

REQUEST FOR PROPOSAL

VOLUME II

INSTRUCTIONS TO BIDDERS (ITB)



“Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode for Bihar Rajya Beej Nigam Limited

ISSUED BY:-



**Infrastructure Development Authority
1st Floor, UdyogBhawan, East Gandhi Maidan,
Patna - 800004**

August 2015

REQUEST FOR PROPSOAL

RFP No. _____ Date: _____

Infrastructure Development Authority (IDA) has been mandated by the **Bihar Rajya Beej Nigam Limited (BRBNL)**, a Public Limited Company under the Deptt. of Agriculture, Govt of Bihar to conduct and manage the overall Bid Process for selection of Developer on its behalf as per the following details :-

“Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode” The proposed cold storage shall have the ultimate capacity of 9000 MT.

The RFP Document containing, Project Information Memorandum (Volume I), Instructions to Applicants (Volume II) and Draft Concession Agreement (Volume III), can be accessed from the website of IDA, www.idabihar.com.

Cost of RFP documents is Rs.10,000/- (Rupees Ten Thousand) which can be deposited in the form of Demand Draft issued by any scheduled Bank drawn in favour of “ **Managing Director, Infrastructure Development Authority**” and payable at **Patna** on or before **24th September, 2015** by the applicants at the time of submission of the Bid.

The schedule of events are:

| | | |
|---|---|--|
| 1 | Downloading of RFP Document | 14th August, 2015 to 4th September, 2015 |
| 2 | Last date of receiving queries regarding RFP (via mail) | 8th September, 2015 |
| 3 | Pre-Application Conference | 10th September, 2015 at 11:30 hrs. |
| 4 | Authority Response to Pre- Bid Queries | 14th September, 2015 |
| 5 | Last date of submission of Applications | 24th September, 2015 upto 16: 00 hrs |
| 6 | Opening of Technical Part of the applications | 24th September, 2015 at 16: 30 hrs |

Note: Any updation / amendment in the RFP documents will be uploaded on the Authority's website www.idabihar.com

All communications should be addressed to :-

The Managing Director

Infrastructure Development Authority

**1st Floor, UdyogBhawan, East Gandhi Maidan,
Patna-800004**

Ph- +91-612- 2675991/ 2675998

Fax- +91-612-2675889

www.idabihar.com, Email: md@idabihar.com

ACKNOWLEDGEMENT

(To be returned to the following address on receipt of this document)

**The Managing Director
Infrastructure Development Authority
1st Floor, UdyogBhawan, East Gandhi Maidan,
Patna-800004**

| | |
|---|--|
| Name of Project | Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode |
| Request for Proposaldocument collected by | (Name of the person) |
| Designation | |
| Name of the Organization | |
| Address | |
| Signature | |
| Date of Receipt | |

NOT REQUIRED IF DOWNLOADED FROM WEBSITE OF IDA

www.idabihar.com

GLOSSARY

| | |
|--|---|
| Applicant(s) | As defined in Clause 1.2.1 |
| Application | As defined in the Disclaimer |
| Application/Proposal/Bid Due Date | As defined in Clause 1.3 |
| Associate | As defined in Clause 2.2 |
| Authority | As defined in Clause 1.1.1.6 |
| Bid Due Date | As defined in Clause 1.3 |
| Bid Security | As defined in Clause 1.2.6 |
| Bidders | As defined in Clause 1.1.1 |
| Bidding Documents | As defined in Clause 1.2.3 |
| Bidding Process | As defined in Clause 1.2.1 |
| Bid Stage | As defined in Clause 1.2.1 |
| RDFOT | Renovate, Design, Finance, Operate and Transfer |
| Concessionaire | As defined in Clause 1.1.3 |
| Concession Agreement | As defined in Clause 1.1 |
| Concession Fee | As defined in Clause 1.2.8 |
| Conflict of Interest | As defined in Clause 2.2 |
| Consortium | As defined in Clause 2.2 |
| Eligible Experience | As defined in Appendix VI |
| First Year Annual Concession Fee | As defined in Clause 1.2.8 |
| GoB | Government of Bihar |
| GoI | Government of India |
| Highest Bidder | As defined in Clause 1.2.8 |
| Jt. Bidding Agreement | As defined in Appendix IV |
| Lead Member | As defined in Clause 2.2 |
| LOA | Letter of Award |
| Member | Member of a Consortium |
| Net Worth | As defined in Clause 2.2.4 (ii) |
| PPP | Public Private Partnership |
| Project | As defined in Clause 1.1.1 |
| Qualification | As defined in Clause 1.2.1 and Appendix VI |
| Qualification Stage | As defined in Clause 1.2.1 |
| Re. or Rs. or INR | Indian Rupee |
| RFP or Request for Proposals | As defined in Clause 1.2.1 |
| RFP | As defined in the Disclaimer |
| SPV | Special Purpose vehicle |
| Subject Person | As defined in Clause 2.2.1(c)(i) |

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

TABLE OF CONTENTS

| | |
|--|-----------|
| DISCLAIMER..... | 7 |
| 1. INTRODUCTION | 8 |
| 1.1 Introduction to Volume | 8 |
| 1.2 Brief description of Bidding Process | 10 |
| 1.3 Schedule of Bidding Process..... | 12 |
| 2. INSTRUCTIONS TO BIDDERS: ELIGIBLE BIDDERS AND QUALIFICATION..... | 12 |
| A. GENERAL..... | 12 |
| 2.1 Scope of Application..... | 12 |
| 2.2 Eligibility of Bids for Qualification (Technical)..... | 12 |
| 2.3 Change in composition of the Consortium..... | 17 |
| 2.4 Number of Applications and costs thereof..... | 17 |
| 2.5 Site visit and verification of information | 17 |
| 2.6 Acknowledgement by Applicant..... | 18 |
| 2.7 Right to accept or reject any or all Applications/ Bids | 18 |
| B. DOCUMENTS..... | 19 |
| 2.8 Contents of the RFP | 19 |
| 2.9 Clarifications | 19 |
| 2.10 Amendment of RFP | 20 |
| C. PREPARATION AND SUBMISSION OF APPLICATION/PROPOSAL..... | 20 |
| 2.11 Language | 20 |
| 2.12 Format and signing of Application/Proposal | 20 |
| 2.13 Sealing and Marking of Applications/Proposals..... | 21 |
| 2.14 Bid Due Date..... | 22 |
| 2.15 Late Application/Proposal/Bid..... | 22 |
| 2.16 Modifications/ substitution/ withdrawal of Application/Proposal/Bids..... | 22 |
| D. EVALUATION PROCESS | 22 |
| 2.17 Opening and Evaluation of Technical Proposal..... | 22 |
| 2.18 Confidentiality | 23 |
| 2.19 Tests of responsiveness | 23 |
| 2.20 Clarifications sought by Authority..... | 24 |
| E. QUALIFICATION AND BIDDING | 24 |
| 2.21 Qualification and Notification..... | 24 |
| F. INVITATION TO ATTEND OPENING OF PRICE PROPOSALS | 24 |
| 2.22 Proprietary data | 24 |
| 2.23 Correspondence with the Applicant | 24 |
| 3. CRITERIA FOR EVALUATION | 25 |
| 3.1 Evaluation Parameters of Technical Proposal..... | 25 |
| 3.2 Deleted | 25 |
| 3.3 Details of Experience | 25 |
| 3.4 Financial information for purposes of evaluation | 25 |
| 3.5 Qualification of Applicants/Bidders | 25 |
| 3.6 Evaluation and Ranking of Financial Proposals / Selection of Bidder | 26 |
| 3.7 Clarification of Proposals..... | 27 |
| 3.8 Contacts during Bid Evaluation | 27 |

| | |
|--|-----------|
| 4. FRAUD AND CORRUPT PRACTICES | 28 |
| 5. PRE-BID MEETING/CONFERENCE | 29 |
| 6. MISCELLANEOUS..... | 30 |
| APPENDICES..... | 32 |
| APPENDIX I: Letter Comprising the Application for Qualification (Technical) | 33 |
| ANNEX-I: Details of Applicant | 36 |
| ANNEX-II: Historical Contract Non Performance | 37 |
| ANNEX-III: Financial Capacity of the Applicant..... | 38 |
| ANNEX-IV: Details of Eligible Projects | 40 |
| ANNEX-V: Statement of Legal Capacity | 42 |
| APPENDIX II: Power of Attorney for signing of Application | 43 |
| APPENDIX III: Power of Attorney for Lead Member of Consortium..... | 45 |
| APPENDIX IV: Joint Bidding Agreement..... | 47 |
| APPENDIX V: Guidelines of the Department of Disinvestment | 52 |
| APPENDIX VI: Qualification and Eligibility Criteria | 54 |
| APPENDIX VII: Bank Guarantee for Bid Security | 63 |
| FORMAT FOR FINANCIAL PROPOSAL/BID..... | 66 |

