. The Successful Bidder's Bid Security will be returned, without any interest, upon the Bidder signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof.

3.21.6. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Concessions Authority shall be entitled to forfeit and appropriate the Bid Security as compensation / damages to the Concessions Authority in any of the events specified herein below.

3.21.7. The Bid Security shall be forfeited and appropriated by the Concessions Authority as compensation and damages payable to the Concessions Authority for, inter alia, time, cost and effort of the Concessions Authority without prejudice to any other right or remedy that may be available to the Concessions Authority hereunder or otherwise, under the following conditions:

- a) If a Bidder submits a non-responsive Bid;
- b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this RFP;
- c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;
- d) In the case of Successful Bidder, if it fails within the specified time limit -
  - i) to sign the Concession Agreement and/or
  - ii) to furnish the Performance Security within the period prescribed therefore in the Concession Agreement; or
- e) In case the Successful Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.



## **4. EVALUATION OF BIDS**

### **4.1. OPENING AND EVALUATION OF BIDS**

- 4.1.1. The Concessioneing Authority shall open the Technical Proposals at 1600 hours on the Bid Due Date, at the office of NRDA and in the presence of the Bidders who choose to attend.
- 4.1.2. The Concessioneing Authority shall open Financial Proposals of only those Bidders who meet the eligibility criteria specified in this RFP at such date and time as intimated by the Concessioneing Authority.
- 4.1.3. The Concessioneing Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this RFP.
- 4.1.4. To facilitate evaluation of Bids, the Concessioneing Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

### **4.2. EVALUATION OF TECHNICAL PROPOSAL**

- 4.2.1. The Bidder's competence and capability shall be evaluated on the basis of by the following parameters:
  - a) Technical Capacity; and
  - b) Financial Capacity

### **4.3. TESTS OF RESPONSIVENESS**

- 4.3.1. Prior to evaluation of Bids, the Concessioneing Authority shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:

- (a) Technical Proposal is received as specified in Clause 2.13.2
- (b) Financial Proposal is received as per the format at Appendix – II;
- (c) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.14.2;
- (d) it is signed, sealed, hard bound and marked as stipulated in Clauses 2.12 and 2.13;
- (e) it is accompanied by the Bid Security as specified in Clause 2.2.5;
- (f) it is accompanied by the Power(s) of Attorney as specified in Clauses 2.2.7 and 2.2.8, as the case may be;
- (g) it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
- (h) it does not contain any condition or qualification; and
- (i) it is not non-responsive in terms hereof.

#### **4.4. DETAILS OF EXPERIENCE**

- 4.4.1. The Bidder should furnish the details of Eligible Experience for the last 7 (seven) financial years immediately preceding the Bid Due Date.
- 4.4.2. The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.
- 4.4.3. The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.

#### **4.5. FINANCIAL INFORMATION FOR PURPOSES OF EVALUATION**

- 4.5.1. The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Bid is made.
- 4.5.2. In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this

effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.

- 4.5.3. The Bidder must establish the minimum Net Worth specified in Clause 2.1.3 (b), and provide details as per format at Annex-III of Appendix-I

#### **4.6. TECHNICAL CAPACITY FOR PURPOSES OF EVALUATION**

- 4.6.1. The Concessioneing Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Concessioneing Authority in respect of such Bid.

Subject to the provisions of Clause 2.1, the categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects as stipulated in Clause 3.6.5 (the "**Eligible Projects**"):

Category 1: experience of development / operation and maintenance of Amusement Park/ Fun Park/ Water Park/ Theme Park/ Recreational Park on minimum 10 acres of land with a minimum project cost of INR 10 crores (excluding the cost of land) completed during the last seven financial years till March 2010

Category 2: experience of development of at least one real estate project with minimum project cost of INR 100 crores (excluding the cost of land) completed in last seven financial years till March 2010

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

- 4.6.3. The Bidder shall quote experience in respect of a particular Eligible Project under any one

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

- 4.6.4. 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.
- 4.6.5. the entity claiming experience should have held, in the company owing the Eligible Project, a minimum of 26% (twenty six percent) equity during the entire year for which Eligible Experience is being claimed
- 4.6.6. the entity claiming experience shall, during the last 7 (seven) financial years preceding the Bid Due Date, have (i) paid for development of the project (excluding the cost of land), and/or (ii) collected and appropriated the revenues from the project.

