



**Department of Health & Family  
Welfare Government of Uttar Pradesh**



**Request for Qualification (RFQ)-cum-Request for  
Proposal (RFP) Document  
Volume 1: Instruction to Bidders**

**Operationalization of 100 Bedded Mother and Child  
Hospital Wing in Uttar Pradesh with Private Sector  
Participation**

***(Bid Reference: 8F/Tender-780/1133 dated 31.05.2016)***

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**[●], 2016**

## TABLE OF CONTENT

<b>GLOSSARY</b> .....	<b>1</b>
<b>DISCLAIMER</b> .....	<b>3</b>
<b>1. INTRODUCTION</b> .....	<b>5</b>
<b>2. INSTRUCTIONS TO BIDDERS</b> .....	<b>10</b>
<b>3. EVALUATION OF BIDS</b> .....	<b>28</b>
<b>4. FRAUD AND CORRUPT PRACTICES</b> .....	<b>31</b>
<b>5. PRE-BID CONFERENCE</b> .....	<b>33</b>
<b>6 MISCELLANEOUS</b> .....	<b>34</b>
<b>APPENDIX – I: Formats for Qualification Bid</b> .....	<b>35</b>
<b>ANNEXURE A</b> .....	<b>35</b>
<b>Letter Comprising the Bid</b> .....	<b>35</b>
<b>ANNEXURE B General Information of Bidder</b> .....	<b>39</b>
<b>ANNEXURE C Power of Attorney for Signing of Bid</b> .....	<b>41</b>
<b>ANNEXURE D Power of Attorney for Lead Member of Consortium</b> .....	<b>43</b>
<b>ANNEXURE E Format for Bid Security (Bank Guarantee)</b> .....	<b>45</b>
<b>ANNEXURE F Joint Bidding Agreement</b> .....	<b>48</b>
<b>ANNEXURE G Technical Capacity of Bidder</b> .....	<b>53</b>
<b>ANNEXURE H Financial Capacity of Bidder</b> .....	<b>54</b>
<b>ANNEXURE I Support Letter from Scheduled Bank</b> .....	<b>56</b>
<b>ANNEXURE J Bid Checklist</b> .....	<b>56</b>
<b>APPENDIX – II: Format for Financial Bid</b> .....	<b>57</b>

## GLOSSARY

Addendum	As defined in Clause 2.9.1
Applicable Laws	As defined in the Concession Agreement
Associate	As defined in Clause 2.1.14
Authority	As defined in Clause 1.1.1
Bank Guarantee	As defined in Clause 2.20.1
Bid(s)	The Qualification Bid and Financial Bid together shall be referred to as the Bid.
Bidder(s)	Parties that submit their Bids for a particular Project in accordance with this RFP and shall include the Members of the Consortium.
Bidding Documents	As defined in Clause 1.1.8
Bid Due Date	As defined in Clause 1.1.8
Bidding Process	As defined in Clause 1.2.1
Bid Security	As defined in Clause 1.2.4
Companies Act	Shall mean the Companies Act, 1956. Provided that references to any repealed provision contained in the Companies Act, 1956 shall be read as references to the corresponding provision contained in the Companies Act, 2013
Concession	As defined in Clause 1.1.6
Concession Agreement	As defined in Clause 1.1.4
Concessionaire	As defined in Clause 1.1.4
Conflict of Interest	As defined in Clause 2.1.14
Crore	Ten million (10,000,000)
Consortium	As defined in Clause 2.2.1 (a)
Damages	As defined in Clause 2.1.14
First Round of Bidding	As defined in Clause 3.3.5
Financial Bid	As defined in Clause 1.2.1
Financial Capacity	As defined in Clause 2.2.2 I (b)
Financial Close	As defined in the Concession Agreement
Lowest Bidder	As defined in Clause 1.2.6
Joint Bidding Agreement	As defined in Clause 2.2.3 (e)
Lakh	Hundred thousand (100,000)
Lead Member	As defined in Clause 2.2.3 (b)
LOA	As defined in Clause 3.3.8
Member	Member of a Consortium
Minimum Eligibility Criteria	As defined in Clause 2.2.2 I
Net Worth	As defined in Clause 2.2.2 I (b)
Project	As defined in Clause 1.1.2

Projects	As defined in Clause 1.1.2
Project COD	As defined in the Concession Agreement
PPP	Public Private Partnership
Qualification Bid	As defined in Clause 1.2.1
Qualified Bidder(s)	As defined in Clause 1.2.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposal	As defined in the Disclaimer
Second Lowest Bidder	Qualified Bidder offering the second highest Premium in the first year for a particular Project
Second Round of Bidding	As defined in Clause 3.3.5
Selected Bidder	As defined in Clause 3.3.3
Sites	As defined in Clause 1.1.3
Scheduled Bank	As defined in Clause 2.20.1
Subject Person	As defined in Clause 2.1.14 (a)
SPV	Special Purpose Vehicle
Technical Capacity	As defined in Clause 2.2.2 I (a)
Third Lowest Bidder	Qualified Bidder offering the third highest Premium in the first year for a particular Project

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

## **DISCLAIMER**

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

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

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

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

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

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

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Projects and the 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 Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

## 1. INTRODUCTION

### 1.1 Background

1.1.1 The Department of Health and Family Welfare, Government of Uttar Pradesh (the “GoUP”) is committed to improving the health scenario in the state of Uttar Pradesh and is engaged in the development of health infrastructure across the state. As part of this endeavour, the Department of Health and Family Welfare, GoUP (the “Authority”) has invested in creation of Mother & Child Hospital Wings (MCHW) in the 49 district hospitals (women), where the prevailing average annual bed occupancy was more than 70%, with an aim to lower the maternal and child mortality rates, and to provide health care “to the last household and to the last person of the state”. Of these 49 districts, 25 districts mentioned in the Clause 1.1.2 below are conceived to be awarded through this RFP.

1.1.2 The Authority is desirous of operationalizing these MCHW through Public Private Partnership (the “PPP”) mode on equip, finance, operate, maintain, and transfer (“EFOMT”) basis. The Authority has decided to carry out the bidding process for each of the following projects in a manner as set out in this Request for Proposal (RFP) document for selection of private developer(s) to whom a project may be awarded.

Cluster Number	Location	Cluster Number	Location
1	Bagpat	3	Maharajganj
1	Jyotiba Phule Nagar	3	Sant Kabir Nagar
1	Auraiya	4	Azamgarh
1	Kannauj	4	Ballia
1	Etah	4	Ghazipur
2	Hardoi	4	Jaunpur
2	Ambedkar Nagar	4	Mau
2	Siddharth Nagar	5	Chandauli
2	Kaushambi	5	Mirzapur
2	Pratapgarh	5	Sant Ravidas Nagar
3	Deoria	5	Sonbhadra
3	Gorakhpur	5	Varanasi
3	Kushinagar		

Hereafter the word “Project Site” shall refer to individual MCHW while a cluster of Project Site (as grouped above) shall be referred as “Cluster”. Upgradation, development, operation and maintenance of Project Site or Cluster shall be referred as “Project” in this RFP.