DISCLAIMER

The information contained in this Request for Proposal document (the “**RFP**”) or subsequently provided to Applicant(s), whether verbally or in documentary or any other form, by or on behalf of the Authority, IDA or any of its employees or advisors, is provided to Applicant(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 Applicants/Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their application for qualification pursuant to this RFP (the “**Application**”). This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This 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 this RFP may not be complete, accurate, adequate or correct. Each Applicant should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Applicant(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, IDA, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this 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 with qualification and selection of Applicants/Bidders for participation in the Bidding Process.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Applicant upon the statements contained in this 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 or IDA is bound to qualify Applications for Bid Stage or to appoint the selected Bidder or Concessionaire, as the case may be, for the Project and the Authority as well as IDA reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

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

BIHAR RAJYA BEEJ NIGAM LTD

1. INTRODUCTION

Introduction to Volume

The “Instructions to Bidders (ITB) and Bidding Formats” is being issued to bidders as Volume II of the RFP as given below:

Volume - I: Project Information Memorandum,

Volume - III: Draft Concession Agreement.

1.1.1 This volume of the RFP sets out the bidding / evaluation process and provides necessary formats for bidders to prepare their Technical and Financial Bids for **“Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode(The Project).** This part (Volume II) of the Request for Proposal (RFP) must be read in conjunction with the other volumes (Volume I (PIM) and Volume III (Draft Concession Agreement) of the RFP relating to information and conditions with regard to the bids. The prescribed formats for the submission of bids are annexed to this volume.

1.1.1.1 The bidders are advised to submit their bids complying with the requirements stipulated in RFP. Bids will be disqualified in case these are incomplete or non-responsive, and if the information is not submitted as per the suggested formats.

1.1.1.2 FORM OF BID / ADDRESS FOR SUBMISSION / DEADLINE

The bidders are required to submit Technical Proposal and Financial Proposal in separate sealed envelopes, clearly marked as follows:

Envelope A (Technical Proposal)

“Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode”

Submitted By: [Name of Bidder]

AND

Envelope B (Financial Proposal)

“Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode”

Submitted By: [Name of Bidder]

1.1.1.3 For the Technical Proposal, the bidders are required to submit within the envelopes a total of two (2) sets of documents, i.e. one (1) original and one true (1) copy. An authorized signatory of the bidder (Lead Member in case of Consortium) is required to initial each page of the original copy of the Technical Proposal.

1.1.1.4 For the Financial Proposal, the bidders are required to submit within the envelope only one (1) original copy. An authorized signatory of the bidder (Lead Member in case of Consortium) is required to initial each page of the Financial Proposal.

1.1.1.5 The separate envelopes containing the Technical Proposal and Financial Proposal shall be placed in a sealed outer envelope or box, clearly marked as follows:

Bid for “Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode”

Submitted By: [Name of Bidder]

1.1.1.6 Bihar Rajya Beej Nigam Ltd (BRBN) (the “Authority”) is envisaging the “Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode”(the “Project”) wherein the private player is responsible for renovation, equip, operation and management of the project for the defined concession period i.e. 30 years.

This Project is proposed to be developed on RDFOT basis under PPP mode by a private developer to be selected through a competitive Bidding Process. The successful Applicant at the end of the Bidding Process may be awarded Concession by Authority to implement the Project. The Concessionaire (the successful Bidder, in case the license is awarded to it) after execution of the Concession Agreement with the Authority shall be responsible for Renovation of the existing facilities, Equipping with required machineries, Operation, Maintenance and Management of the project for the concession period i.e. 30 years.

The selected/successful Bidder, who is either a company incorporated under the Companies Act, 1956 or undertakes to incorporate as such prior to execution of the Concession Agreement (the “Concessionaire”) shall be responsible for renovation of existing facilities, financing, procurement of machinery, up gradation of the project, commissioning, operation & maintenance, charging user fee and marketing and operationalizing the cold storage as Controlled Atmosphere and Modified Atmosphere type of cold storage under and in accordance with the provisions of a long term Concession Agreement (the “Concession Agreement”) to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

1.1.2 The preferred Bidder shall form the SPV (Special Purpose Vehicle) for signing of the Concession Agreement.

1.1.3 The indicative cost of the Project (the “Estimated Project Cost”) has been specified in Volume I of the RFP document. The assessment of actual costs, however, will have to be made by the Bidders

1.1.4 The Concession Agreement sets forth the detailed terms and conditions for grant of the Concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “Concession”)

- 1.1.5 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 or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.
- 1.1.6 IDA on behalf of the Authority, BRBN shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by IDA on behalf of the Authority (collectively the "Bidding Documents"), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the "Bid Due Date").

Brief description of Bidding Process

- 1.2.1 BRBN (The Authority) has mandated Infrastructure Development Authority (IDA) to conduct and manage the overall Bid Process for selection of Developer on its behalf for development of the project on PPP Mode. IDA on behalf of the Authority has adopted a single-stage two proposals bidding procedure (collectively referred to as the "Bidding Process") for selection of the successful Bidder for award of the Project. The interested Parties (Applicants/Bidders) will submit their Proposals/Bids, one containing the Technical Proposal ("Technical Proposal") and other the Financial Proposal ("Financial Proposal") according to the RFP document provided by IDA on behalf of the Authority. The RFP document of the Bidding Process involves Technical Proposal (the "Qualification") and Financial Proposal (the "Selection") of interested Parties/ consortia who make a bid in accordance with the provisions of this RFP (the "Applicant/Bidder", which expression shall, unless repugnant to the context, include the Members of the Consortium). Initially, only the Technical Proposals shall be opened at the date and time mentioned in the RFP document. After completion of the Technical Proposal evaluation, only those Applicants/Bidders whose Technical Proposals are found substantially responsive to the requirements as specified in the RFP, will be eligible for purpose of opening of Financial Proposals and their evaluation according to the conditions of the RFP document.

Government of India has issued guidelines (see Appendix-V) for Qualification of Bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority shall be entitled to disqualify an Applicant in accordance with the aforesaid guidelines at any stage of the Bidding Process. Applicants/Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.

- 1.2.2 In the Bid Stage, the Applicants/Bidders, including their successors, (the "Bidders", which expression shall, unless repugnant to the context, include the Members of the Consortium) are being called upon to submit their Technical Proposals and Financial Proposals (collectively the "Bids") in accordance with the terms specified in the Bidding Documents. The Bid shall be valid for a period of not less than 180 (one hundred and eighty) days from the last date for submission of Bids (the "Bid Due Date").
- 1.2.3 The RFP / Bid Documents include the Project Information Memorandum (Volume I), Instruction to Bidders (Volume II) and Draft Concession Agreement (Volume III) for the Project. Subject to the

provisions of Clause 2.9 and 2.10, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.

