

# **INFRASTRUCTURE DEVELOPMENT AUTHORITY**

**A Government of Bihar Undertaking**

**Request for Proposal (RFP)**

**for**

**Appointment of Transaction Advisor**

**for**

**Public Private Partnership (PPP) Projects in Bihar**



**Infrastructure Development Authority**

**(A Government of Bihar Undertaking)**

**1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna-800004**

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## **Disclaimer**

The information contained in this Request for Proposal document ("RFP") or subsequently provided to Applicants, whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisers, is provided to Applicants 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 or an offer by the Authority to the prospective Applicants 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 Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority. 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 advisers to consider the objectives, technical expertise 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 and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Applicants may be 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 the law expressed herein.

The Authority, its employees and advisers make no representation or warranty and shall have no liability to any person including any Applicant 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, reliability or completeness of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Selection Process.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise however 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 assumption contained in this RFP. The issue of this RFP does not imply that the Authority is bound to select an Applicant or to appoint the Selected Applicant, as the case may be, and the Authority reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

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

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## I. INTRODUCTION

### 1.1. Background

- 1.1.1. Infrastructure Development Authority (hereinafter referred to as “**Authority**” or “**IDA**”) has been constituted under the chairmanship of the Chief Secretary, Government of Bihar under the Bihar State Infrastructure Development Enabling Act 2006 to provide for the rapid development of physical and social Infrastructure in the State and to attract private sector participation in designing, financing and construction of Infrastructure Projects. It is the nodal agency for PPP initiatives in the State.

IDA has mandate to undertake PPP Projects in all sectors such as Roads, Health, Land Reclamation, Canals, Dams, Water Supply, Waste management, Sewerage, Drainage, Public Markets, public Building, Inland water transport, gas and Gas related Works, Sport and Recreation infrastructure, Real Estate etc. and the Government is empowered under the Statute to notify other sectors also.

- 1.1.2. The purpose of this RFP is to invite proposals from a firm representing a team of professionally qualified and experienced Financial and Technical Advisors (hereafter the “Advisors”) desirous to act as Transaction Advisor providing following services amongst others :-
- Interaction with the market or conduct of formal market surveys and studies the feasibility of project with Public Private Partnership (PPP) potential to confirm decisions on scope, timing and packaging of the transactions leading to successful completion of the projects.
  - Preparation of comprehensive bid documents including but not limited to the Expression of Interest / Request for Qualification and the Contract for Services including drafting, vetting, finalizing documents and Agreements etc.
  - Support to communication with the market and interaction with the market, including managing and responding to requests for clarification.
  - Monitoring and advice on tendered performance against any conditions in tender and to ensure prior information against any financial loss likely to be caused to the authority.
  - Management of other advisory inputs and overall management of the transaction team, to ensure a successful conclusion.
- 1.1.3. In pursuance of the above, the Authority has decided to carry out the process for selection of an Advisor in accordance with the Terms of Reference specified at Schedule-1 (the “TOR”).

## 1.2. Request for Proposal

The Authority invites proposals from interested firms (the “**Proposals**”) for selection of an Advisor. The Authority intends to select the Advisor through an open competitive bidding in accordance with the procedure set out herein.

The Proposals should include a Technical Proposal specifying the Approach of the Applicant, the Proposed Team, and the Qualification of the Applicant and the Key Personnel as further described in this RFP document, and a Financial Proposal quoting the monthly payments (the “**Monthly Retainer-ship Fee**”) to be made by the Authority for the services provided by the Advisor.

## 1.3. Due diligence by Applicants

Applicants are encouraged to inform and familiarize themselves fully about the assignment before submitting the Proposal and attend the Pre-Proposal Conference on the date and time specified in Clause 1.10.

## 1.4. Document Fee and EMD

Bid document is available at the IDA, Bihar website [www.idabihar.com](http://www.idabihar.com). Interested parties may download the bid documents from the website and submit their offer.

Bidders shall have to furnish a non-refundable Document Fee amounting to Rs. 10,000/- (Rupees Ten Thousand only) in the form of a demand draft or banker’s cheque drawn on any Scheduled Commercial Bank in India in favour of **Infrastructure Development Authority** and payable at **Patna** along with bid documents.

Bidders shall have to furnish the refundable Earnest Money Deposit (“**EMD**”) amounting to Rs. 1,00,000/- (Rupees One Lakh only) in the form of a demand draft / banker’s cheque / bank guarantee drawn on any Scheduled Commercial Bank in India in favour of “**Infrastructure Development Authority**” and payable at **Patna** along with bid documents.

Bid submitted without Document Fee and EMD will be considered non-responsive and rejected without further consideration.

## 1.5. Validity of the Proposal

The Proposal shall be valid for a period of not less than 180 (one hundred and eighty) days from the Proposal Due Date (the “**PDD**”).

## 1.6. Brief description of the Selection Process

The Authority shall adopt a Technical Eligibility Evaluation and Financial Evaluation process (collectively the “**Selection Process**”) in evaluating the Proposals comprising of technical and financial bids to be submitted in two separate sealed envelopes. In the first stage, a technical evaluation will be carried out as specified in Clause 3.1. Based on this technical evaluation, a panel of short-listed applicants shall be prepared as specified in Clause 3.2. In the second stage, the financial evaluation will be carried out based on the Monthly

Retainership Fee as quoted by the Applicants and as specified in Clause 3.3 of those Proposals which will score the minimum Technical Qualifying marks. Technically Qualifying Proposals will finally be ranked according to their financial quotes based on least cost method as specified in Clause 3.4. The first ranked Applicant (the “Selected Applicant”) shall be called for negotiation, if necessary, while the second ranked Applicant will be kept in reserve.

#### 1.7. Payment to Advisor

All payments to the Advisor shall be made in INR in accordance with the provisions of this RFP. The Advisor may convert INR into any foreign currency as per Applicable Laws and the exchange risk, if any, shall be borne by the Advisor. The fee shall be quoted in INR only.

#### 1.8. Schedule of Selection Process

The Authority would endeavour to adhere to the following schedule:

No	Event Description	Date
1.	Date of Issue of RFP ( downloading from Website )	30.11.2015
2.	Last date of receiving queries	07.12.2015
3.	Pre-Proposal Conference – 11:00 Hrs	14.12.2015
4.	Authority response to queries	18.12.2015
5.	Proposal Due Date or PDD -15:00 Hrs	04.01.2016
6.	Opening of Technical Proposal – 16:00 Hrs	On Proposal Due Date
7.	Opening of Financial Proposal – 16:00 Hrs	To be communicated later
8.	Letter of Award (LoA)	Within 7 days of opening of Financial Proposal
9.	Signing of Agreement	Within 15 days of LoA
10.	Validity of Applications	180 days of Proposal Due Date

#### 1.9. Pre-Proposal visit

Prospective applicants may visit the office of the Authority to review the available documents and data at any time prior to PDD. For this purpose, they will provide at least two days’ notice to the nodal officer specified below:

**Managing Director**

Infrastructure Development Authority

1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna-800004

Ph- +91-612- 2675991/ 2675998 Fax- +91-612-2675889

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

#### 1.10. Pre-Proposal Conference

The date, time and venue of Pre-Proposal Conference shall be:

**Date:** As per Clause 1.8  
**Time:** 11 00 hrs.  
**Venue:** Conference Hall, Infrastructure Development Authority  
1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna-4  
Ph- +91-612- 2675991/ 2675998 Fax- +91-612-2675889  
www.idabihar.com, Email: md@idabihar.com

**1.11. Communications**

1.11.1. All communications including the submission of Proposal should be addressed to:

**Managing Director**

Infrastructure Development Authority  
1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna- 800004  
Ph- +91-612- 2675991/ 2675998 Fax- +91-612-2675889  
www.idabihar.com, Email: md@idabihar.com

1.11.2. The Official Website of the Authority is www.idabihar.com

1.11.3. All communications, including the envelopes, should contain the following information, to be marked at the top in bold letters:

**RFP Notice No \_\_\_\_\_ for Appointment of Transaction Advisory for PPP  
Projects in Bihar**



## II. INSTRUCTIONS TO APPLICANTS

### A. GENERAL

#### 2.1 Scope of Proposal

2.1.1 Detailed description of the objectives, scope of services, deliverables and other requirements are specified in this RFP. In case an applicant firm (the “**Applicant**”) possesses the requisite experience and capabilities required for undertaking the work, it may participate in the Selection Process. **Joint Venture / Consortium proposals are not allowed.** The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP.

2.1.2 Applicants are advised that the selection of Advisor shall be on the basis of an evaluation by the Authority through the Selection Process specified in this RFP. Applicants shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that the Authority’s decisions are without any right of appeal whatsoever.

2.1.3 The Applicant shall submit its Proposal in the form and manner specified in this Section of the RFP. The Technical proposal shall be submitted in the form at Appendix-I and the Financial Proposal shall be submitted in the form at Appendix-II.

