

**Public Private
Partnership for
Operation,
Maintenance &
Transfer (OMT) of
Telecom Tower
Assets of BSNL**

**REQUEST FOR
PROPOSAL**

*Volume I: Instructions to
Bidders*



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NOTICE INVITING BID

Bharat Sanchar Nigam Limited
(A Government of India Enterprise)
MM Section

2nd Floor Bharat Sanchar Bhawan
Janpath New Delhi 110 001

Notice Inviting Bid

Dated xx/xx/2023

Bid/ Package no: **Telecom Tower Assets of BSNL – [10,016 nos.]**

Request for Proposal (RFP) for Public Private Partnership for Operation, Maintenance, & Transfer (OMT) of [10,016 (ten thousand and sixteen)] Telecom Tower Assets of BSNL.

Bharat Sanchar Nigam Limited (hereinafter ‘**BSNL**’ or the ‘**Authority**’) plans to enter into Public Private Partnership for Operation, Maintenance, & Transfer (OMT) of [10,016 (ten thousand and sixteen)] Telecom Tower Assets under a 20 (twenty) year Operate-Maintain-Transfer (**OMT**) Model (the “**Project**”). Accordingly, the Authority has resolved and decided to carry out the bidding process for selection of a private entity for the award of the Project. The brief particulars of Tower Assets are provided under Annexure [●] of this RFP.

The complete Bid document can be viewed / downloaded from the official portal of BSNL <http://www.bsnl.co.in> from xx.xx.2023 to xx.xx.2023 (up to 17:00 Hrs. IST).

The bidders downloading the tender document are required to submit a Tender fee of amount **INR 10,000/-** + GST as applicable) (“**Tender Fee**”) through DD/ Banker’s cheque and sign a non-disclosure agreement for access to data room. The DD/ banker’s cheque shall be drawn from any nationalized/ scheduled bank in favour of “**AO(Cash), BSNL, C.O. N. Delhi**” and payable at New Delhi.

The bidder shall furnish a Bid Security in one of the following ways: (i) Demand Draft drawn in favour of “**AO (Cash), BSNL, C.O. N. Delhi**” and payable at New Delhi; or (ii) Bank Guarantee(s) from a scheduled bank having a minimum net worth of at least Rs. 500 cr drawn in favour of “xx, **Bharat Sanchar Nigam Limited, Corporate Office, New Delhi**” which should be valid for **180 (one hundred and eighty)** days from the Bid Due Date.

Bid Fee and Bid Security can also be remitted online to account as per below mentioned details:

BSNL Bank/Beneficiary Details for e-Payment transaction:

Beneficiary name	: AO (Cash) Bharat Sanchar Nigam Ltd
Name of the Bank	: Punjab National Bank

Bank Branch	: ECE house, K.G. Marg, New Delhi-110001
IFSC Code	: PUNB0112000
Bank Account No.	: 1120002102306372
MICR Code.	: 110024043

Bid must be submitted as follows:

Digitally sealed online bids (**Online Submission**) are to be submitted through e-tender portal CPPP [<https://etenders.gov.in/eprocure/app>] in single stage bidding and two stage opening e-tendering process using two electronic envelopes from the bidders by the time and date specified in this RFP. Kindly refer to instruction for online submission of bids as per Appendix-IV of Volume I – Instructions to Bidders of this RFP. Bid through any other mode shall not be entertained.

Select documents (as per tender conditions) are required to be submitted offline (i.e., **offline submissions**) to **xx**, BSNL, C.O. 5th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110001 within 7 (seven) days of the due date & time of submission of Bids, in a sealed envelope. The envelope shall bear the tender number, name of work and the phrase: “**Do Not Open Before (due date & time of opening of tender)**”. However, scanned copy of these offline documents should be mandatorily uploaded in techno-commercial envelope i.e., first envelope,

Technical submission of the Bids received online shall be opened on XX.XX.2023 (at 11:00 hours IST). Please note that the Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever.

Thanking you,

Yours faithfully,

Shri. xx

Xxxxxxxx

BSNL CO New Delhi

DISCLAIMER

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

This RFP is not an Agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the project(s). 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.

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, as the case may be, for the project(s) 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.

GLOSSARY

Term	As defined in
Associate	As defined in Clause 2.1.18
Applicable Laws	means all laws, brought into force and effect by GOI, Governmental Instrumentalities or the State Government including rules, regulations and notifications made thereunder and the rules made by the Authority, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this RFP, the Bidding Process, and the Project. It is hereby clarified, the term ‘Applicable Laws’ shall include FDI policy as prescribed under the Consolidated FDI Policy, 2017, including the Press Note No. 3 (2020 Series) and any of its modifications thereunder, and Office Memorandum dated July 23, 2020, issued by Public Procurement Division, Department of Expenditure, Ministry of Finance, GOI read along with orders issued thereunder.
Authority	As defined in Clause 1.1.1
Bank	shall mean a nationalized bank or scheduled bank having net worth of Rs. [●] ([●] crore) as defined under Section 2 (e) of the Reserve Bank of India Act, 1934, excluding the co-operative banks.
Bank Guarantee	As defined in Clause 2.20.1
Bid	As defined in Clause 1.2.3
Bid Due Date	As defined in Clause 1.1.8
Bidders	As defined in Clause 1.2.3
Bidding Documents	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
Bid Concession Fee	As defined in Clause 1.2.6
Consortium	As defined in Clause 2.2.1
Concession	As defined in Clause 1.1.5

Concession Agreement	As defined in Clause 1.1.4
Concessionaire	As defined in Clause 1.1.4
Conflict of Interest	As defined in Clause 2.2.1(f)
Demand Draft	As defined in Clause 2.20.2
Financial Bid	As defined in Clause 1.2.1
Government/GoI	Government of India
Highest Bidder	As defined in Clause 1.2.7
Jt. Bidding Agreement	As defined in Clause 2.1.13 (g)
LOA	As defined in Clause 3.5.2
Members	shall mean as Members of Consortium
Project	As defined in Clause 1.1.3
Rs. or Re. or INR	Indian Rupee
RFP or Request for Proposal	As defined in Disclaimer
Selected Bidder	As defined in Clause 3.5.1
SPV	As defined in Clause 2.1.13
Technical Bid	As defined in Clause 1.2.1
Telecom Tower Asset	shall mean and refer to all physical and other assets relating to and forming part of the Tower Sites including (a) rights over the Tower Sites in the form of license; (b) tangible assets such as tower, pole, frame, diesel generator, battery bank, power plant, civil works and equipment including electrical systems, communication systems; (d) Applicable Permits and authorizations relating to or in respect of the Tower Assets
Tender Fee	As defined in Notice Inviting Bid

INSTRUCTIONS TO BIDDERS

1. Introduction

1.1. Background

- 1.1.1.** Bharat Sanchar Nigam Limited (hereinafter “**BSNL**” or the “**Authority**”) is a 100% Government of India (**GoI**) owned telecommunications service provider. It is managed under GoI’s Department of Telecommunications (**DoT**) and is headquartered in New Delhi. Incorporated on 15th September 2000, BSNL took over the business of providing telecom services and network management from the erstwhile Department of Telecom Services (**DTS**) and Telecom Operations (**DTO**) with effect from 1st October 2000, and provides telecom services across the country, other than in Delhi and Mumbai. BSNL provides a bouquet of services including wire line, GSM mobile, Internet, FTTH, Satellite Services, Broadband, Carrier service, MPLS-VPN, VSAT and VoIP
- 1.1.2.** For its wireless services, BSNL owns and operates over **xx** telecom towers across all telecom circles (except Delhi and Mumbai). Most of the BSNL towers are ground based towers (**GBTs**) contributing to over 75% of the tower base. Also close to 80% of tower sites are connected by optical fiber cable, which provides superior connectivity for data services. Currently, almost all operational sites have at least one tenancy from BSNL. BSNL towers also have tenancies from other telecom operators including Airtel, Vodafone Idea and Reliance Jio etc.
- 1.1.3.** Pursuant to targets identified under GoI’s National Monetization Pipeline under telecom assets, the Board of BSNL has accorded approval for Public Private Partnership (**PPP**) in Operation, Maintenance, & Transfer (OMT) of **Telecom Tower Assets** on a Operate-Maintain-Transfer (**OMT**) model for a period of 20 years (the “**Project**”). BSNL has initiated bidding process for selection of a private entity as the Bidder to whom the Project may be awarded. **The break-up of the telecom towers by different circles of BSNL is provided under Annexure [●] of this RFP.**
- 1.1.4.** The Selected Bidder, that maybe a [natural person], body corporate or any incorporated entity under Applicable Laws or any combination of them having executed a Jt. Bidding Agreement, undertaking to incorporate a special purpose company under the Indian Companies Act, 2013 (the “**Concessionaire**”) prior to execution of the Concession Agreement (the “**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. The Concessionaire shall be responsible for the operation and maintenance of the Project in accordance with the terms and conditions of Concession Agreement.

- 1.1.5.** The Concession Agreement sets forth the detailed terms and conditions for grant of the concession for the Project to the Concessionaire, including the scope of the Concessionaire's services and obligations (the "**Concession**").
- 1.1.6.** The scope of work will broadly include Operation, Maintenance and Transfer (**OMT**) of the Project, subject to and in accordance with the provisions of this Concession Agreement; performance and fulfilment of all obligations of the Concessionaire, in accordance with the provisions of the Concession Agreement and matters incidental thereto or necessary for performance of any or all the obligations of the Concessionaire under 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 services and obligations of the Concessionaire set forth in the Concession Agreement, 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 (collectively the "**Bidding Documents**"). At present, the Bidding Documents cover two volumes namely **RFP Volume I – Instructions to Bidders** (this RFP) and **RFP Volume II – Draft Concession Agreement**. Subject to the provisions of *Clause 2.1.3*, the aforesaid documents, additional information including those provided as part of the any data room shared by the Authority and any addenda issued subsequently as part of this process, will be deemed to form part of the Bidding Documents. All Bids shall be prepared and submitted in accordance with such terms on or before the date specified in *Clause 1.3.1* for submission of Bids (the "**Bid Due Date**").

1.2. Brief description of Bidding Process

- 1.2.1.** The Authority has adopted a single stage two envelope system (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. Under this Bidding process, the Bid shall be invited in single stage bidding and two envelope system using two electronic envelopes. Prior to or along with the Bid, the Bidder shall pay to the Authority a sum of Rs. 10,000 + GST as applicable (Rupees ten thousand + GST as applicable) as Tender Fee. The eligibility and qualification of the Bidder will be first examined based on the details submitted under first envelope (i.e., **Technical Bid**) with respect to eligibility and qualifications criteria prescribed in this RFP. ("**Bidder**", which expression shall, unless repugnant to the context, include the Members of the

Consortium). The second envelope (i.e., **Financial Bid**) shall be opened of only of those Bidders whose Technical Bid are responsive to eligibility and qualifications requirements as per this RFP.

- 1.2.2.** GOI has issued guidelines (see **Appendix I** of this RFP) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority shall be entitled to disqualify any Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to Bid, and should give an undertaking to this effect in the form at Appendix-I A.
- 1.2.3.** Interested bidders (“**Bidders**”) are being called upon to submit their Bid in accordance with the terms specified in this Bidding Document (“**Bid**”). The Bid shall be valid for a period of 180 (one hundred eighty) days from the date specified in Clause 1.3 for submission of Bid (the “**Bid Due Date**”).
- 1.2.4.** A Bidder is required to deposit, along with its Bid, a Bid Security of **Rs. 50 Crores (Rupees Fifty crores only)** which should be valid for 180 (one hundred and eighty) days from the Bid Due Date (the “**Bid Security**”), refundable not earlier than 180 (one hundred eighty) days & not later than 240 (two hundred forty) days from the Bid Due Date. In the case of the Selected Bidder the Bid Security shall be returned within 7 (seven) days from the date of payment of the Concession Fee by the Concessionaire to the Authority subject to it having provided a Performance Security in terms of the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a Demand Draft or a bank guarantee acceptable to the Authority.

In the event, the Bid Security is furnished as a bank guarantee, the validity period of the bank guarantee shall not be less than 180 (one hundred eighty) days from the Bid Due Date with a claim period of 240 (two hundred forty) days and may be extended as may be mutually agreed between the Authority and the Bidder and upon receipt of written approval from the bank from time to time.