- 1.2.4 The Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.
- 1.2.5 The Bidding Documents for the Project can be downloaded by every Bidder and may pay the document fee (non-refundable) of Rs. 10,000/- (Indian Rupees Ten Thousand only) in a manner specified in this RFP at the time of submission of the Bid .The Bid shall be valid for a period of not less than 180 days from the date specified in Clause 1.3 for submission of Bids (the “Bid Due Date”).
- 1.2.6 A Bidder is required to deposit, along with its Bid, a bid security of Rs.10,00,000/- (Indian Rupees TenLakh Only) (the “Bid Security”) refundable not later than 60 (sixty) days from the Bid Due Date, except in the case of theselected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority, and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. A format of the Bank Guarantee for Bid Security is appended and marked as Appendix VII with is document.
- 1.2.7 Generally, the Highest Bidder shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, may instruct IDA to invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be.
- 1.2.8 Bids will be invited for the Project on the basis of the highest financial annual payment for the first year of Concession to the Authority (the “First Year Annual Concession Fee”) for award of the Concession. The Annual Concession Fee for the entire concession period shall be escalated as per the terms laid down in the Bidding Documents, herein. The Concession Period shall be pre-determined, and will be indicated in the draft Concession Agreement forming part of the Bidding Documents. The Annual Concession Fee amount shall constitute the sole criteria for evaluation of Bids. The Project shall be awarded to the Bidder quoting the highest First Year Annual Concession Fee. In this RFP, the term “Highest Bidder” shall mean the Bidder who is offering the highest First Year Annual Concession Fee.
- 1.2.9 Any queries or request for additional information concerning this RFP shall be submitted in writing and e-mail to the officer designated in Clause 2.13.3. The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information:

Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode"

Schedule of Bidding Process

The Authority shall endeavor to adhere to the following schedule:

| Event Description | Date |
|--|---|
| Downloading of RFP Documents | 14th August, 2015 to 4th September, 2015 |
| Last date for receiving queries (via email) | 8th September, 2015 |
| Pre-Bid Meeting/ Pre- Application Conference | 10th September, 2015 at 11:30 hrs. |
| Authority response to queries latest by | 14th September, 2015 |
| Bid Due Date | 24th September, 2015 upto 16: 00 hrs |
| Opening of Technical Bids | On Bid Due Date at 16:30 hrs |
| Opening of Financial Bids of the Technically Qualified Bidders | To be informed later to the Technically Qualified Bidders |
| Letter of Award (LOA) | Within 30 days of the Bid Due Date |
| Validity of Bids | 180 days of Bid Due Date |
| Signing of Concession Agreement | Within 30 days of award of LOI |

2. INSTRUCTIONS TO BIDDERS: ELIGIBLE BIDDERS AND QUALIFICATION

A. GENERAL

Scope of Application

The Authority wishes to receive Bids/Proposals in the form of Technical Proposal (Qualification Stage) and Financial Proposal (Selection Stage) in single stage two Proposal processes.

Technically Qualified Applicants/Bidders may be subsequently invited for opening of their Financial Proposals.

Eligibility of Bids for Qualification(Technical)

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

- a) The Applicant/Bidder for qualification may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no Applicant/Bidder applying individually or as a member of a Consortium, as the case may be, can be member of

another Applicant/Bidder. The term Applicant/Bidder used herein would apply to both a single entity and a Consortium.

- b) An Applicant/Bidder may be a natural person, private entity, Government-owned entity or any combination of them with a formal intent to enter into an Agreement or under an existing Agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.
- c) An Applicant/Bidder shall not have a Conflict of Interest (the “**Conflict of Interest**”) that affects the Bidding Process in any manner whatsoever. Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder/Applicant shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (i) the Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, 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 an Applicant, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its Member or Associate is less than 5 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 and section 2(72) of the Companies Act 1956 and 2013. For the purposes of this Clause 2.2.1(c), 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 subclause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
 - (ii) a constituent of such Applicant is also a constituent of another Applicant; or
 - (iii) such Applicant, or any Associate thereof receives or has received any direct or indirect subsidy, Grant, concessional loan or subordinated debt from any other Applicant, or any Associate thereof or has provided any such subsidy, Grant, concessional loan or subordinated debt to any other Applicant, its Member or any Associate thereof; or
 - (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - (v) such Applicant, or any Associate thereof has a relationship with another Applicant, 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 others’ information about, or to influence the Application of either or each other; or
 - (vi) such Applicant, 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.

- d) An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Applicant, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Applicant, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Explanation:

In case an Applicant is a Consortium, then the term Applicant as used in this Clause 2.2.1, shall include each Member of such Consortium.

2.2.2 To be eligible for Qualification, an Applicant shall fulfill the conditions of eligibility mentioned in Appendix VI.

(A) Deleted:

(B) Deleted

2.2.3 Deleted

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

- (i) Certificate(s) from its Statutory Auditors. In case a particular job/ contract has been jointly executed by the Applicant (as part of a Consortium), he should further support his claim for the share in work done for that particular job/ contract by producing a certificate from its Statutory Auditor or the client; and
- (ii) Certificate(s) from its Statutory Auditors specifying the Net Worth of the Applicant, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFP, Net Worth (the "Net Worth") shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity share holders.

2.2.5 The Applicant should submit a Power of Attorney as per the format at Appendix-II, authorizing the signatory of the Application to commit the Applicant. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.

2.2.6 Where the Applicant is a single entity, it may be required to form an appropriate Special Purpose Vehicle incorporated under the Companies Act, 1956 (the "SPV"), to execute the Concession Agreement and implement the Project. In case the Applicant is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements

- (a) Number of Members in a Consortium shall not exceed 3 (Three);
- (b) subject to the provisions of clause (a) above, the Application should contain the information required for each Member of the Consortium;
- (c) Members of the Consortium shall nominate one Member as the Lead Member (the "Lead Member"), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the Consortium. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other Members of the Consortium;

- (d) the Application should include a brief description of the roles and responsibilities of individual Members, particularly with reference to financial, technical and O&M obligations;
- (e) an individual Applicant cannot at the same time be Member of a Consortium applying for qualification. Further, a Member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for qualification;
- (f) the Members of a Consortium shall form an appropriate SPV with the Authority 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-IV (the "Jt. Bidding Agreement"), for the purpose of making the Application and submitting a Bid in the event of being qualified. The Jt. Bidding Agreement, to be submitted along with the Application, shall, inter alia:
 - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the Concession to undertake the Project is awarded to the Consortium;
 - (ii) clearly outline the proposed roles and responsibilities, if any, of each Member;
 - (iii) commit the minimum equity stake to be held by each Member;
 - (iv) commit that each of the Members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such Member shall, for a period of 3 (three) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;
 - (v) Members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the third anniversary of the Commercial Operation Date of the Project; and
 - (vi) include a statement to the effect that all Members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and
- (h) 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.

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

2.2.8 An Applicant including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be, nor has been expelled from any Project or contract by any public entity nor have had any contract terminated any public entity for breach by such Applicant, Consortium Member or Associate.

2.2.9 In computing the technical experience and Net Worth of the Applicant/ Consortium Members under relevant clauses of Appendix VI, the technical experience and Net Worth of their respective Associates would also be eligible hereunder.

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

2.2.10 The following conditions shall be adhered to while submitting an Application:

- (a) Applicants/Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexures is insufficient. Alternatively, Applicants/Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants/Bidders whose identity and/ or constitution is identical to that at qualification;
- (c) in responding to the qualification submissions, Applicants/Bidders should demonstrate their capabilities in accordance with Appendix VI; and
- (d) in case the Applicant is a Consortium, each Member should substantially satisfy the qualification requirements to the extent specified herein.