Collectively all the Project shall be referred as “**Projects**” i.e. MCHW are collectively referred to as “**Projects**”.

- 1.1.3 For each Project, the Authority has identified sites within the relevant districts of Uttar Pradesh (the “**Sites**”). The Sites have good connectivity and have access to basic infrastructure facilities. The details of the Sites, their location, basic infrastructure facilities and other features are provided in Project Information Memorandum (“**PIM**”).
- 1.1.4 The Selected Bidder(s) shall incorporate an SPV under the Companies Act (the “**Concessionaire**”) and along with the Concessionaire shall be responsible for the equipping, financing, operation and maintenance and transfer of the Project(s) under and in accordance with the provisions of a long-term concession agreement (each a “**Concession Agreement**”) to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.
- 1.1.5 The scope of work will broadly include equip, finance, operation and maintenance and transfer of the Project under the Applicable Laws and in accordance with the Concession Agreement.
- 1.1.6 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the exclusive right, licence and authority to equip, operate and maintain that specific Project (each a “**Concession**”) subject to and in accordance with terms of the Concession Agreement.
- 1.1.7 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of work and obligations of the Concessionaire set forth in the Concession Agreement or the 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 herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.
- 1.1.8 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the “**Bidding Documents**”). All Bids shall be prepared and submitted in accordance with such terms on or before the time on the date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).

## **1.2 Brief description of Bidding Process**

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- 1.2.1. The Authority has adopted a single-stage two envelope process (the “**Bidding Process**”) for selection of a Bidder for award of a particular Project. All Bidders of a particular Project shall simultaneously submit their relevant qualification details for the purpose of meeting Minimum Eligibility Criteria (“**Qualification Bid**”) and financial proposal for seeking minimum first operations year financial support (“**Financial Bid**”) payable by Authority against this RFP. In the first step, Qualification Bids of all Bidders shall be evaluated as to whether they are responsive in terms of Clause 3.2.1 and meet the Minimum Eligibility Criteria as set forth in Clause 2.2.2 of this RFP for undertaking the Project(s). The Financial Bids of only those Bidders who are considered responsive and meet the Minimum Eligibility Requirements (the “**Qualified Bidders**”) would be opened and evaluated for the purpose of identifying the Selected Bidder for the relevant Project.
- 1.2.2. As part of the Bidding Process, interested parties who fulfill the Minimum Eligibility Criteria as set forth in this RFP are being called upon to submit their Bids in accordance with the Bidding Documents. The Bid shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date.
- 1.2.3. The Bidding Documents include the draft Concession Agreement (to be entered into for each Project separately incorporating certain conforming changes to include Project specific terms) which shall be provided to the Bidders on the date of issue of RFP. Subject to the provisions of Clause 2.1.4, the aforesaid documents and any addenda issued subsequent to this RFP, but before the Bid Due Date, will be deemed to form part of the Bidding Documents.
- 1.2.4. In terms of the RFP, a Bidder is required to deposit, along with its Bid, a bid security equivalent to an amount of Rs. 3,00,000 (Rupees Three Lakh) if a Bidder is bidding for single Project Site. In the event that a Bidder is bidding for Cluster consisting of 5 Project Site, the Bid Security shall be Rs. 15,00,000 (Rupees Fifteen Lakh). In the event that a Bidder is bidding for more than one Cluster or Project Site, the Bid Security shall be separately submitted for each Project Site / Cluster Projects (the “**Bid Security**”). The Bid Security will be refundable not later than 180 (one hundred and eighty) days from the Bid Due Date except in the case of the Selected Bidder(s) whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have to provide Bid Security in the form of a Bank Guarantee acceptable to the Authority, and the validity period of the Bank Guarantee, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. For the avoidance of doubt, if a Bidder bids for more than 1 (one) Project/Projects, it shall not have to submit a separate Bid Security for each.
- 1.2.5. The Bidders are invited to examine the Sites for each 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 each Project.

1.2.6 Financial Bids are invited for a Project on the basis of the annual support amount sought by a Bidder in first operation year and to be paid in the form of first year annual payment by the Authority. It is hereby clarified that the quoted annual payment for first year of Concession shall upon expiry of each year of operations Period, be escalated by 6.5% of the payment paid in the immediately preceding year. Subject to Clause 2.16, a particular Project will be awarded to the Qualified Bidder quoting the lowest payment for the first year. The annual payment shall be payable subject to and in accordance with terms of the Concession Agreement, in four equal installments at the end of every quarter and shall be paid subject to deductions/adjustments in the form of liquidated damages for non-performance/non observance of obligations/covenants, as particularly set out as per the provisions of the Concession Agreement. There shall be One Time Fee equivalent to 30% of the annual payment quoted for the first year paid at the COD as per the provisions of the Concession Agreement.

In this RFP, the term “**Lowest Bidder**” shall mean the Qualified Bidder who is seeking the lowest annual payment in the first year for that particular Project.

1.2.7 Generally, for a Project, the Lowest Bidder shall be the Selected Bidder, subject to the provisions of Clause 3.3.6.

1.2.8 Further and other details of the process to be followed and the terms thereof has been spelt out in this Bidding Documents.

1.2.9 Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.11.5. The envelopes/ communication by fax or email shall clearly bear the following identification/ title:

**“Queries/Request for Additional Information: RFP for Operationalization of 100 Bed Mother and Child Hospital Wing in 25 districts of UP on PPP”.**

**1.3 Schedule of Bidding Process**

The Authority shall endeavor to adhere to the following schedule. However the Authority may, at its own discretion, revise or extend any of the timelines set out in this schedule.

<b>Event Description</b>	<b>Date</b>
Issue of Final Bidding Documents	28.10.2016
Bid Due Date and time	18.11.2016 at 02:30 PM
Opening of Qualification Bids	18.11.2016 at 03:00 PM
Opening of Financial Bids, issue of LOA and signing of Concession Agreement	Bidders will be intimated in advance



## 2. INSTRUCTIONS TO BIDDERS

### A. GENERAL

#### 2.1 General terms of Bidding

- 2.1.1 A Bidder shall submit only 1 (one) Bid. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid for the same Project either individually or as a member of any other Consortium, as the case may be. A Bidder may, submit separate financial bids for the other Projects.
- 2.1.2 Unless the context otherwise requires, the terms not defined in this RFP, but defined in the Concession Agreement shall have the meaning assigned thereto in the Concession Agreement.
- 2.1.3 The Bidding Documents can be downloaded from <http://www.upnrhm.gov.in> or [uphealth.up.nic.in](http://uphealth.up.nic.in) or [dghealth.up.nic.in](http://dghealth.up.nic.in)

Director General Medical and Health  
Swasthya Bhawan  
Kaiserbagh Lucknow-226001,U.P.