In the event, the Bid Security is furnished as a Demand Draft, such Demand Draft shall not have been issued 60 (sixty) days prior to the Bid Due Date. Upon submission of Demand Draft, the same shall be deposited to the designated account by the Authority. It is clarified that where Bid Security has been paid by Demand Draft, the refund thereof shall be in the form of an account payee Demand Draft in favour of the unsuccessful Bidder(s) or the Selected Bidder, as the case may be. The Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said Demand Draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 1.2.5.** Prior to the submission of the Bid, the Bidders are advised to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Project.
- 1.2.6.** A Concessionaire shall be selected for the Project on the basis of the highest total upfront Concession Fee (the sum of “**Bid Concession Fee**” for the Project). The Bid Concession Fee shall be quoted excluding applicable GST and other applicable taxes which shall be borne by the Selected Bidder/Concessionaire. The Concession Period is pre-determined, as indicated in the Concession Agreement. The Bid Concession Fee (excluding applicable GST and other applicable taxes which shall be borne by the Selected Bidder/Concessionaire) shall constitute the sole criteria for evaluation of Bids. Subject to *Clause 2.16*, the Project may be awarded to the Bidder quoting the highest total Bid Fee.
- 1.2.7.** In this RFP, the term “**Highest Bidder**” shall mean the Bidder who is technically qualified and quoting the highest total Bid Concession Fee (excluding applicable GST and other applicable taxes which shall be borne by the Selected Bidder/Concessionaire) for the Project.
- 1.2.8.** In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance, the Authority reserves the right to course of action including re-tender or call for a limited or short notice tender, as allowed under extant guidelines
- 1.2.9.** Other details of the process to be followed under this Bidding Process and the terms thereof are spelt out in this RFP.
- 1.2.10.** Any queries or request for additional information concerning this RFP shall be submitted by e-mail in *Clause 2.11.4* to the officer designated with identification/ title: “**Queries / Request for Additional Information – PPP in Operation, Maintenance, and Transfer (OMT) of Telecom Tower Assets of BSNL**”

1.3. Schedule of Selection process

- 1.3.1.** The Authority shall endeavor to adhere to the following schedule:

Sl. No.	Event Description	Date
1.	Invitation of RFP	15.12.2022
2.	Last date for receiving queries	05.01.2023
3.	Pre-Bid meeting	15.01.2023
4.	Authority response to queries latest by	25.01.2023
5.	Last date for submission of Bids – Bid Due Date	25.02.2023

Sl. No.	Event Description	Date
6.	Physical Submission of Bid Security/POA etc.	03.03.2023
7.	Opening of Technical Bids	06.03.2023
8.	Declaration of eligible / qualified bidders	07.03.2023
9.	Opening of Financial Bid	09.03.2023
10.	Letter of Award (LOA)	15.03.2023
11.	Incorporation of SPV	31.03.2023
12.	Submission of Performance Bank Guarantee	14.04.2023
13.	Signing of Concessionaire Agreement	17.04.2023
14.	Payment of Concessional Value ¹	16.10.2023
15.	Handing over of identified Telecom Tower Assets of BSNL to SPV	20.10.2023

¹ The conditions precedent period is of 180 days during which the concessionaire needs to achieve financial closure. Payment of concession fee to BSNL is contingent on timeline by which concessionaire achieves financial closure

2. Instructions to Bidders

A. GENERAL

2.1. General terms of selection process

- 2.1.1.** No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.
- 2.1.2.** An international Bidder, in accordance with Applicable Laws, bidding individually or as a member of a Consortium shall ensure that Power of Attorney is legalized/apostille by appropriate authority notarized in the jurisdiction where the Power of Attorney is being issued and requirement of Indian Stamp Act is duly fulfilled.
- 2.1.3.** Information provided to Bidders as part of this Bidding document and other documents during the course of the Bidding Process are being provided only as preliminary reference by way of assistance to the Bidders, who are expected to carry out their own surveys, investigations, and other detailed examination of the Project before submitting their respective Bid. Nothing contained in any information memorandum and other documents and information provided as part of the data room during the Bidding Process shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of these reports.
- 2.1.4.** Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- 2.1.5.** The Bid shall be furnished in the formats exactly as per *Appendix II* and *Appendix III* i.e., Technical and Financial Bid respectively. The Bid Concession Fee amount (excluding applicable GST and other applicable taxes which shall be borne by the Selected Bidder/Concessionaire) shall be indicated clearly in both figures and words, in Indian Rupees in prescribed format of Financial Bid and it will be 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.
- 2.1.6.** The Bidder shall provide a Bid Security of **Rs. 50 Crores (Rupees Fifty crores)** in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of a bank guarantee acceptable to the Authority, as per format at *Appendix- III*. The Bidders shall also submit proof of payment (either online or original bank instrument) of

Rs.10,000 + applicable GST (Rupees ten thousand plus applicable GST) towards cost of Bid document. The validity period of the Bank Guarantee shall not be less than 180 (one hundred eighty) days from the Bid Due Date with a claim period of 240 (two hundred forty) days and may be extended as may be mutually agreed between the Authority and the Bidder and upon receipt of written approval from the Bank. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable not earlier than 180 (one hundred eighty) days & no later than 240 (two hundred forty) days from the Bid Due Date except in the case of the Selected Bidder whose Bid Security shall be returned within 7 (seven) days from the date of payment of the Concession Fee by the Concessionaire to the Authority and it having provided a Performance Security under the Concession Agreement.

- 2.1.7.** The Bidder should submit a Power of Attorney as per the format at *Appendix-II-F*, authorizing the signatory of the Bid to commit the Bidder.
- 2.1.8.** In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favor of any Member, such Member shall thereafter be identified as the Lead Member, in the format at *Appendix II-G*². In case the Bidder is a Consortium, a Jt. Bidding Agreement in the format given in *Appendix II-H* shall be submitted by the Bidder.
- 2.1.9.** Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.10.** The Bid and all communications in relation to or concerning the Bidding Documents, and the Bid shall be in English language.
- 2.1.11.** The Bidding Document including this RFP and all other documents provided by the Authority during the Bidding Process, are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this *Clause 2.1.11* shall also apply mutatis mutandis to Bid and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.12.** Any award of the Project pursuant to this RFP shall be subject to the terms of Bidding Documents and upon fulfilling the criterion as mentioned in *Clause 2.2.1*.

² In case of a Consortium, the Members should submit a Power of Attorney in favour of the any Member as per the format as Appendix-IV. Such Member shall thereafter be identified as the Lead Member. The Lead Member should submit a power of Attorney as per the format in Appendix-III, authorising the signatory of the Application. Members of the Consortium of need not submit Power of Attorney as per the format at Appendix-III, authorising the signatory of the Application.

- 2.1.13.** Where the Bidder is a single entity or a Consortium, it shall be required to form a Special Purpose Vehicle, incorporated as a company under the Indian Companies Act 2013 (the “**SPV**”), to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:
- a. Number of Members in a consortium shall not exceed 6 (six) Members, but information sought in the Bid may be restricted to 3 (three) Members in the order of their equity contribution;
 - b. subject to the provisions of clause 2.1.13 (a) above, the Bid should contain the information required for each member of the Consortium;
 - c. Members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have highest equity share holding and shall hold atleast 26% (twenty-six per cent) of the paid up and subscribed equity share capital of the SPV at all times until the 2nd (second) anniversary of the Appointed Date of the Project. The nomination(s) shall be supported by a Power of Attorney, as per the format at *Appendix II-G*, signed by all the other Members of the Consortium;
 - d. the Bid should include a brief description of the roles and responsibilities of individual Members, particularly with reference to financial, technical and O&M obligations, if any;
 - e. an individual Bidder cannot at the same time be member of a Consortium applying RFP. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for RFP;
 - f. Members of the Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
 - g. Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at *Appendix II-H* (the “**Jt. Bidding Agreement**”), for the purpose of submitting Bid. The Jt. Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:
 - i. convey the obligation to form an SPV, solely for the purpose of domiciling the Project(s) and no other purpose, with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the Concession to undertake the projects is awarded to the Consortium;
 - ii. clearly outline the proposed roles and responsibilities, if any, of each Member;
 - iii. commit the minimum equity stake to be held by each Member, if member;
 - iv. commit a minimum equity holding requirement for the Members as per *Clause 2.2.3 a*;

- v. mandate Members of the Consortium to undertake that they shall, either by itself or through their Associates, collectively hold at least 51% (fifty-one per cent) of the subscribed and paid-up equity share capital of the SPV at all times until the 2nd (second) anniversary of the Appointed Date of the Project. The Lead Member shall hold atleast 26% (twenty-six per cent) of the paid up and subscribed equity share capital of the SPV at all times until the 2nd (second) anniversary of the Appointed Date of the Project;
- vi. include a statement to the effect that all Members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to each of the Project until the financial close of each of the Project is achieved in accordance with the respective Concession Agreement;
- vii. except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority; and
- viii. Bidder/ Lead Member shall give an undertaking in the format prescribed under **Appendix II-N**, in accordance with the Order No. F/No.6/18/2019-PPD and Order No. P- 45021/112/2020-PP (BE-II) (E-43780) by Ministry of Finance, Ministry of Commerce and Industry, Department of Expenditure, Public Procurement Division dated July 23, 2020 and August 24, 2020 and as per amendments from time to time. Bidder/Member of the Consortium, who have beneficial ownership in countries which share land border with India and intend to participate in Bidding Process under this RFP have to get registered with the competent authority.

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

2.1.15. A Bidder including any Member of the Consortium or an Associate(whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the RFP) should, in the last 3 (three) years, have neither been blacklisted by any central/state public sector undertaking, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Bidder or Consortium Member or Associate.

2.1.16. Authority would place sole reliance on the certification provided by the Bidder in this regard in its letter comprising the Technical Bid.

2.1.17. During the Bidding Process and prior to execution of the Concession Agreement for the Project, any default by the Selected Bidder under this RFP shall entitle the Authority to cancel the Selected Bidder's Bid. Upon such cancellation, the provisions of *Clause 2.6.3* of this RFP shall apply.

2.1.18. In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members under *Clauses 2.2.3, 2.2.4 and 3.3*, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder. For purposes of this RFP, ‘**Associate**’ means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder or a Consortium Member (the “**Associate**”). As used in this definition, the expression ‘**Control**’ means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law. It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium Member shall be provided to demonstrate that a person is an Associate of the Bidder or the Consortium as the case may be.

2.1.19. The following conditions shall be adhered to while submitting a Bid:

- a. Bidders should attach clearly marked and referenced continuation sheets if the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- b. information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;
- c. in responding to the RFP submissions, Bidders should demonstrate their capabilities in accordance with *Clause 3.1* below; and
- d. in case the Bidder is a Consortium, each Member should substantially satisfy the RFP requirements to the extent specified herein.

2.1.20. While bidding is open to persons from any country, the following provisions shall apply:

- a. Where, on the date of the Bid, not less than 25% (twenty five percent) of the aggregate issued, subscribed and paid-up equity share capital in a Bidder or its Member is held by persons resident outside India or where an Bidder or its Member is controlled by persons resident outside India; or
- b. if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 25% (twenty five percent) of the aggregate issued, subscribed and paid-up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

then the Eligibility of such Bidder shall be subject to the Applicable Laws and approval of the Authority from national security and public interest perspective. The decision of the Authority in this regard shall be final and conclusive and binding on the Bidder.

2.1.21. The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

2.1.22. During the Bidding Process (but prior to the opening of Financial Bid), the Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

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

2.2. Eligibility and qualification requirement of Bidder

2.2.1. For determining the eligibility of Bidder, the following shall apply:

- a. The Bidder may be a single entity or a group of entities (the “**Consortium**”) but with an identified Lead Member (“**Lead Member of Consortium**”), coming together to implement the Project. However, no Bidder applying individually or as a Member of a Consortium, as the case may be, can be member of another Consortium. The term Bidder used herein would apply to both a single entity and a Consortium.
- b. Bidder may be a natural person, body corporate, or any incorporated entity under Applicable Laws or any combination of them with a formal intent to enter into a Jt. Bidding Agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in *Clause 2.1.13*.
- c. A Bidder will be considered as eligible, only if it meets Government of India’s extant FDI policy as prescribed under the Consolidated FDI Policy, 2017, including the Press Note No. 3 (2020 Series) and any of its modifications hereafter. For avoidance of doubt it is hereby clarified that the eligibility of a Bidder under this RFP for the Project shall also remain subject to the origin country of the Bidder in the context of Press Note 3 date 17th April 2020 issued by Department for Promotion of Industry and Internal Trade (“DPIIT”) and shall be subject to approval of the GoI and such

other stipulations as may be notified from time to time by the Government of India and each of the Bidders shall be required to furnish an undertaking to that effect in the form and manner prescribed under .