2.2.11 While Qualification is open to persons from any country, the Qualification of such Applicant or in case of any subsequent change in its shareholding or the shareholding in the Consortium Members, shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Applicant. Subsequent change shall include change in the holding or acquisition of equity or control, which 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 Share and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

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

2.2.12 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within three months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 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 Applicant in the course of its normal business.

Change in composition of the Consortium

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

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

- (a) the Application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date;
- (b) the Lead Member continues to be the Lead Member of the Consortium;
- (c) the substitute is at least equal, in terms of technical experience, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the qualification criteria for Applicants/Bidders; and
- (d) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a Party to it originally, and is not an Applicant/Member/Associate of any other Consortium bidding for this Project.

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

2.3.4 The modified/ reconstituted Consortium shall submit a revised Jt. Bidding Agreement before the Bid Due Date.

2.3.5 Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, an Applicant may, within 10 (ten) days after the Application Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

Number of Applications and costs thereof

2.4.1 No Applicant shall submit more than one Application for the Project. An Applicant applying individually or as a Member of a Consortium shall not be entitled to submit another Application either individually or as a Member of any Consortium, as the case may be.

2.4.2 The Applicants/Bidders shall be responsible for all of the costs associated with the preparation of their Applications and their participation in the Bid 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.

Site visit and verification of information

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

Acknowledgement by Applicant

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

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

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

Right to accept or reject any or all Applications/ Bids

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

2.7.2 The Authority reserves the right to reject any Application and/ or Bid if:

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

If the Applicant/Bidder is a Consortium, then the entire 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:

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

2.7.3 In case it is found during the evaluation or at any time before signing of the 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 qualification conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Applicant/SPV has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Applicant, without the Authority being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Authority may have under this RFP, the Bidding Documents, the Concession Agreement or under Applicable Law.

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

B. DOCUMENTS

Contents of the RFP

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.

Invitation for Qualification

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

Appendices for Technical Proposal (Envelope A)

- I. Letter comprising the Application
- II. Power of Attorney for signing of Application
- III. Power of Attorney for Lead Member of Consortium
- IV. Joint Bidding Agreement for Consortium
- V. Guidelines of the Department of Disinvestment
- VI. Qualification and Eligibility Criteria
- VII. Bank Guarantee for Bid Security

Appendices for Financial Proposal (Envelope B)

- I. Financial Proposal/Bid Format

Clarifications

2.9.1 Applicants/Bidders requiring any clarification on the RFP may notify IDA in writing by e-mail in accordance with Clause 1.2.9. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. IDA shall endeavor to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. The responses or any updation/amendment will be uploaded on IDA's website i.e. www.idabihar.com only. The IDA will upload all the queries and its responses thereto, without identifying the source of queries.

2.9.2 IDA in consultation with the Authority shall endeavour to respond to the questions raised or clarifications sought by the Applicants/Bidders. However, IDA or the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority or IDA on its behalf to respond to any question or to provide any clarification.

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

Amendment of RFP

2.10.1 At any time prior to the deadline for submission of Application, the Authority or IDA on its behalf may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP by the issuance of Addenda.

2.10.2 Any Addendum thus issued will be uploaded on the IDA's website i.e. www.idabihar.com only.

2.10.3 In order to afford the Applicants/Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority or IDA on its behalf may, in its sole discretion, extend the Application Due Date.

C. PREPARATION AND SUBMISSION OF APPLICATION/PROPOSAL

Language

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

Format and signing of Application/Proposal

2.12.1 The Applicant shall provide all the information sought under this RFP. IDA on behalf of the Authority will evaluate only those Applications/Proposals that are received in the required formats and complete in all respects. Incomplete and /or conditional Applications shall be liable to rejection.

2.12.2 The Applicant shall prepare 1 (one) original set of the Technical Proposal (together with originals/copies of documents required to be submitted along therewith pursuant to this RFP) and clearly marked **ENVELOPE A "ORIGINAL TECHNICAL PROPOSAL"**. In addition, the Applicant shall submit 1 (one) copy of the TECHNICAL PROPOSAL, along with documents required to be submitted along therewith pursuant to this RFP, marked **"COPY OF THE TECHNICAL PROPSOAL"**. The Applicant shall also provide 2 (two) soft copies on Compact Disc (CD). In the event of any discrepancy between the original and the copy, the original shall prevail. The Applicant/Bidder shall prepare FINANCIAL PROPOSAL as per the annexed financial format of clause 2.8 and clearly marked **"ENVELOPE B FINANCIAL PROPSOAL"** only.

The Application/Proposal and its copy shall be typed or written in indelible ink and signed by the authorized signatory of the Applicant/Bidder who shall also initial each page in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Application/ Proposal shall be initialed by the person(s) signing the Application/ Proposal. The Application/ Proposal shall contain page numbers and shall be hard bound.

Sealing and Marking of Applications/Proposals

2.13.1 The Applicant shall submit the Application/ Proposal in the format specified at Appendix-I, together with the documents specified in Clause 2.8, and seal it in an envelope and mark the envelope as "APPLICATION". The Applicant/Bidder shall seal the original and the copy of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.13.2 and 2.13.3

2.13.2 Technical Proposal Envelope A shall also contain:

- (i) Application in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- (ii) Power of Attorney for signing the Application as per the format at Appendix-II;
- (iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
- (iv) copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;
- (v) copy of Memorandum and Articles of Association, if the Applicant is a body corporate, and if a partnership then a copy of its partnership deed;
- (vi) copies of Applicant's duly audited balance sheet and profit and loss account for the preceding five years; and

The Technical Proposal and Financial Proposal shall clearly bear the following identification:

Application/Bid for Qualification:

"Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode" and shall clearly indicate the name and address of the Applicant. In addition, the Application Due Date should be indicated on the right hand corner of each of the envelopes.

2.13.3 Each of the envelopes shall be addressed to:

| | |
|-----------------------|--|
| ATTN. OF | :Ms. A. Arya |
| DESIGNATION | : Managing Director |
| ADDRESS | : Infrastructure Development Authority, 1st Floor,UdyogBhawan, East Gandhi Maidan Patna, - 800004, Bihar |
| TEL NO | : + 91-0612- 2675991/ 2675998 |
| FAX NO | : +91-612-2675889 |
| E-MAIL ADDRESS | : md@idabihar.com |
| Website | :www.idabihar.com |

If the envelopes are not sealed and marked as instructed above, IDA on behalf of the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Application and consequent losses, if any, suffered by the Applicant.

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

Bid Due Date

- 2.14.1 Applications should be submitted before 1600 hours IST on the Application Due Date, at the address provided in Clause 2.13.3 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified in Clause 2.13.3.
- 2.14.2 IDA on behalf of the Authority may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Applicants/Bidders.

Late Application/Proposal/Bid

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

Modifications/ substitution/ withdrawal of Application/Proposal/Bids

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

D. EVALUATION PROCESS

Opening and Evaluation of Technical Proposal

- 2.17.1 IDA on behalf of the Authority shall open the Technical Proposal at 1500 hours IST on the Bid Due Date, at the place specified in Clause 1.3 and in the presence of the Applicants/Bidders who choose to attend.
- 2.17.2 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.
- 2.17.3 IDA on behalf of the Authority will subsequently examine and evaluate Technical Proposal in accordance with the provisions set out in the RFP document.
- 2.17.4 Applicants/Bidders are advised that qualification of Applicants/Bidders will be entirely at the discretion of IDA on behalf of the Authority. Applicants/Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.17.5 Any information contained in the Application shall not in any way be construed as binding on IDA or the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Project is subsequently awarded to it on the basis of such information.
- 2.17.6 IDA on behalf of 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 Application(s) without assigning any reasons.

2.17.7 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the IDA on behalf of the Authority may, in its sole discretion, exclude the relevant Project from computation of the prescribed eligibility as specified in Appendix VI of the Applicant.