#### **4.7. SHORTLISTING OF BIDDERS**

- 4.7.1. In the first step of evaluation, Technical Proposals of Bidders adjudged responsive in terms of Clause 3.3.1 shall be considered for Technical evaluation per Clause 2.1 and 3.6 of this RFP. The Bidders qualifying as per the conditions shall be shortlisted as pre-qualified Bidders and shall be considered for the next step of evaluation.
- 4.7.2. In second step of evaluation, Financial Proposals of only those Bidders who have passed the first step shall be opened in presence of the nominees of the Bidders, who choose to attend the same.

#### **4.8. SELECTION OF BIDDER**

- 4.8.1. The Bidder quoting the highest Annual Concession Fee offered to the Concessioneering

Authority shall be declared as the Successful Bidder (the "**Successful Bidder**")

- 4.8.2. In the event that two or more Bidders quote the same amount of Annual Concession Fee (the "**Tie Bidders**"), the Concessions Authority shall identify the Successful Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 4.8.3. In the event that the highest Bidder withdraws or is not selected for any reason in the first instance (the "**first round of bidding**"), the Concessions Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid highest Bidder (the "**second round of bidding**"). If in the second round of bidding, only one Bidder matches the highest Bidder, it shall be the Successful Bidder. If two or more Bidders match the said highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Successful Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said highest Bidder in the second round of bidding, the said third highest bidder shall be the Successful Bidder.
- 4.8.4. In the event that no Bidder offers to match the highest Bidder in the second round of bidding as specified in Clause 3.8.3, the Concessions Authority may, in its discretion, invite fresh Bids (the "**third round of bidding**") from all Bidders except highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 4.8.5. After selection, a Notice of Award (the "**NOA**") shall be issued, in duplicate, by the Concessions Authority to the Successful Bidder and the Successful Bidder shall, within 14 (fourteen) days of the receipt of the NOA, sign and return the duplicate copy of the NOA in acknowledgement thereof. In the event the duplicate copy of the NOA duly

signed by the Successful Bidder is not received by the stipulated date, the Concessing Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by the Concessing Authority on account of failure of the Successful Bidder to acknowledge the NOA, and the next eligible Bidder may be considered.

- 4.8.6. After acknowledgement of the NOA as aforesaid by the Successful Bidder, it shall execute the Concession Agreement within the period prescribed period in Clause 1.3. The Successful Bidder shall not be entitled to seek any deviation in the Concession Agreement.

#### **4.9. CONTACTS DURING BID EVALUATION**

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

## 5. FRAUD AND CORRUPT PRACTICES

- 5.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the NOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the NOA or the Concession Agreement, the Concessions Authority shall reject a Bid, withdraw the NOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Concessions Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Concessions Authority towards, inter alia, time, cost and effort of the Concessions Authority, without prejudice to any other right or remedy that may be available to the Concessions Authority hereunder or otherwise.
- 5.2. Without prejudice to the rights of the Concessions Authority under Clause 4.1 hereinabove and the rights and remedies which the Concessions Authority may have under the NOA or the Concession Agreement, if a Bidder or Concessionaire, as the case may be, is found by the Concessions Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the NOA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by the Concessions Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Concessions Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 5.3. For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Concessions Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the NOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Concessions Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the NOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the NOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Concessions 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 Concessions Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any

understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## **6. PRE-BID CONFERENCE**

- 6.1. Pre-Bid conference of the Bidders shall be convened on July 14, 2010 at 11.30 hours in NRDA Conference Room, Naya Raipur Development Authority, Gate No. 2, DKS Bhavan, In front of Mahanadi Dwar of Mantralaya, Raipur - 492001. Only those persons who have purchased the RFP document shall be allowed to participate in the Pre-Bid Conferences. A maximum of three representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
  
- 6.2. During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Concessions Authority. The Concessions 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.