- d. The Bidder shall be eligible to participate under the extant laws including but not limited to applicable orders issued by the Central Government (including Order No. F/No.6/18/2019-PPD and Order No. P- 45021/112/2020-PP (BE-II) (E-43780) by Ministry of Finance, Ministry of Commerce and Industry, Department of Expenditure, Public Procurement Division dated 23 July 2020 and 24 August 2020 and as per amendments from time to time). The Bidder/ Member of the Consortium, who have beneficial ownership in countries which share land border with India and intend to participate in public procurement in India have to get registered with the competent authority.
- e. The Bidder must not be blacklisted by any Central/ State Governments/ PSUs in India at the time of submission of Bid. An undertaking must be submitted in this regard.
- f. 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 be entitled to forfeit and appropriate 5% (five per cent) of the value of the Bid Security or equivalent amount from the Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage 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 (the “**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. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - i. the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, 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 capital; of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is not more than 25% (twenty five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956 and section 2(72) of the Companies Act, 2013, as applicable. For the purposes of this *Clause 2.2.1*, 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

- ii. a constituent of such Bidder is also a constituent of another Bidder; or
- iii. 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 any Associate thereof; or
- iv. such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- v. such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other’s information about, or to influence the Bid of either or each other; or
- vi. such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project(s).
- vii. such Bidder or any Associate thereof has appointed any official of the Authority, any official of the Department of Telecommunications, technical advisors of Authority for the Project(s), legal advisors of Authority for the Project(s), financial advisors of Authority for the Project(s), dealing with the Project(s), within a period of 1 (one) year from the date of award of the Project(s) to that Bidder.

Explanation: *In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2., shall include each Member of such Consortium. For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a*

company or corporation, the power to direct the management and policies of such person by operation of law.

- g. A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical advisor of the Authority in relation to the Project(s) is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to Project(s) during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such advisor is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project(s), then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such advisor was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFP for the Project(s). Nor will this disqualification apply where such advisor is engaged after a period of 3 (three) years from the date of commercial operation of the Project(s).

2.2.2. Provided further, in case the Authority seeks information / clarification from Bidder(s) related to occurrence / non-occurrence of Conflict of Interest and the Bidder fail(s) to provide such information within a reasonable time, the Authority shall disqualify the Bidder, encash its Bid Security as per provision of Clause 2.20.7 (a) and further debar it from participation in any future procurement process for a minimum period of 1 (one) year from the date of such debarment or for such other period as the Authority may, in its sole discretion, deem appropriate.

2.2.3. To be eligible for this RFP a Bidder shall fulfil the following conditions of eligibility:

- a. **Financial Capacity:** The Bidder shall have a minimum Net Worth or Available Capital for Investment (ACI) (the “**Financial Capacity**”³) of **Net worth:** Rs. 1200 Crore (Rupees one Thousand two hundred Crores only) or **Available Capital for Investment (ACI):** Rs. 1200 Crores (Rupees One Thousand and Two Hundred Crores only) at the close of the preceding financial year⁴.

For the purposes of this RFP, the expression ‘**Available Capital for Investment**’ or ‘**ACI**’ shall in case of funds, mean on the basis of minimum

³The ACI needs to be certified by a Chartered Accountant (C.A.) of repute or the Statutory Auditor of the Bidder

⁴ In case a Bidder has issued any fresh Equity Capital during the current financial year, the same shall be permitted to be added to the Bidder’s Net Worth subject to the Statutory Auditor of the Bidder certifying to this effect.

investible funds (i.e., immediately available funds for investment and callable capital) subject to the limits of investment in a single investee entity in the relevant jurisdiction for a Foreign Investment Fund, or the maximum permissible investment limit for an AIF (as per SEBI (Alternative Investment Funds Regulations, 2012), as applicable.

In respect of funds (domestic or incorporated outside India), a certificate from Statutory Auditor/independent chartered accountant certifying the available capital for investment shall be submitted. Where the financial statements are expressed in a currency other than USD, the eligible amount as described above shall be computed by taking the equivalent USD at the exchange rates (reference rate as published by Financial Benchmarks India Private Limited or any other authentic data source) prevailing on [●].

In case of a Consortium, the combined Net worth of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, till the 2nd (second) anniversary of the Appointed Date of the Project, collectively hold atleast 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV; *Provided further that* each member of the Consortium shall have a minimum Net Worth of 20% of the Financial Capacity determined using the Net Worth, in the immediately preceding financial year. In case ACI is considered to assess Financial Capability, the minimum Net Worth requirement for each member of the Consortium or the sole Bidder, as the case may be, shall be waived off[§].

- b. **Technical Capacity:** The Bidder shall, in the format as prescribed under Annexure-II B hereto, submit an undertaking to the effect that it has, either itself or through its O&M partner, requisite technical expertise for undertaking the operations and maintenance of the Project and fulfill the SLA requirements in relation to the Project. The Bidder shall be required to furnish the said undertaking on its official letterhead, executed by its authorised signatory, along with its Bid. Also, in terms of the Concession Agreement, the Concessionaire shall be obliged to make appropriate and requisite O&M arrangements, either by itself or through its O&M partner, for the Project prior to the Appointed Date.

2.2.4. The Bidders shall enclose with its Bid, to be submitted as per the formats in Appendix II, complete with its Annexes, the following:

- c. Certificate(s) from its statutory auditors specifying the net worth/ ACI of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of

this *Clause 2.2.4 c*. For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation (the “**Available Capital for Investment**”) shall in case of funds, mean minimum investible funds i.e., funds immediately available for investment and callable capital.

2.3. Proprietary data

2.3.1. All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority. 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 Authority will not return any Bid, or any information provided along therewith.

2.4. Cost of bidding

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

2.5. Site visit and verification of information

2.5.1. Bidders are encouraged to submit their respective Bids after visiting the Project/Tower Sites and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water & other utilities access to site, handling and storage of materials, compliance with Applicable Laws, and any other matter considered relevant by them. Bidders are advised to visit the Tower Sites and familiarise themselves with the Project within the stipulated time of submission of the Bid. No extension of time is likely to be considered for submission of Bids.

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

- a. made a complete and careful examination of the Bidding Documents;
- b. received all relevant information requested from the Authority;
- c. accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in *Clause 2.5.1* above;
- d. satisfied itself about all matters, things and information including matters referred to in *Clause 2.5.1* hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;

- e. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in *Clause 2.5.1* hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
- f. acknowledged that it does not have a Conflict of Interest; and
- g. agreed to be bound by the undertakings provided by it under and in terms hereof.

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

2.6. Verification and disqualification

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

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

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

2.6.3. Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member of the Consortium may be disqualified/ rejected.

If such disqualification/rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/rejected, then the Authority reserves the right to annul the Bidding Process and invite fresh Bids.

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 eligibility and /or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA(s) or entering into of the Concession Agreement(s), and if the Selected

Bidder has already been issued the LOA(s) or the SPV has entered into the Concession Agreement(s), as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security and/or Performance Security (if submitted), as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under this RFP, the Bidding Documents, the Concession Agreement or otherwise.

B. DOCUMENTS

2.7. Contents of the RFP

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

a. Invitation for BIDs

- i. Section 1. Introduction
- ii. Section 2. Instructions to Bidders
- iii. Section 3. Evaluation of Bids
- iv. Section 4. Fraud and Corrupt Practices
- v. Section 5. Pre-Bid Conference and Miscellaneous

b. Appendices

- i. Appendix I Guidelines of department of Disinvestment
- ii. Appendix II-A Letter for Technical Bid
- iii. Appendix II-B Declaration of Bidder in respect of the O&M partner
- iv. Appendix II-C Details of Bidder
- v. Appendix II-D Financial capacity of Bidder
- vi. Appendix II-E Details of projects of Bidder
- vii. Appendix II-F Format for Power of Attorney for signing of Bid
- viii. Appendix II-G Format for Power of Attorney of Lead Member of Consortium
- ix. Appendix II-H Format for Joint Bidding Agreement for Consortium
- x. Appendix II-I Bank Guarantee for Bid Security
- xi. Appendix II-J Integrity Pact
- xii. Appendix II-K Statement of legal capacity – Lead Member of Consortium
- xiii. Appendix II- L Format for Conflict of Interest
- xiv. Appendix II- M Near Relationship Certificate
- xv. Appendix II- N Format for Undertaking to be submitted on the letterhead of the Bidder/Members of Consortium

- xvi. Appendix II-O: Certificate regarding Compliance with Restrictions under Rule 144(xi) of the General Financial Rules (GFRs)
- xvii. Appendix II-P: Statement of Undertaking regarding Non-performing Assets (NPA) /Corporate Debt Restructuring (CDR)/ Strategic Debt Restructuring (SDR)/ National Company Law Tribunal (NCLT)
- xviii. Appendix III Format for Financial Bid

2.7.2. Additional information provided by the Authority as part of the Bid Documents and as part of the data room shall be deemed to be part of this RFP.

2.8. Clarifications

2.8.1. Bidders requiring any clarification on the RFP may notify the Authority in writing or by fax and e-mail in accordance with *Clause 1.2.10*. They should send in their queries before the date mentioned in the schedule of Bidding Process specified in *Clause 1.3*. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be sent by fax or e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

2.8.2. The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this *Clause 2.8.2* shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

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

2.9. Amendment of RFP

2.9.1. At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of addenda.

2.9.2. Any addendum issued hereunder will be in writing and shall be sent 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 Date⁵.

C. PREPARATION AND SUBMISSION OF BIDS

2.10. Format and Signing of Bid

2.10.1. The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received online in the required formats and complete in all respect (including Bid Security, proof of payment towards cost of bid document, Power of Attorney (**POA**) and Jt. Bidding Agreement etc.) as specified in *clause 2.11.1* as well as hard copies specified in *clause 2.11.2* of the RFP.

2.10.2. The Bid shall be typed and signed in indelible blue ink by the authorised signatory of the Bidder. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid. All the documents must be authenticated, by hand signatures by the authorized person and then uploaded on e-tender portal. The letter of authorization shall be indicated by written Power of Attorney accompanying the Bid.

2.11. Documents comprising Technical and Financial Bid – online and physical

2.11.1. The Bids are being called under single stage Bidding & two bid /envelope system. The Bidder shall submit the Technical Bid and Financial Bid **online** through e-procurement portal [<https://etenders.gov.in/eprocure/app>] comprising of the following documents along with supporting documents as appropriate. Bids (except documents mentioned in *clause 2.11.2*) in physical form shall not be accepted.

a. Technical Bid

- i. *Appendix IIA* Covering letter for Technical Bid
- ii. *Appendices II-C, II-D, II-E*, and supporting certificates/documents and Appendix I
- iii. *Appendix II-B* Letter of Declaration/Undertaking of the Bidder in respect of the O&M partner.
- iv. Scanned Power of Attorney for signing the Bid as per the format at *Appendix II-F*;
- v. if applicable, scanned Power of Attorney for Lead Member of Consortium as per the format at *Appendix II-G*;

⁵ While extending the Bid Due Date on account of an addendum, the Authority shall have due regard for the time required by Bidders to address the amendments specified therein. In the case of significant amendments, at least 15 (fifteen) days shall be provided between the date of amendment and the Bid Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

- vi. if applicable, Joint Bidding Agreement for Consortium as per format at *Appendix II-H*
- vii. Scanned copy of statement of legal capacity as per format *Appendix II-K*
- viii. Scanned copy of Conflict-of-Interest certificate as per format *Appendix II-L*
- ix. *Scanned copy of Near Relationship certificate as per format Appendix II-M*

The Bidder should give a certificate that none of his/her near relative is working in the Authority's units/department undertaking the Bidding Process. In case of proprietorship firm, certificate will be given by the proprietor. For partnership firm, certificate will be given by all the partners. In case of limited company, certificate will be given by all the directors of the company excluding Government of India/ Financial institution nominees and independent non-official part time directors appointed by Government of India or the Governor of the State and full time Directors of public sector undertakings (both state and central). Due to any breach of these conditions by the Bidder (company or firm or any other person), the tender will be cancelled, and necessary action will be taken as per provision under the bid security declaration form submitted by Bidder and Authority will not pay any damage to the Bidder (company or firm or the concerned person). The Bidder (company or firm or any other person), will also be debarred for further participation in the concerned unit.

The near relatives for this purpose are defined as:- (a) Members of a Hindu undivided family, (b) They are husband and wife. (c) The one is related to the other in the manner as father, mother, son(s) & Son's wife (daughter in law), Daughter(s) and daughter's husband (son in law), brother(s) and brother's wife, sister(s) and sister's husband (brother-in-law).