2.17.8 In the event that an Applicant claims credit for an eligible Project, and such claim is determined by the IDA on behalf of the Authority as incorrect or erroneous, IDA or Authority shall reject such claim and exclude the same from computation of the qualification eligibility as specified in Appendix VI and make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material representation, the IDA or Authority reserves the right to reject the Application and/ or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the qualified Applicants/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 or IDA in relation to, or matters arising out of, or concerning the Bidding Process, except with prior consent of the Authority or IDA on its behalf. IDA or the Authority will treat all information, submitted as part of Application, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority or IDA 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 IDA on its behalf or as may be required by law or in connection with any legal process.

Tests of responsiveness

2.19.1 Prior to evaluation of Applications, IDA on behalf of the Authority shall determine whether each Application is responsive to the requirements of the RFP. An Application shall be considered responsive only if:

- (a) it is received as per format at Appendix-I.
- (b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.10.3;
- (c) it is signed, sealed, hard bound and marked as stipulated in Clauses 2.12 and 2.13;
- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);
- (e) it contains all the information and documents (complete in all respects) as requested in this RFP;
- (f) it contains information in formats same as those specified in this RFP;
- (g) it contains certificates from its Statutory Auditors in the formats specified at Appendix-I of the RFP for each eligible Project;
- (h) it contains the payment of Rs. 10,000 (Rupees Ten Thousand only) to IDA towards the cost of the RFP document; in the form of Demand Draft in favour of the Authority, payable at Patna;
- (i) it contains Bid Security amount of Rs. 10,00,000 (Rupees Ten Lakh only) in the form of a demand draft in favour of the Authority, payable at Patna or in form of a bank guarantee acceptable to IDA on behalf of the Authority;
- (j) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);

- (k) it does not contain any condition or Qualification; and
- (l) it is not non-responsive in terms hereof.

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

Clarifications sought by IDA on behalf of the Authority

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

2.20.2 If an Applicant does not provide clarifications sought under Clause 2.20 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, IDA on behalf of the Authority may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of IDA on behalf of the Authority.

E. QUALIFICATION AND BIDDING

Qualification and Notification

After the evaluation of Technical Proposal, IDA on behalf of the Authority would inform the Qualified Applicants/Bidders who will be eligible for the Financial Proposal opening. At the same time, IDA on behalf of the Authority would notify the other Applicants/Bidders that they have not been Qualified for Financial Proposal Stage. Neither the Authority nor IDA on its behalf will entertain any query or clarification from Applicants/Bidders who fail to qualify.

F. INVITATION TO ATTEND OPENING OF PRICE PROPOSALS

2.22.1 At the end of the evaluation of the Technical Proposals, IDA on behalf of BRBN will invite Applicants/Bidders who have submitted substantially responsive Technical Proposal and Financial Proposals and who have been determined as being qualified for opening of their Financial Proposals. Bidders shall be given reasonable notice of the Financial Proposal opening.

Proprietary data

All documents and other information supplied by IDA on behalf of the Authority or submitted by an Applicant to IDA shall remain or become the property of the Authority. Applicants/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 Application. IDA or the Authority will not return any Application or any information provided along therewith.

Correspondence with the Applicant

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

3. CRITERIA FOR EVALUATION

Evaluation Parameters of Technical Proposal

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

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

(a) Technical Capacity; and

(b) Financial Capacity

Deleted

3.2.1 Deleted

3.2.2 Deleted

3.2.3 Deleted

3.2.4 Deleted

3.2.5 Deleted

3.2.6 Deleted

3.2.7 Deleted

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

Details of Experience

3.3.1 The Applicant should furnish the details of Eligible Experience as per the Appendix VI.

3.3.2 The Applicants/Bidders must provide the necessary information relating to technical experience as per format at Annex-IV of Appendix-I and Appendix VII.

3.3.2 The Applicant should furnish the required Project-specific information and evidence in support of its claim of technical capacity, as per format at Annex-IV of Appendix-I.

Financial information for purposes of evaluation

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

3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the Statutory Auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.

3.4.3 The Applicant must establish the minimum Net Worth and turnover specified in Appendix VI, and provide details as per format at Annex-III of Appendix-I.

Qualification of Applicants/Bidders

3.5.1 The Applicants/Bidders who fulfill the criteria as mentioned in Appendix VI shall be qualified for the Financial Proposal process.

3.5.2 Deleted

3.5.3 Deleted.

Evaluation and Ranking of Financial Proposals / Selection of Bidder

- 3.6.1 Subject to the provisions of RFP, the Bidder whose Bid is adjudged as responsive in terms of Clause 2.19 and who quotes the [highest “Annual Concession Fee” for the first year offered to the Authority] shall be declared as the selected Bidder (the “Selected Bidder”). In the event that the Authority or IDA on its behalf rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 3.6.2 In the event that two or more Bidders quote the same amount of “Annual Concession Fee” (the “Tie Bidders”), the Authority shall identify the Selected Bidder whose total Capital Expenditure on “Minimum Modernization Obligation Plan” is highest as provided in compliance to Section 4 of Appendix VI.
- 3.6.3 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “first round of bidding”), IDA on behalf of the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the “second round of bidding”). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.
- 3.6.4 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.6.3, the Authority or IDA on its behalf may, in its discretion, invite fresh Bids (the “third round of bidding”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.6.5 After selection, a Letter of Award (the “LOA”) shall be issued, in duplicate, by the Authority to the Selected Bidder 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, and the next eligible Bidder may be considered.
- 3.3.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall call the Concessionaire to execute the Concession Agreement within the period prescribed in RFP document. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

Clarification of Proposals

3.7.1 To assist in the examination, evaluation, comparison of the proposals, IDA on behalf of the Authority may, at its discretion, ask any Bidder for a clarification of its Proposal. Any clarification submitted by the Bidder in respect to its Proposal and that is not in response to a request by IDA on behalf of the Authority shall not be considered. IDA's or the Authority's request for clarification and the response shall be in writing. No change in the prices or substance of the Proposal shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by IDA on behalf of the Authority in the Evaluation of the proposals, in accordance with provisions of this RFP document.

Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority or IDA on its behalf 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, IDA / the Authority and/ or their employees/representatives on matters related to the Bids under consideration.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants/Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority or IDA on its behalf may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove, if an Applicant is found by the Authority or IDA on its behalf to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFP issued by IDA on behalf of the Authority during a period of 2 (two) years from the date such Applicant is found by IDA or the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Clause 4 and subject to the above, 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 IDA or Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of IDA or 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 sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser to IDA or the Authority in relation to any matter concerning the Project;
 - (b) **“fraudulent practice”** means any action or omission of facts or suppression of facts or disclosure of incomplete facts including misrepresentation in order to influence or mislead the Bidding Process ;
 - (c) **“coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
 - (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by IDA or the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
 - (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants/Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-BID MEETING/CONFERENCE

- 5.1 A Pre-Bid Meeting/Conference of the interested Parties shall be convened at the designated date, time and place. A maximum of three representatives of each Applicant shall be allowed to participate on production of authority letter from the Applicant.
- 5.2 During the course of Pre-Bid Meeting/Conference, the Applicants/Bidders will be free to seek clarifications and make suggestions for consideration of IDA on behalf of the Authority. The Authority or IDA on its behalf shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at **Patna** shall have exclusive jurisdiction over all Disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 IDA on behalf of BRBN, 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 Applicant in order to receive clarification or further information;
 - (c) qualify or not to qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;
 - (d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Applicant; and/ or
 - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by Applicable Law and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

6.4 Payment to be made by the Selected Bidder

6.4.1 The Selected Bidder would be required to make the following payments:

- a) **Annual Concession Fee:** The Selected Bidder shall be required to pay the 'Annual Concession Fee', in the form of a Demand Draft in favour of "**Managing Director, BRBN.**" drawn on any Nationalized or Scheduled Bank **payable at Patna**. The 1st Annual Concession Fee shall be paid after the date of signing of the Concession Agreement ("the Appointed Date") but before the end of the financial year in which agreement has been signed i.e. 31st March of that financial year; the amount payable shall be calculated pro rata for the months balance in that Financial Year. For subsequent years, the Annual Concession Fee shall be payable at the end of the Financial Year i.e. on or before the 31st March of the Financial Year. The Annual Concession Fee shall be incremented by 15% (fifteen percent) every 3rd year over that of the previous reset year during the Concession Period. However for avoidance of any doubt it is clarified here that the Concession period shall be calculated from the Appointed Date and the year of the Signing of the Concession Agreement shall be treated as 1st Year of the Concession Period.
- b) **Performance Security:** The Selected Bidder shall submit a Performance Security prior to the signing of the Concession Agreement in the form of an irrevocable & unconditional Bank Guarantee issued by a Scheduled/Nationalized bank having its' branch in Patna.