For avoidance of doubt,it is clarified that the Bid shall be submitted on or before the Bid Due Date and time only at the address specified in Clause 2.11.5. The Bidder shall deposit a non-refundable tender document fee of Rs. 60,375(sixty thousand three hundred seventy five)(the “**Document Fee**”) towards purchase of the Bidding Documents. The Document Fee shall be in the form of a demand draft issued by a Scheduled Bank in India, in favour of “**Director General Medical Health, Uttar Pradesh**” payable at Lucknow.

- 2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have an 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.
- 2.1.5 The Qualification Bid shall be furnished as per formats provided in Appendix-I of this RFP. The Qualification Bid shall include the following:

ANNEXURE A : Letter comprising the Bid  
ANNEXURE B : General Information of Bidder  
ANNEXURE C : Power of Attorney for Signing of Bid  
ANNEXURE D : Power of Attorney for Lead Member of Consortium

ANNEXURE E	:	Bid Security (Bank Guarantee)
ANNEXURE F	:	Joint Bidding Agreement
ANNEXURE G	:	Technical Capacity of Bidder
ANNEXURE H	:	Financial Capacity of Bidder
ANNEXURE I	:	Bid Checklist

- 2.1.6 The Financial Bid for a Project should be furnished in the format at Appendix-II, clearly indicating the bid amount in both figures and words, in Indian Rupees, and signed by the Bidder's authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.1.7 The Financial Bid of a Project shall consist of an annual payment amount to be quoted by the Bidder. The payments shall be payable by the Authority to the Concessionaire as per the terms and conditions of this RFP and particularly subject to and in accordance with the provisions of the Concession Agreement.
- 2.1.8 As mentioned in Clause 1.2.4 above, the Bidder shall deposit a Bid Security in accordance with the provisions of this RFP. The Bidder has to provide the Bid Security in the form of a Bank Guarantee, acceptable to the Authority, as per format set forth in Annexure E of Appendix – I.
- 2.1.9 The validity period of the Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, and may be extended as may be mutually agreed between the Authority and 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 180 (one hundred and eighty) days from the Bid Due Date except in the case of the Selected Bidder (s) whose Bid Security shall be retained till it has provided a Performance Security under the relevant Concession Agreement.
- 2.1.10 The Bidder should submit a Power of Attorney as per the format set forth in Annexure C of Appendix-I, authorising the signatory of the Bid to commit the Bidder. In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member as per the format set forth in Annexure D of Appendix-I.
- 2.1.11 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.12 All communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.13 The Bidding Documents including this RFP and all attached documents are and shall remain the property of the Authority and are transmitted to the Bidders solely for the purpose of

preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.13 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return any Bid or any information provided along therewith.

2.1.14 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 Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be. The Bidder acknowledges and agrees such forfeiture and appropriation of the Bid Security or Performance Security (as the case may be) is reasonable and represents the mutually agreed genuine pre-estimated loss and damages likely to be suffered and incurred by the Authority and not by way of penalty for, *inter alia*, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal (“**Damages**”). The Bidder acknowledges and agrees that such forfeiture and appropriation of the Bid Security or Performance Security (as the case may be) is without prejudice to any other right or remedy that may be available to the 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:

- a) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or Associate (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 of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of not more than 25% (twenty five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder(s), its Member or Associate is not more than 25% (twenty five per cent) of the paid up and subscribed equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 2(72) of the Companies Act, 2013. For the purposes of this Clause 2.1.14, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent)

of the subscribed and paid up equity shareholding of such intermediary; or

- b) a constituent of such Bidder is also a constituent of another Bidder in any of the Projects; or
- c) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or Associate; or
- d) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- e) such Bidder or any Associate thereof has a relationship with another Bidder or any Associate thereof, 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
- f) such Bidder has participated as a consultant or sub-consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

*Explanation:*

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.14, shall include each Member of such Consortium.

For the purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who is under significant influence of such Bidder/Consortium Member (the “Associate”). The expression “significant influence” 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 total share capital of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.

2.1.15 [Deleted].

2.1.16 Any award of Concession pursuant to this RFP shall be subject to the terms of Bidding Documents.

## 2.2 Eligibility of Bidders

2.2.1 For determining the eligibility of Bidders for their technical-qualification hereunder, the following shall apply:

- (a) The Bidder for qualification may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the relevant Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be a 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 company registered in India under the Indian Companies Laws or incorporated outside India under relevant laws of incorporation under country of its origin, or a society registered under Society Registration Act, 1860 or any other Indian law for registration of societies, a registered trust under Indian Trusts Act, 1882 or any other Indian law for registration of public trust or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.3 below.

### 2.2.2 Minimum Eligibility Criteria

I. To be considered as technically qualified, a Bidder shall fulfill the following minimum eligibility criteria (the “**Minimum Eligibility Criteria**”):

- (a) Technical Capacity: For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall have to fulfill the following conditions:

S.N	Criteria	Bidding for	
		Project Site	Cluster
1	Number of total operational beds on a cumulative basis across hospitals, as on BDD	50	250
2	Such hospitals shall have conducted in an aggregate a minimum of number of deliveries performed during last FY preceding BDD	400	800
3	Such hospitals shall have conducted in an aggregate a minimum of number of c-section deliveries performed during last FY preceding BDD	80	160
4	Has been operational (clinical activities) for more than	5 years	5 years

Any Bidder qualifying for a Project Site can bid up to 3 Project Sites subject to

meeting minimum Financial Capacity. Any Bidder qualifying for a Cluster can bid for all Clusters / Project Sites, subject to meeting minimum Financial Capacity requirement.

The Bidder shall provide documentary evidence of the Technical Capacity as specified in this Clause. Such documentary evidence shall be duly signed by the whole time director of the single Bidder or a Member of the Consortium (whose Technical Capacity was taken into consideration for the purposes of technical qualification under and in accordance with the RFP), as the case may be.

- (b) Financial Capacity: For demonstrating financial capacity, the Bidder shall have to fulfill the following conditions (the “**Financial Capacity**”):
- i. The Bidder shall have positive net worth at the Close of the financial year immediately preceding the BDD
  - ii. In the event that the Bidder is bidding for a Project Site, it shall have a minimum average turnover of the last three years immediately preceding the BDD of Rs. 2.4 Crore. In the event that the Bidder is bidding for a Cluster, it shall have a minimum average turnover of Rs. 12 Crore. In the event that a Bidder is bidding for more than a Project Site or/and Cluster, it shall have a minimum average turnover of an amount exceeding the arithmetic sum of the minimum turnover requirements of individual Project Site or/and Cluster, as the case may be.

In the event that a Bidder quotes for Project Site(s) and / or Cluster(s) and the Bidder does not meet the Minimum Eligibility Criteria (Technical or /and Financial Capacity) calculated for the Project Site (s) and / or Cluster (s) described under this Clause 2.2.2 , the Bidder shall be disqualified and the financial bid of such Bidder shall not be opened.