- x. Undertaking to be submitted on the letterhead of the Bidder/Members of Consortium as per format Appendix II-N
- xi. Certificate regarding compliance with restriction under Rule 144 (xi) of the General Financial Rules (GFRs) at *Appendix II-O*
- xii. Statement of undertaking regarding Non-performing Assets (NPA)/ Corporate Debt Restructuring (CDR)/ Strategic Debt Restructuring (SDR)/ National Company Law Tribunal (NCLT) at *Appendix II-P*
- xiii. Undertaking in the context of Press Note 3 date 17th April 2020 issued by Department for Promotion of Industry and Internal Trade at *Appendix II-Q*
- xiv. Copy of Memorandum and Articles of Association of the Bidder or of each Member (in case of Consortium), if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
- xv. Copies of Bidder's or of each Member (in case of Consortium) duly audited balance sheet and profit and loss statement for preceding 5 (five) years.

- xvi. Integrity Pact as per format given in *Appendix II-J* shall be submitted by the Bidder with the RFP Bid duly signed by Authorised signatory & shall be part of the Concession Agreement;
 - xvii. Copy of Scanned Bid Security of Rs. 50 crores (Rupees Fifty crores only) in the form of Bank Guarantee in the format at *Appendix II-I* from a Bank.
 - xviii. Copy of *Demand Draft or proof off online payment* of Rs. 10,000 + applicable GST (Rs. ten thousand plus applicable GST) towards cost of Bid document
- b. Financial Bid (as per format at Appendix III)

2.11.2. The Bidder shall submit the following documents ***physically***:

- a. Original Power of Attorney for signing the Bid as per format at *Appendix II-F*
- b. if applicable, Original Power of Attorney for Lead Member of Consortium as per the format at *Appendix II-G*;
- c. Bid Security of Rs. 50 Crores (Rupees Fifty crores) in the form of Original Demand Draft or Original Bank Guarantee in the format at *Appendix-II-I* from a Scheduled Bank having a minimum networth of atleast Rs. 500cr.
- d. Demand Draft of Rs. 10,000 + applicable GST (Rupees ten thousand plus applicable GST) if not paid online towards cost of tender document;

The Bidder shall submit the following documents in ***electronic form through e-procurement portal [https://etenders.gov.in/eprocure/app]***. It is clarified that the following documents to be submitted by the Bidder through e-procurement portal [https://etenders.gov.in/eprocure/app] shall not, unless specifically mentioned under this RFP, be required to be submitted in physical form:

- e. if applicable, Original Joint Bidding Agreement for Consortium as per the format at *Appendix II-H*
- f. Integrity pact as per *Appendix II-J* on plain paper shall be submitted by the Bidder with the RFP Bid duly signed by Authorized signatory & shall be part of the Concession Agreement;
- g. Original Statement of Legal Capacity as per format at Appendix II-K.
- h. Original signed statement of Conflict of Interest certificate as per format Appendix II-L
- i. Original Statement of Near Relationship certificate as per format Appendix II-M
- j. Undertaking on the letterhead of the Bidder/Members of Consortium as per format Appendix II
- k. Certificate regarding compliance with restriction under Rule 144 (xi) of the General Financial Rules (GFRs) at Appendix II-O
- l. Statement of undertaking regarding Non-performing Assets (NPA) at Appendix II-P

m. Undertaking at Appendix II-Q

2.11.3. The documents listed in Clause 2.11.2 a to j above shall be placed in an envelope, which shall be sealed. The envelope shall clearly bear the identification “**Bid for Public Private Partnership (PPP) in Operation, Maintenance, and Transfer (OMT) of Telecom Tower Assets of BSNL**” and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right-hand top corner of the envelope. Scanned copies of all these documents shall also be mandatorily uploaded in technical electronic envelope.

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

ATTN. OF :
DESIGNATION :
ADDRESS :
FAX NO :
E-MAIL ADDRESS :

2.11.5. 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 and consequent losses, if any, suffered by the Bidder.

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

2.12. Bid Due Date

2.12.1. Technical & Financial Bid comprising of the documents listed at *Clause 2.11.1* of the RFP shall be submitted online through e-procurement portal [<https://etenders.gov.in/eprocure/app>] on or before **xx hrs IST on xx**. Documents listed at *Clause 2.11.2* of the RFP shall be physically submitted on or before **xx hours IST on xx** at the address provided in *Clause 2.11.4* in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at *Clause 2.11.4*.

2.13. Late Bid

2.13.1. E-procurement portal [<https://etenders.gov.in/eprocure/app>] shall not allow submission of any Bid after the prescribed date and time at *Clause 2.12*. Physical receipt of documents listed at *Clause 2.11.2* of the RFP after the prescribed date and time at *Clause 2.12* shall not be considered and the bid shall be summarily rejected.

2.14. Procedure of e-tendering

2.14.1. Accessing/ Purchasing of Bid documents

a. It is mandatory for all the Bidders to have class-III Digital Signature Certificate

(**DSC**) (in the name of authorized signatory / firm or organization / owner of the firm or organisation) from any of the licensed certifying agency (Bidders can see the list of licensed CAs from the link www.cca.gov.in) to participate in e-tendering of the Authority. DSC should be in the name of the authorized signatory as authorized in Appendix III of this RFP. It should be in corporate capacity (that is in Bidder capacity / in case of Consortium in the Lead Member capacity, as applicable). The Bidder shall submit document in support of the class III DSC. The authorized signatory holding Power of Attorney (**POA**) and the person executing/ delegating such POA shall only be the Digital Signatory. In other cases, the Bid shall be considered non responsive.

- b. To participate in the bidding, it is mandatory for the Bidders to get the bidding entity registered on the NIC's CPPP e-tender portal [<https://etenders.gov.in/eprocure/app>], to have user ID and password which has to be obtained free of cost. Following may kindly be noted:
 - i. Registration with e-procurement portal of the Authority should be valid at least up to the date of submission of Bid.
 - ii. Bids can be submitted only during the validity of registration.
- c. If the firm/ Consortium is already registered with e-tendering service provider of the Authority, and validity of registration is not expired the firm / Consortium is not required to apply for a fresh registration.
- d. The complete Bid document can be viewed / downloaded by the Bidder from tenders (BSNL Portal) BSNL website (<http://tender.bsnl.co.in>) and CPPP e-procurement portal of the Authority [<https://etenders.gov.in/eprocure/app>] from xx to xx (up to xx Hrs. IST).
- e. Detailed instructions are available under *Appendix-IV*.

2.15. Online opening of Bids

2.15.1. Opening of online submitted Bids will be done through as per process on e-tender portal CPPP.

2.15.2. The Authority shall open on-line Technical and Financial Bids on date/time as indicated in this RFP or any new date, updates for which will be available on Authority's tender site & CPPP e-tender portal, in the presence of the authorized representatives of the Bidders, who choose to attend. Bids of only those Bidders whose documents listed at *Clause 2.11.2* of the RFP have been physically received, shall be opened online and considered for further stages of evaluation. The Authority will subsequently examine and evaluate the Bids in accordance with the provisions of *Section 3* of this RFP.

2.16. Rejection of Bids

2.16.1. Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at

any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

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

2.17. Validity of Bids

- 2.17.1.** 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

- 2.18.1.** Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the 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

- 2.19.1.** 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. Submission of Bid Security

- 2.20.1.** The Bidder shall furnish as part of its Bid, a Bid Security referred to in *Clause 2.1.6* hereinabove in the form of a bank guarantee issued by a scheduled bank in India having a net worth of at least Rs. 500 crore (Rs. five hundred crore), in favour of the Authority in the format at Appendix-II (the “**Bank Guarantee**”) and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date with a claim period of 240 (two hundred forty) days and may be extended as may be mutually agreed between the Authority and the Bidder from time to time and upon receipt of written approval from the Bank.

- 2.20.2.** Bid Security can also be in the form of a demand draft issued by a scheduled bank in India, drawn in favour of the Authority and payable at Delhi (the “**Demand Draft**”). The return of the Demand Draft shall be as per terms mentioned under *clause 1.2.4* above and 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.** Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.20.4.** Subject to *Clause 1.2.4* above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority, and in any case not earlier than 180 (one hundred eighty) days from the Bid Due Date and not later than 240 (two hundred and forty) days from the Bid Due Date. Where Bid Security has been paid by Demand Draft, the refund thereof shall be in the form of an account payee Demand Draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said Demand Draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.
- 2.20.5.** The Selected Bidder’s Bid Security will be returned, without any interest, within 7 (seven) days from the later of the Concessionaire (i) furnishing the Performance Security in terms of the Concession Agreement; and (ii) making the payment towards the Concession Fee to the Authority, in accordance with the provisions of the Concession Agreement.
- 2.20.6.** The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in *Clause 2.20.7* herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.20.7.** The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or under the Concession Agreement, or otherwise, under the following conditions:
- a. If a Bidder submits a non-responsive Bid. Provided that, in the event of encashment of Bid Security upon occurrence of an event stipulated under this *Clause 2.20.7a*, the Damages so claimed by the Authority shall be restricted to 5% (five per cent) of the value of the Bid Security.
 - b. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in *Clause 4* of this RFP;

- c. If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
 - d. In the case of Selected Bidder, 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 therefore in the Concession Agreement; or
 - iv. to pay the Concession Fee within the period prescribed therefore in the Concession Agreement.
 - e. In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.
- 2.20.8.** For the avoidance of doubt, such default shall also entitle the Authority to cancel the Selected Bidder's Bid and upon such cancellation, the provisions of *Clause 1.2.8* of this RFP shall apply.

3. Bid opening and evaluation

3.1. Evaluation of Technical Bids

- 3.1.1.** The Authority shall open the bids received online at 11 AM hours IST on **XX.XX.2023**, at the place specified in *Clause 2.11.4* and in the presence of the Bidders who choose to attend. Technical Bid of only those bidders shall be online opened whose documents listed at *Clause 2.11.2* of this RFP have been received physically. The Authority shall prepare minutes of the Bid opening, including information disclosed to those present at the time of Bid opening.
- 3.1.2.** The Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this *Section 3*.
- 3.1.3.** Bids received through any other mode, besides online on e-tender portal, shall not be considered for opening and evaluation.
- 3.1.4.** If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant information for consideration of eligibility and qualification of the Bidder.
- 3.1.5.** To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.
- 3.1.6.** If a Bidder does not provide clarifications sought under *Clause 3.1.5* above within the prescribed time, its Bid may be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

3.2. Test of Responsiveness

- 3.2.1.** As a first step towards evaluation of Technical Bid, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFP. A Technical Bid shall be considered responsive only if:
- a. Technical Bids received online as per the format at *Appendix II (A-J)*;
 - b. Documents listed at *Clause 2.11.2* are received physically;
 - c. Technical Bid is accompanied by the Bid Security as specified in *Clause 2.1.5*;
 - d. Technical Bid is accompanied by the Power of Attorney as specified in *Clause 2.1.7*;
 - e. Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium and the Joint Bidding Agreement as specified in *Clause 2.1.8*, if so required;
 - f. Technical Bid contain all the information (complete in all respects);
 - g. Technical Bid does not contain any condition or qualification;

- h. Integrity Pact as per format given in *Appendix II-J* has been submitted by the Bidder with the RFP Bid duly signed by Authorized signatory;
 - i. Technical Bid contains Demand Draft of Rs. 10,000 (Rupees Ten thousand plus applicable GST) towards cost of RFP/Tender Fee; and
 - j. it is not non-responsive in terms hereof.
 - k. Certificate regarding compliance with restriction under Rule 144 (xi) of the General Financial Rules (GFRs) at Appendix II-O
 - l. Statement of undertaking regarding Non-performing Assets (NPA)/Corporate Debt Restructuring (CDR)/Strategic Debt Restructuring (SDR)/National Company Law Tribunal (NCLT) at Appendix II-P
- 3.2.2.** The Authority reserves the right to reject any Technical Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

3.3. Financial Information for Purposes of Evaluation

- 3.3.1.** The Bids must be accompanied by the audited annual reports of the Bidder (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Bid is made.
- 3.3.2.** In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the audited annual reports for 5 (five) years preceding the year for which the audited annual report is not being provided.
- 3.3.3.** The Bidder must establish the minimum Net Worth specified in *Clause 2.2.3 a*, and provide details as per format at *Appendix II-D*.
- 3.3.4.** In case of foreign companies, a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium Member in the formats provided in the country where the project has been executed shall be accepted, provided it contains all the information as required in the prescribed format of this RFP.
- 3.3.5.** In the event that a Bidder claims credit for an eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority may reject/correct such claim for the purpose of qualification requirements.
- 3.3.6.** The Authority will get the Bid security verified from the issuing authority and after due verification, the Authority will evaluate the Technical Bid for their compliance to the eligibility and qualification requirements pursuant to *Clause 2.2* of this RFP.
- 3.3.7.** After evaluation of Technical Bids, the Authority will publish a list of technically responsive Bidders whose financial bids shall be opened, through e-tender portal.