1. The Performance Security shall be amount:
 - i. for an amount equivalent to Minimum Modernization Obligation Plan
 - ii. Amount equivalent to one Annual Concession Fee
2. The Performance Guarantee submitted under i.)above shall be returned after the Project becomes operational or after completion of Minimum Modernisation Obligation Plan
3. The Performance Guarantee submitted under ii.) aboveshall be revised upward equivalent to Annual Concession Fee due for the next Financial Year; in no case it shall be revised downwards. The Performance Guarantee shall be retained till the completion of Concession Period and shall be released after 6 months from the end of Concession period.
4. The Performance Security shall be en-cashed at the sole discretion of the Authority towards any liquidated damages that may be payable by the Selected Bidder to the Authority and/or against termination eventualities attributed to the Selected Bidder, under the terms of the Concession Agreement.

c) Service tax and any other applicable taxes shall be payable by the Concessionaire.

6.4.2 In the event the Selected Bidder fails to pay the Upfront Fee and Performance Security as given in Clause 6.4.1 within the stipulated period, the Authority would be entitled to forfeit the Bid Security of the Selected Bidder towards recovery of the same, in part or whole, without prejudice to any other right or remedy that may be available to the Authority. The decision of the Authority in this regard is final and binding.

APPENDICES

APPENDIX I: Letter Comprising the Application for Qualification (Technical)

(Refer Clause 2.13.3)

Dated:

To,
Ms. A. Arya
Managing Director
Infrastructure Development Authority,
1st Floor, Udyog Bhawan, East Gandhi Maidan
Patna,
Bihar- 800004

Sub: Application/Bid for “Development of Cold Storage at Kudra, Dist Kaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode”

Dear Sir / Madam,

1. With reference to your RFP document dated, I/we, having examined the Bidding Document and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. 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 therein is 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.
3. This statement is made for the express purpose of our selection as Concessionaire for the development, design, construction, operation and maintenance of 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 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:
 - (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and
 - (b) I/ We do not have any Conflict of Interest in accordance with Clause 2.2 of the RFP document; and

§ All blank spaces shall be suitably filled up by the bidder to reflect the particulars relating to such bidder.
£ if the bidder is not a consortium, the provisions applicable to consortium may be omitted.

- (c) I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any Agreement entered into with the 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, 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; and
 - (e) the undertakings given by us along with the Application in response to the RFP for the Project were true and correct as on the date of making the Application and are also true and correct as on the Bid Due Date and I/we shall continue to abide by them.
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 2.7 of the RFP document.
 9. I/ We believe that we/ our Consortium satisfy(s) the Net Worth criteria and meet(s) 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 the 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 or against our Associates or against our CEO or any of our directors/ managers/ employees.
 14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Appendix-V 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 guidelines referred to above, we shall intimate the Authority of the same immediately.
 16. I/ We acknowledge and agree that in the event of a change in control of an Associate whose technical capacity and/ or financial capacity was taken into consideration for the purposes of qualification under and in accordance with the RFP, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.

17. I/ We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate as such prior to execution of the Concession Agreement.
18. I/ We hereby 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.
19. 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.
20. I/ We have studied all the Bidding Documents carefully and also surveyed the project site. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
21. I/ We offer a Bid Security of Rs. 1000000.00 (Rupees Ten Lakh only) to the Authority in accordance with the RFP document.
22. The Bid Security in the form of a demand draft/ bank guarantee (strike out whichever is not applicable) is attached.
23. The documents accompanying the Bid, as specified in Clause 2.8 of the RFP, have been submitted in a Technical proposal envelope.
24. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
25. The Annual Concession Fee has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Project cost and implementation of the Project.
26. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
27. {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.}
28. I/ We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.

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

Yours faithfully,

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

Place: Name and seal of the Applicant/ Lead Member of the Consortium holding Power of Attorney

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

Appendix I

ANNEX-I: Details of Applicant

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

| S.No. | Name of Member | Role*{Refer Clause 2.2.6(d)}[§] | Percentage of equity in the Consortium{Refer Clauses 2.2.6(a), (c) & (g)} |
|--------------|-----------------------|---|--|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |

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

Appendix I

[§] All provisions contained in curly parenthesis shall be suitably modified by the Applicant to reflect the particulars relating to such Applicant.

ANNEX-II: Historical Contract Non Performance*(Refer to Appendix VII Qualification Criteria of RFP)***1. Name of Applicant/ Member of Consortium:**

| No. | Criteria | Yes | No |
|-----|--|-----|----|
| 1 | Has the Applicant/ 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 Application. | | |
| 3 | Has the Applicant/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years? | | |

2. A statement by the Applicant and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material nonperformance or contractual non-compliance in past Projects, contractual Disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary)

Appendix I**Annex-III****ANNEX-III: Financial Capacity of the Applicant***(Refer to Appendix VI Qualification criteria)***(In Rs. crore^{\$\$})**

| Applicant type ^{\$} | Member Code [£] | Net Cash Accrual ^s | | | | | Net Worth [€] | Turnover |
|------------------------------|--------------------------|-------------------------------|--------|--------|--------|--------|------------------------|---------------------------------|
| | | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | Preceding financial year (9) |
| Single entity Applicant | | | | | | | | |
| Consortium Member 1 | | | | | | | | |
| Consortium Member 2 | | | | | | | | |
| Consortium Member 3 | | | | | | | | |
| Consortium Member 4 | | | | | | | | |
| TOTAL | | | | | | | | |

Name & address of Applicant's Bankers:

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

[£] Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the eligible Project relates to an Associate of the Applicant or its Member, write "Associate" along with Member Code[€]. The Applicant should provide details of its own financial capability or of an Associate specified in Clause 2.2.9.

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

Instructions:

1. The Applicant/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Application Due Date. The financial statements shall:

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

ANNEX-IV: Details of Eligible Projects

(Kindly refer Appendix VI)

[The following table shall be filled in for contracts performed by the Applicant, and each partner of a Joint Venture]

Applicant's/Joint Venture Partner's Legal Name: [insert full name]

Date: [insert day, month, year]

Consortium Party Name: [insert full name]

ICB No. and title: [insert ICB number/s and title/s]

Page [insert page number] of [insert total number] pages

| | | | |
|---|--|---|--------------------------------------|
| Similar Project No. [insert number] of [insert number of similar contracts required] | Information | | |
| Project Identification | [insert Project name and number, if applicable] | | |
| Award date | [insert day, month, year, e.g. 15 June, 2007] | | |
| Date of Commissioning | [insert day, month, year, e.g. 15 June, 2007] | | |
| Completion date | [insert day, month, year, e.g. 15 June, 2007] | | |
| Project Scope | [insert Project details and scope of works. Mention details as per the requirement of the document] | | |
| Role in Contract [check the appropriate box] | Sole Developer <input type="checkbox"/> | CONSORTIUM Partner <input type="checkbox"/> | |
| Total Project Amount | [insert total Project amount in local currency] | INR [insert total Project amount in INR equivalent] | |
| If partner in a CONSORTIUM, or subcontractor, specify participation in total Project amount | [insert a percentage amount] | [insert total Project amount in local currency] | [insert total Project amount in INR] |

| | | | |
|---|---|--|-----------------|
| | | | equiv alent] |
| Employer/Developer's Name: | [insert full name] | | |
| Address: | [indicate street / number / town or city / country] | | |
| Telephone/fax number | [insert telephone/fax numbers, including country and city area codes] | | |
| E-mail: | [insert e-mail address, if available] | | |
| Project Completion certificate from client/Employer/Developer | [insert whether attached or not] | | |

ANNEX-V: Statement of Legal Capacity

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

Ref. Date:

To,

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: Power of Attorney for signing of Application

(Refer Clause 2.2.5)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Application/Bid for "**Development of Cold Storage at Kudra, Dist Kaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode**" (the "**Project**") proposed by the IDA on behalf of BRBN (the "Authority") including but not limited to signing and submission of all Applications, Bids and other documents and writings, participate in Applications/Bids 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 lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

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

For

.....