#### 2.1.4 Key Personnel

The Advisor’s team shall consist of the following key personnel (the “**Key Personnel**”) who shall individually as well as collectively discharge their respective responsibilities as specified below:

Key Personnel	Responsibilities
<b>Procurement Expert</b>	He / She shall be responsible for the preparation of bidding documents for PPP Projects , bid process management of the project on PPP Mode, investment promotion activities. Liaison with various entities of the Govt. of Bihar for speedy clearances.-
<b>Financial Expert</b>	He / She will be responsible for all financial analysis, risk sharing and mitigation measures, modelling, tariff determination, and project structuring of Projects on PPP Mode. Liaison with various entities of the Govt. of Bihar for speedy clearances and regularly update the Authority on the progress achieved. Shall act as the Team Leader of the Advisory Team so that all communication with the Authority is done through him / her.

**All communications between the Authority and the Transaction Advisor shall be done through the Financial Expert who shall act as the Team Leader.**

## 2.2 Conditions of Eligibility of Applicants

2.2.1 Applicants must read carefully the minimum conditions of eligibility (the “**Conditions of Eligibility**”) provided herein. Proposals of only those Applicants who satisfy the Conditions of Eligibility will be considered for evaluation.

2.2.2 To be eligible for evaluation of its Proposal, the Applicant shall fulfil the following:

### A. Technical Capacity:

1. The Applicant shall be in advisory/consultancy business for at least ten years preceding the PDD.
2. The Applicant shall have, over the past 5 (five) years preceding the PDD, undertaken at maximum number of Eligible Assignments, as specified in Clause 3.1.3,.

B. **Financial Capacity:** The Applicant shall have a minimum average annual turnover of Rs. 150 crore (Rs. One Hundred and Fifty crore) during the three financial years preceding the PDD. For the avoidance of doubt, turnover would mean professional fees received by the Applicant for providing advisory or consultancy services to its clients and three years shall mean end of FY upto 31st March, 2015.

C. **Availability of Key Personnel:** The Applicant shall offer and make available all Key Personnel meeting the requirements specified in Sub-clause (D) below.

D. **Conditions of Eligibility for Key Personnel:** Each of the Key Personnel must fulfil the Conditions of Eligibility specified below:

Key Personnel	Minimum Educational Qualification	Minimum Length of Professional Experience	Experience on Eligible Assignments
<b>Procurement Expert</b>	Civil Engineer	5 years	He / She should have worked on and successfully completed at least one Eligible Assignment, as mentioned in Clause 3.1.2
<b>Financial Expert</b>	MBA / CA equivalent	5 years	He / She should have worked on and successfully completed at least one Eligible Assignment, as mentioned in Clause 3.1.2

2.2.3 The Applicant shall enclose with its Proposal, certificate(s) from its Statutory Auditors<sup>1</sup> stating its total revenues from professional fees during each of the past three financial years ending 31<sup>st</sup> March, 2015. In the event that the Applicant does not have a statutory auditor, it shall provide the requisite certificate(s) from the firm of Chartered Accountants that ordinarily audits the annual accounts of the Applicant.

<sup>1</sup> No separate annual financial statements should be submitted.

- 2.2.4 The Applicant should submit a Power of Attorney as per the format at Form - 4 of Appendix- I; provided, however, that such Power of Attorney would not be required if the Application is signed by a Partner or Director (on the Board of Directors) of the Applicant.
- 2.2.5 While submitting a Proposal, the Applicant should attach clearly marked and referenced continuation sheets in the event that the space provided in the specified forms in the Appendices is insufficient. Alternatively, Applicants may format the specified forms making due provision for incorporation of the requested information.

### 2.3 Conflict of Interest

- 2.3.1 An Applicant shall not have a conflict of interest that may affect the Selection Process or the Transaction Advisory Services (the “**Conflict of Interest**”). Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate the Performance Security, if available, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, *inter alia*, the time, cost and effort of the Authority including consideration of such Applicant’s Proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.
- 2.3.2 The Authority requires that the Advisory Team provides professional, objective, and impartial advice and at all times hold the Authority’s interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Advisory Team shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the Authority.
- 2.3.3 An Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- a) the Applicant or Associates (or any constituent thereof) and any other Applicant or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (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 or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof. For the purposes of this Clause 2.3.3(a), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to Sub-clause

- (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this Sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or
- b) a constituent of such Applicant is also a constituent of another Applicant; or
  - c) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or
  - d) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
  - e) such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each other's' information about, or to influence the Application of either or each of the other Applicant; or
  - f) there is a conflict among this and other consulting assignments of the Applicant (including its personnel and other members, if any) and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders. The duties of the Advisory Team will depend on the circumstances of each case. While providing Advisory Services to the Authority for this particular assignment, the Advisory Team shall not take up any assignment that by its nature will result in conflict with the present assignment; or
  - g) a firm which has been engaged by the Authority to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same project save and except as provided in Clause 2.3.4; conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or
  - h) the Applicant, its Member or Associate (or any constituent thereof), and the bidder or concessionaire or EPC contractor, if any, for the Project, its contractor(s) or sub-contractor(s) (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 or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be,) in the bidder or concessionaire or EPC contractor, if any, or its contractor(s) or sub-contractor(s) is less than 5% (five per cent) of the paid up and subscribed share capital of such concessionaire / EPC contractor or its contractor(s) or sub-contractor(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in section 2 (72) of the Companies Act 2013. For the purposes of this Sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of Sub-clause (a) above.

For purposes of this RFP, Associate means, in relation to the Applicant, a person who controls, is controlled by, or is under the common control with such Applicant, or is deemed or published as an “Associate Office”; or has a formal arrangement such as tie up for client referral or technology sharing, joint venture with the Applicant (the “Associate”); provided, however, that if the Applicant has any formal arrangement such as consortium membership in a consortium of advisers/ consultants for a particular assignment/ project, not being this project, with any other person, then such other person shall not be treated to be an Associate of the Applicant solely due to the reason of forming such consortium. 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 or by contract.

2.3.4 An Applicant eventually appointed to provide Advisory Services, its Associates, affiliates and the Advisory Team members, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 3 (three) years from the completion of this assignment or to any consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services performed for the Authority in continuation of this Advisory Services or to any subsequent consultancy/ advisory services performed for the Authority in accordance with the rules of the Authority. For the avoidance of doubt, an entity affiliated with the Advisory Team shall include a partner in the firm (to which Advisory Team belongs) or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the firm (to which Advisory Team belongs), as the case may be, and any Associate thereof. For the avoidance of doubt, in the event that: (a) any member of Advisory Team of an Applicant/ Consultant was a partner or an employee of another firm, which attracts the provisions relating to Conflict of Interest hereunder; and (b) was directly or indirectly associated with any assignment that causes a Conflict of Interest hereunder, then such Advisory Team member shall be deemed to suffer from Conflict of Interest for the purpose hereof.

2.3.5 In the event that the Advisory Team, its Associates or affiliates are auditors or financial advisers to any of the bidders for the Project, they shall make a disclosure to the Authority as soon as any potential conflict comes to their notice but in no case later than 7 (seven) days from the opening of the RFQ applications for the Project and any breach of this obligation of disclosure shall be construed as Conflict of Interest. The Authority shall, upon being notified by the Advisory Team under this Clause 2.3.5, decide whether it wishes to terminate this Advisory Services or otherwise, and convey its decision to the firm within a period not exceeding 15 (fifteen) days.

## **2.4 Number of Proposals**

No Applicant shall submit more than one Application. An Applicant applying individually shall not be entitled to submit another application as an Associate with another Applicant.

## **2.5 Cost of Proposal**

The Applicants shall be responsible for all the costs associated with the preparation of their Proposals and their participation in the Selection Process including subsequent negotiation, visits to the Authority, etc. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

## **2.6 Visit to the Authority and verification of information**

Applicants are encouraged to submit their respective Proposals after visiting the office of the Authority and ascertaining for themselves the availability of documents and other data with the Authority, Applicable Laws and regulations or any other matter considered relevant by them.

## **2.7 Acknowledgement by Applicant**

- 2.7.1 It shall be deemed that by submitting the Proposal, 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 or relating to any of the matters referred to in Clause 2.6 above;
  - d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Application and performance of all of its obligations thereunder;
  - e) acknowledged that it does not have a Conflict of Interest; and
  - f) agreed to be bound by the undertaking provided by it under and in terms hereof.
- 2.7.2 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 RFP or the Selection Process, including any error or mistake therein or in any information or data given by the Authority.

## **2.8 Right to reject any or all Proposals**

- 2.8.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor.
- 2.8.2 Without prejudice to the generality of Clause 2.8.1, the Authority reserves the right to reject any Proposal if:
- a) at any time, a material misrepresentation is made or discovered, 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 Proposal.

Misrepresentation/ improper response by the Applicant may lead to the disqualification of the Applicant. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Applicant gets disqualified / rejected, then the Authority reserves the right to consider the next best Applicant, or take any other measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Selection Process.

