
REQUEST FOR PROPOSAL
for
DEVELOPMENT OF SEWAGE TREATMENT PLANTS
ON Hybrid Annuity PPP BASIS
AT Kanpur, State of Uttar Pradesh

FEBRUARY 2018

TABLE OF CONTENTS

TABLE OF CONTENTS.....2
SECTION I: INTRODUCTION 16
SECTION II: ELIGIBILITY AND QUALIFICATION CRITERIA27
SECTION III: INSTRUCTION TO BIDDERS37

DISCLAIMER

The information contained in this RFP or any other information provided to the Bidders, whether verbally or in writing or in any other form, by or on behalf of the *Jal Nigam* or NMCG and its employees or advisors is provided to the Bidders on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and further it is neither an offer nor an invitation by the *Jal Nigam* to the Bidders or any other Person. The purpose of this RFP is to provide the Bidders with information that may be useful to them in the preparation and submission of their Bids.

This RFP includes statements which reflect various assumptions and assessments arrived at by the *Jal Nigam*, NMCG and their advisors for the Project. Such assumptions, assessments and statements do not purport to contain all the information that the Bidders may require. The information contained in this RFP may not be appropriate for all Persons and it is not possible for the *Jal Nigam*, NMCG and their employees or advisors to consider the investment objectives, financial situation and particular needs of each Person who reads this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each Bidder should therefore conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP.

The information provided in this RFP to the Bidders is on a wide range of matters, some of which may depend upon interpretation of the 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 the law. The *Jal Nigam*, NMCG and their employees and advisors accept no responsibility for the accuracy or otherwise for any interpretation or opinion on laws expressed in this RFP.

The issue of this RFP does not imply that the *Jal Nigam* is bound to qualify any Bidder or to award the Project to any Bidder. The *Jal Nigam* reserves the right to reject all or any of the Bids without assigning any reasons whatsoever.

GLOSSARY

In this RFP, unless the context otherwise requires, capitalised terms shall have the meaning given to them in the table below. Capitalised terms not defined below shall have the meaning given to them in the Concession Agreement.

Addendum or Addenda	means an addendum or addenda to this RFP.
Additional Performance Security	means a performance security that must be submitted by the Selected Bidder to the <i>Jal Nigam</i> before the issue of LOA to secure the obligations of the Concessionaire/Bidder in relation to the <i>clause 16.5 of the RFP document</i> .
Annexure	means an annexure to this RFP.
Appointed Date	means the date of signing of the Concession Agreement.
Associate	means, in relation to a Bidder or a Member of a Consortium, a Person who Controls, or is Controlled by/ with such Bidder or Member of a Consortium.
Jal Nigam	Refers to Executing Agency i.e. 'Uttar Pradesh Jal Nigam'
Average Guaranteed Energy Consumption	means a particular facility's Average Guaranteed Energy Consumption
Bank	means [the International Bank for Reconstruction and Development (IBRD)/International Development Association (IDA)].
Bid	means a bid consisting of the Qualification Proposal and the Financial Proposal submitted by a Bidder for qualification and award of the Project, and Bids mean collectively, all the bids for the Project.
Bid Due Date	means the last date for submission of the Bids specified in the Bid Schedule, as may be extended from time to time in accordance with Clause 19.2.
Bid Price	means the Bid Price of any of the Locations as calculated in Bid price sheet

Bid Price Sheet	means the sheet provided on the e-Procurement Portal, in which the Bidders shall quote, separately for each facility, the: (a) Bid Project Cost (including all Taxes and Goods and Services Tax); (b) O&M Charges for the first month after COD for the STP and the Associated Infrastructure (including all Taxes and Goods and Services Tax); (c) Guaranteed Energy Consumption for the O&M Period for the STP and for the Associated Infrastructure; and (d) Land Requirement, as required, based on which the Bid Price will be calculated.
Bid Process	means the single-stage bidding process, with two sub-stages, undertaken by the <i>Jal Nigam</i> to award the Project to the Selected Bidder on the terms and conditions set out in this RFP. The Bid Process has commenced with the issuance of this RFP and will end on the date that the Concession Agreement is executed with the Special Purpose Vehicle incorporated by the Selected Bidder for the Project.
Bid Project Cost	means any location's Bid Project Cost, as the context may require.
Bid Schedule	means the schedule of the Bid Process set out in Clause 2.14, as may be amended from time to time.
Bid Security	means a bid security that must be submitted by a Bidder along with its Bid in accordance with Clause 15.
Bidder	means an interested Company or a Consortium of Companies which submits a Bid to the <i>Jal Nigam</i> in accordance with this RFP and includes each Member when the Bidder is a Consortium, and Bidders shall be construed accordingly.
Bingawan Handover Date	Means the date, as assigned by the <i>Jal Nigam</i> , from which the Concessionaire would be required to start operations and maintenance of Bingawan Facilities
BOD	means biochemical oxygen demand.
Capex Annuity	means the <i>any location's</i> Capex Annuity, as the context may require.
Capital	means, in respect of the SPV that is incorporated by the Selected Bidder to act as the Concessionaire, the total capital of such SPV that will be raised by the issuance of equity shares, preference shares and convertible

	instruments.
Clause	means a clause of this RFP.
COD Certificate	means the certificate issued or deemed to be issued by the <i>Jal Nigam</i> upon successful completion of the Trial Operations of the <i>Unnao</i> Facilities and/or the <i>Shuklaganj</i> Facilities and/or <i>Pankha</i> Facilities and/or <i>Jajmau</i> Facilities, in accordance with the Concession Agreement.
Commercial Operations Date or COD	For a facility which is to be newly constructed or renovated, means the date on which the COD Certificate is issued or deemed to be issued to the Concessionaire in accordance with the Concession Agreement.
Companies Act	means the (Indian) Companies Act, 1956 or the (Indian) Companies Act, 2013, as amended from time to time, as the context may require.
Company	means a company incorporated under the Companies Act or a foreign company incorporated under the relevant statute of its jurisdiction.
Concession Agreement	means the tripartite concession agreement to be executed between NMCG, the <i>Jal Nigam</i> and the Concessionaire. A draft of the Concession Agreement is attached to this RFP.
Concessionaire	means the Special Purpose Vehicle incorporated by the Selected Bidder to implement the Project.
Conflict of Interest	has the meaning ascribed to it in Clause 3.3.
Consortium	means any combination of Companies that have formed a consortium for the purpose of submitting a Bid and to implement the Project if such consortium is declared the Selected Bidder.
Construction Completion Date	means, with respect to any Facility, the date on which the Construction Completion Certificate is issued or deemed to be issued to the Concessionaire and with respect to the <i>that facility</i> , in accordance with the Concession Agreement and the reference to Construction Completion Date shall be construed accordingly.
Construction Period	means the period from the Effective Date until the Construction Completion Date.

Control	<p>means, with respect to a Person:</p> <p>(a) the ownership, directly or indirectly, of more than 50% of the voting shares of such Person; or</p> <p>(b) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise,</p> <p>and the term Controlled and Controlling shall be construed accordingly.</p>
Effective Date	<p>means the date on which all the Conditions Precedent have been satisfied by the <i>Jal Nigam</i>, NMCG, and the Concessionaire in accordance with the Concession Agreement.</p>
Eligibility Criteria	<p>means the eligibility criteria set out in Clause 3 that a Bidder is required to satisfy (in addition to the Qualification Criteria), to be qualified for evaluation of the Financial Proposal.</p>
e-Procurement Portal	<p>means the e-procurement portal of the GoUP available at the following url: https://www.etenders.up.nic.in</p>
ESHS	<p>means environment, social, health and safety.</p>
Expiry Date	<p>Means the date which is 15 years from either Unnao COD, Shuklaganj COD or Pankha COD, whichever is later.</p>
ESHS Performance Security	<p>means any location's ESHS Performance Security, as the context may require, and the term 'ESHS Performance Securities' shall mean collectively, the ESHS Performance Security of all locations combined.</p>
Facilities	<p>means the Facilities at any location or under any schedule, as the context may require, and the term Facility shall be construed accordingly.</p>
Financial Capacity	<p>means the financial capacity and strength of the Bidder, as determined in accordance with Clause 4.2.</p>
Financial Proposal	<p>means the financial proposal, comprising the Bid Price Sheet, to be submitted by a Bidder in accordance with this RFP.</p>
Financial Year	<p>means each 12-month period commencing on 1 April of one calendar year and ending on 31 March of the next</p>

	calendar year; and if different for a Bidder, then the 12-month period for which such Bidder files its statutory audited accounts in the normal course of its business.
Ganga 2016 Order	has the meaning ascribed to it in Clause 1.2.
GoI	means the Government of India.
GoUP	means the Government of Uttar Pradesh
Guaranteed Energy Consumption	means the Guaranteed Energy Consumption of a particular facility, as the context may require.
Guidelines	has the meaning ascribed to it in Clause 1.8.
Information Memorandum	means the information memorandum for the Project set out in Schedule 1.
Average Guaranteed Energy Consumption	has the meaning ascribed to it in Clause 2.5.
Bid Price	means the price calculated for each Bidder, based on the values provided by such Bidder in the Bid Price Sheet, as a part of its Financial Proposal, to design, finance, develop, construct, operate, and maintain the Facilities.
Bid Project Cost of any location	means the cost of construction of the Facilities of that location, any power plant proposed to be set up by the Bidder at those locations, as quoted by a Bidder in its Bid, which must include the interest during construction, Taxes (other than service tax) and all other pre-operative expenses in relation to the Facilities and the power plant, if any.
Total Bid Project Cost	Sum of bid project costs of all locations
Capex Annuity	means the amount to be specified in the Concession Agreement, which is payable to the Concessionaire per quarter during the O&M Period, towards reimbursement of 60% of the Bid Project Cost, as adjusted to account for inflation in accordance with the Concession Agreement.
Construction Completion Certificate	means the certificate issued to the Concessionaire to certify completion of construction of the <i>particular</i> Facility in accordance with the Concession Agreement.
ESHS Performance Security	means a demand bank guarantee that must be submitted by the Selected Bidder or the Concessionaire to the <i>Jal</i>

	<i>Nigam</i> , in accordance with Clause 16A, to secure the obligations of the Concessionaire to comply with the ESHS requirements in relation to the Facilities of a particular location, as set out in the Concession Agreement.
Facilities	means collectively, the STPs, the online monitoring system, the on-site testing laboratory facilities, the main pumping station, the intermediary pumping stations (if any), and common sewage pumping station (if any) and such other facilities associated with the STPs of that location, required to be set up/renovated/maintained by the Concessionaire, as described in greater detail in the Scope of Work and Technical Specifications.
Guaranteed Energy Consumption	means the maximum number of units of power quoted by a Bidder in its Financial Proposal, which it expects the Concessionaire to consume during the O&M Period (other than any units expected to be generated and consumed from any power plant proposed to be set up by the Concessionaire), to operate and maintain the Facilities (at varying volumes and BOD of sewage).
Jajmau Existing Assets	Refers to all assets of Jajmau Location except STP 1(130 MLD) which needs renovation
Jajmau STP 1	means the existing STP of 130 MLD at the Jajmau Site
Jajmau STP 2	means the under construction STP of 43 MLD at Jajmau Site
KPIs	means, in relation to each Facility, the key performance indicators (i.e., the Guaranteed Availability, the Guaranteed Interim Availability and the Discharge Standards, as the case may be) set out in Schedule 10 of the Agreement, which such Facility must achieve during the relevant O&M Period
Land Price	means the price of the land required by the Bidder to develop the Facilities, determined by multiplying the Land Requirement quoted by such Bidder and the Land Rate. *applicable for Pankha, Unnao and Shuklaganj
Land Rate	means the cost per Acre of the land forming the Site, which, for the purpose of this RFP shall be for Unnao - INR 540/sqm (Five hundred and forty Rupees per square meter). Shuklaganj – INR 550/sqm (Five hundred and fifty Rupees per square meter). Pankha – INR 12,000/sqm (Twelve thousand Rupees per square meter).
Land Requirement	means the area required by the Selected Bidder at the Site to construct, operate and maintain the STP. Facilities .