For the purposes of this RFP, Net Worth means:

- i. in case the Bidder is a company, Net Worth will mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation; and
- ii. in case the Bidder is a trust or a society, Net Worth will mean the sum of available corpus and reserves.

For the purposes of this RFP, Turn Over means:

- i. in case the Bidder is a company - the aggregate value of the realization of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year. For avoidance of doubt, it is clarified that it shall not include interest earned from financial instruments.
- ii. in case the Bidder is a society or a trust: is the gross receipts which includes donations from individuals and corporations, support from government agencies, income from activities related to the organization's mission, and income from fundraising activities, membership dues, and financial investments such as stock shares in companies.

In case the annual accounts for the last financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect, certified by the statutory auditor in accordance with Clause 2.2.5. In such a case, the Bidder shall provide the audited annual reports for the financial year proceeding the latest financial year for which the audited annual report is not being provided.

In case of a Consortium, the combined (arithmetic sum) Technical Capacity and Net Worth of only those Members who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, shall be considered to satisfy the above condition of eligibility; provided that each such Member shall, for a period of 2 (two) years from the Project COD (as defined in the Concession Agreement), hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid up equity of the SPV.

- II. In computing the Technical & Financial Capacity of the Bidder/ Consortium Members under Clause 2.2.2, the Technical & Financial Capacity of their respective Associates would also be eligible hereunder.

2.2.3 The Bidder (single entity or consortium of entities), shall be required to form an SPV to execute the Concession Agreement and implement the relevant Project. In case the Bidder is a Consortium, it should comply with the following additional requirements:

- (a) Bid should contain the information required for each Member of the Consortium, provided number of members of Consortium should not exceed 3(three);
- (b) Members of the Consortium shall nominate 1 (one) member as the lead member (“**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;
- (c) The nomination of the Lead Member shall be supported by a Power of Attorney, as

per the format set forth in Annexure Dof Appendix-I, signed by all the other members of the Consortium;

- (d) The parties to a Consortium shall form an appropriate SPV to execute the Project if awarded to the Consortium; and
- (e) Members of the Consortium shall enter into a binding Joint Bidding Agreement (the “**Joint Bidding Agreement**”) for the purpose of submitting the Bid. The Joint Bidding Agreement 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 carry out all the responsibilities as Concessionaire in terms of the Concession Agreement, in case the Concession to undertake the Project is awarded to the Consortium;
  - (ii) clearly outline the proposed roles and responsibilities of each Member at each stage;
  - (iii) commit the minimum equity stake to be held by each Member; and
  - (iv) include a statement to the effect that all Members of the Consortium shall, till the occurrence of Financial Close in accordance with the Concession Agreement, be liable jointly and severally for all obligations of the Concessionaire in relation to the Project.
- (f) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Authority.

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

2.2.4 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (Build, Own and Transfer or otherwise), and the bar subsists as on the date of the Bid, would not be eligible to submit the Bid, either individually or as Member of a Consortium.

2.2.5 The Bid must be accompanied by the audited annual reports of the Bidder (of each Member

in case of a Consortium) for the latest financial year preceding the Bid Due Date. The Bidder shall enclose its Bid, as per the format set forth in Annexure H of Appendix-I, complete with its Annexes, the certificate(s) from its statutory auditors specifying the Net Worth of the Bidder at the close of the financial year preceding the Bid Due Date and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of Clause 2.2.2 I (b).

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 the financial year preceding the latest financial year for which the audited annual report is not being provided.

- 2.2.6 No change in the composition of the Consortium is allowed subsequent to the submission of the Bid during the Bidding Process.

### **2.3 Change in Ownership**

- 2.3.1 By submitting the Bid, the Bidder acknowledges and undertakes that it is meeting the Minimum Eligibility Criteria on the basis of Technical Capacity and Financial Capacity of those of its Members who shall each, until 2 (two) years from the Project COD (as defined in the Concession Agreement), hold equity share capital representing not less than 26% (twenty six per cent) of the subscribed and paid-up equity of the SPV. 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. For the avoidance of doubt, the provisions of this Clause 2.3.1 shall apply only when the Bidder is a Consortium.

- 2.3.2 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 Member or an Associate whose Technical Capacity and/or Financial Capacity was taken into consideration for the purposes of technical qualification under and in accordance with the RFP, the Bidder shall inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.

## **2.4 Cost of Bidding**

2.4.1 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 Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

## **2.5 Sites visit and verification of information**

2.5.1 Bidders are encouraged to submit their respective Bids after visiting the Sites and ascertaining for themselves the Sites' conditions, location, surroundings, climate, access to Sites, emergency medical needs, healthcare infrastructure, Applicable Laws, applicable permits and regulations, and any other matter considered relevant by them.

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

- a) made a complete and careful examination of the Bidding Documents;
- b) received all relevant information requested from the Authority;
- c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above;
- d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project(s) in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement; and
- f) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.3 The Authority shall not be liable for any omission, mistake or error 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 the Bidding Documents including the RFP or the Bidding Process,

including any error or mistake therein or in any information or data given by the Authority.

## **2.6 Right to accept and to reject any or all Bids**

- 2.6.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.
- 2.6.2 Notwithstanding anything contained in this RFP, the 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 thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.6.3 The Authority reserves the right to reject any Bid and appropriate the Bid Security if, at any time, a material misrepresentation is made or uncovered or the Bidder does not provide, within the time specified by the Authority, supplemental information sought by the Authority for evaluation of the Bid. Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium shall be disqualified / rejected. If such disqualification / rejection occurs after the Bids have been opened and the Lowest Bidder gets disqualified / rejected, then the Authority reserves the right to:
- (a) to choose the Selected Bidder in accordance with Clause 3.3.5 and 3.3.6; or
  - (b) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.
- 2.6.4 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by the Authority, that one or more of the Minimum Eligibility Criteria 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 LOA or entering into of the Concession Agreement, and if the Bidder has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Bidder, without the Authority being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be. In such an

event, the Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as compensation and damages payable to the Authority for, *inter alia*, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority.

**B. DOCUMENTS**

**2.7 Contents of the RFP**

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

**Invitation for Bids**

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

**Appendices**

**I Formats for Qualification Bid**

ANNEXURE A.	Letter comprising the Bid
ANNEXURE B.	General Information of Bidder
ANNEXURE C.	Power of Attorney for Signing of Bid
ANNEXURE D.	Power of Attorney for Lead Member of Consortium
ANNEXURE E.	Bid Security (Bank Guarantee)
ANNEXURE F.	Joint Bidding Agreement
ANNEXURE G.	Technical Capacity of Bidder
ANNEXURE H.	Financial Capacity of Bidder
ANNEXURE I.	Bid Checklist

**II. Format for Financial Bid**

The draft Concession Agreement to be provided by the Authority as part of the Bid Documents shall be deemed to be part of this RFP.