## **B. DOCUMENTS**

### **2.9 Contents of the RFP**

- 2.9.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below and will additionally include any Addendum / Amendment issued in accordance with Clause 2.11:

#### **Request for Proposal**

- 1 Introduction
- 2 Instructions to Applicants
- 3 Criteria for Evaluation
- 4 Fraud and corrupt practices
- 5 Pre-Proposal Conference
- 6 Miscellaneous

#### **Schedules**

##### **1 Terms of Reference**

#### **Appendices**

##### **Appendix – I: Technical Proposal**

- |         |   |
|---------|---|
| Form 1  | : Letter of Proposal                                |
| Form 2  | : Particulars of the Applicant                      |
| Form 3  | : Statement of Legal Capacity                       |
| Form 4  | : Power of Attorney                                 |
| Form 5  | : Financial Capacity of the Applicant               |
| Form 6  | : Particulars of Key Personnel                      |
| Form 7  | : Abstract of Eligible Assignments of the Applicant |
| Form 8  | : Abstract of Eligible Assignments of Key Personnel |
| Form 9  | : Eligible Assignments of Applicant                 |
| Form 10 | : CVs of Professional Personnel                     |

##### **Appendix – II: Financial Proposal**

- |        |                      |
|--------|----------------------|
| Form 1 | : Covering Letter    |
| Form 2 | : Financial Proposal |

Form 3 : Estimate of Personnel Costs

**2.10 Clarifications**

- 2.10.1 Applicants requiring any clarification on the RFP may send their queries to the Authority in writing before the date mentioned in the Schedule of Selection Process at Clause 1.8. The envelopes shall clearly bear the following identification:

**“Queries/Request for Additional Information concerning RFP for Appointment of Transaction Advisor for PPP Projects in Bihar”**

The Authority shall endeavour to respond to the queries within the period specified therein but no later than 7 (seven) days prior to the PDD. The responses will be sent by fax or e-mail. The Authority will post the reply to all such queries on the Official Website and copies thereof will also be circulated to all Applicants who have purchased the RFP document without identifying the source of queries.

- 2.10.2 The Authority reserves the right not to respond to any queries or provide any clarifications, in its sole discretion, and nothing in this Clause 2.10 shall be construed as obliging the Authority to respond to any question or to provide any clarification.

**2.11 Amendment of RFP**

- 2.11.1 At any time prior to the deadline for submission of Proposal, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP document by the issuance of Addendum/ Amendment and posting it on the Official Website and by conveying the same to the prospective Applicants (who have purchased the RFP document) by fax or e-mail.

- 2.11.2 All such amendments will be notified in writing through fax or e-mail to all Applicants who have purchased the RFP document. The amendments will also be posted on the Official Website along with the revised RFP containing the amendments and will be binding on all Applicants.

- 2.11.3 In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, the Authority may, in its sole discretion, extend the PDD.

**C. PREPARATION AND SUBMISSION OF PROPOSAL**

**2.12 Language**

The Proposal with all accompanying documents (the “**Documents**”) and all communications in relation to or concerning the Selection Process shall be in English language and strictly on the forms provided in this RFP. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for and in case any of these Documents



is in another language, it must be accompanied by an accurate translation of all the relevant passages in English, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

## **2.13 Format and signing of Proposal**

2.13.1 The Applicant shall provide all the information sought under this RFP. The Authority would evaluate only those Proposals that are received in the specified forms and complete in all respects.

2.13.2 The Applicant shall prepare one original set of the Proposal (together with originals/ copies of Documents required to be submitted along therewith pursuant to this RFP) and clearly marked "ORIGINAL". In addition, the Applicant shall submit 1 (one) copy of the Proposal, along with Documents, marked "COPY". In the event of any discrepancy between the original and its copies, the original shall prevail.

2.13.3 The Proposal, and its copy, shall be typed or written in indelible ink and signed by the authorized signatory of the Applicant who shall initial each page, in blue ink. In case of printed and published Documents, only the cover shall be initialled. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialled by the person(s) signing the Proposal. The Proposals must be properly signed by the authorized representative (the "**Authorized Representative**") as detailed below:

- a. by the proprietor, in case of a proprietary firm; or
- b. by a partner, in case of a partnership firm and/or a limited liability partnership; or
- c. by a duly authorized person holding the Power of Attorney, in case of a Limited Company or a corporation.

A copy of the Power of Attorney certified by a notary public in the form specified in Appendix-I (Form-4) shall accompany the Proposal (if required).

2.13.4 Applicants should note the PDD, as specified in Clause 1.8, for submission of Proposals.

Except as specifically provided in this RFP, no supplementary material will be entertained by the Authority, and that evaluation will be carried out only on the basis of Documents received by the closing time of PDD as specified in Clause 2.17.1. Applicants will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected.

## **2.14 Technical Proposal**

2.14.1 Applicants shall submit the technical proposal in the formats at Appendix-I (the "**Technical Proposal**").

2.14.2 While submitting the Technical Proposal, the Applicant shall, in particular, ensure that:

- a. all forms are submitted in the prescribed formats and signed by the prescribed signatories;
- b. power of attorney, if applicable, is executed as per Applicable Laws;
- c. CVs of all Key Personnel have been included;
- d. Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 2.2.2 (D) of the RFP;
- e. no alternative proposal for any Key Personnel is being made and only one CV for each position has been furnished;
- f. the CVs shall contain an undertaking from the respective Key Personnel about his/her availability for the duration specified in the RFP;
- g. Key Personnel proposed have good working knowledge of English language;
- h. Key Personnel would be available for the period indicated in the TOR;
- i. Key Personnel shall not have crossed the age of 70years at the time of submitting the proposal; and
- j. the proposal is responsive in terms of Clause 2.21.3.

2.14.3 Failure to comply with the requirements spelt out in this Clause 2.14 shall make the Proposal liable to be rejected.

2.14.4 If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, he shall be liable to be debarred for any future assignment of the Authority for a period of 3 (three) years. The award of this Advisory Services to the Applicant may also be liable to cancellation in such an event.

2.14.5 The Technical Proposal shall not include any financial information relating to the Financial Proposal.

2.14.6 The proposed team shall include experts and specialists (the “**Key Personnel**”) in their respective areas of expertise such that the Advisory Team should be able to complete the Advisory Services. The team shall comprise other competent and experienced professional personnel in the relevant areas of expertise (where applicable) as required for successful completion of this Advisory Services. The CV of each such professional personnel, if any, should also be submitted in the format at Form-11 of Appendix-I.

2.14.7 An Applicant may, from time to time, if it considers necessary, propose suitable Sub-Consultants in specific areas of expertise (where applicable).

2.14.8 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 the lack of such verification by the Authority to undertake such verification shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.14.9 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of

the eligibility 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 Advisor either by issue of the LOA or entering into of the Agreement, and if the Selected Applicant has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority without the Authority being liable in any manner whatsoever to the Selected Applicant or Consultant, as the case may be.

In such an event, the Authority shall forfeit and appropriate the Performance Security, if available, as mutually agreed pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority.

## **2.15 Financial Proposal**

2.15.1 Applicants shall submit the financial proposal in the formats at Appendix-II (the “**Financial Proposal**”) clearly indicating its quote for the Advisory Services in both figures and words, in Indian Rupees, and signed by the Applicant’s Authorized Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail. In the event of a difference between the arithmetic total and the total shown in the Financial Proposal, the lower of the two shall prevail.

2.15.2 While submitting the Financial Proposal, the Applicant shall ensure the following:

- i. All the costs associated with the assignment shall be included in the Financial Proposal. These shall normally cover remuneration for all the Personnel (Expatriate and Resident, in the field, office, etc.). The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.
- ii. The Financial Proposal shall take into account all expenses and tax liabilities. For the avoidance of doubt, it is clarified that all taxes shall be deemed to be included in the costs shown under different items of the Financial Proposal. Further, all payments shall be subject to deduction of taxes at source as per Applicable Laws.
- iii. Amount towards the monthly retainer ship fee as quoted in the Financial Proposal shall remain firm during the entire duration of the Advisory Services.
- iv. IDA will provide office space and facilities e.g. communication, printing, stationery, etc. to the Advisory Team.
- v. Travel and boarding expenses for any visit required for the purposes of the project e.g. site visit, meetings, road shows, etc. will be borne by the Advisor.
- vi. Costs (including break down of costs) shall be expressed in INR.

## 2.16 Submission of Proposal

2.16.1 The Applicants shall submit the Proposal in hard bound form with all pages numbered serially and by giving an index of submissions. Each page of the submission shall be initialled by the Authorized Representative of the Applicant as per the terms of this RFP. Since the proposal is submitted on the document downloaded from Official Website, the Applicant shall be responsible for its accuracy and correctness as per the version uploaded by the Authority and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the RFP and the original RFP issued by the Authority, the latter shall prevail.

2.16.2 The Proposal will be sealed in an outer envelope which will bear the address of the Authority, RFP Notice number, Advisory Services name as indicated at Clause 1.11.1 and 1.11.3 and the name and address of the Applicant. It shall bear on top, the following:

**“Do not open, except in presence of the Authorized Person of the Authority”**

If the envelope is not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted and consequent losses, if any, suffered by the Applicant.

2.16.3 The aforesaid outer envelope will contain two separate sealed envelopes; one clearly marked ‘**Technical Proposal**’ and the other clearly marked ‘**Financial Proposal**’. The envelope marked “Technical Proposal” shall contain the Application in the prescribed format (Form 1 of Appendix-I) along with Forms 2 to 10 of Appendix-I and supporting documents. The envelope marked “Financial Proposal” shall contain the financial proposal in the prescribed format (Form 1, 2 & 3 of Appendix-II).