The Authority shall notify other Bidders that they have not been technically responsive, through e-tender portal. The Authority will not entertain any query or clarification from Bidders who fail to qualify.

3.4. Opening and Evaluation of Financial Bids

3.4.1. The Authority shall inform the venue and time of opening of the online Financial Bids, to the technically responsive Bidders through e-tender/procurement portal of the Authority and e-mail. The Authority shall online open the Financial Bids on date and time to be informed in this *Clause 3.4* in the presence of the authorised representatives of the Bidders who may choose to attend. The Authority shall make public the Bid Concession Fee quoted by the technically responsive Bidder, through e-tender portal. The Authority shall prepare a record of opening of Financial Bids.

3.5. Selection of Bidder

3.5.1. Subject to the provisions of *Clause 2.16.1*, the Bidder whose Bid is adjudged as responsive in terms of *Clause 3.2* and who quotes Highest Bid Concession Fee (excluding applicable GST and other applicable taxes which shall be borne by the Selected Bidder/Concessionaire) shall be declared as the selected Bidder (the “**Selected Bidder**”).

3.5.2. In the event that two or more Bidders quote the same Bid Concession Fee (excluding applicable GST and other applicable taxes which shall be borne by the Selected Bidder/Concessionaire) (the “**Tie Bidders**”), the Authority shall identify the Selected Bidder by forward auction, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.

3.5.1. In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance, the Authority reserves the right to course of action including re-tender or call for a limited or short notice tender, as allowed under extant guidelines

3.5.2. After selection, a letter of award shall be issued, in duplicate, by the Authority to the Selected Bidder (“**LOA**”) and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder 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 to acknowledge the LOA.

3.5.3. After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Bidder to execute the Concession Agreement within the period prescribed in *Clause 1.3*. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

3.6. Contacts during Bid Evaluation

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

3.7. Correspondence with Bidder

- 3.7.1.** Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.
- 3.7.2.** Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project(s) is/are subsequently awarded to it on the basis of such information.
- 3.7.3.** The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.

4. Fraud and corrupt practices

4.1. Conditions pertaining to fraud and corrupt practices

- 4.1.1.** 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 may 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, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security and/or Performance Security (if submitted), as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 4.1.2.** Without prejudice to the rights of the Authority under *Clause 4.1.1* hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or

after the issue of the LOA or the execution of the Concession Agreement, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder, 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.

4.1.3. For the purposes of this *Section 4*, the following terms shall have the meaning hereinafter respectively assigned to them:

- a. “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the *Clause 2.2.1 g* of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical advisor of the Authority in relation to any matter concerning the Project;
- b. “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts;
- 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.

4.1.4. Bidder shall comply with the provisions of Model Agreement for Integrity Pact (IP) as per format given in *Appendix II-J* shall be submitted by the Bidder along with the Bid duly signed by authorized signatory and shall be part of the Concession Agreement.

5. Pre-bid conference and miscellaneous

5.1. Pre-bid conference

5.1.1. Pre-Bid conference of the Bidders shall be convened at the designated date, time and place. A maximum of two representatives of prospective Bidders shall be allowed to participate on production of authority letter from the Bidder.

5.1.2. During the course of pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

5.2. Miscellaneous

5.2.1. The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at [New Delhi] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

5.2.2. 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 to receive clarification or further information. Retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
- c. independently verify, disqualify, reject and/ or accept all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

5.2.3. It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by Applicable Laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

5.2.4. Bidders must not enter into any arrangements with suppliers of equipment or software that would restrict the supplier's ability to supply such equipment or software to other bidders for the purposes of planning, building or operating Project. Bidders are also not permitted to agree with suppliers of equipment or software any form of restriction as to the prices charged or

other terms and conditions that such suppliers may agree with any other Bidders.

5.2.5. The Authority reserves the right to disqualify any Bidder that:

- a. Colludes or attempts to collude with another Bidder in determining its bids or releases confidential information with the effect or intention of modifying the bidding behavior of other pre-qualified bidders;
- b. Breaches or attempts to breach the secure measures within the e-tendering portal;
- c. Prevents or attempts to prevent any other Bidder from accessing the e-tendering portal;
- d. In the event of such disqualification, a Bidder's Bid Security will be forfeited and the Authority may undertake other penal action as well against such a Bidder. The Authority reserves the right to impose a fine equal to some or all of a Bidder's deposit for less serious breaches of these rules. Such fines shall be deducted from that Bidder's Bid Security.

APPENDIX

Appendix I Guidelines of department of Disinvestment

(Refer Clause 1.2.2)

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment
Block 14, CGO Complex
New Delhi.
Dated 13th July, 2001.

OFFICE MEMORANDUM

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

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

- a. In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- b. In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- c. In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- d. Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it

has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

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

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

APPENDIX II FORMATS FOR TECHNICAL BID

Appendix II-A Covering Letter for Technical Bid

(Refer Clause 2.1.5, 2.11 and 3.2)

The *****

Bharat Sanchar Nigam Limited
Corporate Fund Management
509 5th Floor Bharat Sanchar Bhawan
Janpath New Delhi 110 001

Sub: Bid for Public Private Partnership (PPP) in Operation, Maintenance, and Transfer (OMT) of Telecom Tower Assets of BSNL.

Dear Sir,

1. With reference to your RFP document dated⁶, I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project. We also intend to submit my/our Bid during the Bidding Process. The Bid that we make are unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided in the Bid is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as a Concessionaire for the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last 3 (three) years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:

⁶ All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.

- a. I/ We have examined and have no reservations to the RFP document, including any addendum issued by the Authority.
 - b. I/ We do not have any Conflict of Interest in accordance with *Clauses 2.2.1 c, 2.2.1 d and 2.2.1 g* of the RFP document; and
 - c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in *Clause 4.1.3* of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of *Section 4* of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with *Clause 2.16.2* of the RFP document.
 9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy (ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFP document.
 10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for this Project.
 11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
 12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
 13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors.
 14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines form part of the RFP at *Appendix-I* thereof.

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately
 - a. The Statement of Legal Capacity as per format provided at *Appendix II-K* of the RFP document, and duly signed, is enclosed. The Power of Attorney for Signing of Bid and the Power of Attorney for Lead Member of Consortium, as per format provided at *Appendix II-F and Appendix II-G* respectively of the RFP, are also enclosed.
 - b. I/We hereby confirm that we [are in compliance of/ shall comply with] the O&M requirements specified in *Clause 2.2.3*.
16. I/We acknowledge and undertake that our Consortium is qualified on the basis of Technical Capacity and Financial Capacity of those of its Members, who shall, till the 2nd (second) anniversary of the Appointed Date of the Project, hold equity share capital not less than 26% (twenty six percent) of the subscribed and paid-up equity of the Concessionaire. 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.
17. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity shall be taken into consideration for the purposes of selection as Concessionaire 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 LOA, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to financial close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
18. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the Concession Agreement.
19. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above-mentioned Project and the terms and implementation thereof.
20. 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.
21. I/We have studied all the Bidding Documents carefully and also surveyed other information related to the Project. We understand that except to the extent as expressly

set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.

22. I/We offer a Bid Security of Rs. 50 crores (Rupees Fifty crores only) to the Authority in accordance with the RFP Document, and if we are adjudged as the Selected Bidder, we agree to keep the Bid Security valid and effective till the expiry of 7 (seven) days till the (i) payment of the Concession Fee; and (ii) submission of Performance Security, whichever is later, in accordance with the terms of the Concession Agreement.
23. The Bid Security in the form of a Demand Draft/ bank guarantee (*strikeout whichever is not applicable*) is attached.
24. The documents accompanying the Technical Bid, as specified in *Clause 2.11.2* of the RFP, have been submitted in a separate envelope and marked as “Bid for Public Private Partnership (PPP) in Operation, Maintenance, and Transfer (OMT) of Telecom Tower Assets of BSNL”.
25. 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 rejected.
26. The Bid Concession Fee has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own assessment of the assets under the Project, the revenue potential and financial viability, and all conditions that may have a bearing on the project. We further state and confirm that the Bid Concession Fees quoted by me/us is excluding applicable GST and other applicable taxes which shall be borne by us.
27. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
28. We, the Consortium Members 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.
29. I/ We certify that in terms of the RFP, my/our Net worth/ Asset Under Management is Rs. (Rs. in words).
30. I/We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
31. I/ We hereby submit our Bid and offer a Bid Concession Fee (excluding applicable GST and other applicable taxes which shall be borne by the Selected Bidder/Concessionaire) as indicated in Financial Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

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:

Note: Paragraphs in curly parenthesis may be omitted by the Bidders, if not applicable to it, or modified as necessary to reflect Bidder-specific particulars.

Appendix II-B Declaration of Bidder

The *****

Bharat Sanchar Nigam Limited
Corporate Fund Management
509 5th Floor Bharat Sanchar Bhawan
Janpath New Delhi 110 001

Sub: Declaration of Bidder to undertake the Public Private Partnership (PPP) in Operation, Maintenance, and Transfer (OMT) of Telecom Tower Assets of BSNL.

Dear Sir,

We wish to confirm that we have {our O&M partner has} the requisite technical experience and expertise to undertake the operation and management of the Project, the SLA requirements and other O&M obligations in terms of the Concession Agreement.

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:

Appendix II-C Details of Bidder

1. Details of Bidder
 - a. Name:
 - b. Country of incorporation:
 - c. Address of the corporate headquarters and its branch office(s), if any, in India:
 - d. Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
 - a. Name:
 - b. Designation:
 - c. Company:
 - d. Address:
 - e. Telephone Number:
 - f. E-Mail Address:
 - g. Fax Number:
4. Particulars of 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 2.1.13 g should be attached.
 - c. Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role* {Refer Clause 2.1.13 (d)}^{\$}	Percentage of equity in the Consortium {Refer Clauses 2.1.13 (a), (c) & (g)}
1.			
2.			
3.			
4.			

**The role of each Member, as determined by the Bidder, should be as per instruction 4 at Appendix II-H.*

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

Name of Bidder/ member of Consortium:

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

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

^{\$} All provisions contained in curly parenthesis shall be suitably modified by the Bidder to reflect the particulars relating to such Bidder.
[£] or has been declared by the Authority as non-performer/blacklisted.

Appendix II-D Financial capacity of Bidder

(Refer to Clauses 2.2.3 (a), 2.2.4 (ii) and 3.5 of the RFP)

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

Bidder type §	Member Code£	Proposed Equity Shareholding in Consortium (%)	Net Worth/Asset Under Management ⁷				
(1)	(2)	(3)	Year 1 (4)	Year 2 (5)	Year 3 (6)	Year 4 (7)	Year 5 (8)
Single entity Bidder							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
Consortium Member 4							
TOTAL							

Name & address of Bidder's Bankers:

§ A Bidder consisting of a single entity should fill in details as per the row titled single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled single entity Bidder may be ignored.

£Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write "Associate" along with Member Code.

€The Bidder should provide details of its own Financial Capability or of an Associate specified in *Clause 2.1.18s*.

⁷ Market Value of the Assets managed by self or on behalf of Investors

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

Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements, and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
 - a. reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
 - b. be audited by a statutory auditor;
 - c. be complete, including all notes to the financial statements; and
 - d. correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean 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.
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial years.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with *Clause 2.1.13 g* of the RFP document.
6. The Bidder shall also provide the name and address of the Bankers to the Bidder.
7. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with *Clause 2.2.4 b* of the RFP document.

Appendix II-F Format for Power of Attorney for signing of Bid

(Refer Clause 2.1.7)

Know all men by these presents, We, (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr. / Ms (Name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the “**Attorney**”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the (Name of the Project *****) Project proposed or being developed by Bharat Sanchar Nigam Limited (the “**Authority**”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' 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 said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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

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

For

(Signature, name, designation and address)
of person authorized by Board Resolution (in
case of Firms/Company)/Partner in case of
Partnership Firms

Witnesses:

1.

2.

Notarised

Notarised

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

(*Notary to specify as applicable)

(Signature, Name and Address of the Notary)

Seal of the Notary

Registration Number of the Notary

Date_____

Accepted

(Signature, name, designation 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.