[Location] COD	<p>means the date on which the COD Certificate is issued or deemed to be issued to the Concessionaire, after successful Trial Operations and testing of the</p> <ul style="list-style-type: none"> i. Jajmau STP 1 for Jajmau, ii. Pankha STP for Pankha, iii. Unnao STP for Unnao, and iv. Shuklaganj STP for Shuklaganj <p>in accordance with Clause 7.15(a)</p>
[Location] O&M Charges	<p>means the amount required by a Bidder per quarter (including all Taxes other than service tax) to operate and maintain the Facilities of a particular location, excluding the Power Charges, during the O&M Period.</p> <p>The O&M Charges for the first quarter after the COD will be determined on the basis of the O&M Charges quoted by the Bidder for the first month from the COD, in its Financial Proposal, which amount shall be adjusted to account for inflation, in accordance with the Concession Agreement.</p>
[Location] Payment Milestones	<p>means the 8 milestones for Pankha, Unnao and/or Shuklaganj or <u>4</u> milestones for Jajmau Facilities, as applicable, listed in the Concession Agreement for release of 40% of the Bid Project Cost of each location (as adjusted to account for inflation in accordance with the Concession Agreement) to the Concessionaire.</p>
[Location] Performance Security	<p>means a performance security for any location that must be submitted by the Selected Bidder or the Concessionaire to the <i>Jal Nigam</i> on or before execution of the Concession Agreement to secure the obligations of the Concessionaire in relation to the Facilities during the Construction Period in accordance with Clause 16.</p> <p>*applicable for Jajmau, Pankha, Unnao and Shuklaganj Facilities</p>
[Location] Power Charges	<p>means the cost of the power consumed by the Concessionaire to operate and maintain the Facilities of a particular location during the O&M Period, which will be calculated in accordance with the Concession Agreement.</p> <p>For the purpose of evaluation of Bids, each facility's Power Charges means the cost of power (for operation and maintenance of that facility) for each Bidder determined in accordance with the formula set out in the Bid Price Sheet.</p>

Site	means the location for the Facilities in Kanpur as set out in more detail in the Information Memorandum provided in Schedule 1.
STP	means the sewage treatment plant to be set up/renovated/maintained at the locations, as part of the Project.
Supporting Infrastructure	means the supporting infrastructure facilities required for the operation of each location's Facilities, which will be provided, operated and maintained by the <i>Jal Nigam</i> during the term of the Concession Agreement.
Joint Bidding Agreement	means a binding joint bidding agreement to be entered into by the Members of a Consortium that submits a Bid pursuant to this RFP, in the format set out at Annexure 1K.
Lead Member	means the Member nominated by the Members of the Selected Bidder to act as the lead member.
LOA	means the letter of award that will be issued by the <i>Jal Nigam</i> to the Selected Bidder in accordance with Clause 30.
Location	Means Unnao Location or Shuklaganj Location or Pankha Location or Jajmau Location or Bingawan Location or Sajari Location, as the context may require
Member	means a member of a Consortium.
MLD	means million litres per day.
MoWR	means the Ministry of Water Resources, River Development and Ganga Rejuvenation.
Net Worth	means the net worth of a Bidder, which shall be determined as follows, in case of a: <p>(a) Company, means</p> <p>(i) subscribed and paid up equity share capital; and</p> <p>(ii) reserves</p> <p>LESS</p> <p>(iii) revaluation reserves;</p>

	<p>(iv) miscellaneous expenditure not written off;</p> <p>(v) reserves not available for distribution to equity shareholders; and</p> <p>(vi) aggregate value of accumulated losses.</p> <p>(b) <i>trust or society</i>, means the sum of available corpus and reserves;</p> <p>(c) <i>partnership firm</i>, means the sum of the partners' capital account and undistributed profits;</p> <p>(d) <i>limited liability partnership</i>, means the sum of partners' capital account and undistributed profits as per the 'Statement of Account' prepared as per Limited Liability Partnership Rules, 2009;</p> <p>(e) <i>sole proprietorship</i>, means the value of all assets minus liabilities of the proprietorship but does not include the personal assets or liabilities of the sole proprietor; and</p> <p>(f) <i>individual</i>, means the sum of the value of all unencumbered assets owned by the individual minus the sum of the value of all liabilities of the individual.</p>
NMCG	means the National Mission for Clean Ganga, a statutory body constituted under the Environment (Protection) Act, 1986.
O&M	means operation and maintenance.
O&M Period	<p>a. For Jajmau, Pankha, Unnao and Shuklaganj means the period from the Location COD till Expiry Date</p> <p>b. For Bingawan means the period from the Bingawan Handover Date till Expiry Date</p> <p>c. For Sajari means the period from the Effective Date till Expiry Date</p> <p>during which the Concessionaire is required to operate and maintain the Facilities for each Location.</p>
Person	means any [individual,] company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organization or any other legal entity.

Power Unit Rate	means the cost per unit of power drawn from the grid (through the relevant distribution licensee for the Site), which for the purpose of evaluation of the Financial Proposals is INR [<i>enter power unit rate in figure and words</i>] per kWh. For the purpose of reimbursement of Power Charges to the Concessionaire during the O&M Period, the Concessionaire will be paid on the basis of the then prevailing cost per unit of power charged by the relevant distribution licensee and/or the cost of fuel for any power consumed from any diesel generator back-up sets, installed by the Concessionaire.
PPP	means public private partnership.
Pre-Bid Meeting	means the meeting to be held in accordance with Clause 8.2.
Preferred Bidder	means the Bidder which: (a) meets the Qualification Criteria and the Eligibility Criteria; and (b) quotes the lowest Bid Price.
Project	means the design, development, finance, construction, renovation, operation and maintenance of the Facilities at the Site in accordance with the Concession Agreement.
Project Engineer	means the engineering firm appointed by NMCG for the Project, in accordance with the Concession Agreement.
Qualification Criteria	means the qualification criteria set out in Clause 4 that a Bidder is required to satisfy (in addition to the Eligibility Criteria), to be qualified for evaluation of the Financial Proposal.
Qualification Proposal	means the proposal to be submitted by each Bidder to demonstrate that it meets the Eligibility Criteria and the Qualification Criteria as set out in Clause 3 and Clause 4.
RFP	means this request for proposal dated [mentioned date] (as amended) along with its Schedules and Annexures and includes any Addenda, if issued.
Rupee or INR	means Indian Rupees, the lawful currency of India.
Scheduled Bank	means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934.
Scheduled Construction	means the date which is 24 or 12 months from the Effective

Completion Date	Date, as applicable
Scope of Work	means the scope of work for construction/renovation and O&M of the Facilities as set out in the Concession Agreement.
Second Preferred Bidder	means the Bidder who: (a) meets the Qualification Criteria and the Eligibility Criteria; and (b) quotes the second lowest Bid Price.
Section	means a section of this RFP.
Selected Bidder	means the eligible Bidder selected by the <i>Jal Nigam</i> for award of the Project.
Site	means collectively, the Unnao Site, Shuklaganj Site, Pankha Site, Jajmau Site, Bingawan Site or Sajari Site
SPV or Special Purpose Vehicle	means a company incorporated under the Companies Act by the Selected Bidder to carry out the obligations of the Concessionaire under the Concession Agreement.
STP	means a sewage treatment plant.
Supporting Infrastructure	means collectively, Supporting Infrastructure for all the locations
Taxes	<u>means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) Goods and Service Tax, income tax , corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Concessionaire or the Subcontractors and the term Tax shall be construed accordingly.</u> means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, sales tax, value added tax, service tax, goods and services tax, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Concessionaire.
Technical Capacity	means the technical capacity and experience of a Bidder, as determined in accordance with Clause 4.1.

Technical Specifications	means the technical specifications for design, construction, operation and maintenance of the Facilities, which the Concessionaire and/or its subcontractors must comply with, as set out in the Concession Agreement.
Trial Operations	means the operation of the Facilities on a trial basis for 3 months post the Construction Completion Date in accordance with the Concession Agreement.

1. BACKGROUND

- 1.1 The GoI, recognizing that long-term rejuvenation of the river Ganga will have significant social and economic benefits on the lives of the 500 million people living along its basin, has identified cleaning of the river Ganga as one of its priorities. For this purpose, in May 2015, the GoI approved the flagship Namami Gange programme for cleaning, rejuvenation, and protection of the river Ganga. In January 2016, the GoI approved a hybrid annuity model to implement STP projects under the Namami Gange programme on a PPP basis.
- 1.2 Subsequently, the MoWR issued the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016 (**Ganga 2016 Order**) to constitute various authorities to assist the GoI in achieving its aim of effective abatement of pollution in the river Ganga. The Ganga 2016 Order applies to all states in the catchment of the river Ganga basin.. The Ganga 2016 Order revised the legal status of NMCG (which was initially constituted as a registered society under the Societies Registration Act, 1860) to an authority constituted under the Environment (Protection) Act, 1986 and designated NMCG as the nodal agency for the implementation of the Ganga 2016 Order.
- 1.3 The Uttar Pradesh Jal Nigam (“**Jal Nigam**”) is a statutory body constituted under the Uttar Pradesh Water Supply and Sewerage Act, 1975, and has the power to develop, maintain and regulate water supply and sewerage works in Uttar Pradesh. The *Jal Nigam* in association with the NMCG, has decided to undertake the (i) the development, operations and maintenance of one STP at Unnao with a proposed capacity of 15 MLD along with Unnao Associated Infrastructure (ii) the development, operations and maintenance of one STP with a proposed capacity of 5 MLD at Shuklaganj along with Shuklaganj Associated Infrastructure (iii) the development, operations and maintenance of one STP with a proposed capacity of 30 MLD at Pankha along with Pankha Associated Infrastructure (iv) Rehabilitation of one existing Jajmau STP with a capacity of 130 MLD and operations and maintenance of Jajmau 130 MLD and 43 MLD STP along with Jajmau Associated Infrastructure (v) Operations and maintenance of one STP with a proposed capacity of 210 MLD at Bingawan along with Bingawan Associated Infrastructure and (vi) Operations and maintenance of one STP with a proposed capacity of 42 MLD at Sajari along with Sajari Associated Infrastructure in Kanpur on a PPP basis, through a hybrid annuity model. While the *Jal Nigam* will be the principal executing agency and bidding authority for the Project, NMCG will be responsible for making payments to the Concessionaire.
- 1.4 The objectives that NMCG and the *Jal Nigam* wish to achieve through the Project are to:

-
- (a) intercept raw sewage flowing into the river Ganga and divert the raw sewage to the STPs;
 - (b) treatment of the raw sewage at the STPs;
 - (c) implement viable technologies and international best practices for development, operation and maintenance of the STPs and other Facilities; and
 - (d) demonstrate large scale private sector participation and mobilisation of private sector investment to further the national aim of rejuvenation of the river Ganga.

1.5 The main features of the Project are set out below:

- (a) The *Jal Nigam* will provide such part of the Site as required by the Concessionaire to construct/rehabilitate Unnao Facilities, Shuklaganj Facilities, Pankha Facilities (based on the Land Requirement quoted by the Selected Bidder in the Bid Price Sheet) and Jajmau Facilities, Bingawan Facilities and Sajari Facilities, and implement the Project, free of all encumbrances and encroachments, and along with all necessary rights of way.
- (b) The Concessionaire will be responsible for
 - (i) Designing, financing, rehabilitating and completing the Jajmau Facilities by the Scheduled Jajmau Construction Completion Date in accordance with the Concession Agreement
 - (ii) Operating and maintaining Jajmau Facilities from Effective Date until the Expiry Date, in accordance with the Concession Agreement;
 - (iii) Designing, financing, constructing and completing Unnao Facilities, Shuklaganj Facilities and Pankha Facilities by the Scheduled Unnao Construction Completion Date, Scheduled Shuklaganj Construction Completion Date and Scheduled Pankha Construction Completion Date respectively in accordance with the Concession Agreement;
 - (iv) Operating and maintaining Unnao Facilities, Shuklaganj Facilities and Pankha Facilities from the Unnao COD, Shuklaganj COD and Pankha COD respectively until the Expiry Date, in accordance with the Concession Agreement; and
 - (v) Operating and maintaining Bingawan Facilities and Sajari Facilities from the Bingawan Handover Date and Effective Date respectively until the Expiry Date, in accordance with the Concession Agreement.
- (c) The *Jal Nigam* will handover such part of the site as required by the Concessionaire to construct Unnao Facilities, Shuklaganj Facilities, Pankha Facilities (based on Unnao Land Requirement, Shuklaganj Land Requirement and Pankha Land Requirement as quoted by the selected bidder) and to operate and maintain Sajari Facilities, Jajmau Facilities, Bingawan Facilities, free of all encumbrances and encroachments, and along with all necessary rights of way.
- (d) The Concessionaire will be required to construct/renovate (wherever mentioned in the scope of work), operate and maintain facilities and fulfil the KPIs, in accordance with the Concession Agreement.