2.16.4 The Technical Proposal and Financial Proposal shall be typed or written in indelible ink and signed by the Authorized Representative of the Applicant. All pages of the original Technical Proposal and Financial Proposal must be numbered and initialled by the person or persons signing the Proposal.

2.16.5 The completed Proposal must be delivered on or before the specified time on PDD. Proposals submitted by fax, telex, or e-mail shall not be entertained.

2.16.6 The Proposal shall be made in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents. No separate documents like printed annual statements, firm profiles, copy of contracts etc. will be entertained.

2.16.7 The rates quoted shall be firm throughout the period of performance of the assignment up to and including discharge of all obligations of the Advisory Team under the Agreement.

## **2.17 Proposal Due Date**

- 2.17.1 Proposal should be submitted before 15:00 hrs on the PDD specified at Clause 1.8 at the address provided in Clause 1.11 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified therein.
- 2.17.2 The Authority may, in its sole discretion, extend the PDD by issuing an Addendum in accordance with Clause 2.11 uniformly for all Applicants.

## **2.18 Late Proposals**

Proposals received by the Authority after the specified time on PDD shall not be eligible for consideration and shall be summarily rejected.

## **2.19 Modification/ substitution/ withdrawal of Proposals**

- 2.19.1 The Applicant may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by the Authority prior to PDD. No Proposal shall be modified, substituted, or withdrawn by the Applicant on or after the PDD.
- 2.19.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.16, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.
- 2.19.3 Any alteration / modification in the Proposal or additional information or material supplied subsequent to the PDD, unless the same has been expressly sought for by the Authority, shall be disregarded.

## **2.20 Performance Security**

The Applicant, by submitting its Application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to the Authority's any other right or remedy hereunder or in law or otherwise, the Performance Security, as available, shall be forfeited and appropriated by the Authority as the mutually agreed pre-estimated compensation and damage payable to the Authority for, inter alia, the time, cost and effort of the Authority in regard to the RFP including the consideration and evaluation of the Proposal under the following conditions:

- a) If an Applicant engages in any of the Prohibited Practices specified in Clause 4.1 of this RFP;
- b) if the Applicant is found to have a Conflict of Interest as specified in Clause 2.3; and
- c) if the selected Applicant commits a breach of the Agreement.

## **D. EVALUATION PROCESS**

## **2.21 Evaluation of Proposals**

- 2.21.1 The Authority shall open the Proposals at 1600 hours on the PDD, at the place specified in Clause 1.11.1 and in the presence of the Applicants who choose to attend. The envelopes marked “Technical Proposal” shall be opened first. The envelopes marked “Financial Proposal” shall be kept sealed for opening at a later date.
- 2.21.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.19 shall not be opened.
- 2.21.3 Prior to evaluation of Proposals, the Authority will determine whether each Proposal is responsive to the requirements of the RFP. A Proposal shall be considered responsive only if:
- a. the Technical Proposal is received in the form specified at Appendix-I;
  - b. it is received within the PDD including any extension thereof pursuant to Clause 2.17;
  - c. it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.13 and 2.16;
  - d. it is accompanied by the Power of Attorney as specified in Clause 2.2.4;
  - e. it contains all the information (complete in all respects) as requested in the RFP;
  - f. it does not contain any condition or qualification; and
  - g. it is not non-responsive in terms hereof.
- 2.21.4 The Authority reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Proposals.
- 2.21.5 The Authority shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Clause 1.6 and the criteria set out in Section III of this RFP.
- 2.21.6 After the technical evaluation, the Authority shall prepare a list of pre-qualified Applicants in terms of Clause 3.2 for opening of their Financial Proposals. A date, time and venue will be notified to all Applicants for announcing the result of Technical evaluation and opening of Financial Proposals. Before opening of the Financial Proposals, the list of pre-qualified Applicants along with their Technical Scores will be read out. The opening of Financial Proposals shall be done in presence of respective representatives of Applicants who choose to be present. The Authority will not entertain any query or clarification from Applicants who fail to qualify at any stage of the Selection Process. The financial evaluation and subsequent ranking of the Proposals shall be carried out in terms of Clauses 3.3 and 3.4.
- 2.21.7 Applicants are advised that Selection shall be entirely at the discretion of the Authority.

Applicants shall be deemed to have understood and agreed that the Authority shall not be required to provide any explanation or justification in respect of any aspect of the Selection Process or Selection.

- 2.21.8 Any information contained in the Proposal shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Applicant if the Advisory Services is subsequently awarded to it.

## **2.22 Confidentiality**

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

## **2.23 Clarifications**

- 2.23.1 To facilitate evaluation of Proposals, the Authority may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 2.23.2 If an Applicant does not provide clarifications sought under Clause 2.23.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the Authority may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Authority.

## **E. APPOINTMENT OF ADVISORY TEAM**

### **2.24 Negotiations**

- 2.24.1 The Selected Applicant may, if necessary, be invited for negotiations. The negotiations shall generally not be for reducing the price of the Proposal, but will be for re-confirming the obligations of the Advisor under this RFP. Issues such as deployment of Key Personnel, understanding of the RFP, methodology and quality of the work plan shall be discussed during negotiations. A Key Personnel who did not score 70% (seventy per cent) marks as required under Clause 3.1.2 shall be replaced by the Applicant with a better candidate to the satisfaction of the Authority. In case the Selected Applicant fails

to reconfirm its commitment, the Authority reserves the right to designate the next ranked Applicant as the Selected Applicant and invite it for negotiations.

- 2.24.2 The Authority will examine the CVs of all other Key Personnel and those not found suitable shall be replaced by the Applicant to the satisfaction of the Authority.

## **2.25 Substitution of Key Personnel**

- 2.25.1 The Authority expects the Key Personnel to be available during implementation of the Agreement. The Authority will consider substitution of the Key Personnel only in extraordinary / unavoidable circumstances. Such substitution shall ordinarily be subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority.

## **2.26 Indemnity**

The selected Advisor shall, subject to the provisions of the Agreement, indemnify the Authority, for an amount not exceeding the value of the Agreement, for any direct loss or damage that is caused due to any deficiency in Services.

## **2.27 Award of Advisory Contract**

After selection, a Letter of Award (the “LOA”) shall be issued, in duplicate, by the Authority to the Selected Applicant and the Selected Applicant 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 Applicant is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, cancel the LOA and the next ranked Applicant may be considered.

## **2.28 Execution of Agreement**

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it shall execute the Agreement within the period prescribed in Clause 1.8. The Selected Applicant shall not be entitled to seek any deviation in the Agreement.

## **2.29 Commencement of Assignment**

The Advisory Team shall commence the Advisory Services within fifteen (15) days of the date of the Agreement, or such other date as may be mutually agreed. If the Selected Applicant fails to either sign the Agreement as specified in Clause 2.28 or commence the assignment as specified herein, the Authority may invite the second ranked Applicant for negotiations. In such an event, the LOA or the Agreement, as the case may be, may be cancelled / terminated.

## **2.30 Proprietary data**



Subject to the provisions of Clause 2.22, all documents and other information provided by the Authority or submitted by an Applicant to the Authority shall remain or become the property of the Authority. Applicants and the Advisor, as the case may be, are to treat all information as strictly confidential. The Authority will not return any Proposal or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Applicant to the Authority in relation to the Advisory Services shall be the property of the Authority.

### **2.31 Term of the Agreement**

2.31.1 The services will be required to be provided for a period of 2 (two) years (“**Term**”) under the Advisory Agreement.

2.31.2 The Term will be further extendable by a period of 6 (six) months on satisfactory delivery of services by the Advisory Team.

### **2.32 Contract Value**

The Total Contract Value will be calculated as the product of 24 Monthly Retainership Fee for the entire duration of the services.

### **2.33 Performance Security**

The Applicant Transaction Advisor will furnish within 10 days of the issue of Letter of Acceptance (LOA), an Account Payee Demand Draft / Fixed Deposit Receipt / Unconditional Bank Guarantee (in prescribed format) / in favour of “**Infrastructure Development Authority**” payable/ en-cashable at Patna, from any scheduled commercial Bank in India having a branch in Patna for an amount equivalent to 10% of the Contract Value towards Performance Security valid for a period of one (1) month beyond the stipulated date of completion of services. The Performance Security will be released after one month of successful completion of the assignment.

### **2.34 Dispute Resolution Procedure**

#### **2.34.1 Amicable Settlement**

In the event that any dispute, controversy or claim arises among the Parties in connection with or under the Agreement or the interpretation of any of its provisions or upon the occurrence of an Event of Default, the Company and the Operator shall appoint one representative each, who is not involved in the day-to-day operations relating to the Project to meet promptly in an effort to resolve such dispute, controversy or claim. All such disputes shall be amicably settled through mutual consultation and negotiation between the representatives. Each Party shall bear all the expenses of its representative. The Parties hereto agree to use their respective best efforts to resolve all disputes arising hereunder through the consultative process.