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

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

Appendix II-G Format for Power of Attorney of Lead Member of Consortium

(Refer Clause 2.1.8)

Whereas the Bharat Sanchar Nigam Limited (“the **Authority**”) has invited bids from interested parties for the (Name of the Project *****). (“the **Project**”). Whereas,, and (collectively the “**Consortium**”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

(Signature, Name & Title)

Witnesses:

- 1.
- 2.

(Executants)

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

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the

executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

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

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

Appendix II-H Format for Joint Bidding Agreement for Consortium

(Refer Clause 2.1.13 g)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

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

AND

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

AND

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

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. Bharat Sanchar Nigam Limited, a 100% Government of India owned telecom services provider operating under the Department of Telecommunications, Government of India, represented by its Chairman and having its principal offices at Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi – 110001 (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 award of contract for (Name of the Project *****) on Operate-Maintain-Transfer (OMT) Mode (the “**Project**”) through public private partnership.
- B. The Parties are interested in jointly bidding for the Project as Members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and

- C. It is a necessary condition under the RFP document that the Members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

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

- a. The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.
- b. The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act 2013 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 undertake to perform the roles and responsibilities as described below:

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

5. Joint and Several Liability

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

6. Shareholding in the SPV

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

First Party:

Second Party:

{Third Party:}

{Fourth Party:}

- a. The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the 2nd (second) anniversary of the Appointed Date of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and net worth have been reckoned for the purposes of qualification and short-listing of Bidders for the Project in terms of the RFP.
- b. The Parties undertake that they shall, either directly or through their Associates, collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the 2nd (second) anniversary of the Appointed Date of the Project.
- c. The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

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

- a. Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- b. The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - i. require any consent or approval not already obtained;
 - ii. violate any Applicable Law presently in effect and having applicability to it;
 - iii. violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - iv. violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except

for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

- c. this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d. there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

7. Termination

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

8. Miscellaneous

- a. This Joint Bidding Agreement shall be governed by laws of {India}.
- b. 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

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SECOND PART

(Signature)

(Name)

(Designation)

(Address)

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of
THIRD PART

(Signature)
(Name)
(Designation)
(Address)

For and on behalf
FOURTH PART

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
FIFTH PART

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf
SIX PART

(Signature)
(Name)
(Designation)
(Address)

In the presence of:

1.

2.

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

Appendix II-I Bank Guarantee for Bid Security

(Refer Clauses 2.1.6 and 2.20.1)

B.G. No. Dated:

1. In consideration of you, Bharat Sanchar Nigam Limited, having its office at Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi – 110001, (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 Companies Act, 2013) and having its registered office at (and acting on behalf of its Consortium) (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the (Name of the Project*****). (hereinafter referred to as the “**Project**”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft concession agreement (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 2.1.6* read with *Clause 2.1.7* of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. 100 crore(Rupees one hundred crore) (hereinafter referred to as the “**Guarantee**”) 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 fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the 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 *****).

4. This Guarantee shall be irrevocable and remain in full force for an initial period of 180 (one hundred eighty) days from the Bid Due Date and an initial claim period of 240 (two hundred and forty) days or for such extended period as may be required pursuant to the terms of the RFP Document and the Concession Agreement, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. 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 fulfillment 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.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the 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 fulfillment 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.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein. We undertake to make the payment on receipt of your notice of claim on us addressed to name of Bank along with branch address and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.

9. 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.
10. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
11. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
12. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. 100 crore (Rupees one hundred crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before *** (indicate date falling 240 days after the Bid Due Date) or for such extended period as may be required pursuant to the terms of the RFP Document and the Concession Agreement.

Signed and Delivered by Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

Appendix II-J Integrity Pact

(Refer clause 4.1.4)

Public Private Partnership (PPP) in Operation, Maintenance, and Transfer (OMT) of Telecom Tower Assets of BSNL (the “Project”)

(To be submitted on Plain Paper)

INTEGRITY PACT

Between

Bharat Sanchar Nigam Limited (BSNL) / hereinafter referred to as “The Principal”

and

.....hereinafter referred to as “The Bidder/Contractor”

PREAMBLE

The Principal intends to award, under laid down organizational procedures, contract/s for ----- . The Principal values full compliance with all relevant laws, rules and regulations, and economic use of resources, and of fairness and transparency in its relations with its Bidder(s) and / or Contractor(s).

In order to achieve these goals, the Principal will appoint an Independent External Monitors (IEMs) who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1: Commitments of the Principal

1. The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-
 - a. No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for him/herself or third person, any material or immaterial benefit which he/she is not legally entitled to.
 - b. The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Authority will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
 - c. The Principal will exclude from the process all known prejudiced persons.

2. If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the relevant Anti-Corruption Laws of India, or if there be a substantive suspicion in this regard, the Authority will inform its Vigilance Office and in addition can initiate disciplinary actions.

Section 2: Commitments of the Bidder(s)/Contractor(s)

1. The Bidder(s)/Contractor(s) commit itself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
 - a. The Bidder(s)/Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contractor to any third person any material or immaterial benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
 - b. The Bidder(s)/Contractor(s) will not enter with other Bidder(s) into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
 - c. The Bidder(s)/Contractor(s) will not commit any offence under the relevant Anti-corruption Laws of India; further the Bidder(s)/Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically and commit any offence under Indian Penal code (IPC)/Prevention of Corruption (PC) Act.
 - d. The Bidder(s)/Contractor(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly, the Bidders/Contractors(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any.
 - e. The Bidder(s)/Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
 - f. Bidder(s)/Contractor(s) who have signed the Integrity Pact shall not approach the Courts while representing the matter to Independent External Monitors (IEMs) and shall wait for their decision in the matter.
 - g. To disclose and transgression with any other company that may impinge on the anti-corruption principle.

2. The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3: Disqualification from tender process and exclusion from future contracts

If the Bidder(s)/Contractor(s), before contract award or during execution has committed a transgression through a violation of Section 2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as per the defined procedure in BSNL Procurement Manual, which is in-force on the date of Publication of tender.

Section 4: Compensation for Damages

1. If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit / Bid Security.
2. If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to section 3, the Principal shall be entitled to demand and recover from the Contractor the amount equivalent to liquidated damages (LD) of the contract value or the amount equivalent to Security Deposit/Performance Bank Guarantee (PBG) in addition to any other penalties/ recoveries as per terms and conditions of the tender.

Section 5: Previous transgression

1. The Bidder declares that no previous transgression occurred in the last 3 (three) years with any other Company in any country conforming to the Anti-corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.
2. If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the defined procedure.

Section 6: Equal treatment of all Bidders/Contractors/Subcontractors

1. The principal will enter into agreements with identical conditions as this one with all Bidders/Contractors.
2. The Bidder(s)/Contractor(s) undertake(s) to demand from all subcontractors, a commitment in conformity with this Integrity Pact.
3. The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

Section 7: Criminal charges against violating Bidder(s) / Contractor(s) / Subcontractor(s)

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor,

which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to Chief Vigilance Officer.

Section 8: External Independent Monitor/Monitors

1. Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
2. The monitor is not subject to instructions by the representatives of the parties and performs his/her functions neutrally and independently. The Monitor would have access in all contract documents, whenever required. It will be obligatory for him/her to treat the information and documents of the Bidders/Contractors as confidential. He/she reports to the CMD BSNL.
3. The Bidder(s)/Contractor(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/Contractor(s)/Subcontractor(s) with confidentiality.

Notwithstanding anything contained in this Section, the Bidder(s)/Contractor(s) shall have no obligation whatsoever to provide any internal costing mechanisms or any internal financial or commercial data pursuant to any audit or review conducted by or on behalf of the Principal. Further, the Bidder(s)/Contractor(s) shall not be required to provide any data relating to its other customers, or any personnel or employee related data.

4. The Monitor is under contractual obligation to treat the information and documents of the Bidders/Contractor(s) /Sub-contractor(s) with confidentiality. The Monitor has also signed declarations on “Non-Disclosures of Confidential Information” and of “Absence of Conflict of Interest”. In case of any conflict of interest arising at a later date, the Independent External Monitor (IEM) shall inform CMD BSNL and recuse himself/herself from that case.
5. The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
6. As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

7. The Monitor will submit a written report to the Chairperson of the Board of the Principal within 4 to 6 weeks from the date of reference or intimation to him by the 'Principal' and, should the occasion arise, submit proposals for correcting problematic situations.

8. If the Monitor has reported to the CMD of the BSNL, a substantiated suspicion of an offence under relevant Anti-Corruption Laws of India, and the BSNL has not, within reasonable time, taken visible action to proceed against such offence or reported it to the Corporate Vigilance Office, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.

9. The word 'Monitor' would include both singular and plural.

Section 9: Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders 6 months after the contract has been awarded. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.

If any claim is made/ lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/determined by CMD, BSNL.

Section 10: Other provisions

1. This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. New Delhi. The arbitration clause provided in the tender document / contract shall not be applicable for any issue /dispute arising under Integrity Pact.

2. Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

3. If the Contractor is a partnership or a consortium, this agreement must be, signed by all partners or consortium Members.

4. Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

5. Issues like Warranty/Guarantee etc. shall be outside the purview of IEMs.

For the Authority

For the Bidder / Contractor

Place.....

Witness1:

Date.....

Witness2:

Appendix II-K Statement of legal capacity – Lead Member of Consortium

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

Ref. Date:

The *****

Bharat Sanchar Nigam Limited
Corporate Fund Management
509 5th Floor Bharat Sanchar Bhawan
Janpath New Delhi 110 001

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

**Please strike out whichever is not applicable.*

Appendix II-L Format for Conflict of Interest

We, the undersigned (“**Bidder**”) are submitting our bid in respect of the Request for Proposal No [●], Dated [●] (“**Bid**”) issued by the Bharat Sanchar Nigam Limited (“**BSNL**”), in relation to [●] and in this connection we hereby solemnly affirm, declare and undertake as follows:

1. Details of the Bidder as disclosed in **Appendix - I** enclosed herewith are true and correct as on date.
2. There has been no conviction by any court of law or indictment or adverse order by any statutory or regulatory authority for a Grave Offence against us or any of our Associate(s) or any of our promoters or directors or that of our Associate(s) during the last ten financial years.
3. No enquiry or investigations for any Grave Offence is pending against us or any of our Indian Associate or any of our or our Indian Associate directors, managers and/or other Senior Managerial Personnel by any regulatory authority and/or Government agency.
4. The details of enquiry or investigations for non-Grave Offenses pending against us/our Indian Associate (s)/ our or our Associate’s directors, managers and/or other Senior Managerial Personnel by any regulatory authority and/or BSNL agency are disclosed in **Appendix - II** enclosed herewith.
5. There is no Conflict of Interest with respect to the Proposed Transaction as on date.
6. We have put in place a robust mechanism to resolve any Conflict of Interest situations and circumstances that may arise or result while conducting our business or rendering of services and where-so-ever any Conflict of Interest or potential for Conflict of Interest may arise, we shall take reasonable steps to resolve the same forthwith in a fair and equitable manner. During the term of our engagement we shall ensure to and continue to exercise adequate due diligence for identifying and removing any areas, source, situations and circumstances of conflict and mitigating the effects of such conflicts to the satisfaction of the BSNL, in case any such Conflict of interest (or apparent conflict of interest) arises or results in relation to the Proposed Transaction.
7. We have laid down an internal code of conduct for governing our internal procedures and operations and have prescribed the standards of appropriate conduct for our employees and officers for carrying out their duties and responsibilities with a view to

appropriately ensuring proper maintenance of professional excellence and standards with integrity, confidentiality, objectivity and have made provisions for identification, avoidance and resolution of conflict of interests and for disclosure of shareholdings and interests, etc., in terms of applicable laws.

10. We understand that:

- (i) In cases where existing Conflict of Interest (or apparent conflict of interest) is disclosed by us, the BSNL would be entitled to initiate appropriate actions to eliminate or address or mitigate or neutralize the conflict through restricting or modifying the work to be performed by us in respect of the Proposed Transaction. The BSNL may also terminate our engagement for the Proposed Transaction, in whole or in part, if such termination is absolutely necessary in the view of the BSNL to avoid the appearance of a Conflict-of-Interest situation.
- (ii) The BSNL would be entitled to terminate Proposed Transaction, if any, if the affirmation/declaration/undertaking given by us is found to be false or misleading in any manner or not adhered or fulfilled or complied by us.

Signature of the Bidder
With date and seal

Appendix I & II hereto shall constitute and shall be deemed to form an integral part of this document.