(Signature, name, designation and address)

Witnesses:

1.

2.

(Notarised)

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- *Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ Power of Attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants/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 Appostille certificate.*

APPENDIX III: Power of Attorney for Lead Member of Consortium

(Refer Clause 2.2.5)

Whereas IDA on behalf of the BRBN (“the Authority”) has invited Applications from interested Parties for “Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode”(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 Propsoal document (RFP), Request for Proposal (RFP) and other connected documents in respect of the Project, and whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s Bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We,having our registered office at, M/s. having our registered office at, M/s. having our registered office at, and having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/S having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process and, in the event the Consortium is awarded the Concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the qualification of the Consortium and submission of its Bid for the Project, including but not limited to signing and submission of all Applications, Bids and other documents and writings, participate in Bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of 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 lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

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

For
(Signature)
.....
(Name & Title)
For
(Signature)
.....

(Name & Title)
For
(Signature)
.....
(Name & Title)

Witnesses:

- 1.
- 2.

.....

(Executants)

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

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ Power of Attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants/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 Appostille certificate.*

APPENDIX IV: Joint Bidding Agreement

(Refer Clause 2.13.2)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

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

AND

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

AND

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

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

WHEREAS,

- (A) Bihar Rajya Beej Nigam Ltd. (BRBN), was founded in 1978 to bring about complete self sufficiency and self reliance to meet the full active demand of quality seeds of high yielding varieties to be farmer of the State at reasonable price, represented by its Managing Director and having its principal office at BRBN, Agriculture Farm Campus, Mithapur, Patna, Bihar 800001 (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the **BIDS**) by its Request for Proposal No. dated(the “**RFP**”) for selection of Bidder for “**Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode**”
- (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 Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. Consortium

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

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a Special Purpose Vehicle (the “SPV”) under the Indian Companies Act 1956 for entering into a Concession Agreement with the 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 Management and Marketing 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, RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

6. Shareholding in the SPV

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

First Party:

Second Party:

Third Party:

- 6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation 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 Applicants/Bidders for the Project in terms of the RFP.
- 6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the Commercial Operation Date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.

- 6.4 The Parties undertake that they shall 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 second anniversary of the Commercial Operation Date of the Project.
- 6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.
- 6.6 The Parties undertake that the O&M Member shall subscribe and hold at least 10% (ten per cent) of the subscribed and paid up equity shares in the SPV¹ in terms of 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 organized, 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 authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ Power of Attorney in favour of the Person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
- (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the Memorandum and Articles of Association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, Concession, Grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, Encumbrances or mortgage in or on the property of such Party, except for Encumbrances that would not, individually or in the aggregate, have a Material Adverse Effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its affiliates is a party that presently affects or which would have a Material Adverse Effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession

¹ Add further conditions relating to the O&M Member, if any.

Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

9. Miscellaneous

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

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SECOND PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THIRD PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

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 of

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 V: Guidelines of the Department of Disinvestment

(Refer Clause 1. 2.1)

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

Block 14, CGO Complex
New Delhi.

Dated: 13th July,2001.

OFFICE MEMORANDUM

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

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

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the Bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding Party or by any sister concern of the bidding Party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all Bidders for various disinvestment transactions, which have not been completed as yet.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

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

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

APPENDIX VI: Qualification and Eligibility Criteria

(Refer Clause No. 2.2.2)

| Eligibility and Qualification Criteria | | | Compliance Requirements | | | | Documentation |
|---|--|---|--|----------------------|--|-------------|-------------------------|
| No. | Subject | Requirement | Single Entity | Joint Venture | | | Submission requirements |
| | | | | All Parties Combined | Each Partner | One Partner | |
| 1. Historical Contract Non-Performance | | | | | | | |
| 1.1 | History of Non-Performing Contracts \$ | Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any Project (BOT or otherwise), and the bar subsists as on the date of Application, would not be eligible to submit an Application, either individually or as Member of a Consortium | Must meet requirement by itself or as partner to past or existing CONSORTIUM | N/A | Must meet requirement by itself or as partner to past or existing CONSORTIUM | N/A | Annexure II |
| 1.2 | Pending Litigation | The Applicant will be required to provide details of all the pending litigations | Must meet requirement by itself or as a partner to past or existing CONSORTIUM | N/A | Must meet requirement by itself or as a partner to past or existing CONSORTIUM | N/A | Annexure II |

| Eligibility and Qualification Criteria | | Compliance Requirements | | | | | Documentation |
|--|-------------------------------------|--|-----------------------|-----------------------|-----------------------|---|-------------------------|
| No. | Subject | Requirement | Single Entity | Joint Venture | | | Submission requirements |
| | | | | All Parties Combined | Each Partner | One Partner | |
| <p>\$ A fully settled Dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract and where all appeal instances available to the Applicant have been exhausted.</p> | | | | | | | |
| 2. Financial Situation | | | | | | | |
| 2.1 | Financial Performance | Submission of audited balance sheets or if not required by the law of the Applicant's country, other financial statements acceptable to BRBN, for the last 3 (Three) years | Must meet requirement | N/A | Must meet requirement | N/A | Annexure III |
| 2.2 | Average Annual financial parameters | (a) Minimum Net Worth as on March 2014 (in Rs. crore) shall be Rs.4 crore (Indian Rupees Four Crore Only) | Must meet requirement | Must meet requirement | N/A | Must meet 26%, [Twenty Six percentage] of the requirement | Annexure III |

| Eligibility and Qualification Criteria | | | Compliance Requirements | | | | Documentation |
|--|------------------------|--|-------------------------|-----------------------|-----------------------|-----------------------|-------------------------|
| No. | Subject | Requirement | Single Entity | Joint Venture | | | Submission requirements |
| | | | | All Parties Combined | Each Partner | One Partner | |
| | | (b) Minimum annual turnover of Rs.5 crore (Five Crore) at the close of two consecutive preceding financial year. | Must meet requirement | Must meet requirement | N/A | Must meet requirement | Annexure III |
| | | (b)Have generated positive net cash accruals at the close of two consecutive preceding financial year | Must meet requirement | N/A | Must meet requirement | N/A | Annexure III |
| 3. Experience | | | | | | | |
| 3.1 | Eligibility Conditions | 1) The Bidder should have experience of successfully operating for the past 5 years: | | | | | Annexure IV |