#### 2.34.2 Arbitration

##### 2.34.2.1 Arbitrators

In the event the dispute or difference or claim, as the case may be, is not resolved, as evidenced by the signing of the written terms of settlement by the Parties, within 30 (thirty) days of reference for amicable settlement and/or settlement by the representatives, the same shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996.

##### 2.34.2.2 Place of Arbitration

The place of arbitration shall be Patna but by agreement of the Parties, the arbitration hearings, if required, can be held elsewhere from time to time.

##### 2.34.2.3 English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

##### 2.34.2.4 Procedure

The procedure to be followed within the arbitration including appointment of arbitrator, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

##### 2.34.2.5 Enforcement of Award

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto agree to waive, to the extent permitted by law, any rights to appeal or to review of such award by any court or tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgement upon the arbitral award may be entered in any court having jurisdiction thereof.

##### 2.34.2.6 Fees and Expenses

The fees and expenses of the arbitrator and all other expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the arbitrator. The arbitrator may provide in the arbitral award for the reimbursement to the prevailing Party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by such Party.

#### 2.34.3 Performance during Dispute Resolution

Pending the submission of a dispute, controversy or claim for arbitration and thereafter until the final decision of the arbitration, the Parties shall continue to perform all of their

obligations under this Agreement, without prejudice to a final adjustment in accordance with such decision.

#### 2.34.4 Survival

The dispute resolution provisions contained in this Clause 2.34 shall survive the termination of the Agreement.

### 2.35 Limitation of Liability

The liability of the Advisory Team under this contract shall be limited to a maximum of 10% of the Annual Contract Value for the year under consideration.

## III. CRITERIA FOR EVALUATION

### 3.1 Evaluation of Technical Proposals

3.1.1 In the first stage, the Technical Proposal will be evaluated on the basis of Applicant's experience, its understanding of TOR, proposed methodology and Work Plan, and the experience of Key Personnel. Only those Applicants whose Technical Proposals score 70 points or more out of 100 shall be pre-qualified for financial evaluation in the second stage.

3.1.2 The scoring criteria to be used for evaluation shall be as follows.

Criteria	Assessment	Weighting
<b>Transaction Advice (Total 35 points)</b>		
<b>1. Sector Experience</b>	<b>Sector:</b> <ul style="list-style-type: none"> <li>• Health</li> <li>• Tourism</li> <li>• Highways</li> <li>• Art &amp; Culture</li> <li>• Urban Development</li> <li>• Public Transport</li> <li>• Housing</li> <li>• Education</li> </ul>	Upto 20 marks
<b>2. Lead Transaction Advisor</b>	The applicant should provide detail of assignment in the last 5 years to demonstrate experience in providing the	Upto 15 marks

	<p>services detailed in section 1 above as lead Transaction advisor across a range of transaction in the infrastructure sector, including water, highway, ports, airports and rail ( public transport), health, art &amp; culture, housing, education, Tourism, Urban Development . The assignments described should have been undertaken by members of the team Proposed for the panel.</p> <p>For each assignment, the applicant should provide details of the nature Of the services provided, the duration of the assignment and the total fees. ( Project Data Sheets)</p>	
Response : Respondents to provide details of company experience and team experience separately. As per format attached)		

Criteria	Assessment	Weighting
<b>3. Commercial and Financial Advice (Total 30 points)</b>		
<i>3.1 Financial modeling</i>	The applicant should provide details of 3 assignments in the last 5 years which demonstrate an ability to conduct financial modeling in support of transactions. The applicant should describe the nature of the transaction, the role of the applicant in supporting that transaction, the nature of the financial modeling and its relationship to the transaction, the duration of the assignment, and the total fees related to the financial modeling work.	Up to 10 points
Response : (Respondents to provide details of company experience and that of the nominated personnel separately. As per format attached)		
<i>3.2 Taxation advice</i>	The applicant should provide details of 3 assignments in the last 5 years which demonstrate ability to advice on tax issues associated with ppp-type transactions, and on the preferred approach to managing tax impacts in the transaction. The applicant should describe the nature of	Up to 5 points

	the transaction, the role of the applicant in supporting that transaction, the nature of the taxation analysis and its relationship to the transaction, the duration of the assignment and the total fees related to rendering such tax advice.	
Response: (Respondents to provide details of company experience and that of the nominated personnel separately. As per format attached)		
3.3 Commercial advice on contract design	The applicant should provide details of 3 assignments in the last 5 years which demonstrate an ability to provide commercial advice on the design and documentation of contracts associated with ppp-type transactions. The applicant should describe the nature of the transaction, the role of the applicant in supporting that transaction, the nature of the commercial advice, the duration of the assignment and the total fees related to rendering such commercial advice.	Up to 10 points
Response: (Respondents to provide details of company experience and that of the nominated personnel separately. As per format attached)		
3.4 Commercial and financial advice during tender evaluation and contract negotiations	The applicant should provide details of 3 assignments in the last 5 years which demonstrate its ability to provide commercial and financial advice during tender evaluation and contract negotiations. The applicant should describe the nature of the transaction, the role of the applicant in supporting that transaction, the nature of the commercial advice, the duration of the assignment and the total fees related towards rendering such advice.	Up to 5 points
Response: (Respondents to provide details of company experience and that of the nominated personnel separately. As per format attached)		

Criteria	Assessment	Weighting
<b>4. Legal Advice (Total 35 Points)</b>		
4.1 Contract design and documentation.	The applicant should provide details of 5 assignments in the last 5 years which demonstrate an ability to provide legal advice	20 points

	to a public authority on initial contract design and documentation. The assignment should have been undertaken by nominated personnel who should have at least 15 years of experience in corporate and contract laws. The applicant should describe the nature of the transaction, the role of the applicant in supporting that transaction, the nature of the legal advice on contract design and documentation, the duration of the assignment and the total fees related to contract design and documentation.	
Response: (Respondents to provide details of company experience and that of the nominated personnel separately. As per format attached)		
<i>4.2 Legal advice during tender evaluation</i>	The applicant should provide details of 5 assignments in the last 5 years which demonstrate an ability to provide legal advice to a public authority on design and conduct of tender evaluation processes. The assignment should have been undertaken by nominated personnel. The applicant should describe the nature of the transaction, the role of the applicant in supporting the evaluation, the nature of the legal advice during tender valuation, the duration of the assignment and the total fees related to legal advice during tender evaluation.	5 points
Response: ( Respondents to provide details of company experience and that of the nominated personnel separately. As per format attached )		
<i>4.3 Legal advice during contract negotiation and executions</i>	The applicant should provide details of 5 assignments in the last 5 years which demonstrate an ability to provide legal advice to a public authority during contract negotiations and execution and legal support to ensuring any conditions precedent( CP) are satisfied prior to contract execution. The assignment should have been undertaken by nominated personnel who should have at least 15 years of experience in Corporate and Contract Laws. The applicant should describe the nature of the transaction, the role of the applicant in supporting that transaction, the nature of the legal advice during contract negotiations and executions, the duration of the assignment and the total fees related to the tax advice	10 points
Response: (Respondents to provide details of company experience and that of the nominated personnel separately. As per format attached)		

### 3.1.3 Eligible Assignments

For the purposes of satisfying the Conditions of Eligibility and for evaluating the Proposals under this RFP, advisory/ consultancy assignments for the following projects shall be deemed as eligible assignments (the “**Eligible Assignments**”):

- a. An infrastructure project undertaken through Public Private Partnership (PPP) or other forms of private participation and having an estimated capital cost of at least Rs. 500 crore (Rupees Five Hundred crore) in India (the “**PPP Projects**”);
- b. A Program Management assignment of more than 6 months for programs / schemes of State / Central government related to infrastructure in India (the “**PMU Projects**”);
- c. Other assignments undertaken by the Applicant for private sector entities if: (a) the advisory/ consultancy services relate to an infrastructure project; (b) the estimated capital cost of the project exceeds Rs. 500 crore (Rupees five hundred crore); and (c) the professional fee for the assignment was at least Rs. 30 lakh (Rupees thirty lakh) (the “**Other Projects**”).

### **3.2 Short-listing of Applicants**

All the Applicants securing the minimum passing Technical marks and ranked as aforesaid, shall be pre-qualified for financial evaluation in the second stage. However, if the number of such pre-qualified Applicants is less than 3(three), the Authority may, in its sole discretion, open the financial proposal of only those technically qualified Applicants or annul the entire bidding process .

### **3.3 Evaluation of Financial Proposal**

- 3.3.1 For financial evaluation, the financial quote, as indicated in the Financial Proposal, will be considered.

### **3.4 Lowest Financial Quote**

- 3.4.1 Proposals shall be finally be ranked according to the Lowest Financial Quote
- 3.4.2 The Selected Applicant shall be the Applicant having the Lowest Financial Quote out of the Technically Qualified Applicants . In case the financial scores of two or more Applicants are tied, then the Applicant with the higher technical score of the two will be the Selected Applicant. The Applicant with the second lowest technical score shall be kept in reserve and may be invited by the Authority in its discretion for negotiations in case the first-ranked Applicant withdraws, or fails to comply with the requirements specified in Clauses 2.24, 2.28 and 2.29, as the case may be.