-
- (e) The *Jal Nigam* will provide, operate and maintain the Supporting Infrastructure, to enable the Concessionaire to operate Unnao Facilities, Shuklaganj Facilities, Pankha Facilities, Jajmau Facilities, Bingawan Facilities, and Sajari Facilities in *Kanpur* in accordance with the Concession Agreement.
- (f) In order to meet its power consumption requirements, the Concessionaire may construct and operate a biogas power plant at any or all of the Facilities and utilise the bio gas generated from the treatment of raw sewage at those Facilities to produce clean energy. The Concessionaire may also set up a rooftop solar project at any or all of the Facilities to meet its power consumption requirements.
- (g) The Concessionaire will be required to operate and maintain the (i) Unnao Facilities from the Unnao COD and until the Expiry Date, (ii) Shuklaganj Facilities from the Shuklaganj COD and until the Expiry Date (iii) Pankha Facilities from the Pankha COD and until the Expiry Date in accordance with the Concession Agreement, such that the Facilities meet the Guaranteed Interim Availability and/or key performance indicators specified in the Concession Agreement.
- (h) On and from the Effective Date and until the Expiry Date, the Concessionaire will be required to operate and maintain the Jajmau Facilities, in accordance with the Concession Agreement, such that the Facilities meet the key performance indicators specified in the Concession Agreement. It is clarified that the Concessionaire shall be entitled to receive the O&M Charges for O&M of Jajmau Facilities only from the Jajmau Facilities COD. O&M charges incurred in operations and maintenance of Existing Jajmau Facilities from the Effective Date to Jajmau Facilities COD will be considered and quoted by the concessionaire as a part of the Jajmau Bid Project Cost. It is further clarified that the concessionaire shall not be entitled to receive any O&M charges for the operation and maintenance of the Existing Jajmau STP during the Jajmau Construction Period.
- (i) The Concessionaire will be required to operate and maintain the (i) Bingawan Facilities on and from the Bingawan Handover Date and until the Expiry Date and (ii) Sajari Facilities On and from the Effective Date and until the Expiry Date in accordance with the Concession Agreement, such that the Facilities meet the key performance indicators specified in the Concession Agreement.
- (j) Upon the expiry of the O&M Period, the Facilities and any power plant set up by the Concessionaire, will be transferred to the *Jal Nigam* after the rectification of any defects or deficiencies, in accordance with the Concession Agreement.
- (k) The construction, renovation and O&M of all the locations and their facilities must be in accordance with Applicable Laws, Applicable Permits and other requirements specified in the Concession Agreement.

-
- (l) Prior to the Effective Date, NMCG will appoint a Project Engineer to assist the *Jal Nigam* in supervising the construction, renovation, operation and maintenance of the all the Facilities. The Project Engineer shall support the *Jal Nigam* in monitoring compliance with the key performance indicators to be specified in the Concession Agreement. NMCG will solely bear the costs of the Project Engineer.
- (m) The Concessionaire shall operate all the Facilities at its risk for the term of the Concession Agreement.
- (n) 40% of the relevant Bid Project Cost will be reimbursed to the Concessionaire during (i) the Unnao Construction Period for the Unnao Facilities, (ii) Pankha Construction Period for the Pankha Facilities, (iii) Jajmau Construction Period for the Jajmau Facilities, ~~and~~ (iv) the Shuklaganj Construction Period for the Shuklaganj Facilities, (iv) the Bingawan Construction Period for the Bingawan Facilities, and (iv) the Sajari Construction Period for the Sajari Facilities, which will be linked to completion and certification of the works corresponding to specified Payment Milestones (refer clause 9.3 of Concession Agreement). From the relevant COD of each Facility, the Capex Annuity (along with interest) and the O&M Charges will be paid on a quarterly basis to the Concessionaire. Additionally, the Concessionaire will also be reimbursed on a quarterly basis for: (i) the Power Charges at actuals (subject to a cap of the Power Charges based on the Guaranteed Energy Consumption) for power consumed for the O&M of the Facilities. If the Concessionaire consumes more power for O&M of any Facility than the relevant Guaranteed Energy Consumption for such Facility in any given quarter, it will be liable to pay damages to the Jal Nigam in accordance with the Concession Agreement.
- (o) The NMCG will set up a revolving escrow account for the Project, and all Payment Milestones (refer linked construction payments, Capex Annuities (along with interest), O&M Charges and the Power Charges will be paid to the Concessionaire through this escrow account.
- i. For Unnao Facilities, Shuklaganj Facilities, Pankha Facilities and Jajmau Facilities, from the Effective Date and until the relevant Construction/Renovation Completion Date, NMCG will ensure that the escrow account is funded with an amount equivalent to the construction payments due to the Concessionaire for the next 2 Payment Milestones. From the relevant COD and at all times thereafter until the expiry or termination of the Concession Agreement, NMCG shall keep the escrow account funded with (i) Unnao Capex Annuity (along with interest), Shuklaganj Capex Annuity (along with interest), Pankha Capex Annuity (along with interest) and Jajmau Capex Annuity (along with interest); (ii) Unnao O&M Charges, Shuklaganj O&M Charges, Pankha O&M Charges and Jajmau O&M Charges; and (iii) the estimated Power Charges for each of Unnao Facilities, Shuklaganj Facilities, Pankha Facilities and Jajmau Facilities (based on the Guaranteed Energy

-
- Consumption) for the subsequent 2 years.
- ii. For Bingawan Facilities, from the Bingawan Handover Date NMCG shall keep the escrow account funded with (i) Bingawan Capex Annuity (along with interest), (ii) the Bingawan O&M Charges (iii) and the estimated relevant Power Charges for Bingawan Facilities, based on the Guaranteed Energy Consumption, for subsequent 2 years
 - iii. For Sajari Facilities, from the Effective Date NMCG shall keep the escrow account funded with (i) Sajari Capex Annuity (along with interest), (ii) the Sajari O&M Charges (iii) and the estimated relevant Power Charges for Sajari Facilities, based on the Guaranteed Energy Consumption, for subsequent 2 years
- (p) Subject to early termination, the Concession Agreement for each location shall be valid until the relevant Expiry Date.
- 1.6 The *Jal Nigam* is now inviting interested natural persons, Companies, other private entities and State-owned entities to submit Bids to implement the Project.
- 1.7 This RFP follows the General Procurement Notice for National Ganga River Basin Project (NGRBP) that was published on United Nations Development Business online on March 30, 2011 and updated on January 31, 2014.
- 1.8 The Selected Bidder is required to incorporate a Special Purpose Vehicle to implement the Project and such Special Purpose Vehicle will be required to execute the Concession Agreement with the *Jal Nigam* and NMCG in the format attached to this RFP.
- 1.9 The statements and explanations contained in this RFP are intended to provide the Bidders with an understanding of the subject matter of this RFP and the Project. Such statements and explanations should not be construed or interpreted as limiting in any way or manner:
- (a) the scope of the rights and obligations of the Concessionaire, which will be set out definitively in the Concession Agreement; or
 - (b) the *Jal Nigam's* right to alter, amend, change, supplement or clarify the rights and obligations of the Concessionaire or the terms and conditions that will be set out in the Concession Agreement, in accordance with this RFP.

Consequently, any omissions, conflicts or contradictions between this RFP and the Concession Agreement are to be noted, interpreted and applied appropriately to give effect to this intent. NMCG and the *Jal Nigam* will not entertain any claims on account of such omissions, conflicts or contradictions.

2. BRIEF DESCRIPTION OF THE BID PROCESS

-
- 2.1 The *Jal Nigam* has adopted a single-stage Bid Process for declaration of the Selected Bidder for award of the Project, which is divided into 2 sub-stages.
- 2.2 A complete set of bidding documents will be available on the e-procurement website (<https://etender.up.nic.in>) w.e.f. 12 March 2018. The bidders who are interested to participate in the bidding process can download the bid documents from the website. A complete set of bidding documents will be available on the e-Procurement portal in the “Latest Tenders” section and will be available only until the specified time on the Bid Due Date. The Jal Nigam is not responsible for the completeness of the RFP, if it is not downloaded directly from the e-Procurement Portal complete with Addenda, if issued and uploaded on the e-Procurement Portal by the bid inviting authority.
- 2.3 Each Bidder is required to submit a single Bid, which should consist of 2 parts: (a) the Qualification Proposal; and (b) the Financial Proposal.

2.4 Evaluation stages

The evaluation of the Bids will be carried out in 2 sub-stages:

- (a) The first sub-stage will involve qualification of the Bidders based on the evaluation of their Qualification Proposals to determine compliance with the Eligibility Criteria and the Qualification Criteria in accordance with Clauses 3 and 4. Only those Bidders who are found to meet the Eligibility Criteria and the Qualification Criteria will be qualified for the next sub-stage.
- (b) The second sub-stage will involve evaluation of the Financial Proposals of those Bidders whose Qualification Proposals meet the requirements set out in Clauses 3 and 4, to identify the Selected Bidder for the Project.

2.5 Bid parameter

- (a) Each Bidder will be required to quote separately in the Bid Price Sheet
- (i) For the Jajmau Facilities, the following components: (a) the Jajmau Bid Project Cost (including all Taxes); (b) Jajmau STP 1 O&M Charges, Jajmau STP 2 O&M Charges and Jajmau Associated Infrastructure O&M Charges (along with a break-up of the O&M Charges for the components specified in the Bid Price Sheet) for the first month after the Jajmau Facilities COD (including all Taxes); (c) Separate Jajmau STP 1 Guaranteed Energy Consumption, Jajmau STP 2 Guaranteed Energy Consumption and Jajmau Associated Infrastructure Guaranteed Energy Consumption, for the Jajmau O&M Period
- (ii) For the Unnao Facilities, the following components: (a) the Unnao Bid Project Cost (including all Taxes); (b) Unnao STP O&M Charges and Unnao Associated Infrastructure O&M Charges (along with a break-up of the O&M

Charges for the components specified in the Bid Price Sheet) for the first month after the Unnao Facilities COD (including all Taxes); (c) the Unnao STP Guaranteed Energy Consumption and Unnao Associated Infrastructure Guaranteed Energy Consumption, for the Unnao O&M Period and (d) Unnao Land Requirement

- (iii) For the Shuklaganj Facilities, the following components: (a) the Shuklaganj Bid Project Cost (including all Taxes); (b) the Shuklaganj STP O&M Charges and Shuklaganj Associated Infrastructure O&M Charges (along with a break-up of the O&M Charges for the components specified in the Bid Price Sheet) for the first month after the Shuklaganj Facilities COD (including all Taxes); (c) Shuklaganj STP Guaranteed Energy Consumption and the Shuklaganj Associated Infrastructure Guaranteed Energy Consumption, for the Shuklaganj O&M Period and (d) Shuklaganj Land Requirement
- (iv) For the Pankha Facilities, the following components: (a) the Pankha Bid Project Cost (including all Taxes); (b) the Pankha O&M Charges and Pankha Associated Infrastructure O&M Charges (along with a break-up of the O&M Charges for the components specified in the Bid Price Sheet) for the first month after the Pankha Facilities COD (including all Taxes); (c) the Pankha STP Guaranteed Energy Consumption and Pankha Associated Infrastructure Guaranteed Energy Consumption, for the Pankha O&M Period and (d) Pankha Land Requirement
- (v) For the Bingawan Facilities, the following components: (a) the Bingawan Bid Project Cost (including all Taxes); ~~(ba)~~ the Bingawan O&M Charges and Bingawan Associated Infrastructure O&M Charges (along with a break-up of the O&M Charges for the components specified in the Bid Price Sheet) for the first month after the Bingawan Effective Date (including all Taxes); ~~(cb)~~ the Bingawan STP Guaranteed Energy Consumption and Bingawan Associated Infrastructure Guaranteed Energy Consumption, for the Bingawan O&M Period
- (vi) For the Sajari Facilities, the following components: (a) the Sajari Bid Project Cost (including all Taxes); ~~(ba)~~ the Sajari STP O&M Charges and Sajari Associated Infrastructure O&M charges (along with a break-up of the O&M Charges for the components specified in the Bid Price Sheet) for the first month after the Sajari Effective Date (including all Taxes); ~~(cb)~~ the Sajari STP Guaranteed Energy Consumption and Sajari Associated Infrastructure Guaranteed Energy Consumption, for the Sajari O&M Period

(b) For each of the Facilities, the Bidders must provide a break-up of the O&M Charges for the components specified in the Bid Price Sheet, including details of manpower, repairs and maintenance of civil and electro-mechanical works and consumables.