**7. MISCELLANEOUS**

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Raipur shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Concessioneing Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Bidder in order to receive clarification or further information;
  - (c) retain any information and/ or evidence submitted to the Concessioneing Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
  - (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Concessioneing 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 BID***(Refer Clause 2.13.2)*

Dated:

To,

Chief Executive Officer,

Naya Raipur Development Authority

Gate No. 2, DKS Bhavan,

In front of Mahanadi Dwar of Mantralaya

Raipur – 492001, Chhattisgarh

**Sub: Proposal for Project - Development of Amusement and Recreational Park on Public Private Partnership (PPP) basis at Naya Raipur (Chhattisgarh)**

Dear Sir,

With reference to ~~you~~ the RFP document dated .....<sup>3</sup>, I/we, having examined the RFP document and understood its contents, hereby submit my/our Proposal for the aforesaid project. The Proposal is unconditional and unqualified.

2. I/ We acknowledge that the Concessioneing Authority will be relying on the information provided in the Proposal and the documents accompanying such Proposal of the Bidders, and we certify that all information provided in the Proposal and in Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the development, construction, operation and maintenance of the aforesaid Project.

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<sup>3</sup> All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder

4. I/ We shall make available to the Concessioneing Authority any additional information it may find necessary or require to supplement or authenticate the Proposal statement.
5. I/ We acknowledge the right of the Concessioneing Authority to reject our Proposal without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
7. I/ We declare that:
  - (a) I/ We have examined and have no reservations to the RFP document, including any Addendum issued by the Concessioneing Authority.
  - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.12 and 2.2.13 of the RFP document; and
  - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Concessioneing Authority or any other public sector enterprise or any government, Central or State; and
  - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Proposal that you may receive nor to invite the Bidders to Bid

for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.18.2 of the RFP document.

9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFP document and are/ is qualified to submit a Bid.
- 10.I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for qualification.
- 11.I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
- 12.I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
- 13.I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ employees.
- 14.I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines forms part of the RFP at Appendix-VI thereof.
- 15.I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP; we shall intimate the Concessing Authority of the same immediately.

16. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of proposal and the power of attorney for Lead Member of consortium, as per format provided at Appendix IV and V respectively of the RFP, are also enclosed.

17. I/ We understand that the Successful Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate as such prior to execution of the Concession Agreement.

18. I/ We hereby confirm that we [are in compliance of/ shall comply with] the O&M requirements specified in Clause 2.1.4.

19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Concessing Authority in connection with the 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.

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

21. I/ We certify that in terms of the RFP, my/our Networth is Rs. .... (Rs. in words).

{22. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.}4

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

Yours faithfully,

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

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<sup>4</sup> Omit if the Bidder is not a Consortium

Place:

Name and seal of the Bidder / Lead Member

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

**ANNEX-I**  
**DETAILS OF BIDDER**

1.
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
  - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project]:
3. Details of individual(s) who will serve as the point of contact/ communication for the Concessioneing Authority:
  - (a) Name:
  - (b) Designation:
  - (c) Company:
  - (d) Address:
  - (e) Telephone Number:
  - (f) E-Mail Address:
  - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
  - (e) Fax Number:
5. In case of a Consortium:
  - (a) The information above (1-4) should be provided for all the Members of the Consortium.
  - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.1.2(g) should be

attached to the Proposal.

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

Sl. No.	Name of Member	Role* {Refer Clause 2.1.2(d)} <sup>5</sup>	Percentage of equity in the Consortium {Refer Clauses 2.1.2(a), (c) & (d)}
1.			
2.			
3.			
4.			