| Eligibility and Qualification Criteria | | | Compliance Requirements | | | Documentation | |
|--|---------|--|-------------------------|-----------------------|--------------|---------------|-------------------------|
| No. | Subject | Requirement | Single Entity | Joint Venture | | | Submission requirements |
| | | | | All Parties Combined | Each Partner | One Partner | |
| | | <p>(a) a single Cold Storage of minimum capacity 4500 MT or two Cold Storages of minimum capacity 2500 MT each.</p> <p>(b) a single Agricultural Warehouse of minimum capacity 4500 MT or warehouses having combined capacity of not less than 10000 MT</p> <p>The Projects quoted for criteria under 1 (a) to 1(b) above should have been carried out on a single responsibility basis, in the last 5 years (2008-09 to 2013-14). The Projects quoted for the above criteria should have been</p> | Must meet requirement | Must meet requirement | N/A | N/A | |

| Eligibility and Qualification Criteria | | | Compliance Requirements | | | Documentation | |
|--|---------|---|-------------------------|----------------------|--------------|---------------|-------------------------|
| No. | Subject | Requirement | Single Entity | Joint Venture | | | Submission requirements |
| | | | | All Parties Combined | Each Partner | One Partner | |
| | | <p>operating successfully for minimum one year as on 31.08.2014.</p> <p>For the purpose of above clauses 1 (a) to 1(b); “on a single responsibility basis” implies that the Applicant should have carried out the work being quoted for Qualification on a single responsibility basis. In case of an Applicant being a JV/Consortium, any one partner of the JV/Consortium should have carried out the concerned work quoted for qualification on a single responsibility basis.</p> | | | | | |
| 4 Project Proposal | | | | | | | |

| Eligibility and Qualification Criteria | | | Compliance Requirements | | | Documentation | |
|--|---------------------------------------|--|-------------------------|-----------------------|--------------|---------------|-------------------------|
| No. | Subject | Requirement | Single Entity | Joint Venture | | | Submission requirements |
| | | | | All Parties Combined | Each Partner | One Partner | |
| 4.1 | Minimum Modernisation Obligation Plan | <p>The Bidders shall submit a detailed project proposal and project cost estimate (the capital cost of the project excluding cost of land should be supported by documentary evidence and certified by chartered engineers and chartered accountants).</p> <p>The proposal must include the Minimum Modernisation Obligations Plan required to make the Cold Storage operational. The proposal shall necessarily chalk out plan and component wise costing and total cost with respect to renovation, upgradation, new construction (wherever needed), utilities,</p> | Must meet requirement | Must meet requirement | N/A | N/A | |

| Eligibility and Qualification Criteria | | Compliance Requirements | | | | Documentation | |
|--|---------|--|---------------|----------------------|--------------|---------------|-------------------------|
| No. | Subject | Requirement | Single Entity | Joint Venture | | | Submission requirements |
| | | | | All Parties Combined | Each Partner | One Partner | |
| | | installation and commissioning of machineries etc. | | | | | |

1. The entity claiming experience should have held, in the company owing the eligible Project, a minimum of 26% equity during the period for which Eligible Experience is being claimed. If a Project was done in CONSORTIUM, a company can claim experience in proportion to its share in the CONSORTIUM.

2. Bidders are required to submit:

a.) Approved plan of the operational Cold Storage / Agricultural Warehouse by local Authority / other statutory body

b.) Certificate / NOC from office of the Chief Electrical Officer / Electrical Inspector who has jurisdiction over the unit

c.) Certificate / NOC from Chief Inspector Factories / Inspector Factories who has jurisdiction over the unit

d.) If the Warehouse is operating as Custom Bonded Warehouse then certificates from Department of Custom and Central Excise or State Excise department, as the case may be, shall also be produced

Certificate along with contact details of the issuing authority shall be provided; IDA on behalf of BRBN may contact the same for verification purposes. Only those units would be considered for evaluation purposes, whose certificates (as mentioned above) containing the desired details has been provided in the RFP submissions by the Bidders. The Bidder shall also submit Location map of the said unit(s) and 4 photographs of the unit(s).

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

4. Project Proposal submitted by the Bidder for Minimum Modernisation Obligation Plan, shall be binding in the event of the bidder being selected as

| Eligibility and Qualification Criteria | | Compliance Requirements | | | | Documentation | |
|---|---------|-------------------------|---------------|----------------------|--------------|---------------|-------------------------|
| No. | Subject | Requirement | Single Entity | Joint Venture | | | Submission requirements |
| | | | | All Parties Combined | Each Partner | One Partner | |
| Preferred Bidder. i.e. the Bidder shall be required to carry out minimum capital expenditure within the timelines stipulated in their project proposal. | | | | | | | |

APPENDIX VII: Bank Guarantee for Bid Security

(Refer Clause 1.2.6)

B.G. No.

Dated:

1. In consideration of you, BRBN, having its office at, Agriculture Farm Campus, Mithapur, Patna – 800001 (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of (a company registered under the Companies Act, 1956) and having its registered office at (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the Project “Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode” (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 1.2.6 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. 1000000 (Rupees Ten Lakh Only) (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 fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the 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 fulfill 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.1000000/- (Rupees Ten Lakh Only)

4. This guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the bank, and shall continue to be enforceable till all amounts under this guarantee have been paid.
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.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. 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.
11. We, the bank, further undertake not to revoke this guarantee during its currency except with the previous express consent of the Authority in writing.
12. The bank declares that it has power to issue this guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this guarantee for and on behalf of the bank.

For the avoidance of doubt, the bank's liability under this guarantee shall be restricted to Rs..... 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 180 days after the Bid Due Date)].

Signed and Delivered by Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

FORMAT FOR FINANCIAL PROPOSAL/BID

(Enclosed in Envelope B)

CONTENTS

| | |
|------------------|--------------------------------|
| Section 1 | Financial Proposal/Bid |
| | Covering letter for Envelope B |

FINANCIAL PROPOSAL/BID

Date:.....

Place:.....

To,

**Ms. A. Arya
Managing Director
Infrastructure Development Authority,
1st Floor, UdyogBhawan, East Gandhi Maidan
Patna,
Bihar - 800004**

Sir / Madam,

Sub: Financial Bid for “Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode”

Being duly authorized to represent and act on behalf of and having reviewed and fully understood all the requirements of bid submission provided vide the RFP document dated **pertaining “Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode”** we hereby provide our Financial Bid.

1. The Annual Concession Fee for the first year (the “**First Year Annual Concession Fee**”) for “Development of Cold Storage at Kudra, DistKaimur, Bihar on RDFOT (Renovate, Design, Finance, Operate and Transfer) basis under PPP mode” by (Name of the single bidder) to the Authority (BRBN) shall be Indian Rupees (Indian Rupeesin words).
2. We also agree to submit the following upon issue of Letter of Intent (LoI) by BRBN -
 - i. Performance Guarantee (“Performance Security”) from a scheduled commercial bank as per Clause 6.4.1 of this RFP document and as per the details provided in Volume – III (DCA) of the Bidding Documents.
 - ii. Demand Draft in favor of the Transaction Advisors of amount Rs 10,00,000/- (Indian Rupees Ten lakh) as Success Fee for Bid Process Management. **Srei Infrastructure Finance Limited** has been deputed as Transaction Advisors for this bid.
3. We understand the First Year Annual Concession Fee quoted shall be the basis of evaluation of the Financial Proposal. However the same shall be enhanced by 15% after every 3 year over the last reset year as per conditions of the RFP (described in the Draft Concession Agreement (Volume III of the RFP)
4. We also agree to fulfill the Condition Precedence (described in the Draft Concession Agreement (Volume III of the RFP) as per the conditions of the Bid (RFP) Document.

5. We understand that the project shall be developed following the terms and conditions specified in the Bid Documents and the applicable rules, conditions, guidelines of GoB / GoI.
- 6.
7. It is a firm and irrevocable offer, and shall remain valid and open for a period of not less than 180 days from the last date for submission of the bid. We acknowledge and agree to submission of an unconditional bid.

Signed

(For and on behalf of (name of bidder or lead member of the Consortium))

[Authorized signatory]

[Designation of Signatory]

[Common Seal]