(c) For the purposes of calculation of the 'Guaranteed Energy Consumption' for each relevant STP, each Bidder will be required to quote in its Bid Price Sheet the maximum number of units of power (in kWh) per MLD which it expects the Concessionaire to consume to treat the varying volumes (expressed in MLD) and BOD of sewage, as specified in the format of the Bid Price Sheet. Based on the number of units of power per MLD quoted by a Bidder for the varying volumes and BOD of sewage, the average

number of units (in kWh) that the Concessionaire is expected to consume per MLD of sewage treated at relevant STP(s) will be calculated using the formula specified in the Bid Price Sheet (such average, the location's **Average Guaranteed Energy Consumption**).

- (d) The relevant STP(s) Power Charges of a Bidder will be calculated by multiplying the relevant Average Guaranteed Energy Consumption quoted by such Bidder with the Power Unit Rate, in accordance with the Bid Price Sheet.

Based on the components quoted by the Bidders in the Bid Price Sheet for Jajmau Facilities, Bingawan Facilities, Unnao Facilities, Shuklaganj Facilities, Pankha Facilities and Sajari Facilities, the overall Bid Price will be calculated as per the formula in the Bid Price Sheet.

- (e) Bidder shall carefully quote the Land Requirement for Unnao Facilities, Shuklaganj Facilities and Pankha Facilities in the Financial Proposal. No additional Land shall be ordinarily allocated to the Concessionaire beyond the quoted Land in the Financial Proposal for the Construction of the Project. However, under unavoidable circumstances and in the interest of the Project, the Jal Nigam based on availability, may consider to allocate additional land for the construction of the Project upon the request of the Concessionaire and such allocation shall be subject to the payment of a sum equivalent to one hundred and fifty percentage of the Land Rate, for each additional acres of Land and part thereof. If the additional land requirement changes position of the Selected Bidder/Concessionaire vis a vis the Second Preferred Bidder, then the Concessionaire shall pay to the Jal Nigam, a sum of equivalent to (a) one hundred and fifty percentage of the relevant Land Rate for each additional acres of Land and part thereof; OR (b) the difference between Bid Price of Second Preferred Bidder and the revised Bid Price of the Selected Bidder; whichever is higher.

Based on the components quoted by the Bidders in the Bid Price Sheet for each location's facilities, the Bid Price for each location, and the overall Bid Price will be calculated as per the formula in the Bid Price Sheet.

The only criterion for evaluation and comparison of Financial Proposals will be the Bid Price.

- 2.6 The Bidder shall quote the Bid Project Cost in Rupees.
- 2.7 Subject to Clause 7.1(e), the Preferred Bidder shall be the one which: (a) meets the Qualification Criteria and the Eligibility Criteria; and (b) quotes the lowest Bid Price. Generally, the Preferred Bidder shall be the Selected Bidder for the Project. If the Preferred Bidder withdraws its Bid or is not selected for any reason, then the *Jal Nigam* may, in its discretion, select the Second Preferred Bidder as the Selected Bidder or annul the Bid Process.
- 2.8 Bidders are required to submit the Bid Security along with their Bids as per clause 15. The Bidders shall provide the Bid Security in the form of a bank guarantee issued by a Scheduled Bank in India or by a foreign bank listed with the Reserve Bank of India and

payable at *Kanpur* in favour of "*Uttar Pradesh Jal Nigam* " represented by the Project Manager, Ganga Pollution Control Unit, UP Jal Nigam, Kanpur, in the format set out at Annexure 11. The original Bid Security must be submitted to the *Jal Nigam* at the address mentioned in Clause 24.11 below before the date/time of opening of the Bids (Qualification Proposals), either by registered/speed post/courier or by hand, failing which the Bid will be declared non-responsive. A scanned copy of the Bid Security must be uploaded by the Bidders on the e-Procurement Portal along with their Bids.

2.9 All Bids are required to be prepared and submitted electronically in accordance with the terms of this RFP on or before the Bid Due Date.

2.10 The Bidders may inspect the Site and carry out, at their own cost, such inspections as may be required to submit their respective Bids at any time prior to the date specified in the Bid Schedule. The *Jal Nigam* shall facilitate such site visits provided that the Bidder gives the *Jal Nigam* at least 3 days' prior written notice of its intention to visit the Site.

2.11 It will be assumed that the Bidders have accounted for all relevant factors, including technical data, status and condition of the Supporting Infrastructure, the Site conditions, climate, weather conditions, availability of power (including the requirement of any power back-up), water and other utilities for construction and/or operations and maintenance of Facilities, access to the Site, handling and storage of materials, Applicable Laws and Applicable Permits while submitting their Bids. The Bidders will be deemed to have full knowledge of the Project, including the scope of activities required to be undertaken by the Bidders to undertake the Project.

2.12 e-Procurement

(a) The Bid Process will be conducted by way of e-tendering. In order to participate in the Bid Process, a Bidder must procure a digital signature certificate (class II or III) and register on the e-Procurement Portal using its digital signature. A digital signature certificate may be procured from a registered certifying authority as stipulated by Controller of Certifying Authorities, GoI.

(b) In case of a Consortium, the Bidder must register with the e-Procurement Portal in the name of the Lead Member, using the digital signature certificate issued in the name of the authorized signatory of the Lead Member.

(c) The Bidders must: (i) upload a soft copy/scanned copy of their Qualification Proposal, including a copy of the Bid Security on the e-Procurement Portal in PDF format; and (ii) populate the Bid Price Sheet provided on the e-Procurement Portal, before the specified time on the Bid Due Date. Upon submitting the Qualification Proposals and the Financial Proposals on the e-Procurement Portal, the Bidders must affix their digital signature both to the

Qualification Proposals and the Financial Proposals. However, Bid Security, copy of online receipt towards payment of cost of Bid, Power of Attorney, Joint Bidding Agreement, etc. shall be submitted physically by the Bidder on or before 1430 Hrs on ~~17 May~~~~25 April~~, 2018.

- (d) The Bidders are encouraged to visit the e-Procurement Portal to acquaint themselves with the process of submitting their Bids online.
- (e) For the purposes of determining the cut-off time for submission of queries and Bids, the central server time displayed on the clock on the e-Procurement Portal will be followed by the Bidders and the *Jal Nigam*.

2.13 Any queries or requests for additional information relating to this RFP should be submitted by the Bidder on the e-Procurement Portal on or before the specified time and date mentioned in the Bid Schedule.

2.14 Schedule for the Bid Process

The *Jal Nigam* shall endeavour to adhere to the following schedule for the Bid Process:

S. No.	Event	Date/Location
1.	Issue of RFP	12 March 2018, 1800 Hrs
2.	Site Visit	Upto 22 March 2018, 1800 Hrs
3.	Last date for receiving queries from Bidders	Upto 23 March 2018, 1800 Hrs
4.	Pre-Bid Meeting	27 March 2018, 1500 Hrs Room 325, Hotel Regenta, Bena Jhawar Road (Near UP Jal Nigam Office), Kanpur
5.	Issue of Addendum/Revised RFP and Concession Agreement by Jal Nigam latest by	25 April 2018
6.	Bid Due Date	Upto 16 May 25 April 2018, 1200 Hrs
7.	Opening of Qualification Proposals	26 April <u>17 May</u> 2018, 1500 Hrs Office of Project Manager, Ganga Pollution Control Unit, Uttar Pradesh Jal Nigam, Bena Jhawar Road, Kanpur, Uttar Pradesh - 208002

S. No.	Event	Date/Location
8.	Notification of qualified Bidders	Within 7 days from the date of opening of Qualification Proposals
9.	Opening of Financial Proposals	Within 7 days from the date of notification of qualified bidders
10.	Issue of LOA	Within 30 days from the date of opening of Financial Proposals
11.	Signing of the Concession Agreement	Within 45 days from the date of issue of the LOA to the Selected Bidder

SECTION II: ELIGIBILITY AND QUALIFICATION CRITERIA

3. ELIGIBILITY OF BIDDERS

3.1 Nature of Bidder

- (a) A Bidder may be a natural person, a Company registered under the Companies Act or an equivalent law outside India, or any other private entity or State-owned entity, acting in its individual capacity or as a Consortium. The term Bidder used in this RFP shall apply to both a single entity as well as a Consortium.

However, Bidders that are Government-owned enterprises or institutions in the Executing Agency's country may participate only if they can establish that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not dependent agencies of NMCG or the Jal Nigam.

To be eligible, a government-owned enterprise or institution shall establish to NMCG's satisfaction, through all relevant documents, including its Charter and other information NMCG may request, that it: (i) is a legal entity separate from the government (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to the government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt; and (iv) is not bidding for a contract to be awarded by the department or agency of the government which under their applicable laws or regulations is the reporting or supervisory authority of the enterprise or has the ability to exercise influence or control over the enterprise or institution.

- (b) If a Bidder is a Consortium, then the Consortium and its Members shall comply with the following conditions:
- (i) The number of Members in such Consortium shall not exceed 3.
 - (ii) The Bid submitted by the Consortium should contain the required information for each Member and a brief description of the roles and responsibilities of each Member.
 - (iii) The Consortium will nominate one of the Members as the Lead Member. Such nomination will be supported by a power of attorney from each Member of the Consortium and will be in the format set out in Annexure 1J. The Lead Member will have the authority to represent and bind all the Members during the Bid Process.
 - (iv) The Members of the Consortium shall enter into a binding and enforceable Joint Bidding Agreement, in the format set out in Annexure 1K and shall appoint one of the Members to represent the Consortium.

All Members shall be jointly and severally liable for the performance of the Project till the end of the term of the Concession Agreement or till the date of exit from the Concessionaire subject to clause 3.2(b)(iii) of the RFP document, whichever is earlier. Members will not be permitted to amend or terminate the Joint Bidding Agreement, at any time during the validity of the Bid without the prior consent of the *Jal Nigam*.

3.2 Lock-in Restrictions and Change in Control

- a. Each Bidder (whether a single entity or Consortium) is required to incorporate a Special Purpose Vehicle to implement the Project.
- b. If the Selected Bidder is a Consortium, then the Members are required to comply with the following conditions with respect to the SPV to be incorporated by the Selected Bidder to implement the Project:
 - i. the Lead Member shall hold not less than 26% of the total Capital and voting rights of the Concessionaire until 3 years after the Unnao Facilities COD or Shuklaganj Facilities COD or Pankha Facilities COD or Jajmau Facilities COD, whichever is later
 - ii. any Member, other than the Lead Member, whose Technical Capacity or Financial Capacity is being assessed for the purpose of qualification, shall hold at least 26% of the total Capital and voting rights of the Concessionaire for 3 years after the Unnao Facilities COD or Shuklaganj Facilities COD or Pankha Facilities COD or Jajmau Facilities COD, whichever is later; and
 - iii. after the expiry of 3 years from from the Unnao Facilities COD or Shuklaganj Facilities COD or Pankha Facilities COD or Jajmau Facilities COD, whichever is later., the Lead Member and/or other Members can exit the Concessionaire, subject to: (A) the Member who demonstrated the O&M experience for the purposes of qualification continuing to be part of the Concessionaire; or (B) the entity acquiring the shareholding of the Lead Member/any other Member in the Concessionaire meeting the technical qualification criteria set out in Clause 4.1 (b); or (C) the Concessionaire appointing an O&M contractor who complies with the technical qualification criteria set out in Clause 4.1 (b).
- c. If the Selected Bidder is a single entity, then:
 - i. the Selected Bidder shall hold at least 51% of the total Capital and voting rights of the Concessionaire until the Unnao Facilities COD or Shuklaganj Facilities COD or Pankha Facilities COD or Jajmau Facilities COD, whichever is later, and at least 26% of the total Capital and voting rights of the Concessionaire for 3 years after the Unnao Facilities COD or Shuklaganj Facilities COD or Pankha Facilities COD or Jajmau Facilities COD, whichever is later; and

-
- ii. after the expiry of 3 years from the Unnao Facilities COD or Shuklaganj Facilities COD or Pankha Facilities COD or Jajmau Facilities COD, whichever is later., the Selected Bidder can exit the Concessionaire, subject to: (A) the entity acquiring the shareholding of the Selected Bidder in the Concessionaire meeting the technical qualification criteria set out in Clause 4.1 (b); or (B) the Concessionaire appointing an O&M contractor who complies with the technical qualification criteria set out in Clause 4.1 (b).
- d. If, post submission of the Bid, any Associate, whose credentials have been taken into consideration for determining Technical Capacity, ceases or will cease to be an Associate of the Bidder or such Member, then, the Selected Bidder shall seek the approval of the *Jal Nigam* for such occurrence. If the *Jal Nigam* is of the view that such occurrence is likely to affect the Technical Capacity of the Bidder adversely, then the *Jal Nigam* may disqualify the Bidder from participation in the Bid Process; or, if the Bidder has been declared as the Selected Bidder, withdraw the LOA or treat such occurrence as a Concessionaire event of default in accordance with the Concession Agreement, without the *Jal Nigam* incurring any liability towards the Selected Bidder or the Concessionaire for such withdrawal or possible termination. While the *Jal Nigam* will not unreasonably withhold or delay such approval, the decision of the *Jal Nigam* will be final in this regard.