Appendix-I

BIDDER DETAILS

Name of the Bidder	
Address: Registered Office: Corporate Office: Tel: Email:	
Constitution	Company/Partnership/LLP/Others (If others, please provide the nature of constitution)
SEBI registration no, if	

registered with SEBI	
Details of registration with other professional statutory bodies	

Appendix-II

DETAILS OF PENDING ENQUIRY/INVESTIGATIONS

S. No	Name of the Associate(s)/ concerned person(s) against whom the enquiry/ investigation has been initiated	Relationship with the bidder	Name of the investigating agency	Nature of pending enquiry/ investigation and law under which the enquiry has been initiated	Brief facts/ interim orders/ other relevant information in respect of the pending enquiry/investigation

Annexure II–M Near Relationship Certificate

(Format of the Certificate to be given by the bidder in respect of status of employment of his/ her near relation in BSNL)

To be submitted by all Directors/Proprietors/Partners of bidder Company

"I.....s/o.....in capacity of.....hereby certify that none of my near relative(s) as defined in the tender document is/are employed in BSNL unit, as per details given in tender document. In case at any stage, it is found that the information given by me is false/ incorrect, BSNL shall have the absolute right to take any action as deemed fit/without any prior intimation to me."

OR

I.....s/o.....in capacity of.....hereby certify that my following near relative(s) as defined in the tender document is/are employed in BSNL unit, as per details given in tender document. In case at any stage, it is found that the information given by me is false/ incorrect, BSNL shall have the absolute right to take any action as deemed fit/without any prior intimation to me."

S.No.	Name	Designation	Office	Contact number
1.				
2.				

Signature of the tenderer

With date and seal

Appendix II-N: Format for undertaking to be submitted on the letterhead of the bidder/members of consortium

To,

The *****

Bharat Sanchar Nigam Limited
Corporate Fund Management
509 5th Floor Bharat Sanchar Bhawan
Janpath New Delhi 110 001

Dear Sir,

We have read the Orders issued by Ministry of Finance (Public Procurement 1, Public Procurement 2 and Public Procurement 3; F. No. 6/18/2019-PPD issued on 23rd July 2020 and 24th July 2020) regarding restrictions on a bidder of a country which shares a land border with India; We certify that, M/S..... (insert name of Bidder/Members of Consortium) is/are not from such a country or, if from such a country or, has been registered with the Competent Authority. I hereby certify that M/S.....(insert name of Bidder/Lead Bidder), [and all our Members] fulfills all requirements in this regard and is eligible to be considered.

Regards

Name & Signature of Authorized Signatory

Designation

Name and Seal of Bidder/Each Member of Consortium

Date:

Place:

Appendix II-O: Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs)

To,

The *****

Bharat Sanchar Nigam Limited
Corporate Fund Management
509 5th Floor Bharat Sanchar Bhawan
Janpath New Delhi 110 001

Sub: Bid for Public Private Partnership (PPP) in Operation, Maintenance, and Transfer (OMT) of Telecom Tower Assets of BSNL.

Dear Sir,

With reference to your RFP document dated, I/we, having examined the Bidding Documents and understood their contents, hereby undertake and confirm as follows:

I/We have read the Clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this Bidder is not from such a country or, if from such a country.

I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered.

Date:

Yours

faithfully,

Place:

(Signature of the Authorised signatory)
(Name and Designation of the of the Authorised signatory)
Name and seal of Bidder/Lead Member

In case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.

Appendix II-P: Statement of Undertaking Regarding Non-Performing Asset (NPA) / Restructuring under RBI's Prudential Framework for Resolution of Stressed Assets dated June 7, 2019/CIRP proceedings before the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy

Name of Bidder/ Lead member of the consortium

*******Designation**

Address

Sub: Bid for Public Private Partnership (PPP) in Operation, Maintenance, and Transfer (OMT) of Telecom Tower Assets of BSNL

Dear Sir,

We hereby confirm that we/ any members in the Consortium (constitution of which has been described in the Bid) are not in the list of NPA and have not undergone any restructuring under RBI's Prudential Framework for Resolution of Stressed Assets dated June 7, 2019 and do not have any notice or part of any CIRP proceedings from or before the NCLT under the Insolvency and Bankruptcy Code, 2016 during the last three years preceding the Bid Due Date and have not been a loss-making company in the last three years preceding the Bid Due Date.

We also confirm that we / any member in the Consortium is not in the list of NPA or undergoing any restructuring under RBI's Prudential Framework for Resolution of Stressed Assets dated June 7, 2019 and do not have any notice from NCLT or are a part of any ongoing/pending CIRP proceedings under the Insolvency and Bankruptcy Code, 2016, as on Bid Due Date.

Thanking you,

Signature, name and *****Designation of
Auditor's firm:

Authorised Signatory
(Signature, name

For and on behalf of(Name
Membership
of the Applicant)

Name of the Statutory

Seal of the audit firm:

and *****Designation and

and No. of authorized signatory)

Note: This undertaking is to be signed by the Applicant / Lead Member of the JV and is to be countersigned by the Statutory Auditor.

**Appendix II-Q: Undertaking in the context of Press Note 3 date 17th April 2020
issued by Department for Promotion of Industry and Internal Trade
("DPIIT")**

(On the letterhead of the sole Bidder/each member of the Consortium submitting the Bid)

Date: [●]

Undertaking

In context of our Bid dated [●] submitted ("**Bid**") pursuant to the to the Request for Proposal dated October [●], as amended from time to time ("**RFP**") inviting Bids for Public Private Partnership (PPP) in Operation, Maintenance, and Transfer (OMT) of Telecom Tower Assets of BSNL ("**Transaction**" or "**Project**"), we solemnly declare and undertake that neither we, nor our Affiliates (only in case IP is taking benefit of financial strength of such Affiliate) or our Ultimate Beneficial Owners would fall within the entities required to obtain requisite approval(s) under Press Note 3 dated April 17, 2020 issued by Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India (DPIIT), including clarifications and notifications issued thereto as on date hereof.

All the terms used in capitals in this Undertaking, but not defined herein, shall have the meaning as ascribed thereto under the RFP.

[●]

(Signature, name, designation, and address)

APPENDIX III FORMAT FOR FINANCIAL BID

(Refer Clauses 2.1.5, 2.11.1 and 3.5)

(NOT TO BE SUBMITTED IN THE TECHNICAL BID)

Date:

To:

The *****

Bharat Sanchar Nigam Limited
Corporate Fund Management
509 5th Floor Bharat Sanchar Bhawan
Janpath New Delhi 110 001

Sub: Bid for Public Private Partnership (PPP) in Operation, Maintenance, and Transfer (OMT) of Telecom Tower Assets of BSNL (**Project**)

Dear Sir,

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

1. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
2. The Bid Concession Fee (excluding applicable GST and other applicable taxes which shall be borne by the Selected Bidder/Concessionaire) has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Draft Concession Agreement and its Schedules, information provided in the Virtual Data Room, our own estimates of costs and after a careful assessment of the site, project assets, and all own the conditions that may affect and the implementation of the project.
3. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
4. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into 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.
5. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.

6. 7. I/ We hereby submit our Bid and offer a Bid Concession Fee of Rs. (Rs..... in words), excluding applicable GST and other applicable taxes which shall be borne by the us, for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

Yours faithfully,

(Signature, name and designation of the Authorised Signatory)

Class III DSC ID of Authorised Signatory :.....

Name & seal of Bidder/Lead Member:.....

Date:

Place:

APPENDIX IV E-TENDERING INSTRUCTIONS TO BIDDERS

The bidders are required to submit soft copies of their bids electronically on the CPP Portal, using valid Digital Signature Certificates. The instructions given below are meant to assist the bidders in registering on the CPP Portal, prepare their bids in accordance with the requirements and submitting their bids online on the CPP Portal.

More information useful for submitting online bids on the CPP Portal may be obtained at: <https://etenders.gov.in/eprocure/app>.

REGISTRATION

- 1) Bidders are required to enroll on the e-Procurement module of the Central Public Procurement Portal (URL: <https://etenders.gov.in/eprocure/app>) by clicking on the link “Online bidder Enrollment” on the CPP Portal which is free of charge.
- 2) As part of the enrolment process, the bidders will be required to choose a unique username and assign a password for their accounts.
- 3) Bidders are advised to register their valid email address and mobile numbers as part of the registration process. These would be used for any communication from the CPP Portal.
- 4) Upon enrolment, the bidders will be required to register their valid Digital Signature Certificate (Class III Certificates with signing key usage) issued by any Certifying Authority recognized by CCA India (e.g. Sify / nCode / eMudhra etc.), with their profile.
- 5) Only one valid DSC should be registered by a bidder. Please note that the bidders are responsible to ensure that they do not lend their DSC's to others which may lead to misuse.
- 6) Bidder then logs in to the site through the secured log-in by entering their user ID / password and the password of the DSC / e-Token.

SEARCHING FOR TENDER DOCUMENTS

- 1) There are various search options built in the CPP Portal, to facilitate bidders to search active tenders by several parameters. These parameters could include Tender ID, Organization Name, Location, Date, Value, etc. There is also an option of advanced search for tenders, wherein the bidders may combine a number of search parameters such as Organization Name, Form of Contract, Location, Date, Other keywords etc. to search for a tender published on the CPP Portal.
- 2) Once the bidders have selected the tenders they are interested in, they may download the required documents / tender schedules. These tenders can be moved to the respective ‘My Tenders’ folder. This would enable the CPP Portal to intimate the bidders through SMS / e-mail in case there is any corrigendum issued to the tender document.

3) The bidder should make a note of the unique Tender ID assigned to each tender, in case they want to obtain any clarification / help from the Helpdesk.

PREPARATION OF BIDS

1) Bidder should take into account any corrigendum published on the tender document before submitting their bids.

2) Please go through the tender advertisement and the tender document carefully to understand the documents required to be submitted as part of the bid. Please note the number of covers in which the bid documents have to be submitted, the number of documents - including the names and content of each of the document that need to be submitted. Any deviations from these may lead to rejection of the bid.

3) Bidder, in advance, should get ready the bid documents to be submitted as indicated in the tender document / schedule and generally, they can be in PDF / XLS / RAR / DWF/JPG formats. Bid documents may be scanned with 100 dpi with black and white option which helps in reducing size of the scanned document.

4) To avoid the time and effort required in uploading the same set of standard documents which are required to be submitted as a part of every bid, a provision of uploading such standard documents (e.g. PAN card copy, annual reports, auditor certificates etc.) has been provided to the bidders. Bidders can use “My Space” or “Other Important Documents” area available to them to upload such documents. These documents may be directly submitted from the “My Space” area while submitting a bid, and need not be uploaded again and again. This will lead to a reduction in the time required for bid submission process.

Note: My Documents space is only a repository given to the Bidders to ease the uploading process. If Bidder has uploaded his Documents in My Documents space, this does not automatically ensure these Documents being part of Technical Bid.

SUBMISSION OF BIDS

1) Bidder should log into the site well in advance for bid submission so that they can upload the bid in time i.e. on or before the bid submission time. Bidder will be responsible for any delay due to other issues.

2) The bidder has to digitally sign and upload the required bid documents one by one as indicated in the tender document.

3) Bidder has to select the payment option as “offline” to pay the Tender fee as applicable and enter details of the instrument.

5) Bidders are requested to note that they should necessarily submit their financial bids in the format provided and no other format is acceptable. If the price bid has been given as a standard BoQ format with the tender document, then the same is to be downloaded and to be

filled by all the bidders. Bidders are required to download the BoQ file, open it and complete the white coloured (unprotected) cells with their respective financial quotes and other details (such as name of the bidder). No other cells should be changed. Once the details have been completed, the bidder should save it and submit it online, without changing the filename. If the BoQ file is found to be modified by the bidder, the bid will be rejected.

6) The server time (which is displayed on the bidders' dashboard) will be considered as the standard time for referencing the deadlines for submission of the bids by the bidders, opening of bids etc. The bidders should follow this time during bid submission.

7) All the documents being submitted by the bidders would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered cannot be viewed by unauthorized persons until the time of bid opening. The confidentiality of the bids is maintained using the secured Socket Layer 128 bit encryption technology. Data storage encryption of sensitive fields is done. Any bid document that is uploaded to the server is subjected to symmetric encryption using a system generated symmetric key. Further this key is subjected to asymmetric encryption using buyers/bid opener's public keys. Overall, the uploaded tender documents become readable only after the tender opening by the authorized bid openers.

7) The uploaded tender documents become readable only after the tender opening by the authorized bid openers.

8) Upon the successful and timely submission of bids (i.e. after Clicking "Freeze Bid Submission" in the portal), the portal will give a successful bid submission message & a bid summary will be displayed with the bid no. and the date & time of submission of the bid with all other relevant details.

9) The bid summary has to be printed and kept as an acknowledgement of the submission of the bid. This acknowledgement may be used as an entry pass for any bid opening meetings.