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

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

**Name of Bidder/ member of Consortium:**

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

6. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non- performance or

<sup>5</sup> All provisions contained in curly parenthesis shall be suitably modified by the Bidder to reflect the particulars relating to such Bidder

contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

**ANNEX-II****TECHNICAL CAPACITY OF THE BIDDER @***(Refer to Clauses 2.1.3(a), 3.3 and 3.4 of the RFP)*

Bidder type #	Member Code*	Project Code**	Category \$	Experience ¥ (Equivalent Rs. crore)\$\$	
				Payments made/ received for construction/installation /operation of Eligible Projects in Category 1 (5)	Payments made for development / construction of Eligible Projects in Category 2 (6)
Single entity Bidder		a			
		b			
		c			
		d			
Consortium Member 1		1a			
		1b			
		1c			
		1d			
Consortium Member 2		2a			
		2b			
		2c			
		2d			
Consortium Member 3		3a			
		3b			
		3c			
		3d			

		4b			
		4c			
		4d			

*@ Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.2.20 and/ or by a project company eligible under Clause 3.6. Include only those projects which have an estimated capital cost exceeding the amount specified in Clause 2.1.3(a). In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 3.5.2.*

*# A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.20, shall be provided.*

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

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

*\$ Refer Clause 3.6.1.*

*¥ In eligible projects, Construction/installation shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key contract/ EPC contract for the project. In no case shall the cost of land be included while evaluating the experience of an Eligible Project.*

*\$\$ For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 45 (forty five) to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.*

**ANNEX-III**  
**FINANCIAL CAPACITY OF THE BIDDER**

(Refer to Clauses 2.1.3(b), 2.1.4 (ii) and 3.5 of the RFP)

(In Rs. crore<sup>\$\$</sup>)

Bidder type <sup>\$</sup>	Member Code <sup>£</sup>	Net Cash Accruals					Net Worth <sup>€</sup>
		Year 1 (3)	Year 2 (4)	Year 3 (5)	Year 4 (6)	Year 5 (7)	Year 1 (8)
Single entity Bidder							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
TOTAL							

**Name & address of Bidder's Bankers:**

<sup>\$</sup> A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

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

€ The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 2.2.20.

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

**Instructions:**

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Bid Due Date. The financial statements shall:
  - (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder 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 + reserves not available for distribution to equity shareholders).
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 Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 3.5.2.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.1.2 (g) of the RFP document.
6. The Bidder shall also provide the name and address of the Bankers to the Bidder.
7. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.1.4 (ii) of the RFP document.

**ANNEX-IV****DETAILS OF ELIGIBLE PROJECTS***(Refer to Clauses 2.1.3(a), 3.6 of the RFP)***Project Code:****Member Code:**

<b>Item</b>	<b>Refer Instruction (2)</b>	<b>Particulars of the Project</b>
Title & nature of the project		
Category	5	
Year-wise (a) payments received/ made for construction/ installation/ operation, (b) payments made for development of projects	6	
Entity for which the project was constructed/ developed	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	16	

**Instructions:**

1. Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.6 of the RFP, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Proposal. Bidders should also refer to the Instructions below.
2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is

- a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each Eligible Project.
  4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write "Associate" along with Member Code.
  5. Refer to Clause 3.6.1 of the RFP for category number.
  6. The total payments received/ made 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 7 (seven) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1 (Refer Clause 3.5.2) and so on. For projects under Categories 1 & 2 (A), expenditure on development of the project, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 2.1.3. Payment for construction/installation works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
  7. In case of projects where operation & maintenance or construction experience is shown, particulars such as name, address and contact details of owner/ Concessing Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided.
  8. Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.6
  9. For ownership projects, the date of commissioning of the project, upon completion, should be indicated. For projects with construction experience shown, date of completion of construction/installation should be indicated. In the case of projects under implementation, the likely date of completion or commissioning, as the case may be, shall be indicated.
  10. For projects, wherever applicable, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.6).
  11. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
  12. Certificate from the Bidder's statutory auditor<sup>\$</sup> or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not

have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.