3.3 Conflict of Interest

Any Bidder found to have a conflict of interest (Conflict of Interest) shall be disqualified. Bidder, a Member (in case of a Consortium), its Group Companies or Associates may be considered to have a Conflict of Interest with one or more Bidders, its Members, its Group Companies or Associates in this Bid Process if, as indicated in this Clause 3.3:

- (a) they have a common Controlling partner, except that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in the Companies Act, 2013. Bidder can view the Companies Act, 2013 at <http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>. The Bidders are advised to ascertain the updated list of Public Financial Institutions from the available sources; or
- (b) they receive or have received any direct or indirect subsidy from any of them; or
- (c) they have the same legal representative for purposes of this Bid; or
- (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to access the information about or influence the Bid of another Bidder, or influence the decisions of the *Jal Nigam* regarding this Bid Process;

or

-
- (e) the Bidder participates in more than one Bid for the same Project (as described in Clause 17); or
- (f) the Bidder, or any of its Group Companies or Associates participated as a consultant in the preparation of any documents, design or technical specifications of the Project that are subject of the Bid; or
- (g) the Bidder or any of its Group Companies or Associates has been hired (or is proposed to be hired) by the Jal Nigam as project manager for the Project.
- (h) The Bidder or any of its Group Companies or Associates has a close business or family relationship with a professional staff of NMCG (or of the Jal Nigam, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to NMCG throughout the Bid Process and execution of the Concession Agreement.

3.4 Fraud and Corrupt Practices

- (a) The Borrowers (including beneficiaries of loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, are required to observe the highest standard of ethics during the Bid Process. Notwithstanding anything to the contrary contained in this RFP, the Jal Nigam may reject a Bid without being liable in any manner whatsoever to the Bidder, if it determines that a Bidder has, directly or indirectly or through an agent, engaged in a corrupt, fraudulent, coercive, undesirable or restrictive practice in or affecting the Bid Process.
- (b) Without prejudice to the rights of the Jal Nigam under Clause 3.4(a) above, in the event that a Bidder is found by the Jal Nigam to have directly or indirectly or through an officer, employee, agent or advisor engaged or indulged in any corrupt, fraudulent, coercive, undesirable or restrictive practice during the Bid Process, such Bidder will not be eligible to participate in any tender or request for qualification issued by NMCG or the Jal Nigam for 5 years, from the date such Bidder is found by NMCG or the Jal Nigam to have directly or indirectly or through an officer, employee, agent or advisor engaged or indulged in any of the activities mentioned above.
- (c) For purpose of this contract, the Jal Nigam:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
- (i) “**corrupt practice**” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) “**fraudulent practice**” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

-
- (iii) “**collusive practice**” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;¹
 - (iv) “**coercive practice**” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;²
 - (v) **undesirable practice** means: (A) establishing contact with any Person connected or employed or engaged by NMCG or the Jal Nigam with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid Process; or (B) having a Conflict of Interest (as defined in Clause 3.3); and
 - (vi) **restrictive practice** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating full and fair competition in the Bid Process.

3.5 Other Eligibility Criteria

- (a) A Bidder or any Member of a Consortium that has been determined ineligible by the World Bank in accordance with the Bank's Guidelines on Preventing and Combating Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants, will not be eligible to submit a Bid.
- (b) If the Bidder or any Member (in case of a Consortium) is party to any litigation (required to be disclosed as per Annexure 1H), in which, any subsequent ruling/judgement by any court/judicial authority after the submission of bid affects or could have a material adverse effect on the financial condition, prospects or business of such Bidder or Member or its ability to fulfil its obligations under the Concession Agreement, the Bid will not be evaluated further by the Jal Nigam.
- (c) If a Company has entered into a contract for operation of the e-Procurement Portal, which is currently valid and subsisting, then such Company and its Associates will not be eligible to submit a Bid.
- (d) If any contract of the Bidder or any Member (in case of a Consortium) has been suspended or terminated and/or performance security has been called by an employer for reasons related to the non-compliance by the Bidder with any ESHS requirements or safeguard in the past 5 years (required to be disclosed as per Annexure 1L), which, in the Jal Nigam's opinion, affects or could have a material adverse effect on the financial condition, prospects or business of such Bidder or Member or its ability to fulfil its obligations under the Concession Agreement, the Bid will not be evaluated

¹ For the purpose of this sub-paragraph, “parties” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

² For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution.

further by the Jal Nigam.

Bidders will provide such evidence of their continued eligibility as the *Jal Nigam* may request at any time during or after the Bid Process.

If a Bidder is a Consortium, then the term "**Bidder**" as used in Clause 3.3, Clause 3.4 and Clause 3.5 shall include each Member of such Consortium, and the term "**Associate**" as used in Clause 3.3, Clause 3.4 and Clause 3.5 shall include Associates of each Member of the Consortium.

4. QUALIFICATION CRITERIA

The Bidders should satisfy the following minimum technical criteria and financial criteria set out in Clause 4.1 and Clause 4.2 respectively to qualify for evaluation of the Financial Proposals:

4.1 Technical Criteria

To demonstrate its technical capacity and experience (**Technical Capacity**), the Bidder must have the following experience:

a. Development/Design and Construction experience

STP Construction Experience

(i) The Bidder shall have developed or designed and constructed 1 STP of at least 25 MLD capacity or 2 STPs of at least 15 MLD capacity each or 3 STPs of at least 10 MLD capacity each across locations/contracts. Each of these shall:

- A. have been developed or designed and constructed using [any technology;
- B. have been (A) developed or (B) designed and constructed in the 7 years preceding the Bid Due Date, as evidenced by the issuance of a completion certificate by the relevant government authority/client, certifying that the STP(s) have been completed in terms of the concession agreement or similar contract executed for such STP(s); and
- C. have been successfully operational for any 24 consecutive months in the 7 years preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STP(s), as evidenced by a certificate from the relevant government authority.

(ii) To claim development experience for STP as mentioned in Clause 4.1(a).(i), the entity claiming the experience shall have held, in the company developing the

STP, a minimum of 26% equity share capital as on the commercial operations date of such project.

- (iii) To claim design and construction experience for STP as mentioned in Clause 4.1(a)(i), the entity claiming experience should have been appointed as the principal contractor (i.e., the contractor hired directly by the owner of the project/entity developing the relevant STP/SPS) and any other subcontractor experience is not permitted for claiming Technical Capacity for STP design and construction.
- (iv) The Bidder may develop the STPs at the locations in the scope of this package using different technologies, provided that each such technology should be the same as the technology adopted for at least one of the STP(s) for which experience is being claimed under this Clause 4.1(a)(i) to demonstrate Technical Capacity

b. Operation and maintenance experience

- (i) The Bidder shall have (A) successfully operated and maintained 1 STP of at least 100 MLD capacity or 2 STPs of at least 70 MLD capacity each or 3 STPs of at least 50 MLD capacity each. Each of these STPs shall have been operational for at least 24 consecutive months in the 7 years immediately preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STP(s). The STP(s) for which the Bidder is claiming O&M experience should have been developed using any technology.
- (ii) For this purpose, the Company claiming the experience will be required to submit a certificate issued by the relevant government authority.

c. It is clarified that:

- (i) the Bidder must demonstrate both development/design and construction experience specified in Clause 4.1(a) above and O&M experience specified in Clause 4.1(b) above to be technically qualified for evaluation of the Financial Proposals;
- (ii) the Bidder/Member may rely on the experience of its Associate(s) for demonstrating the Technical Capacity (including, if applicable, under Clause 4.1(d)). However a Bidder claiming the experience of the Associates for Technical Capacity, shall submit a Letter of Commitment from such Associate that the expertise of the Associate will be made available during the development and operation of the Project
- (iii) in case of a Consortium, the development/design and construction experience set out in Clause 4.1(a)(i) must be demonstrated by one

Member and the O&M experience set out in Clause 4.1(b) may be claimed by a different Member;

- (iv) in case of a Consortium, if the Consortium is claiming O&M experience on the basis of more than 1 STP or SPS, then each of the STPs should have been operated and maintained by the same Member;
 - (v) if the development/design and construction experience as set out Clause 4.1(a)(i) and the O&M experience as set out Clause 4.1(b) is being claimed by a different Member, then the Member who demonstrates development/design and construction experience and the Member who demonstrates the O&M experience must each hold 26% of the total Capital and voting rights of the Concessionaire for at least 3 years post last COD among all locations;
 - (vi) the development/design and construction experience and the O&M experience may be claimed in relation to the same STP. If, however, the development/design and construction experience and the O&M experience is being claimed for different STPs, then it is clarified that the STP for which O&M experience is being claimed may be based on a technology which is different from the technology used in the STP(s) for which development/design and construction experience is being claimed; and
 - (vii) for certificates claiming development/design and construction and O&M experience that are issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the certificate is being issued. However, the certificates provided by the Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostilled certificate.
- (d) If the Bidder proposes to set up a biogas power plant at any location in accordance with the Concession Agreement, then the Bidder/Member will be required to demonstrate its experience (in the format set out in Annexure 2) in developing or designing and constructing a biogas power plant, which should have:
- (A) a capacity of at least 0.25 MW;
 - (B) been based on STP effluent;
 - (C) been developed or designed and constructed in the 7 years preceding the Bid Due Date, as evidenced by the issuance of a completion certificate by the relevant government authority, certifying that the biogas power plant has been completed in terms of the relevant contract executed for such biogas power plant; and

-
- (D) successfully operational for any 24 consecutive months in the 7 years preceding the Bid Due Date, in accordance with the relevant contract executed for such biogas power plant, as evidenced by a certificate from the relevant government authority;

If the Bidder or any Member of the Consortium does not have any experience of having developed or designed and constructed a biogas power plant, the Bidder will be required to nominate an experienced power plant developer which has developed and/or designed a biogas power plant, which meets the criteria set out in (A) to (D) above. The nominated Subcontractor will be engaged to develop the power plant for the Project, if the Bidder is declared the Selected Bidder, and will be required to provide a consent letter in the format set out in Annexure 3 (along with certificate(s) from the relevant government authority).

4.2 Financial Criteria

To demonstrate its financial capacity to undertake the Project (**Financial Capacity**), the Bidder must meet each of the financial qualification criteria specified in this Clause 4.2.

(a) Net worth

- (i) In each of the ~~3~~ Financial Years 2014-15, 2015-16 and 2016-17 ~~immediately preceding the Bid Due Date~~, the Bidder's Net Worth (as per the annual financial statements) shall be at least INR 150 Cr [*One hundred and fifty crores*].
- (ii) If the Bidder is a Consortium, then the Net Worth, as required in Clause 4.2 (a)(i) above will be demonstrated cumulatively, i.e., the Consortium as a whole should meet the requirement. Provided further that if the Bidder is subsequently declared the Selected Bidder for the Project, then any Member of the Consortium whose Net Worth was assessed for the purposes of demonstrating that the Consortium has the Financial Capacity to undertake the Project, shall hold at least 26% of the total Capital and voting rights of the Concessionaire for 3 years post the COD.
- (iii) The calculation of Net Worth must be based on the unconsolidated audited annual accounts of the Bidder for the preceding Financial Year. If the annual accounts for the Financial Year immediately preceding the Bid Due Date are not audited, the Bidder shall provide the provisional annual accounts for such Financial Year. The provisional annual accounts shall be accompanied by an undertaking by the Bidder to the effect that:

(A) if it is chosen as the Selected Bidder, the Bidder will submit the audited annual accounts for the Financial Year immediately preceding the Bid Due Date prior to the Effective Date; and

(B) the Net Worth as per such audited annual accounts shall not vary by more than 5% from the provisional accounts submitted by it with its Bid.