ASSISTANCE TO BIDDERS

1) Any queries relating to the tender document and the terms and conditions contained therein should be addressed to the Tender Inviting Authority for a tender or the relevant contact person indicated in the tender.

2) Any queries relating to the process of online bid submission or queries relating to CPP Portal in general may be directed to the 24x7 CPP Portal Helpdesk.

For any technical related queries please call at 24 X 7 Help Desk Number
0120-4200 462/4001 002/4001 005/6277 787

International Bidders are requested to prefix +91 as country code

Email Support:

For any issues or Clarifications relating to the published tenders, bidders are requested to contact the respective Tender Inviting Authority

Technical – support-eproc(at)nic(dot)in

Policy Related – cppp-doe(at)nic(dot)in

APPENDIX V DEFAULT CONSEQUENCES

S. No.	Defaults of the bidder / vendor.	Action to be taken
A	B	C
1(a)	Submitting fake / forged	i) Rejection of tender bid of respective Vendor.
	a) Bank Instruments with the bid to meet terms & condition of tender in respect of tender fee and/ or EMD / PBG;	ii) Banning of business for 3 years which implies barring further dealing with the vendor for procurement of Goods & Services including participation in future tenders invited by BSNL for 3 years from date of issue of banning order.
	b) Certificate for claiming exemption in respect of tender fee and/ or EMD;	iii) Termination/ Short Closure of PO/WO (Concessionaire Agreement), if issued. This implies non-acceptance of further supplies / work & services except to make the already received material work/ complete work in hand.
	and detection of default at any stage from receipt of bids till award of APO/ issue of PO/WO.	
	Note 1:- Deleted.	
	Note 2:- Payment for already received supplies/ completed work shall be made as per terms & conditions of PO/ WO.	
1(b)	Submitting fake / forged documents towards meeting eligibility criteria such as experience capability, supply proof, registration with Sales Tax, Income Tax departments etc and as supporting documents towards other terms & conditions with the bid to meet terms & condition of tender :	
	<i>(i) If detection of default is prior to award of APO</i>	i) Rejection of Bid & ii) Forfeiture of EMD. iii) Banning of business for upto three years which implies Barring further dealing with the vendor for procurement of Goods and Services including participation in future tenders invited by BSNL for upto three years from date of issue of banning order.

S. No.	Defaults of the bidder / vendor.	Action to be taken
	(ii) <i>If detection of default after issue of APO but before receipt of PG/ SD (DD,BG etc.)</i>	i) Cancellation of APO, ii) Rejection of Bid & iii) Forfeiture of EMD. iv) Banning of business for upto three years which implies Barring further dealing with the vendor for procurement of Goods and Services including participation in future tenders invited by BSNL for upto three years from date of issue of banning order.
1(b) cont d.	(iii) <i>If detection of default after receipt of PG/ SD (DD,BG etc.) .</i>	i) Cancellation of APO ii) Rejection of Bid & iii) Forfeiture of PG/ SD. However on realization of PG/ SD amount, EMD, if not already released shall be returned. iv) Banning of business for up to three years which implies Barring further dealing with the vendor for procurement of Goods and Services including participation in future tenders invited by BSNL for up to three years from date of issue of banning order.
	(iv) <i>If detection of default after issue of PO/ WO</i>	i) Termination/ Short Closure of PO/WO and Cancellation of APO ii) Rejection of Bid & iii) Forfeiture of PG/ SD. However on realization of PG/ SD amount, EMD, if not released shall be returned. iv) Banning of business for up to three years which implies Barring further dealing with the vendor for procurement of Goods and Services including participation in future tenders invited by BSNL for up to three years from date of issue of banning order.
2	If vendor or his representative uses violent/ coercive means viz. Physical / Verbal means to threatens BSNL Executive / employees and/ or obstruct him from functioning in discharge of his duties & responsibilities for the following :	Banning of business for 3 years which implies Barring further dealing with the vendor for

S. No.	Defaults of the bidder / vendor.	Action to be taken
	a) Obstructing functioning of tender opening executives of BSNL in receipt/ opening of tender bids from prospective Bidders, suppliers/ Contractors. b) Obstructing/ Threatening other prospective bidders i.e. suppliers/ Contractors from entering the tender venue and/ or submitting their tender bid freely.	procurement of Goods & Services including participation in future tenders invited by BSNL for 3 years from date of issue of banning order.
3	Non-receipt of acceptance of APO/ AWO and SD/ PG by L-1 bidder within time period specified in APO/ AWO.	Forfeiture of EMD.
4.1	Failure to supply and/ or Commission the equipment and /or execution of the work at all even in extended delivery schedules, if granted against PO/ WO.	i) Termination of PO/ WO. ii) Under take purchase/ work at the risk & cost of defaulting vendor. iii) Recover the excess charges if incurred from the PG/ SD and outstanding bills of the defaulting Vendor.
4.2	Failure to supply and/ or Commission the equipment and /or execution of the Work in full even in extended delivery schedules, if granted against PO/ WO.	i) Short Closure of PO/ WO to the quantity already received by and/ or commissioned in BSNL and/ or in pipeline provided the same is usable and/or the Vendor promises to make it usable. ii) Undertake purchase/ work for balance quantity at the risk & cost of defaulting vendor. iii) Recover the excess charges if incurred from the PG/ SD and outstanding bills of the defaulting Vendor.

S. No.	Defaults of the bidder / vendor.	Action to be taken
5.1	The supplied equipment does not perform satisfactory in the field in accordance with the specifications mentioned in the PO/ WO/Contract.	<p>i) If the material is not at all acceptable, then return the non-acceptable material (or its part) & recover its cost, if paid, from the o/s bills/ PG/ SD.</p> <p>OR</p> <p>ii) If the material is inducted in network & it is not possible to return it and/ or material is acceptable with degraded performance, the purchaser may determine the price for degraded equipment (Financial penalty = Price – price determined for degraded equipment) himself and/ or through a committee. Undertake recovery of financial penalty from outstanding dues of vendor including PG/ SD.</p>
5.2	Major quality problems (as established by a join team / committee of User unit(s) and QA Circle) performance problems and non-rectification of defects (based on reports of field units and Q circle).	<p>4. If the material is not at all acceptable, the return the non-acceptable material (or its part) & recover its cost, if paid, from the o/s bills/ PG SD;</p> <p>OR</p> <p>5. If the material is inducted in network & it is not possible to return it and/ or material is acceptable with degraded performance, the purchaser may determine the price for degrade equipment (Financial penalty = Price – price determined for degraded equipment) himself and/ or through a committee. Undertake recovery of financial penalty from outstanding dues of vendor including PG/ SD and</p> <p>(iii) Withdrawal of TSEC/ IA issued by QA Circle</p>
6	Submission of claims to BSNL against a contract	<p>i) Recovery of over payment from the outstanding dues of Vendor including EMD/ PG & SD etc. and by invoking 'Set off' Part A or by any other legal tenable manner.</p> <p>ii) Banning of Business for 3 years from date of issue of banning order or till the date of</p>
	(a) for amount already paid by BSNL .	
	(b) for Quantity in excess of that supplied by Vendor to BSNL.	

S. No.	Defaults of the bidder / vendor.	Action to be taken
	c) for unit rate and/ or amount higher than that approved by BSNL for that purchase.	recovery of over payment in full, whichever is later.
	Note 5:- The claims may be submitted with or without collusion of BSNL Executive/ employees.	
	Note 6:- This penalty will be imposed irrespective of the fact that payment is disbursed by BSNL or not.	
7	Network Security/ Safety/ Privacy:- If the vendor tampers with the hardware, software/ firmware or in any other way that a) Adversely affects the normal working of BSNL equipment(s) and/ or any other TSP through BSNL.	i) Termination of PO/ WO. ii) Banning of business for 3 years which implies barring further dealing with the vendor for procurement of Goods & Services including participation in future tenders invited by BSNL for 3 years from date of issue of banning order. iii) Recovery of any loss incurred on this account from the Vendor from its PG/ SD/ O/s bills etc. iv) Legal action will be initiated by BSNL against the Vendor if required.
7	b) Disrupts/ Sabotages functioning of the BSNL network equipment such as exchanges, BTS, BSC/ MSC, Control equipment including IN etc., transmission equipment but not limited to these elements and/ or any other TSP through BSNL.	
	c) tampers with the billing related data/ invoicing/ account of the Customer/ User(s) of BSNL and/ or any other TSP(s).	
	d) hacks the account of BSNL Customer for unauthorized use i.e. to threaten others/ spread improper news etc.	
	e) undertakes any action that affects/ endangers the security of India.	

S. No.	Defaults of the bidder / vendor.	Action to be taken
8	If the vendor is declared bankrupt or insolvent or its financial position has become unsound and in case of a limited company, if it is wound up or it is liquidated.	<p>i) Termination/ Short Closure of the PO/ WO. ii) Settle bills for the quantity received in correct quantity and quality if pending items do not affect working or use of supplied items. iii) No further supplies are to be accepted except that required to make the already supplied items work. iv) In case of turnkey projects, If the material is commissioned and is usable without any degradation of performance, then settle bills for the acceptable equipment/ material (or its part). v) In case of turnkey projects, if the material is inducted in network & it is not possible to return it and/ or material is acceptable with degraded performance, the purchaser may determine the price for degraded equipment (Financial penalty = Price – price determined for degraded equipment) himself and/ or through a committee.</p> <p>Undertake recovery of financial penalty from outstanding dues of vendor including PG/ SD.</p>
9	In the event of the vendor, its proprietor, Director(s), partner(s) is / are convicted by a Court of Law following prosecution for offences involving moral turpitude in relation to the business dealings.	<p>i) Termination/ Short Closure of the PO/ WO. ii) Settle bills for the material received in correct quantity and quality if pending items do not affect working or use of supplied items. iii) No further supplies are to be accepted except that required to make the already supplied items work. iv) In case of turnkey projects, If the material is commissioned and is usable without any degradation of performance, then settle bills for the acceptable equipment/ material (or its part). v) In case of turnkey projects, If the material is inducted in network & it is not possible to return it and/ or material is acceptable with degraded performance, the purchaser may determine the price for degraded equipment (Financial penalty = Price – price determined</p>

S. No.	Defaults of the bidder / vendor.	Action to be taken
		for degraded equipment) himself and/ or through a committee. Undertake recovery of financial penalty from outstanding dues of vendor including PG/ SD.
10	If the vendor does not return/ refuses to return BSNL's dues:	i) Take action to appoint Arbitrator to adjudicate the dispute.
	a) inspite of order of Arbitrator.	i) Termination of contract, if any. ii) Banning of business for 3 years which implies barring further dealing with the vendor for procurement of Goods & Services including participation in future tenders invited by BSNL from date of issue of banning order or till the date by which vendor clears the BSNL's dues, whichever is later. iii) Take legal recourse i.e., filing recovery suite in appropriate court.
	b) inspite of Court Orders.	i) Termination of contract, if any. ii) Banning of business for 3 years which implies barring further dealing with the vendor for procurement of Goods & Services including participation in future tenders invited by BSNL from date of issue of banning order or till the date by which vendor clears the BSNL's dues, whichever is later.
11	If the Central Bureau of Investigation/ Independent External Monitor (IEM) / Income Tax/ Sales Tax/ Excise / Custom Departments recommends such a course	Take Action as per the directions of CBI or concerned department.
12	The following cases may also be considered for Banning of business:	i) Banning of business for 3 years which implies Barring further dealing with the
	(a) If there is strong justification for believing that the proprietor, manager, MD, Director, partner, employee or representative of the vendor/ supplier has been guilty of malpractices such as bribery,	

S. No.	Defaults of the bidder / vendor.	Action to be taken
	corruption, fraud, substitution of tenders, interpolation, misrepresentation with respect to the contract in question. (b) If the vendor/ supplier fails to execute a contract or fails to execute it satisfactorily beyond the provisions of Para 4.1 & 4.2.	vendor for procurement of Goods & Services including participation in future tenders invited by BSNL for 3 years from date of issue of banning order.
	(c) If the vendor/ supplier fails to submit required documents/ information, where required.	
	(d) Any other ground which in the opinion of BSNL is just and proper to order for banning of business dealing with a vendor/ supplier.	
Note 7: The above penalties will be imposed provided it does not clash with the provision of this tender.		
Note 8:- In case of clash between these guidelines & provision of invited tender, the provision in this tender shall prevail over these guidelines.		
Note 9: Banning of Business dealing order shall not have any effect on the existing/ ongoing works/ AMC / CAMC which will continue along with settlement of Bills.		