13. If the Bidder is claiming experience for development under Category 1 and 2(A)<sup>£</sup>, it should provide a certificate from its statutory auditor in the format below:

<p><b>Certificate from the Statutory Auditor regarding development / ownership projects (Category 1 and 2(A) projects)<sup>Φ</sup></b></p>
<p>Based on its books of accounts and other published information authenticated by it, this is to certify that ..... (name of the Bidder/Member/Associate) is/ was an equity shareholder in ..... (title of the project company) and holds/ held Rs. .... cr. (Rupees ..... crore) of equity (which constitutes .....%<sup>€</sup> of the total paid up and subscribed equity capital) of the project company from ..... (date) to ..... (date)<sup>¥</sup>. The project was/is likely to be commissioned on ..... (date of commissioning of the project).</p>
<p>We further certify that the total estimated capital cost of the project is Rs. .... cr. (Rupees .....crore), of which Rs. .... cr. (Rupees ..... crore) of capital expenditure was incurred during the past seven financial years as per year- wise details noted below:</p> <p>.....</p> <p>.....</p>
<p>Name of the audit firm:</p>
<p>Seal of the audit firm: (Signature, name and designation of the authorised signatory)</p>
<p>Date:</p> <p>_____</p>

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

£ Refer Clause 3.6.1 of the RFP.

Φ Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

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

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

14. If the Bidder is claiming experience under Category 1 and 2 (A) ♣, it should provide a certificate from its statutory auditors or the client in the format below:

**Certificate from the Statutory Auditor/ Client regarding construction/installation works<sup>Φ</sup>**

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

We further certify that the total estimated capital cost of the project is Rs. .... cr. (Rupees .....crore), of which the Bidder/Member/Associate received/paid Rs. .... cr. (Rupees ..... crore), in terms of Clauses 3.3.1 and 3.3.4 of the RFP, during the past seven financial years as per year- wise details noted below:

.....  
 .....

{It is further certified that the payments/ receipts indicated above are restricted to the share of the Bidder who undertook these works as a partner or a member of joint venture/ consortium.}<sup>♠</sup>

Name of the audit firm:

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

Date:

♣ Refer Clauses 3.6.1 of the RFP.

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

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

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

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

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.20, the Bidder should also provide a certificate in the format below:

**Certificate from Statutory Auditor/ Company Secretary regarding Associate<sup>§</sup>**

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of ..... (name of the Associate) is held, directly or indirectly<sup>£</sup>, by ..... (name of Bidder/ Consortium Member). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.20 of the RFP.

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

{Describe the share-holding of the Bidder/ Consortium Member in the Associate}

Name of the audit firm:

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

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

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

**ANNEX-V**

**STATEMENT OF LEGAL CAPACITY**

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

Ref. Date:

To,

Chief Executive Officer,

Naya Raipur Development Authority

Gate No. 2, DKS Bhavan,

In front of Mahanadi Dwar of Mantralaya

Raipur – 492001, Chhatisgarh

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

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

and on behalf of.....

*\*Please strike out whichever is not applicable.*

**APPENDIX – II**  
**FINANCIAL PROPOSAL**  
(Refer Clauses 2.2.3 and 2.16)

Dated: \_\_\_\_\_

To

Chief Executive Officer,  
Naya Raipur Development Authority  
Gate No. 2, DKS Bhavan,  
In front of Mahanadi Dwar of Mantralaya  
Raipur – 492001, Chhatisgarh

**Sub: Bid for Development of Amusement and Recreational Park on Public Private Partnership (PPP) basis at Naya Raipur (Chhatisgarh)**

Dear Sir,

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

2. All information provided in the Bid and in the Appendices is true and correct.
3. We acknowledge that our Consortium/ proposed Consortium shall be short-listed on the basis of Technical Capacity and Financial Capacity of those of its Members who will own at least 26% of the equity of the Concessionaire and undertake that each of such Consortium Members shall continue to hold at least 26% of the equity of the Concessionaire until the date of commercial operation of the Project is achieved under and in accordance with the provisions of the Concession Agreement. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.
4. [I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and qualification under and in accordance with the RFP, I/We shall inform the Concessions Authority forthwith

along with all relevant particulars and the Concessing Authority may, in its sole discretion, disqualify our Consortium or withdraw the Notice of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Concessing Authority being liable to us in any manner whatsoever.]