A Bidder or a Member of a Consortium is not permitted to rely on the Net Worth of its Associate for demonstrating its Financial Capacity.

(b) The Bidder (and in case of a Consortium, any Member) is not affected by and has not been affected by any of the following events, conditions or circumstances in the 3 Financial Years immediately preceding the Bid Due Date, as certified by the statutory auditor of the Bidder (and in case of a Consortium, the statutory auditor of a Member):

- (i) the Bidder having been categorized as a willful defaulter in accordance with Applicable Laws or laws of the country of its incorporation.
- (ii) the Bidder being subject to proceedings for declaration of or being declared bankrupt, being wound up, or having its affairs administered or conducted by any court, administrator, receiver; or
- (iii) the Bidder having been declared by a court or other competent authority as being unable to pay its debts, or having made any composition or arrangements with creditors or having had the repayment of its debts suspended.

(c) The Bidder (and in case of a Consortium, any Member) has not been convicted or otherwise being found responsible (or having any of its directors, partners, trustees, officers or managers convicted or being found responsible) by any court, tribunal, regulatory, public or other competent authority for a breach of any laws or regulations which:

- (i) related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation or other payment was levied against the Bidder or any of its directors, partners, trustees, officers or managers; or
- (ii) resulted in the permanent or temporary suspension of the rights of the Bidder to provide any service or carry on any type of business or operations.

SECTION III: INSTRUCTION TO BIDDERS

PART A. GENERAL

5. SCOPE OF RFP

- 5.1 The *Jal Nigam* wishes to receive Bids in accordance with this RFP for award of the Project.
- 5.2 The RFP must be read as a whole. If any Bidder finds any ambiguity or lack of clarity in this RFP, the Bidder must inform the *Jal Nigam* at the earliest. The *Jal Nigam* will then direct the Bidders regarding the interpretation of the RFP. If any discrepancy, ambiguity or contradiction arises between the terms of the RFP and the Concession Agreement in relation to:
- (a) the Bid Process, the provisions of the RFP shall prevail; and
 - (b) the scope of services or any other terms or conditions of the Concession Agreement, including Technical Specifications, the provisions of the Concession Agreement shall prevail.

6. ACKNOWLEDGEMENT BY THE BIDDER

- 6.1 It shall be deemed that by submitting the Bid, the Bidder has:
- (a) made a complete and careful examination of the RFP (including all instructions, forms, terms and specifications) and any other information provided by the *Jal Nigam* under this RFP and the Bidder acknowledges that its submission of a Bid that is not substantially responsive to the RFP in every respect will be at the Bidder's risk and may result in rejection of the Bid;
 - (b) received all relevant information requested from the *Jal Nigam* and NMCG;
 - (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the *Jal Nigam*;
 - (d) satisfied itself about all things, matters and information, necessary and required to submit a Bid;
 - (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the RFP or ignorance of any matter in

relation to the Project shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations or loss of profits or revenue from the *Jal Nigam* or NMCG, or a ground for termination of the Concession Agreement;

- (f) satisfied itself regarding the suitability of the Site conditions to undertake the Project; and
- (g) agreed to be bound by the undertakings provided by it under and in terms of this RFP.

6.2 The *Jal Nigam* 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 relating to the RFP or the Bid Process.

7. RIGHTS OF THE JAL NIGAM

7.1 The *Jal Nigam*, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- (a) suspend the Bid Process and/or amend and/or supplement the Bid Process or modify the dates or other terms and conditions relating thereto;
- (b) consult with any Bidder in order to receive clarification or further information at any stage of the Bid Process;
- (c) retain any information, documents and/or evidence submitted to the *Jal Nigam* by and/or on behalf of any Bidder;
- (d) independently verify, disqualify, reject and/or accept any and all documents, information and/or evidence submitted by or on behalf of any Bidder;
- (e) reject any Bid, if:
 - (i) at any time, a material misrepresentation is made or uncovered; or
 - (ii) the Bidder in question does not provide, within the time specified by the *Jal Nigam*, the supplemental information sought by the *Jal Nigam* for evaluation of the Bid; or
- (f) accept or reject a Bid, annul the Bid Process and reject all Bids, at any time, without any liability or any obligation for such acceptance, rejection or annulment and without assigning any reasons whatsoever to any Person, including the Bidders.

If the *Jal Nigam* annuls the Bid Process and rejects all Bids, it may in its sole discretion invite fresh Bids for the Project.

7.2 If the Jal Nigam exercises its right under this RFP to reject a Bid and consequently, the Preferred Bidder for the Project gets disqualified or rejected, then the Jal Nigam reserves the right to:

- (a) select the Second Preferred Bidder as the Selected Bidder for the Project; or
- (b) take any such measure as may be deemed fit in the sole discretion of the *Jal Nigam*, including inviting fresh Financial Proposals from the qualified Bidders or annulling the entire Bid Process.

7.3 If it is found during the Bid Process, at any time before signing the Concession Agreement, that one or more of the Qualification Criteria and/or the Eligibility Criteria have not been met by a Bidder or that the Bidder has ceased to meet them, or a Bidder has made material misrepresentations or has given any materially incorrect or false information, then such Bidder will be disqualified.

If such Bidder has been declared as the Selected Bidder or has already been issued the LOA or has entered into the Concession Agreement, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated, by a notice in writing from the *Jal Nigam* to the Selected Bidder.

Upon any disqualification, cancellation or termination in accordance with this Clause 7.3, the *Jal Nigam* will not be liable in any manner whatsoever to the Bidder. Additionally, the *Jal Nigam* will have the right to forfeit and appropriate the Bid Security or, as the case may be, appropriate an equivalent amount from the Performance Security if the Concession Agreement has been executed, as a mutually agreed genuine pre-estimate of the loss suffered by the *Jal Nigam* for, amongst others, the *Jal Nigam*'s time, cost and efforts in conducting the Bid Process. Such forfeiture will be without prejudice to any other right or remedy that the *Jal Nigam* may have under the RFP, the Concession Agreement or Applicable Laws.

8. CLARIFICATIONS ON THE RFP

8.1 Clarifications and Queries

- (a) If a Bidder requires any clarification on or has any query in relation to the RFP, it should submit such query or request for clarification to the *Jal Nigam* on the e-Procurement Portal or send an email to pmgpcu@yahoo.co.in before the specified time and date mentioned in the Bid Schedule. All queries or clarification requests should be received on or before the date and time mentioned in the Bid Schedule.
- (b) The *Jal Nigam* shall make reasonable efforts to respond to the queries or requests for clarifications on or before the date mentioned in the Bid Schedule. The *Jal Nigam*'s responses (including an explanation of the query but not identification of its source) will be made available to all the Bidders and shall

be uploaded on the e-Procurement Portal.

- (c) The *Jal Nigam* may, on its own initiative, if deemed necessary, issue clarifications to all the Bidders. All clarifications and interpretations issued by the *Jal Nigam* shall be deemed to be part of this RFP. Should the *Jal Nigam* deem it necessary to amend the RFP as a result of a request for clarification, it will do so following the procedure under Clause 9.
- (d) It shall be the responsibility of the Bidders to check the e-Procurement Portal for the response to the queries or requests for clarifications.
- (e) Verbal clarifications and information given by NMCG, the *Jal Nigam* or any other Person for or on its behalf shall not in any way or manner be binding on NMCG or the *Jal Nigam*.

8.2 Pre-Bid Meeting

- a. All interested Companies shall be invited to attend the Pre-Bid Meeting on the date, time and place mentioned in the Bid Schedule. The purpose of the Pre-Bid Meeting will be to clarify issues and answer questions on any matter relating to the RFP, the Bid Process and the Project.
- b. All interested Companies may nominate up to 3 authorized representatives to participate in the Pre-Bid Meeting, by confirming the participation of its authorized representatives at the Pre-Bid Meeting at least 3 days prior to the date of the Pre-Bid Meeting. Such confirmation shall be sent by e-mail to pmgpcu@yahoo.co.in
- c. During the course of the Pre-Bid Meeting, all interested Companies will be free to seek clarifications and make suggestions to the *Jal Nigam*.
- d. Non-attendance at the Pre-Bid Meeting will not be a cause for disqualification of an interested Company from participating in the Bid Process.

9. AMENDMENT OF THE RFP

- 9.1 Up until the date that is mentioned in the Bid Schedule, the *Jal Nigam* may, for any reason, whether on its own initiative or in response to a query raised or clarifications requested by a Bidder, amend the RFP by issuing an Addendum or an amended RFP and amended draft Concession Agreement. The addendum will appear on the e-Procurement Portal under “Latest Corrigendum” and email notification is also automatically sent to those bidders who have moved this tender to their “My Tenders” area. Any addendum thus issued shall be part of the bidding documents and deemed to have been communicated to all the bidders who have moved this tender to their “My Tenders” area.
- 9.2 All Addenda/amendments and amended RFP & amended draft Concession Agreement will be uploaded on the e-Procurement Portal.

-
- 9.3 The Bidders are required to visit the website before submission of the Bid so as to take into account with any Addenda/amendments that may be issued in accordance with this Clause 9.
- 9.4 Each Addendum/amendment will be binding on the Bidders, whether or not the Bidders convey their acceptance of the Addendum/amendment.
- 9.5 Any oral statements made by NMCG or the *Jal Nigam* or its advisors regarding the Bid Process, the RFP or on any other matter, shall not be considered as amending the RFP.
- 9.6 The *Jal Nigam* will assume that the information contained in the Addendum/amendments will have been taken into account by the Bidder in its Bid. The *Jal Nigam* assumes no responsibility for the failure of a Bidder to submit the Bid in accordance with the terms of the Addendum/amendments or for any consequent losses suffered by the Bidder.

10. AVAILABILITY OF INFORMATION

- 10.1 The information relating to or in connection with the Project, the Bid Process and this RFP, including all notices issued by the *Jal Nigam* to all Bidders in accordance with this RFP; queries and responses or clarifications and any Addenda will be uploaded on the e-Procurement Portal.
- 10.2 All such information will be made available for review by the Bidders until the Bid Due Date.
- 10.3 If a Bidder faces any technical issue or technical error in accessing the e-Procurement Portal, the Bidder may seek assistance from the *Jal Nigam* by sending an e-mail request to pmgpcu@yahoo.co.in, no later than 3 days prior to the Bid Due Date.
- 10.4 The *Jal Nigam* will use its best endeavours to respond to a written e-mail request and resolve the technical issue or error or provide an alternative solution to the Bidder within 3 days of receipt of such request.

11. CORRESPONDENCE WITH BIDDERS

Save as expressly provided in this RFP, NMCG and the *Jal Nigam* will not entertain any correspondence with the Bidders, whether in connection with the acceptance or rejection of their Bids or otherwise.

12. CONFIDENTIAL INFORMATION AND PROPRIETARY DATA

12.1 Proprietary Data

All documents and other information provided by the *Jal Nigam* or submitted by a Bidder to the *Jal Nigam* will remain or become the property of the *Jal Nigam*, as the case may be. Bidders are required to treat all information provided by the *Jal Nigam* in the RFP as strictly confidential and not to use them for any purpose other than for preparation and submission of their Bids.

12.2 Confidentiality Obligations of the Jal Nigam

The *Jal Nigam* will treat all information, submitted as part of a Bid as confidential and will require all those who have access to such material to treat it in confidence. The *Jal Nigam* may not divulge any such information or any information relating to evaluation of Bids or the qualification of Bidders unless:

- (a) such publication is contemplated under this RFP;
- (b) such publication is made to any Person who is officially involved with the Bid Process or is a retained professional advisor advising the *Jal Nigam*, NMCG or the Bidder on matters arising out of or in connection with the Bid Process;
- (c) it is directed to do so by any statutory authority that has the power under law to require its disclosure;
- (d) such publication is to enforce or assert any right or privilege of the statutory authority and/or the *Jal Nigam* and/or NMCG or as may be required by law (including under the Right to Information Act, 2005); or
- (e) in connection with any legal process.

13. GOVERNING LAW AND JURISDICTION

13.1 Governing Law

The Bid Process, this RFP and the Bids shall be governed by, and construed in accordance with, the laws of India.

13.2 Exclusive Jurisdiction

The competent courts in *Uttar Pradesh* shall have jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bid Process, this RFP and the Bids.