#### IV. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, the Authority shall reject a Proposal 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 (collectively the “**Prohibited Practices**”) in the Selection Process. In such an event, the Authority shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Performance Security, if available, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, in regard to the RFP, including consideration and evaluation of such Applicant’s Proposal.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Agreement, if an Applicant or Advisor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Applicant or Advisor shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Applicant or Advisor, as the case may be, is found by the Authority to have directly 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, 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 action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process; or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical consultant/ adviser of the Authority in relation to any matter concerning the Project;



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

## **V. PRE-PROPOSAL CONFERENCE**

- 5.1 A Pre-Proposal Conference shall be convened at the designated date, time and place. Applicants, willing to seek any clarifications as well as make suggestions on the RFP Document shall be allowed to participate in the Pre-Proposal Conference. A maximum of two representatives of each Applicant shall be allowed to participate on production of an authority letter from the Applicant.
- 5.2 During the course of Pre-Proposal Conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Selection Process.

## **VI. MISCELLANEOUS**

- 6.1 The Selection 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 Selection Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability or assigning any reasons thereof, reserves the right, at any time, to:
- a. suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection 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. retain any information and/or evidence submitted to the Authority by, on behalf of and/or in relation to any Applicant; and/or
  - d. Independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Proposal, the Applicant agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.4 All documents and other information supplied by the Authority or submitted by an Applicant shall remain or become, as the case may be, the property of the Authority. The Authority will not return any submissions made hereunder. Applicants are required to treat all such documents and information as strictly confidential.
- 6.5 The Authority reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.

## **Schedules**

## **SCHEDULE – 1**

(See Clause 1.1.3)

### **Terms of Reference (TOR)**

#### **I. GENERAL**

The Authority seeks the services of a qualified firm for acting as Advisor for Transaction Advisory (collectively the “**Advisory Services**”) Services for PPP projects in Bihar. The Terms of Reference (the “**TOR**”) and the scope of the Advisory Services for this assignment are specified below.

#### **II. SCOPE OF SERVICES**

##### **1. Scope of Work**

The scope of work for the Transaction Advisor is:

- (i) To conceptualize and identify projects and ensure their conformance according to the objective of the State
- (ii) To contribute the requisite technical, financial, legal and managerial resources to advice and undertake project identification, development and implementation of various projects including preparation of pre-feasibility, feasibility Reports and drafting of Agreements, Advise on Financial Closure of Projects etc.
- (iii) Coordinate with the Authority and various other Departments/ Corporations/ Agencies to identify and develop projects in the infrastructure sectors.
- (iv) Structure projects in such a way to protect the Government rights, serve public purposes and to enable recovery of the investments made in such projects through innovative business and commercial practices such as commercial sale of real estate, levy of user charges/fee/tolls, facilitating financial contribution under the various schemes of government of India and exploitation of development right/concessions etc.
- (v) Proactively market the structured projects to potential investors, both domestic and foreign at appropriate stages.
- (vi) Structure and market the projects in such a manner that various forms of aid, grant, etc., from the Government of India, national and international institutions etc. can flow into the projects.
- (vii) Assist in providing all services including inter-alia, selection of technical consultant, concessionaires, independent engineers etc. and preparation of documents, contract, bank guarantees etc.
- (viii) Assist the Authority and other Public Infrastructure Agencies of Bihar in establishing eligibility, if possible, financial assistance from World Bank/Asian Developments Bank/Other multilateral and bilateral agencies.

##### **2. Pre-Feasibility / Techno – Economic Feasibility Study**

The Transaction Advisors will be required to produce a comprehensive Pre-Feasibility Study of the Projects. This must enable the Authority to determine:

- Full projects cycle costs
- Affordability limits
- Risks and their costs
- Optimal value-for-money methods of delivery.

### **3. Procurement of the project**

The Transaction Advisor has to prepare all the procurement documentation from EoI stage to the signing of the concession agreement.

### **4. Pre-Feasibility / Techno – Economic Feasibility Study Deliverables**

The Transaction Advisor is required to produce, in close liaison with the Authority and other client Department of Government of Bihar, a Comprehensive Pre-Feasibility / Techno – Economic Feasibility Study for the Project which shall clearly demonstrate affordability for complete life-cycle of the project, and the optimal value-for-money solution by which the Government of Bihar can achieve its desired results/outcomes.

### **5. PPP Procurement Deliverables- Transaction Advisor has to deliver following:**

#### **5.1. Preparation ,Administration and Management of the bidding process**

The Transaction Advisor must prepare a complete set of documents, complying with State/Union law, policies and guidelines, and in accordance with the established bidding systems. The documentation must be consistent with the results of the Pre -Feasibility or Feasibility Study as the case may be. The Transaction Advisor shall be responsible for management of the entire bidding process and shall provide administrative support necessary for entire procurement process to be conducted in accordance with applicable law and policy, and to the highest standards of efficiency, quality and integrity.

#### **5.2. Pre-qualification**

The Transaction Advisor must design and administer a pre-qualification process, issuing the Request for Qualification Documentation (“EoI /RFQ/RFP”) with the intention of:

- Ensuring that the Authority/ Client’s exact interest regarding the Project is communicated clearly to prospective market participants;
- Determining the extent and nature of interest in the private sector;
- Request the prospective bidders to indicate their interest based on the information in the RFQ/EoI;
- Pre-qualifying a competitive number of competent consortia in a manner that is equitable, open and transparent and the result of which is that each pre-qualified bidder is capable of providing the facilities and services required by the Authority.

The Transaction Advisor must prepare all necessary EoI /RFQ / RFP documentation, including advertising material, assist the Authority to set up and administer the pre-qualification process by which the Authority can pre-qualify the parties. It shall assist the Authority to evaluate and pre-qualify bidders and provide the Authority with a clearly defined and concise pre-qualification process and compliance Report.

### **5.3. Payment mechanism**

The Transaction Advisor must formulate and develop a rigorous payment mechanism encompassing the elements of risk transfer and expected performance of the service provider. The payment mechanism must be simple, fair and based on the expected service delivery level of standards incorporating a penalty point deduction system-all based on the output specifications and risk matrix established in the Pre – Feasibility / Techno – Economic Feasibility Study.

### **5.4. Bid Evaluation Criteria, Bid Process Design**

The Transaction Advisor must set up bid evaluation system and criteria, design a suitable bid process that will ensure comparable bids, suitable bidder communication (i.e. interaction with prospective bidders but not compromising with the Authority/ Client's position), a Data Room with comprehensive project and project site information, and assist the Authority in such a manner that the process will inspire build market confidence.

### **5.5. Request for Proposals (RFP-cum-RFQ)**

The Transaction Advisor must prepare a RFP-cum-RFQ document in accordance with best industry practice in the region, approved by the Authority and the Client and consistent with the results of the Pre-Feasibility / Techno – Economic Feasibility Study. The RFP-cum-RFQ must concisely set out:

- The output specifications of the project
- Requirements for compliant bids
- A risk profile as established in the Feasibility Study
- The financial mechanism
- The Bid process
- Evaluation criteria
- Bidder communication systems

### **5.6. Draft PPP Agreement**

The Transaction Advisor shall prepare a draft PPP Agreements, based on best industry practices and the risk matrix developed in the Pre-Feasibility Study. Close liaison with the Client's management and the PPP Unit (IDA) are required during drafting. The PPP Agreement must include mechanisms in terms of which the Government of Bihar is able to measure performance and operate a penalty system.

### **5.7. Administration of the bidding process**

The Transaction Advisor is to provide all necessary administrative support to the Authority for the efficient and professional management of the bidding process, including the management of a Data Room, conducting structured engagement between the Secretariat and bidders, and assisting the Secretariat with proper bidder communication and receipt of bids. All bidding documents prepared by the Transaction Advisor will have to obtain Authority's written approval.

### **5.8. Evaluation of Bids, demonstrating value- for-money**

#### **5.8.1. Evaluation of bids**

An Evaluation Committee, assisted by the Transaction Advisor, will evaluate bids in line with the bid evaluation criteria stipulated in RFP-cum-RFQ. A “best and final offer (BAFO)” process may be followed.

#### **5.8.2. The value-for-money Report**

Value-for-money must be demonstrated by comparing the Net Present Value (NPV) of the bids received to the NPV of the revised Risk-Adjusted PSC for the Project, (the PSC with a suitable adjustment for similar risks assumed as the private sector bid/s). The results of the bidding and evaluation of bids must be presented in a single ‘Value-for-money Report’ (with relevant annexure) that demonstrates clearly how value-for-money and risks transfer will be achieved with the preferred bidder within the affordability limits. The Reports must clearly motivate and indicate the preferred and second-ranked bidders and confirm compliance with the applicable legal requirements. The value-for-money Report must be in a suitable format and of a suitable standard for the Authority’s approval.