5. In the event of my/ our being declared as the Successful Bidder, I/We agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
6. I/We have studied all the Bidding Documents carefully and also surveyed the project site. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Concessing Authority or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of Concession.
7. The Annual Concession Fee has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Bid.
8. I/We offer a Bid Security of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) to the Concessing Authority in accordance with the RFP Document.
9. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.
10. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the

Project / Concession is not awarded to me/us or our Bid is not opened.

11. I/We hereby submit our Bid and offer a Annual Concession Fee in the form of Rs \_\_\_\_ (in words) of the Concessing Authority for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.
12. The Annual Concession Fee shall be increased, after every 3 years, at the rate of 5% (five percent), over the previous Annual Concession Fee.
13. I/We agree to keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
14. I/We agree and undertake to abide by all the terms and conditions of the RFP document.
15. I/We agree and understand that a bid amount of less than Indian Rupees Fifteen Lakhs for Annual Concession Fee shall be considered as non-responsive and shall not be considered for evaluation

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

Yours faithfully,

Date: (Signature of the Authorised signatory)

Place: (Name and designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Firm

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

**APPENDIX – III**  
**BANK GUARANTEE FOR BID SECURITY**  
*(Refer Clauses 2.2.5 and 2.22.1)*

B.G. No.

Dated:

1. In consideration of you, CEO, Naya Raipur Development Authority, having its office at \*\*\*\*\*, (hereinafter referred to as the "Concessing Authority", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of \_\_\_\_\_ [a Company registered under provision of the Companies Act, 1956] and having its registered office at \_ [and acting on behalf of its Consortium] (hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the Project – Development of Amusement and Recreational Park on Public Private Partnership basis at Naya Raipur, Chhatisgarh on DBOT basis (hereinafter referred to as "the **Project**") pursuant to the RFP Document dated \*\*\*\*\* issued in respect of the Project and other related documents (hereinafter collectively referred to as "Bidding Documents"), we [Name of the Bank] having our registered office at \_\_\_\_\_ and one of its branches at \_Raipur, Chhattisgarh \_\_\_\_\_ (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of Clause 2.2.5 read with Clause 2.2.6 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Concessing Authority an amount of Rs. \*\*\*\*\* (Rupees \*\*\*\*\* only) at the branch in \_\_\_\_\_, Raipur, Chhattisgarh, as bid security (hereinafter referred to as the "**Bid Security**") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.

2. Any such written demand made by the Concessioneing Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Concessioneing Authority is disputed by the Bidder or not merely on the first demand from the Concessioneing Authority stating that the amount claimed is due to the Concessioneing Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as setforth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. \*\*\*\*\* (Rupees \*\*\*\*\* only).
4. This Guarantee shall be irrevocable and remain in full force for a period of 120 (one hundred and twenty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Concessioneing Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Concessioneing Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Concessioneing Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Concessioneing Authority and the Bidder or any dispute pending

before any Court, Tribunal, Arbitrator or any other Concessing Authority.

6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Concessing Authority shall be entitled to treat the Bank as the principal debtor. The Concessing Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Notice of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Concessing Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Concessing Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Concessing Authority or any indulgence by the Concessing Authority to the said Bidder or by any change in the constitution of the Concessing Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch who shall be deemed to have been duly authorised to receive the

said notice of claim.

10. It shall not be necessary for the Concessioneing Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Concessioneing Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Concessioneing Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. **This Bank Guaranty no. \_\_\_\_\_, dated \_\_\_\_\_ shall be operative at Raipur and if invoked, be encashable at the \_\_\_\_\_ [name of the bank and its branch at Raipur], branch code no.: \_\_\_\_\_**

Signed and Delivered by \_ \_\_\_\_\_ Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

**APPENDIX – IV**  
**POWER OF ATTORNEY FOR SIGNING OF BID**

*(Refer Clause 2.2.7)*

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 bid for the Project – Development of Amusement and Recreational Park on Public Private Partnership basis at Naya Raipur, Chhatisgarh proposed or being developed by the Naya Raipur Development Authority (the "Concessions Authority") including but not limited to signing and submission of all proposals, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Concessions Authority, representing us in all matters before the Concessions Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Concessions Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Concessions 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 \_\_\_\_\_, 20\*\*.