14. VALIDITY OF THE BIDS

- 14.1 The Bids shall remain valid for a period of 180 days from the Bid Due Date. A Bid valid for a shorter period shall be rejected by the *Jal Nigam* as being non-responsive.
- 14.2 In exceptional circumstances, prior to the expiry of the Bid validity period, the *Jal Nigam* may request Bidders to extend the Bid validity period. The request and the responses shall be made in writing. A Bidder may refuse the *Jal Nigam's* request to extend the validity period of its Bid, without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its bid.

PART B. BID SECURITY, PERFORMANCE SECURITY AND ESHS PERFORMANCE SECURITY

15. BID SECURITY

- 15.1 The Bidder shall furnish as part of its Bid, a bid security for the Project (the **Bid Security**). The Bid Security shall be for an amount equivalent to INR 4,00,00,000 (*INR four crores only*) or an equivalent amount in a freely convertible currency
- 15.2 The Bid Security shall remain valid for Bid validity period as specified in Clause 14.
- 15.3 The Bidder shall provide the Bid Security in the form of a bank guarantee issued by a Scheduled Bank in India. The Bid Security shall be issued in favour of the "**Uttar Pradesh Jal Nigam**", represented by the Project Manager, Ganga Pollution Control Unit, UP Jal Nigam, payable at Kanpur and in the format set out in Annexure 11.
- 15.4 Unless forfeited in accordance with Clause 15.5 below, the Bid Security of the unsuccessful Bidders will be returned by the Jal Nigam no later than 30 days from the date of execution of the Concession Agreement with SPV incorporated by the Selected Bidder.

The Bid Security of the Selected Bidder will be returned upon the SPV incorporated by the Selected Bidder furnishing the Performance Securities in accordance with Clause 16.

- 15.5 The Bid Security shall be forfeited and appropriated by the Jal Nigam as mutually agreed genuine pre-estimated compensation and damages payable to the Jal Nigam for time, cost and effort of the Jal Nigam, without prejudice to any other right or remedy that may be available to the Jal Nigam hereunder or otherwise, under the following conditions:
- (a) if a Bidder is disqualified in accordance with, Clause 3.2 (Lock-in Restrictions and Change in Control), Clause 3.3 (Conflict of Interest), Clause 3.5 (Other Eligibility Criteria), Clause 7.3 (Rights of the *Jal Nigam*), Clause 17 (Number of Bids) and Clause 31.3 (Execution of Concession Agreement);
 - (b) if, after the Bid Due Date, a Bidder withdraws its Bid during the Bid validity period; or
 - (c) if a Bidder is selected as the Selected Bidder and it fails, within the specified time limit, to:
 - (i) sign and return, as acknowledgement, the duplicate copy of the LOA;
 - (ii) cause the Concessionaire to furnish the Performance Security, and if applicable, the Additional Performance Securities, in accordance with Clause 16;

-
- (iii) cause the Concessionaire to furnish the ESHS Performance Security in accordance with Clause 16A;
 - (iv) cause the Concessionaire to furnish the O&M Performance Security in accordance with Clause 16B;
 - (v) fulfil any other condition precedent to the execution of the Concession Agreement; or
 - (vi) cause the Concessionaire to execute the Concession Agreement.

16. PERFORMANCE SECURITY

- 16.1 The Selected Bidder shall cause the Concessionaire to furnish to the *Jal Nigam* (i) Unnao Performance Security for a value equal to 9% of the Unnao Bid Project Cost; (ii) Shuklaganj Performance Security for a value equal to 9% of the Shuklaganj Bid Project Cost; (iii) Pankha Performance Security for a value equal to 9% of the Pankha Bid Project Cost and (iv) Jajmau Performance Security for a value equal to 9% of the Jajmau Bid Project Cost. The performance security for all the locations and their facilities would need to be furnished on or before execution of the Concession Agreement to secure the obligations of the Concessionaire under the Concession Agreement.
- 16.2 The Performance Security/Securities for each Location's Facilities shall remain valid until 1 month from COD of that Location.
- 16.3 The Selected Bidder shall cause the Concessionaire to provide the Performance Security/Securities in the form of bank guarantee(s) issued by a Scheduled Bank in India. The Performance Security/Securities shall be issued in favour of "**Uttar Pradesh Jal Nigam**", represented by the Project Manager, Ganga Pollution Control Unit, UP Jal Nigam, payable at *Kanpur* and in the format set out in Annexure 4.
- 16.4 If the Selected Bidder fails to cause the Concessionaire to furnish the Performance Security /Securities for any or all the relevant sites in accordance with this Clause 16 on or before the execution of the Concession Agreement, then the *Jal Nigam* shall have the right to forfeit the Bid Security of the Selected Bidder in accordance with Clause 15.5(c).
- 16.5 During evaluation of Financial Proposal and before award of the Project, if it is found that the Selected Bidder has submitted an unbalanced or frontloaded Bid for the entire Project or for any components thereof, the Jal Nigam reserves right to seek Additional Performance Security over and above that is mentioned in the Clause 16.1. The quantum of such Additional Performance Security will be determined by the Jal Nigam on the basis of reasonable assessment of various Project components and after seeking suitable justifications/clarifications on the price components of the Bid from the Selected Bidder. The Selected Bidder shall submit this Additional Performance Security before the issue of LOA. The Additional Performance Security shall be in force till the end of Construction period if the Bid Project Cost is found to be unreasonable and till the end of the Concession Period if O & M Charges are found to

be unreasonable. The Additional Performance Security shall be liable to be forfeited either fully or partially as it deems fit for the reasons mentioned in Clause 16.1 of the draft Concession agreement.

16A. ESHS Performance Security

16A.1 The Selected Bidder shall cause the Concessionaire to furnish to the *Jal Nigam*, ESHS Performance Security for each location for a value equal to 1% of the aggregate of O&M charges ~~and Power Charges~~ quoted by the bidder for a period of 15 years for that location, on or before execution of the Concession Agreement to secure due performance of the ESHS obligations of the Concessionaire under the Concession Agreement.

16A.2 The ESHS Performance Security/Securities shall remain valid for the entire term of the Concession Agreement.

16A.3 The Selected Bidder shall cause the Concessionaire to provide the ESHS Performance Security/Securities in the form of bank guarantees issued by a Scheduled Bank in India. The ESHS Performance Security/Securities shall be issued in favour of " *Uttar Pradesh Jal Nigam*", represented by the Project Manager, Ganga Pollution Control Unit, UP Jal Nigam, payable at Kanpur and in the format set out in Annexure 5.

16A.4 If the Selected Bidder fails to cause the Concessionaire to furnish the ESHS Performance Security/Securities in accordance with this Clause 16A on or before the execution of the Concession Agreement, then the Jal Nigam shall have the right to forfeit the Bid Security of the Selected Bidder in accordance with Clause 15.5(c).

16B. O&M Security

16B.1 The Selected Bidder shall cause the Concessionaire to furnish to the Jal Nigam (i) Unnao O&M Security (ii) Shuklaganj O&M Security (iii) Pankha O&M Security and (iv) Jajmau O&M Security, within 60 days of the Construction Completion Date or 30 days before COD, whichever is earlier. For Bingawan and Sajari, the Concessionaire shall submit 30 days prior to the ~~relevant-Bingawan~~ Handover Date ~~and Effective Date~~, Bingawan O&M Security and Sajari O&M Security, respectively. The amount of O&M security should be

- a. 10% of the Total O&M cost ~~and Power Charges~~ (i.e. Monthly quoted O&M cost X 180 ~~+ Monthly quoted power charges X 180~~) for first 5 years from the start of O&M Period for each location
- b. 7% of the Total O&M cost ~~and Power Charges~~ (i.e. Monthly quoted O&M cost X 180 ~~+ Monthly quoted power charges X 180~~) for year 6 to year 10 from the O&M start date for each location

-
- c. 5% of the Total O&M cost ~~and Power Charges~~ (i.e. Monthly quoted O&M cost X 180 ~~+ monthly quoted power charges X 180~~) beyond 10 years from the O&M start date till the Expiry Date

for each the Location towards Location's O&M Security. The O&M security for all the locations and their facilities would need to be furnished to secure the obligations of the Concessionaire under the Concession Agreement.

16B.2 The O&M Securities shall have an initial validity period of 1 year, which must be renewed on a year-on-year basis, before the expiry of the 11th month of the relevant year, until the expiry of the O&M Period. If any of the O&M Securities is not renewed by the expiry of the 11th month of the relevant year of the O&M Period, then the Jal Nigam shall be entitled to drawdown the total amount available under the relevant or total O&M Security, and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the O&M Security

16B.3 The Selected Bidder shall cause the Concessionaire to provide the O&M Security/Securities in the form of bank guarantees issued by a Scheduled Bank in India. The O&M Security/Securities shall be issued in favour of "***Uttar Pradesh Jal Nigam***", represented by the Project Manager, Ganga Pollution Control Unit, UP Jal Nigam, payable at *Kanpur*.

16B.4 If the Selected Bidder fails to cause the Concessionaire to furnish the O&M Security/Securities in accordance with this Clause 16B on or before the respective due dates, then the *Jal Nigam* shall have the right to forfeit the Bid Security of the Selected Bidder in accordance with Clause 15.5(c).

PART C. PREPARATION AND SUBMISSION OF BIDS

17. NUMBER OF BIDS

- 17.1 Each Bidder shall be permitted to submit only 1 Bid for the Project, either individually or as a Member of a Consortium. A Bidder applying individually or as a Member of a Consortium shall not be entitled to submit another Bid either individually or as a Member of any other Consortium, as the case may be. A Bidder who submits or participates in more than 1 Bid for the Project shall cause all the Bids with the Bidder's participation to be disqualified.

18. LANGUAGE OF BIDS AND CORRESPONDENCE

- 18.1 The Bid prepared by the Bidder and all correspondence and documents related to the Bid exchanged by the Bidder and the *Jal Nigam* shall be in English.
- 18.2 Any document furnished by the Bidder may be in another language, as long as such document is accompanied by an English translation, in which case, for purposes of interpretation of the Bid, the English translation shall take precedence. If any document submitted by a Bidder is in a local language, then the English translation must be certified by an advocate and notarised in India. If any document submitted by a Bidder is in a foreign language, then the English translation must be certified by the embassy/consulate/high commission of the relevant foreign country in India or the Ministry of Foreign/External Affairs of the relevant foreign country where the project is situated. Supporting materials which are not translated into English or certified/notarised in accordance with this Clause 18.2 may not be considered by the *Jal Nigam*.

19. BID DUE DATE

- 19.1 The Bid shall be submitted on or before the date, time and place specified in the Bid Schedule.
- 19.2 The *Jal Nigam* may, at its discretion and for any reason, extend the Bid Due Date for all Bidders by issuing an Addendum in accordance with Clause 9, in which case all rights and obligations of the *Jal Nigam* and the Bidders will thereafter be subject to the Bid Due Date as extended.
- 19.3 Bids received by the *Jal Nigam* after the specified time on the Bid Due Date will not be eligible for consideration and will be summarily rejected.

20. QUALIFICATION PROPOSAL

20.1 The Qualification Proposal submitted by a Bidder shall comprise scanned copies of the following:

- (a) bid letter in the format set out in **Annexure 1A**;
- (b) description of the Bidder/Members in the format set out in **Annexure 1B**;
- (c) Power of Attorney in the format set out in **Annexure 1C**, executed by the Bidder or the Lead Member authorizing the signatory of the Bid to commit the Bidder;
- (d) certificate issued by the statutory auditor of the Bidder, in the format set out in **Annexure 1D**, certifying the Net Worth of the Bidder and compliance with other financial qualification criteria specified in Clause 4.2;
- (d) details of the eligible STP(s) for which development/design and construction experience is being claimed in the format set out in **Annexure 1E – Part 1** and details of the eligible STP(s) for which O&M experience is being claimed in the format set out in **Annexure 1E – Part 2**;
- (e) certificate from the statutory auditor certifying the shareholding of the Bidder (or in case of a Consortium, the relevant Member) in the Company developing the STP(s) for which development is being claimed by the Bidder in the format set out in **Annexure 1F**;
- (f) self-attested certificate regarding Associate, if applicable, in the format set out in **Annexure 1G**;
- (g) information on any litigation that the Bidder is a party to, in the format set out at **Annexure 1H**;
- (h) Bid Security in the format set out at **Annexure 1I**;
- (i) if applicable, experience certificate for a biogas power plant in the format set out at **Annexure 2** or a consent letter for a biogas power plant in the format set out at **Annexure 3**, along with certificate(s) from the relevant government authority;
- (j) for each STP for which development/design and construction experience is being claimed, certificate from the relevant government authority/client certifying that the STP has been completed/commissioned in accordance with the concession agreement or similar contract executed for such STP;
- (k) for each STP for which O&M experience is being claimed, certificate from the relevant government authority certifying that the Bidder (or, in case of a Consortium, the relevant Member) has successfully operated and maintained the STP for which O&M experience is being claimed, for at least 24 consecutive months in the 7 years immediately preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STP / SPS;

-
- (l) annual financial statements of the Bidder (including profit and loss statements) for the 3 Financial Years immediately preceding the Bid Due Date;
 - (m) self-attested copies of the certificate of incorporation, memorandum of association and articles of association. If the Bidder is a Consortium, then each Member shall submit self-attested copies of its certificate of incorporation, memorandum of association and articles of association;
 - (n) declaration listing the contract(s) of the Bidder or each Member (in case of a Consortium) that has/have been suspended or terminated and/or performance security that has been called by an employer for reasons related to the non-compliance by such Bidder or Member(s) with any ESHS requirements or safeguard in the past 5 years, in the format set out at **Annexure II**.