**2.8 Clarifications**

- 2.8.1 Bidders requiring any clarification on the Bidding Documents including the RFP may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.9. They should send in their queries before the date mentioned in the schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. The responses will be given on e-mail.
- 2.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

## **2.9 Amendment of RFP**

- 2.9.1 At any time prior to the deadline for submission of Bids, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of an addendum (“**Addendum**”).
- 2.9.2 Any Addendum issued hereunder will be sent in writing to all the Bidders.
- 2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Bid Due Date.

## **C. PREPARATION AND SUBMISSION OF BIDS**

### **2.10 Format and Signing of Bid**

- 2.10.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects.
- 2.10.2 The Bid shall be typed or written in indelible ink and signed by the authorized 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 initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.

## **2.11 Sealing and Marking of Bids**

2.11.1 The Bidder shall submit the Qualification Bid in the formats specified under Appendix-I, and seal it in an envelope and mark the envelope as “QUALIFICATION BID”. The Qualification Bid shall include:

- a. Letter comprising the Bid (Appendix – I - **ANNEXURE A**);
- b. General Information of Bidder (Appendix – I - **ANNEXURE B**)
- c. Power of Attorney for signing of Bid in the prescribed format (Appendix – I - **ANNEXURE C**);
- d. If applicable, the Power of Attorney for Lead Member of Consortium (Appendix – I - **ANNEXURE D**);
- e. Bid Security (Appendix – I - **ANNEXURE E**);
- f. Joint Bidding Agreement (in case of Consortium) (Appendix – I - **ANNEXURE F**);
- g. Technical Capacity of the Bidder (Appendix – I - **ANNEXURE G**);
- h. Financial Capacity of the Bidder (Appendix – I - **ANNEXURE H**);
- i. Bid Checklist (Appendix – I - **ANNEXURE I**); and
- j. A copy of the Concession Agreement with each page initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (c) hereinabove.

2.11.2 The Bidder shall separately submit the Financial Bid for a Project in the format specified in Appendix – II and seal it in an envelope and mark the envelope as “FINANCIAL BID”. In case the Bidder desires to bid for more than 1 (one) Project, it shall submit a separate Financial Bid for each such Project and enclose them in a separate envelope, duly identifying the Financial Bid envelope for each Project.

2.11.3 A true copy of the Qualification Bid shall be placed in hard binding and the pages shall be numbered serially. Each page thereof shall be initialed in blue ink by the authorized signatory. Three copies of this document shall be placed in a separate envelope and marked “COPY OF DOCUMENTS”.

2.11.4 The 3 (three) or more envelopes, as the case may be, specified in Clauses 2.11.1, 2.11.2 and

2.11.3 shall be placed in an outer envelope, which shall be sealed. All the envelopes shall clearly bear the following identification:

**“Bid for the equipping, financing, operating, maintaining, and transfer of MCHW in Uttar Pradesh on PPP Basis”** 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.

2.11.5 Each of the envelopes shall be addressed to the address mentioned in Clause 2.1.3 of the RFP.

2.11.6 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted.

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

## **2.12 Bid Due Date and time**

2.12.1 Bids should be submitted before 1700hours IST on the Bid Due Date at the address provided in Clause 2.11.5 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.5.

2.12.2 The Authority may, in its sole discretion, extend the Bid Due Date and specified time by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

## **2.13 Late Bids**

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

## **2.14 Contents of the Bid**

2.14.1 The Qualification Bid for the Project(s) shall be furnished in the formats provided under Appendix – I.

2.14.2 The Financial Bid for each Project shall be furnished in the format at Appendix – II and shall consist of an annual payment required for first operation year during the Concession Period, to be quoted by the Bidder. The Bidder shall specify (in INR) the minimum annual payment payable to the Bidder by the Authority to undertake a Project in the first year of operation in accordance with this RFP and the provisions of the Concession Agreement.

- 2.14.3 Generally, for a Project, the Lowest Bidder shall be the Selected Bidder, subject to the provisions of Clause 3.3.6.
- 2.14.4 The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.
- 2.14.5 The proposed Concession Agreement shall be deemed to be part of the Bid.

## **2.15 Modifications/ Substitution/ Withdrawal of Bids**

- 2.15.1 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 Authority prior to Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.
- 2.15.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.11, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- 2.15.3 Any alteration/ modification in the Bid or additional information supplied subsequent to the specified time on the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

## **2.16 Rejection of Bids**

- 2.16.1 If any Bid received by the Authority is found not signed and/or sealed and/or hard bound and/or marked as stipulated in Clauses 2.10 and 2.11, and/or not accompanied by the Bid Security as specified in Clause 2.1.8, it may be summarily rejected.
- 2.16.2 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul Bidding Process and to reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reason whatsoever. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite fresh Bids hereunder.
- 2.16.3 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

## **2.17 Validity of Bids**

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

Bidders and the Authority.

## **2.18 Confidentiality**

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

## **2.19 Correspondence with the Bidder**

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

## **D. BID SECURITY**

### **2.20 Bid Security**

2.20.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.8 and 2.1.9 hereinabove in the form of a bank guarantee issued by a Scheduled Bank in India, in favour of the “**Director General Medical Health, Uttar Pradesh**” in the format set forth in Annexure E of Appendix –I (the “**Bank Guarantee**”) and having a validity period of not less than 180 (one hundred and eighty) days from the Bid Due Date, as may be extended by the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India is required. For the avoidance of doubt, “**Scheduled Bank**” shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.

2.20.2 The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

2.20.3 Save as provided in Clause 1.2.4 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority.

2.20.4 The Selected 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. The Authority may, at the Selected Bidder(s)' option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.

- 2.20.5 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages *inter alia* in any of the events specified in Clause 2.20.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the Bid validity period. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.20.6 The Bid Security shall be forfeited and appropriated by the Authority as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement, or otherwise, under the following conditions:
- (a) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
  - (b) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;
  - (c) In the case of Selected Bidder(s), if it fails within the specified time limit -
    - (i) to sign and return the duplicate copy of LOA;
    - (ii) to sign the Concession Agreement; or
    - (iii) to furnish the Performance Security within the period prescribed thereof in the Concession Agreement;
  - (d) In case the Selected Bidder(s), having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.
- 2.20.7 The Bid Security of Bidders whose Bid is rejected on account of not meeting the Minimum Eligibility Criteria will be returned/refunded within a period of 60 (sixty) days from the date of intimating the rejection of the proposal by Authority to the Bidder.

### **3. EVALUATION OF BIDS**

#### **3.1 Opening and Evaluation of Bids**

3.1.1 The Authority shall open the Qualification Bid at 1730hours on the Bid Due Date, at the place specified in Clause 2.11.5 and in the presence of the Bidders who choose to attend.

3.1.2 The Authority will subsequently examine and evaluate the Qualification Bid in accordance with the provisions set out in this Section 3.

3.1.3 To facilitate evaluation of Qualification Bid, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Qualification Bid.