#### **5.8.3. Contract Negotiations and Contract Management Plans**

The Transaction Advisor shall assist the Authority in final negotiations with the preferred bidder. This will entail the preparation of suitable negotiation terms, strategies encompassing suitable categorization of issues, time-lines for completion, negotiations tactics and processes for reaching agreement. The Transaction Advisor must ensure incorporation of all agreements reached into financial, commercial and legal documentation, and must assist with drafting of all attendant correspondence. The Transaction Advisor must ensure that the all Project Documents are drafted back-to-back with the PPP Agreement and that the risk profile as agreed in the PPP Agreement is respected and followed through in the supporting legal documentation.

The Transaction Advisor shall, in close liaison with the Authority, draft a comprehensive Contract Management Plan for the Secretariat in accordance with the provisions of the PPP Agreement and with due adherence to guidelines issued by the best industry practice in this regard, policies and law.

The final terms of all the Project Documents, each as negotiated with the preferred bidder and its funders, must be submitted, along with the Contract Management Plan for the Project, to the Authority.

#### **5.8.4. PPP agreement signature, close-out Report and case study**

The Transaction Advisor shall assist the Authority with all matters pertaining to the signing of the final PPP Agreement.

The Transaction Advisor shall also compile a comprehensive close-out Report and case study. They shall follow the formats prescribed by the Authority/Client Department, and shall incorporate any additional factors that may be required by the Authority.

The close-out Report will be a confidential document of the Authority.

### **6. The transaction advisor shall submit the deliverables according to the following table:**

<b>No</b>	<b>Name of the documents</b>	<b>Time Limit</b>
1.	Draft pre - feasibility / Techno – Economic Feasibility study	4 weeks to 6 weeks
2.	Draft EoI / RFQ	2weeks
3.	RFP and Draft Agreement	4weeks to 6 weeks

The Transaction Advisor if not submits the required documents within the above-mentioned time-limit; the Authority shall deduct the retainer fee @ 1% per week subject to a maximum of 10% of the retainer fee. In case of late submission, reasonable justification may be given.

## **7. Skills and experience required for a Transaction Advisor**

The Transaction Advisor will comprise a team of 3 members, and all the members of team shall have both the skill and experience necessary to undertake the range of tasks set out in this RFP. Each individual in the team must be personally available to coordinate the work as and when required to do so. The Transaction Advisor will be held accountable, in terms of the Contract, for ensuring project deliverables, and the professional conduct and integrity of the team.

The skills and experience required in the Transaction Advisor team are as follows:

- Financial analysis, with relevant PPP and project finance experience;
- PPP procurement and structuring;
- Relevant experience in the drafting PPP or Corporate Finance or similar agreements.
- Project Finance experience;
- Environment planning management.
- Environment facilities management.
- Providing Legal Advice.
- Contract Documentation for PPP projects.
- Legal Vetting.
- Expertise in building design, construction, engineering, quantity surveying, and property development and planning applicable to the proposed facilities.
- Negotiations skills.
- Contract Management skills.
- Project Management skills.

## **8. Role of the Transaction Advisors to provide support to the Authority**

### **a. Financial Expert**

- Shall act as Team Leader of the Team based at IDA, Patna.
- Handle all communications between the Authority and the Transaction Advisor.
- Initial feasibility and structuring of the PPP including advice on its finance ability;
- Risk analysis and balance-sheet treatment
- Preparation of the initial Value for Money (VfM) appraisal and any Public Sector Comparator (PSC)
- Initial soundings in the PPP market;
- Preparation of bid documentation;
- Financial evaluation of the bids;
- Specialized advice, e.g. on taxation;
- Negotiation with bidders.

### **b. Procurement Expert**

- General background (for a new PPP programme);



- Environment planning management.
- Environment facilities management.
- Expertise in building design, construction, engineering, quantity surveying, and property development and planning applicable to the proposed facilities.
- Drafting the PPP Contract, making use of standard forms, where these exist and the experience of PPP Contracts in other countries;
- Support in drafting output specifications and risk analysis for the PPP contract
- Preparing bid documentation; and
- Negotiation with bidders.
- Contract Management skills.
- Project Management skills

### **III. INPUTS TO BE PROVIDED BY IDA**

1. Authority will provide office space and facilities e.g. communication, printing, stationery, etc. for the Advisory Team.
2. Travel and boarding expenses for any visit required for the purposes of the project e.g. site visit, meetings, road shows, etc. shall be borne by the Transaction Advisor.

### **IV. TERM OF THE AGREEMENT**

The services will be required to be provided for a period of 2 (two) years (“**Term**”) under the Agreement. The Term can be further extended up to another 6 months based on mutual agreement.

### **V. TIME AND PAYMENT SCHEDULE**

In consideration of its services, Advisory Team shall be paid a fixed Monthly Retainership Fee.

#### **Monthly Retainership Fee**

The fixed Monthly Retainership Fee for the first 12 months of the Transaction Advisory Team shall be equal to the Monthly Retainership Fee quoted by the Applicant in its Financial Proposal. Monthly Retainership Fee shall remain firm during the entire duration of the services under the Agreement.

The payment of the Monthly Retainership Fee will be made on the basis of the monthly man-month utilization report to be submitted by the Advisory Team.

#### **Success Fee**

The Success Fee payable to the Advisory Team for success of PPP projects including operation & maintenance on PPP shall be decided by the Authority and conveyed to the Advisor from time to time.

### **VI. Advisory Team**

The Advisor shall form a team (the “**Advisory Team**”) for undertaking this assignment, which will assist the Authority for a period of 2 (two) years. Advisory Team shall consist of experts who have the requisite qualifications and experience. The following Key Personnel whose experience and responsibilities are briefly described herein would be part of the Advisory Team. Other expertise as required for the services to be rendered by the Advisory Team shall be included in the Team either through the Key Personnel specified below or through other professional personnel, as necessary.

Key Personnel	Responsibilities
<b>Procurement Expert</b>	He / She shall be responsible for the preparation of bidding documents for PPP Projects , bid process management of the project on PPP Mode, investment promotion activities. Liaison with various entities of the Govt. of Bihar for speedy clearances. -
<b>Financial Expert</b>	He / She will be responsible for bid documentation of PPP Projects, managing bidding process, for all financial analysis, risk sharing and mitigation measures, modelling, tariff determination, and project structuring of Projects on PPP Mode. Liaison with various entities of the Govt. of Bihar for speedy clearances and regularly update the Authority on the progress achieved. Shall act as the Team Leader of the Advisory Team so that all communication with the Authority is done through him / her.

- **All communications between the Authority and the Transaction Advisor shall be done through the Financial Expert who shall act as the Team Leader.**

**The documents/assignments which will be submitted to the Authority should be properly examined and legally vetted. On behalf of the firm, the Team Leader shall certify that all the documents submitted are legally vetted by the experts of the firm.**

#### **Deployment of Advisory Team**

- 6.1 All the 2members of the Advisory Team shall be deployed Authority’s Office at Patna.
- 6.2 The Advisory Team shall have to adhere to Authority’s policy with respect to holidays, leaves and working hours. Any significant deviation from this will attract penalties in form of deduction of retainer-ship fee.

#### **VII. Performance Security**

The Advisor will furnish within 10 days of the issue of Letter of Acceptance (LOA), an Account Payee Demand Draft / Fixed Deposit Receipt / Unconditional Bank Guarantee (in prescribed format) / in favour of “**Infrastructure Development Authority**” payable/ en-cashable at **Patna**, from any scheduled commercial Bank in India having a branch in Patna for an amount equivalent to 10% ( Ten Percent) of the total Contract Value towards Performance Security valid for a period of one (1) months beyond the stipulated date of completion of

services. The Performance Security will be released after one month of successful completion of the assignment.

## **Appendices**

## APPENDIX-I

(See Clause 2.1.3)

### TECHNICAL PROPOSAL

Form-1

Letter of Proposal

(On Applicant's letter head)

(Date and Reference)

To,

**Managing Director**

Infrastructure Development Authority

(A Government of Bihar Undertaking)

1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna-800004

Ph- +91-612- 2675991/ 2675998 Fax- +91-612-2675889

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

Sub: Appointment of Transaction Advisor for PPP Projects in Bihar

Dear Sir,

With reference to your RFP Document No. dated ....., I/We, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as Advisor (the "**Advisory**") for Appointment of Transaction Advisor for PPP Projects in Bihar ("**Project**"). The proposal is unconditional and unqualified.

1. I/We acknowledge that the Authority will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the Advisory, and we certify that all information provided in the Proposal and in the Appendices is true and correct, nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as the Advisor for the aforesaid Project.
3. I/We shall make available to the Authority any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
4. I/We acknowledge the right of the Authority to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. I/We declare that:

- (a) I/We have examined and have no reservations to the RFP Documents, including any Addendum issued by the Authority;
  - (b) I/We do not have any conflict of interest in accordance with Clause 2.3 of the RFP Document;
  - (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 will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
- 6. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Advisor, without incurring any liability to the Applicants in accordance with Clause 2.8 of the RFP document.
  - 7. I/We certify that in regard to matters other than security and integrity of the country, we or any of our Employees have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Advisory Services or which relates to a grave offence that outrages the moral sense of the community.
  - 8. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
  - 9. 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.
  - 10. 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 [and/ or the Government of India] in connection with the selection of Advisor or in connection with the Selection Process itself in respect of the above mentioned Project.
  - 11. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Advisory Services is not awarded to me/us or our proposal is not opened or rejected.
  - 12. I/We agree to keep this offer valid for 180(one hundred eighty) days from the PDD specified in the RFP.
  - 13. A Power of Attorney in favour of the authorized signatory to sign and submit this Proposal and documents is attached herewith in Form 4 (if applicable).
  - 14. In the event of my/our firm being selected as the Advisory, I/we agree to enter into an Agreement in accordance with the conditions of the RFP. We agree not to seek any changes in the aforesaid and agree to abide by the same.
  - 15. I/We have studied RFP and all other documents carefully. We understand that except to the extent as expressly set forth in the 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 concerning or relating to the Selection Process including the award of Advisory Services.