For\_ \_\_\_\_\_

(Signature)

(Name, Title and Address)

Witnesses:

1.

2.

Accepted

[Notarised]

(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 Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *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.*

**APPENDIX – V****POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM***(Refer Clause 2.2.8)*

Whereas the Naya Raipur Development Authority (“the Concessing Authority”) has invited bids from eligible parties for the Project – Development of Amusement and Recreational Park on Public Private Partnership basis at Naya Raipur, Chhatisgarh (“the Project”).

Whereas, \_\_\_\_\_, \_\_\_\_\_ and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal 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 Concessing 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 \_\_\_\_\_, \_\_\_\_\_, and M/s. \_\_\_\_\_, having our registered office at \_\_\_\_\_, [the respective names and addresses of the registered office] (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s \_\_\_\_\_, having its registered office at \_\_\_\_\_, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Concession/ Contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all bids and other documents and writings, participate in bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to



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

**APPENDIX – VI****GUIDELINES OF THE DEPARTMENT OF DISINVESTMENT***(Refer Clause 1.2.1)*

No. 6/4/2001-DD-II

Government of India

Department of Disinvestment

Block 14, CGO Complex

New Delhi.

Dated 13th July 2001

## OFFICE MEMORANDUM

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

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

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

examining whether the two concerns are substantially controlled by the same person/ persons.

(c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.

(d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

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

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

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

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

**APPENDIX VII**  
**JOINT BIDDING AGREEMENT**

*(Refer Clause 2.13.2)*

*(To be executed on Stamp paper of appropriate  
value)*

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

**AMONGST**

1. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at ..... (hereinafter referred to as the **"First Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

2. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at ..... (hereinafter referred to as the **"Second Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

3. {..... Limited, a company incorporated under the Companies Act, 1956 and having its registered office at ..... (hereinafter referred to as the **"Third Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)}

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

**WHEREAS,**

- (A) NAYA RAIPUR DEVELOPMENT AUTHORITY, a statutory authority constituted by Governemnt of Chhatisgarh under Chhatisgarh Nagar Tatha Gram Nivesh Adhiniyam 1973, represented by its Chief Executive Officer and having its principal offices at Gate No. 2, DKS Bhavan, Mantralaya, Raipur – 492001 (hereinafter referred to as the “**Concessioneing Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited proposals (the “**Proposals**”) by its Request for Proposal No. .... dated .....(the “**RFP**”) for qualification and short-listing of bidders for development and operation/ maintenance of Project – Development of Amusement and Recreational Park on Public Private Partnership basis at Naya Raipur, Chhatisgarh (the “**Project**”).
- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Proposal.

**NOW IT IS HEREBY AGREED as follows:****1. Definitions and Interpretations**

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

**2. Consortium**

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

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

### **3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the "SPV") under the Indian Companies Act 1956 for entering into a Concession Agreement with the Concessional Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

### **4. Role of the Parties**

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

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be {the Technical Member of the Consortium;}
- {(c) Party of the Third Part shall be the Financial Member or Other Member of the Consortium; and}

### **5. Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all

obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

## **6. Shareholding in the SPV**

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

First Party:

Second Party:

{Third Party:}

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the fifth anniversary of the Project Construction Completion Date, be held by the Parties of the First, {Second and Third} Part whose experience and networth have been reckoned for the purposes of qualification of Bidders for the Project in terms of the RFP.

6.3 The Parties undertake that they shall collectively hold at least 100% (one hundred per cent) of the subscribed and paid up equity share capital of the SPV at all times until the fifth anniversary of the Project Construction Completion Date.

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

## **7. Representation of the Parties**

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

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

(b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and

board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

- (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this

Agreement.

## 8. Termination

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

## 9. Miscellaneous

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

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

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

SIGNED, SEALED AND DELIVERED  
on behalf of

LEAD MEMBER by:

SIGNED, SEALED AND DELIVERED For and

SECOND PART

(Signature)

(Name)

(Designation)

(Address)

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THIRD PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

**Notes:**

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

documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.

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