#### **3.2 Tests of responsiveness**

3.2.1 As part of the evaluation of Qualification Bids, the Authority shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:

- (a) it is received as per the format at Appendix – I;
- (b) it is received by the Authority on or before the specified time on the Bid Due Date including any extension thereof pursuant to Clause 2.12.2;
- (c) it is signed and sealed as stipulated in Clauses 2.10 and 2.11;
- (d) it is accompanied by the Bid Security as specified in Clause 2.1.8;
- (e) it is accompanied by the Power(s) of Attorney as specified in Clause 2.1.10 and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.3 (c), as the case may be;
- (f) it does not contain any condition or qualification;
- (g) it is accompanied by the Joint Bidding Agreement (for Consortium), specific to the Project, as stipulated in this RFP; and
- (h) it is not non-responsive in terms hereof.

3.2.2 The 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 Authority in

respect of such Bid.

### **3.3 Selection of Bidder**

- 3.3.1 The Bidders considered as responsive in terms of Clause 3.2.1 and fulfilling the Minimum Eligibility Criteria as set forth in Clause 2.2.2 shall be declared as the Qualified Bidders.
- 3.3.2 Financial Bids of only Qualified Bidders shall be considered for evaluation. Only Qualified Bidders shall be invited for the opening of Financial Bids; the date on which the Financial Bids will be opened shall be intimated to the Qualified Bidders.
- 3.3.3 Subject to Clause 3.3.6 below, for each Project, the Qualified Bidder quoting the lowest Period Payment to be paid by the Authority during first operation year shall be declared as the selected Bidder (the “**Selected Bidder**”).
- 3.3.4 Subject to Clause 3.3.6 below, in the event that 2(two) or more Qualified Bidders quote the same amount of annual payment (the “**Tie Bidders**”) for the same Project, the Qualified Bidder shall be identified by asking the two Bidders to provide their best and final offer. The Bidder offering the most advantageous Final offer shall be adjudged the winner.
- 3.3.5 Subject to Clause 3.3.6 below, in the event that the Lowest Bidder withdraws or is not selected for any reason in the first instance (the “**First Round of Bidding**”) for a Project, the Authority may invite all the remaining Qualified Bidders to revalidate or extend their respective Bid Security, as necessary, and shall invite all the remaining bidders to match the bid of the aforesaid Lowest Bidder (the ‘**Second Round of bidding**’). If in the second round of bidding, only one Bidder matches the aforesaid Lowest Bidder, it shall be selected the Preferred Bidder. If two or more Bidders match the said Lowest Bidder in the second round of bidding, then the Bidder whose Bid was ranked higher as compared to other Bidder(s) in the first round of bidding shall be selected the Preferred Bidder. For example, if the third and fifth ranked Bidders in the first round of bidding offer to match the said first ranked Bidder in the second round of bidding, the said third rank Bidder shall be the Selected Bidder.
- 3.3.6 The Selected Bidder for each Project Site / Cluster shall be identified in the following manner:

#### **I. Case I: Bids have been received for a Cluster and for each of the individual Project Sites within that Cluster**

- a. Lowest quote for the Cluster (say  $C_L$ ) shall be identified among the Bidders who have quoted for the full Cluster. If there is only one Bid, the quote of the single Bidder shall be considered as  $C_L$
- b. The lowest quote ( $PS^i_L$ ) for each of Project Sits within the Cluster shall be identified from the quotes of Bidders for that particular Project Site (i). If there is

only one Bid for a particular Project Site, the quote of the single Bidder shall be considered as  $(PS_L^i)$  for the project site  $i$

- c. If  $C_L$  is lower than or equal to  $\sum_i PS_L^i$ , the Cluster shall be awarded to the Bidder quoting  $C_L$ . Otherwise individual Project Sites shall be awarded to Bidders quoting lowest for that Project Site.

**II. Case II: Bids have been received for a Cluster and not for all the individual Project Sites within that Cluster**

- a. Lowest quote for the Cluster (say  $C_L$ ) shall be identified among the Bidders who have quoted for the full Cluster. If there is only one Bid, the quote of the single Bidder shall be considered as  $C_L$
- b. The Project shall be awarded to that Bidder quoting  $C_L$ .

**III. Case III: There are no Bids for a Cluster and all the individual Project Sites within that Cluster have received Bids**

- a. The lowest quote  $(PS_L^i)$  for each of Project Sites within the Cluster shall be identified from the quotes of Bidders for that particular Project Site ( $i$ ). If there is only one Bid for a particular Project Site, the quote of the single Bidder shall be considered as  $(PS_L^i)$  for the project site  $i$
- b. The Project Site shall be awarded to the Bidder quoting the least  $PS_L^i$

**IV. Case IV: Some the individual Project Sites within that Cluster have received Bids and there are no Bids for the Cluster as a whole**

- a. The Project Sites which have received Bids shall be awarded as per (III) above.

In the event that there is a tie under Case I between a Cluster quote and the arithmetic sum of the individual Project Site quotes of that cluster, the bid shall be awarded to the Bidder quoting for the Cluster.

3.3.7 Notwithstanding anything contained in this RFP, the Authority reserves the right to award Project or Projects to 1 (one) Qualified Bidder, in the event there are not more than 2 (two) same Qualified Bidders, bidding for the Projects. Further, Authority also reserves the right to award more than 25 Project Site, at its discretion, in accordance with the provisions of this agreement, taking into consideration the public interests and welfare.

3.3.8 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder(s) and the Selected Bidder(s) shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder(s) is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder(s) to acknowledge the LOA, and the next eligible Bidder may

be considered.

- 3.3.9 After acknowledgement of the LOA as aforesaid by the Selected Bidder(s), it shall execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder(s) shall not be entitled to seek any deviation in the Concession Agreement.

### **3.4 Contacts during Bid Evaluation**

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

## **4. FRAUD AND CORRUPT PRACTICES**

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

respectively assigned to them:

- a) “**corrupt practice**” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process);
- b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;
- c) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

**5. PRE-BID CONFERENCE**

- 5.1 Pre-bid conference of the Bidders was convened on 17<sup>th</sup> June 2016 at UP Sadan, New Delhi wherein the inputs/feedback were received from prospective bidders. This RFQ cum RFP has been issued incorporating the inputs / feedback received, post approval of the competent Authority.