16. The Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall constitute the Application which shall be binding on us.

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

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

Yours faithfully,

(Signature, name and designation of the authorised signatory)

(Name and seal of the Applicant)

## **APPENDIX-I**

### Form-2

#### **Particulars of the Applicant**

1. Name of Firm:
2. Legal status:
3. Country of incorporation:
4. Registered address:
  
5. Year of Incorporation:
6. Year of commencement of business:
7. Principal place of business:

Name, designation, address and phone numbers of authorized signatory of the Applicant:

1. Name:
2. Designation: Company:
3. Address:
4. Phone No.:
5. Fax No. :
6. E-mail address:

(Signature, name and designation of the authorized signatory)

For and on behalf of .....

## APPENDIX-I

### Form-3

#### **Statement of Legal Capacity**

*(To be forwarded on the letter head of the Applicant)*

Ref:

Date:

To,

**Managing Director**

Infrastructure Development Authority

(A Government of Bihar Undertaking)

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

Ph- +91-612- 2675991/ 2675998 Fax- +91-612-2675889

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

Sub: Appointment of Transaction Advisor for PPP Projects in Bihar

Dear Sir,

I/We hereby confirm that we, the Applicant, satisfy the terms and conditions laid down in the RFP document.

I/We have agreed that ..... (insert individual's name) will act as our Authorized Representative on our behalf and has been duly authorized to submit our Proposal. Further, the authorized signatory is vested with requisite powers to furnish such proposal and all other documents, information or communication and authenticate the same.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of .....



## APPENDIX-I

### Form-4

#### **Power of Attorney**

Know all men by these presents, We, .....  
(name of Firm and address of the registered office) do hereby constitute, nominate, appoint and authorize Mr/Ms..... son/daughter/wife and presently residing at ....., who is presently employed with/ retained by us and holding the position of ..... as our true and lawful attorney (hereinafter referred to as the "Authorized Representative") 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 Proposal for and selection, as the Advisor, to work as Transaction Advisor for Infrastructure Development Authority (the "Authority"), for Appointment of Transaction Advisor for PPP Projects in Bihar, including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with the Authority.

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

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

For .....

(Signature, name, designation and address)

Witnesses:

1

2

Notarized

Accepted

.....

(Signature, name, designation and address of the Attorney)

**Notes:**

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

*Wherever required, the Applicant should submit for verification the extract of the charter documents and other 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 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-I**Form-5**Financial Capacity of the Applicant***(Refer Clause 2.2.2 (B))*

No.	Financial Year	Annual Revenue <sup>2</sup>
1.		
2.		
3.		

**Certificate from the Statutory Auditor<sup>3</sup>**

This is to certify that ..... (name of the Applicant) has received the payments shown above against the respective years on account of professional fees.

Date:

(Signature, name and designation of the authorised signatory)

Name and seal of the audit firm:

**Note:**

1. Please do not attach any printed Annual Financial Statement.

<sup>2</sup>In the event that the Applicant does not wish to disclose its Annual Revenue, it may state that it has received more than the amount specified in the aforesaid certificate.

<sup>3</sup>In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

## APPENDIX-I

### Form-6

#### Particulars of Key Personnel

No	Designation	Name	Educational Qualification	Length of Professional Service	Present Firm		No of Eligible Assignments <sup>#</sup>
					Name of Firm	Employed Since	
1.							
2.							
3.							
4.							

<sup>#</sup>Refer Form 8 of Appendix I Abstract of Eligible Assignments of the Key Personnel

**APPENDIX-I**Form-7**Abstract of Eligible Assignments of the Applicant<sup>#</sup>***(Refer Clause 3.1)*

No	Name of Project	Name of Client	Estimated Capital Cost of Project (in Rs. Crore)	Professional Fees <sup>##</sup> received by the Applicant (in Rs. Crore) <sup>\$</sup>
(1)*	(2)	(3)	(4)	(5)
1.				
2.				
3.				
4.				
5.				

<sup>#</sup> The Applicant should provide details of only those assignments that have been undertaken by it under its own name.

<sup>##</sup> Exchange rate should be taken as Rs. 60 per US \$ for conversion to Rupees.

<sup>\$</sup> In the event that the Applicant does not wish to disclose the actual fee received for any particular assignment, it may state that it has received more than the amount specified for eligibility under this RFP. For example, it may state: "Above Rs. 5 (five) lakh" in respect of a particular project.

<sup>\*</sup> The names and chronology of Eligible Assignments included here should conform to the project wise details submitted in Form-9 of Appendix-I.

## APPENDIX-I

### Form - 8

#### Abstract of Eligible Assignments of the Key Personnel<sup>s</sup>

(Refer Clause 3.1)

Name of Key Personnel:

Designation:

No	Name of Project	Name of Client	Estimated capital cost of project (in Rs. Crore)	Name of the firm for which Key Personnel worked	Designation of the Key Personnel on the assignment	Date of completion of the assignment
1.						
2.						
3.						
4.						
5.						

@ Use separate Form for each Key Personnel.

**APPENDIX-I****Form-9****Eligible Assignments of Applicant***(Refer Clause 3.1.4)*

Name of Applicant:	
Name of the Project:	
Project particulars:	
Description of services performed by the Applicant firm:	
Name of client and Address:	
Name, telephone no. and fax no. of client's representative:	
Estimated capital cost of Project (in Rs crore):	
Payment received by the Applicant as professional fees (in Rs. crore) <sup>£</sup> :	
Start date and finish date of the services (month/ year):	
Brief description of the Project:	

**Notes:**

1. The form is provided for indicative purposes. Applicants are free to use a different format providing the information required above.
2. Use separate sheet for each Eligible Assignment.
3. Exchange rate should be taken as Rs. 60 per US \$ for converting to Rupees.

<sup>£</sup> In the event that the Applicant does not wish to disclose the payment received by it as professional fees for any particular assignment, it may state that it has received more than the amount specified in this statement.

## APPENDIX-I

### Form-10

#### Curriculum Vitae (CV) of Professional Personnel

1. Proposed Position:
2. Name of Personnel:
3. Date of Birth:
4. Nationality:
5. Educational Qualifications:
6. Employment Record:  
(Starting with present position, list in reverse order every employment held.)
7. List of projects on which the Personnel has worked  

Name of Project	Description of responsibilities
-----------------	---------------------------------

Certification:

Place.....

(Signature and name of the Key Personnel)

(Signature and name of the authorised signatory of the Applicant)

#### Notes:

1. The form is provided for indicative purposes. Applicants are free to use a different format providing the information required above.
2. Use separate form for each Key Personnel .
3. The names and chronology of assignments included here should conform to the project-wise details submitted in Form-8 of Appendix-I.



## **APPENDIX-II**

### **FINANCIAL PROPOSAL**

#### **Form-1**

#### **Covering Letter**

(On Applicant's letter head)

(Date and Reference)

To,

**Managing Director**

Infrastructure Development Authority

(A Government of Bihar Undertaking)

1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna-800004

Ph- +91-612- 2675991/ 2675998 Fax- +91-612-2675889

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

Sub: Appointment of Transaction Advisor for PPP Projects in Bihar

Dear Sir,

I/We, .....(Applicant's name) herewith enclose the Financial Proposal (Monthly Retainership Fee) for selection of my/our firm as Advisor to IDA.

I/We agree that this offer shall remain valid for a period of 180(one hundred and eighty) days from the Proposal Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

**Note:** The Financial Proposal is to be submitted strictly as per forms given in the RFP.

## APPENDIX-II

### FINANCIAL PROPOSAL

(See Clause 2.1.3)

Form-2

### Financial Proposal

No	Description	Amount (Rs.)
A.	Monthly Retainership Fee	
B.	Service Tax	
C.	Total (including taxes) (A+B) (in Rs.) In Indian Rupees in figures in words	

#### Notes:

1. The costs of telephone/fax, photocopying, printing, couriers, postage, collections and deliveries, stationery, etc. shall be borne by the Authority.
2. All payments shall be made in Indian Rupees and shall be subject to applicable Indian withholding taxes if any.

## APPENDIX-II

### FINANCIAL PROPOSAL

Form-3

#### Estimate of Personnel Costs

No.	Position	Name	Man day Rate (Rs.)	Total Man Days	Amount (Rs.)
Remuneration for Key Personnel					
1	Procurement Expert				
2	Financial Expert				
Total					