**6 MISCELLANEOUS**

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

**ANNEXURE A  
Letter Comprising the Bid**

Dated:

To

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

Tel:

Fax:

**Sub: Bid for the equipping, financing, operating, maintaining, and transfer of MCHW in Uttar Pradesh on PPP Basis**

Dear Sir,

1. 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 Project(s). The Bid is unconditional and unqualified.
2. All information provided in the Bid and in the Appendices is true and correct.
3. This statement is made for the express purpose of qualifying as a Bidder for the development, construction, operation and maintenance of the Project(s).
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. We certify that in the last 3 (three) years, we/ any of the Consortium Members have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
7. I/ We declare that:

- a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority;
  - b) I/ We do not have any Conflict of Interest in accordance with Clause 2.1.14 of the RFP;
  - 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, in respect of any tender or request for proposal issued by or any agreement entered into with any other public sector enterprise or any Authority, Central or State; and
  - d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Projects, without incurring any liability to the Bidders, in accordance with Clause 2.6.2 of the RFP.
  9. I/ We declare that we/ any Member of the Consortium are/ is not a Member of a/ any other Consortium submitting a Bid for the Project(s).
  10. I/ We certify that in regard to matters other than security and integrity of the country, I/ we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project(s) or which relates to a grave offence that outrages the moral sense of the community.
  11. I/We further certify that in regard to matters relating to security and integrity of the country, I/ we have not been charge-sheeted by any agency of the Authority or convicted by a Court of Law for any offence committed by us or by any of our Associates.
  12. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/ Managers/ employees.
  13. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
  14. We acknowledge that our Consortium/ proposed Consortium is qualified on the basis of Technical Capacity and Financial Capacity of those of its Members who will own at least 26%

(twenty six per cent) of the subscribed and paid-up equity of the SPV and undertake that Lead Member of the Consortium shall continue to hold at least 51% (fifty one percent) of the subscribed and paid-up equity of the SPV under and in accordance with the provisions of Clause 7.1(k) 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.

15. 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 pre-qualification under and in accordance with the RFP, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter 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(s), 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 Authority/Authority being liable to us in any manner whatsoever.
16. I/ We understand that the Selected Bidder shall be an existing {Company/ Trust/ Society} incorporated under relevant laws of India or from outside India under equivalent law and shall incorporate a company under the Companies Act prior to execution of the Concession Agreement.
17. I/We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the Project(s) and the terms and implementation thereof.
18. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into 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.
19. I/We have studied all the Bidding Documents carefully and also surveyed the sites. I/ We understand that except to the extent as expressly set forth in the Concession Agreement, I/ we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of it.
20. The Premium 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 call volumes and after a careful assessment of the state and all the conditions that may affect the Bid.

21. I/We offer a Bid Security of Rs. ....(Rupees .....) for the Project(s)to the Authority in accordance with the RFP.
22. The Bid Security in the form of a Bank Guarantee is attached.
23. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened.
24. I/We agree and undertake to abide by all the terms and conditions of the RFP.
- {25. 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.}

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

Yours faithfully,

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

Name and seal of Bidder/Lead Member

**ANNEXURE B**  
**GENERAL INFORMATION OF BIDDER**

1.
  - a) Name:
  - b) Country of incorporation:
  - c) Address of the {corporate headquarters and its branch office(s)/ registered office }, if any, in India:
  - d) Date of incorporation and/ or commencement of business:
2. Brief description of the {Company/Trust/ Society} including details of its main lines of business and proposed role and responsibilities in the Project(s):
3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
  - (a) Name:
  - (b) Designation:
  - (c) Company:
  - (d) Address:
  - (e) Telephone Number:
  - (f) E-Mail Address:
  - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
  - (e) Fax Number:
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 Joint Bidding Agreement, as envisaged in Clause 2.2.3(e) should be attached to the Bid.

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

S. No.	Name of Member	Role* {Refer Clause 2.2.3(e)}*	Percentage of equity in the Consortium {Refer Clauses 2.2.3(a), (b) & (e)}
1			
2			
3			

\* The role of each Member, as may be determined by the Bidder, should be indicated.

(d) The following information shall also be provided for **each Member** of the Consortium and/or Associate<sup>†</sup>:

Name of Bidder/ Member of Consortium:

No.	Criteria	Yes	No
1.	Has the Bidder/constituent of the Consortium/its Associate been barred by the {Central/State} Authority, or any entity controlled by it, from participating in any project.		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid?		
3.	Has the Bidder/constituent of the Consortium/its Associate paid liquidated damages of more than 5% (five percent) 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 3 (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 nonperformance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below. (Attach extra sheets, if necessary.)

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\* All provisions contained in curly parenthesis shall be suitably modified by the Bidder to reflect the particulars relating to such Bidder

<sup>†</sup> Provide details of only those Associates whose technical capacity and NetWorth are to be evaluated

**ANNEXURE C**  
**POWER OF ATTORNEY FOR SIGNING OF BID**  
**(Refer Clause 2.1.10)**

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 equipping, financing, operating, maintaining, and transfer of MCHW in Uttar Pradesh on PPP Basis (“Projects”) proposed or being developed by the Department of Health & Family Welfare, Government of Uttar Pradesh(the “Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders’ meetings and other conferences and providing information /responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the Project(s) and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority or any entity representing the Authority.

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

IN WITNESS WHEREOF WE, \_\_\_\_\_, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF \_\_\_\_\_, 20\*\*.

For

.....

(Signature)

Witnesses:

(Name, Title and Address)

- 1.
- 2.

[Notarised]

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the 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.*
- *Power of Attorney should be executed on a non judicial stamp paper of appropriate value as relevant to the place of execution (if required under applicable laws).*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued.*

**ANNEXURE D**  
**POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM**

(Refer Clause 2.1.10)

Whereas the Department of Health & Family Welfare, Government of Uttar Pradesh (“the Authority”) has invited bids for the equipping, financing, operating, maintaining, and transfer of MCHW in Uttar Pradesh (“Projects”).

Whereas, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project(s) in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project(s), and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project(s) 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 \_\_\_\_\_, {insert 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, during the execution of the Project(s), 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(s), including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders’ meetings and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Authority Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project(s) and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 20\*\*.

For \_\_\_\_\_

(signature)  
(Name & Title)

For \_\_\_\_\_

(signature)  
(Name & Title)

For \_\_\_\_\_

(Name & Title)

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

Witnesses:

[Notarised]

- 1.
- 2.

**Notes:**

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a 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.*
- *Power of Attorney should be executed on a non judicial stamp paper of appropriate value as relevant to the place of execution(if required under applicable laws).*
- *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.*

**ANNEXURE E**  
**FORMAT FOR BID SECURITY (BANK GUARANTEE)**

(Refer Clauses 2.1.8 and 2.20.1)

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

B.G. No.

Dated:

1. In consideration of you, the Department of Health & Family Welfare, Government of Uttar Pradesh, having its office at Lucknow, Uttar Pradesh (hereinafter referred to as the “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 the provisions of the Companies Act/a society registered under Society Registration Act, 1860 or any other Indian law for registration of societies/a trust registered under the Indian Trusts Act, 1882 or any other Indian law for registration of public trust} 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 “equipping, financing, operating, maintaining, and transfer of MCHW in Uttar Pradesh on PPP Basis” (hereinafter referred to as the “Project”) pursuant to the RFP Document dated \*\*\*\*\* issued in respect of the Project(s) 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 \_\_\_\_\_ (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.1.8 read with Clause 2.1.9 of the RFP, 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) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. ....(Rupees .....only) 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 fulfil 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 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.
  - a) 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 Authority is disputed by the Bidder or not merely on the first demand from the Authority stating that the amount claimed is due to the 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 set forth 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).

- b) This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) 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 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.
- c) We, the Bank, further agree that the 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 Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other authority.
- d) 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.
- e) In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The 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 Letter 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 Authority, and the Bank shall not be released from its liability under these presents by any exercise by the 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 Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the 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.
- f) 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.

- g) 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 which shall be deemed to have been duly authorised to receive the said notice of claim.
- h) It shall not be necessary for the 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 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.
- i) We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
- j) The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

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

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

(Signature of the Authorised Signatory)

(Official Seal)

**ANNEXURE F**  
**JOINT BIDDING AGREEMENT**

*(Refer Clause 2.2.3 (e))*

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

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

**AMONGST**

1. {....., a company/society/trust incorporated/registered under the .....} 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. {....., a company/society/trust incorporated/registered under the .....} 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. {....., a company/society/trust incorporated/registered under the .....} 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)<sup>3</sup>.

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) Department of Health & Family Welfare, Government of Uttar Pradesh (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited bids (the “**Bids**”) by its Request for Proposal No. .... dated .....(the “**RFP**”) for selection of bidders for “Equipping, financing, operating, maintaining, and transfer of MCHW in Uttar Pradesh on PPP Basis” (the “**Projects**”) through public private partnership.
- (B) The Parties are interested in jointly bidding for the Project(s) as members of a Consortium and in accordance with the terms and conditions of the RFP and other Bidding Documents in respect of the Project(s), and
- (C) It is a necessary condition under the RFP that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

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<sup>3</sup> A consortium can have a maximum of 3 members

**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(s).

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(s), either directly or indirectly or through any of their Associates.

**3. Covenants**

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

**4. Role of the Parties**

The Parties hereby undertakes that 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 Financial Close under the Concession Agreement when all the obligations of the SPV shall become effective.

**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(s) and in accordance with the terms of the RFP and the Concession Agreement, till the occurrence of Financial Close 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 not less than 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV shall, during the Construction Period and 2 (two) years thereafter, be held by the Party of the First Part.
- 6.3 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 2 (two) years from Project COD, as defined in the Concession Agreement, be held by each of the Parties of the {Second and Third}Part whose experience and combined networth have been reckoned for the purposes of fulfilling the Technical Capacity and Financial Capacity in terms of the RFP.
- 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 Authority 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 prequalified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

## **9. Miscellaneous**

- 9.1 This Joint Bidding Agreement shall be governed by laws of India.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of  
LEAD MEMBER by:  
(Signature)

(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of  
SECOND PART  
(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 legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.*

**ANNEXURE G**  
**TECHNICAL CAPACITY OF BIDDER**  
*(Refer to Clause 2.2.2 I (a) of the RFP)*

**Form 1: Summary of Experience**

S.N.	Name of hospital & Location	Number of operational Bed as on .....	Number of Deliveries Performed During the Year Preceding BDD	Number of C-Section Deliveries Performed During the Year Preceding BDD	Accreditation#	Legal Entity Claiming Experience	Associate Relationship of the Legal Entity who is claiming relationship with Bidder / Consortium Member	Details of Facility®	Years since start of operations	Remarks
1										
2										
3										
4										
5										
6										

# NABH / JCAHO / JCI /Not Available  
 @ description around hospital configuration including

- Number of OTs
- Number of NICU / PICU
- Average bed occupancy

**ANNEXURE H**  
**FINANCIAL CAPACITY OF BIDDER**  
(to be certified by the statutory auditor)

*(Refer to Clause 2.2.2 I (b) of the RFP)*

I.

(In Rs. Crore)

<b>Bidder type</b>	<b>Net Worth</b>	<b>Average Turnover of Three Financial Years Immediately Preceding the BDD</b>
Single entity Bidder / Lead Member of the Consortium		
{ Consortium Member 1 }		
{ Consortium Member 2 }		
<b>Total Net Worth for Single entity/ Consortium</b>		

It is certified that the calculation of Net Worth and Turnover have been carried out as the formula presented in the Clause 2.2.2 I (b) of the RFP.

Name & address of Bidder's Bankers:

Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports in accordance with Clause 2.2.5 of the RFP. 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).

*Note:*

1. *In case of a Consortium the Financial Statement reflecting the Net Worth of all the relevant Member(s) and/or its/their Associates being evaluated to meet the Financial Capacity shall be prepared and signed by the Lead Member, and the certificates from statutory auditors of the relevant Members shall be attached to this Financial Statement.*

2. *\* For conversion of US Dollars to INR, the rate of conversion shall be INR [60] 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 INR 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.*

**ANNEXURE I  
BID CHECKLIST**

<b>S. No</b>	<b>Item</b>	<b>Checked by Bidder</b>	<b>Checked by Authority</b>
<b>1</b>	Letter comprising the Bid (Appendix – I - ANNEXURE A);		
<b>2</b>	General Information of Bidder (Appendix – I - ANNEXURE B)		
<b>3</b>	Power of Attorney for signing of Bid in the prescribed format (Appendix – I - ANNEXURE C);		
<b>4</b>	If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix – I - ANNEXURE D);		
<b>5</b>	Bid Security in the prescribed format (Appendix – I - ANNEXURE E);		
<b>6</b>	Joint Bidding Agreement (in case of Consortium) (Appendix – I - ANNEXURE F);		
<b>7</b>	Technical Capacity of the Bidder (Appendix – I - ANNEXURE G);		
<b>8</b>	Financial Capacity of the Bidder (Appendix – I - ANNEXURE H);		
<b>9</b>	A copy of the Concession Agreement with each page initialled by the person signing the Bid in pursuance of the Power of Attorney		

**APPENDIX – II: FORMAT FOR FINANCIAL BID**

**Financial Proposal**

(Refer Clauses 2.1.6 and 2.1.7)

Dated:

To

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

Tel:

Fax:

**Sub: Bid for the equipping, financing, operating, maintaining, and transfer of MCHW in Uttar Pradesh on PPP Basis**

Dear Sir,

1. With reference to your RFP document dated \*\*\*\*\*, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
  
2. I/We hereby submit our Bid and offer to perform services for the {Project Site / Cluster / Projects namely .....} for a payment of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) as the annual payment for the first year. The quoted Annual payment shall be made in four (4) equal quarterly payments (Periodic Payment), subject to deductions, in accordance with the provisions of the Concession Agreement. Payment for the successive 9 (nine) years shall be paid on each anniversary of the Payment Date in accordance with the provisions of the Concession Agreement. The payment for each subsequent year shall be determined by increasing the payment of the preceding year by an amount equal to 6.5 % (six point five percent) of the payment of the immediately preceding year. There shall be One Time Fee equivalent to 30% of the annual payment quoted for the first year paid at the COD as per the provisions of the Concession Agreement.
  
3. I/We agree to keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
  
4. I/We agree and undertake to abide by all the terms and conditions of the Bidding Documents. 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 Member