20.2 If the Bidder is a Consortium, it will also be required to submit the following documents:

- (a) Power of Attorney in the format set out at **Annexure 1J**, executed by the Members of the Consortium authorizing the Lead Member of the Consortium to act on behalf of and commit the Consortium.
- (b) Joint Bidding Agreement in the format set out at **Annexure 1K**.

21. FINANCIAL PROPOSAL

21.1 The Financial Proposal submitted by a Bidder shall comprise the Bid Price Sheet provided on the e-Procurement Portal.

21.2 The Bidders shall quote in the Bid Price Sheet, separately for each Facility the:

- (a) Bid Project Cost (including all Taxes and GST), for Jajmau Facilities, Pankha Facilities, Unnao Facilities, ~~and~~ Shuklaganj Facilities, Bingawan Facilities and Sajari Facilities;
- (b) O&M Charges for the first month after COD for Jajmau, Pankha, Unnao and Shuklaganj Facilities and/or first month after effective date for Sajari Facilities and/or first month after Handover Date for Bingawan Facilities (including all Taxes and GST) for all facilities;
- (c) Guaranteed Energy Consumption for the O&M Period for all facilities; and
- (d) Land Requirement (For Unnao STP, Shuklaganj STP and Pankha STP).

Based on these 4 components quoted by a Bidder, the Bid Price is calculated by the system using the formula set out in Bid Price Sheet.

-
- 21.3 The Bidder shall quote 1(one) figure for any of the components of the Bid Price after all discounts the Bidder wishes to offer on any or all of the components of the Bid Price.
- 21.4 If the Bidder: (a) quotes more than 1 figure for any of the components of the Bid Price; (b) offers a discount on any or all of the components of the Bid Price, then the Financial Proposal of such Bidder will be deemed to be non-responsive.

22. COST AND CURRENCY OF BIDS

22.1 Cost of the Bid

The Bidders will bear their own costs associated with or relating to the preparation and submission of their Bids, including copying, postage, delivery charges and expenses associated with any presentations which may be required by the *Jal Nigam* or NMCG or any other costs incurred in connection with or relating to their Bids, including any costs incurred on conducting any due diligence. All such costs and expenses will be borne by the Bidders and the *Jal Nigam*, NMCG and their employees and advisors will not be liable in any manner whatsoever for such costs and expenses, regardless of the conduct or outcome of the Bid Process.

22.2 Currency of the Bid

All amounts in the Bid should be stated in Rupees.

23. SIGNING OF BIDS

23.1 Each Bidder (and in case of a Consortium, the Lead Member) must affix the digital signature of its authorised signatory to the soft copies of both the Qualification Proposal and the Financial Proposal, upon uploading the soft copy of the Qualification Proposal and submission of the Financial Proposal to the e-Procurement Portal.

24. SUBMISSION OF BIDS

24.1 Each Bidder is required to upload a soft copy/scanned copy of its Bid on the e-Procurement Portal.

24.2 While uploading the Bid on the e-Procurement Portal, Bidder must ensure that files containing the Qualification Proposal and scanned copies of the Bid Security are uploaded separately under the relevant heads in a PDF format. The Bidder shall be required to fill all mandatory forms and fields indicated in the e-Procurement Portal at the time of uploading its Bid.

-
- 24.3 The Bidders should ensure the legibility of the documents uploaded to the e-Procurement Portal.
- 24.4 The Bidder shall upload the Bid sufficiently before the specified time on the Bid Due Date to avoid any technical issues or malfunction in the network caused by heavy traffic of Bidders on the Bid Due Date. The *Jal Nigam* and NMCG will not be responsible for any failure, malfunction or breakdown of the electronic system during the e-procurement process.
- 24.5 The Bidder should check the system generated summary of its Bid submission to confirm successful uploading of its Bid.
- 24.6 All Bids uploaded to the e-Procurement Portal will be encrypted and the encrypted Bids can only be opened by the authorised representatives of the Jal Nigam at or after the specified time on the Bid Due Date.
- 24.7 Each Bidder shall submit a hard copy of the original Bid Security, Power of Attorney, joint bidding agreement to the Jal Nigam, before date/ time specified in Clause 2.12 (c).

It is clarified that the Bidder will not be required to submit a hard copy of its Financial Proposal, and if a hard copy of the Financial Proposal is submitted, then the Bid submitted by such Bidder shall be rejected as being non-responsive.

- 24.8 The Bid will contain no alterations, omissions or additions, unless such alterations, omissions or additions are signed by the authorized signatory of the Bidder/Lead Member. Any interlineations, erasures, or overwriting will be valid only if they are signed by the authorized signatory of the Bidder/Lead Member.
- 24.9 The hard copy of the Bid Security, Power of Attorney, joint bidding agreement, etc will be duly sealed in an envelope, which will be super-scribed as follows:

**"KANPUR STP PPP PROJECT
QUALIFICATION PROPOSAL
DO NOT OPEN BEFORE SPECIFIED TIME ON BID DUE DATE"**

- 24.10 The sealed envelope Bid Security, Power of Attorney, Joint Bidding Agreement, etc will clearly indicate the name, address and contact details of the Bidder. If the envelope is not sealed, marked and submitted as instructed in this Clause 24, the *Jal Nigam* assumes no responsibility for the misplacement or premature opening of the contents and consequent losses, if any, suffered by the Bidder.
- 24.11 The hard copy of the Bid Security, Power of Attorney, Joint Bidding Agreement, etc will either be hand delivered or sent by registered post acknowledgement due or courier to the address below:

Office of the Project Manager,
Ganga Pollution Control Unit,

Uttar Pradesh Jal Nigam,
Bena Jhawar Road,
Kanpur, Uttar-Pradesh – 208002
Phone: 0512-2545573
Mobile: 94739 42738/94739 42741

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

24.12 The Jal Nigam will not be responsible for any delays, loss or non-receipt of Bids.

25. SUBSTITUTION/WITHDRAWAL/MODIFICATION OF BIDS

- 25.1 Bidders may modify their bids by using the appropriate option for bid modification on e-Procurement Portal, before the deadline for submission of bids. For bid modification and consequential re-submission, the Bidder is not required to withdraw his bid submitted earlier. The last modified Bid submitted by the Bidder within the Bid Due Date shall be considered as the Bid. For this purpose, modification/withdrawal by other means will not be accepted. In online system of bid submission, the modification and consequential re-submission of Bid is allowed any number of times. A bidder may withdraw his Bid by using the appropriate option for Bid withdrawal, before the deadline for submission of Bids. However, if the Bid is withdrawn, re-submission of the Bid is not allowed.
- 25.2 Bids requested to be withdrawn in accordance with Clause 25.1 shall not be opened.
- 25.3 No Bid may be withdrawn, substituted, or modified in the interval between the Bid Due Date and the expiration of Bid validity period specified by the Bidder in the Bid Letter or any extension thereof. This will result in the forfeiture of the Bid Security pursuant to Clause 15.5.

PART D. OPENING AND EVALUATION OF BIDS

26. PUBLIC OPENING OF BIDS

- 26.1 The Jal Nigam will publicly open all Bids that are submitted on or before the specified time on the Bid Due Date and this could be viewed by the Bidders online.
- 26.2 The Jal Nigam will open the soft copy of the Bids (Qualification Proposals) at the time and on the date specified in the Bid Schedule at the following address:

Office of the Project Manager,
Ganga Pollution Control Unit,

Uttar Pradesh Jal Nigam,
Bena Jhawar Road,
Kanpur, Uttar-Pradesh – 208002
Phone: 0512-2545573
Mobile: 94739 42738/94739 42741

The Financial Proposals of the Bids shall remain unopened in the e-Procurement System, until the subsequent public opening in accordance with Clause 28 following the evaluation of the Qualification Proposals of the Bids.

The Bids will be opened in the presence of the Bidders whose designated representatives choose to be present. The Bidders can also view the summary of opening of Bids by logging on to the e-Procurement Portal.

- 26.3 If the specified date for opening the Qualification Proposals is declared a holiday in Jal Nigam's office, then the Qualification Proposals will be opened at the specified time and location on the next working day.
- 26.4 The Jal Nigam will prepare a record of the opening of the Bids that will include, as a minimum, the names of the Bidders from whom Bids have been received. The Bidders' representatives who are present will be requested to sign the record. The omission of a Bidder's representative's signature on the record will not invalidate the contents and effect of the record.
- 26.5 Once all the Qualification Proposals have been opened, they will be evaluated for responsiveness and to determine whether the Bidders are qualified for opening of the Financial Proposals. The procedure for evaluation of the Qualification Proposals is set out in Clause 27.
- 26.6 Once the Qualification Proposals have been evaluated, all Bidders whose Qualification Proposals meet the Qualification Criteria and the Eligibility Criteria, will be informed of a date, time and place for opening of their Financial Proposals. The Financial Proposals will be opened in the presence of the representatives of the qualified Bidders that choose to be present. The procedure for evaluation of the Financial Proposals is set out in Clause 28.
- 26.7 Any information contained in a Bid will not in any manner be construed as binding on the Jal Nigam, its agents, successors or assigns; but will be binding on the Bidder.

27. DETERMINATION OF RESPONSIVENESS AND EVALUATION OF QUALIFICATION PROPOSALS

- 27.1 The *Jal Nigam* will examine the Qualification Proposals to determine whether they are complete, whether the documents have been properly signed, and whether the Qualification Proposals are generally in order. If any Bidder is found to be disqualified

in accordance with the terms of the RFP or if any Qualification Proposal is found to be non-responsive or not meeting the Technical Capacity or the Financial Capacity, the Bid comprising such Qualification Proposal will be rejected by the *Jal Nigam* and not included for further consideration. No request for alteration, modification, substitution or withdrawal shall be entertained by the *Jal Nigam* in respect of such Bid.

- 27.2 Prior to evaluation of the Qualification Proposals, the Qualification Proposals will be evaluated to determine responsiveness to the RFP. A Qualification Proposal, shall be considered responsive only if:
- (a) the Qualification Proposal and all documents specified in Clause 20 are received in the prescribed formats and original documents are received as specified in Clause 24.7;
 - (b) the Bid is received by the specified time on the Bid Due Date;
 - (c) it is signed, marked, and uploaded as stipulated in Clauses 23 and 24;
 - (d) it contains all the information and documents (complete in all respects) as requested in this RFP; and
 - (e) it does not contain any condition or qualification.
- 27.3 The *Jal Nigam* shall then evaluate and determine whether the Bidders who have submitted responsive Qualification Proposals satisfy the Eligibility Criteria and the Qualification Criteria set out at Clause 3 and Clause 4 respectively.
- 27.4 In order to determine whether the Bidder satisfies the Eligibility Criteria set out at Clause 3 and the Qualification Criteria set out in Clause 4, the *Jal Nigam* will review the documentary evidence of the Bidder's eligibility and qualifications submitted by the Bidder and any additional information which the *Jal Nigam* seeks from the Bidder.
- 27.5 Where any information provided by a Bidder is found to be patently false or amounting to a material misrepresentation, the *Jal Nigam* reserves the right to reject the Bid submitted by such Bidder.
- 27.6 Upon completion of evaluation of the Qualification Proposals, the *Jal Nigam* will notify in writing those Bidders whose Bids were considered non-responsive to the RFP or failed to meet the Qualification Criteria set out in this RFP, advising them of the following information:
- (a) their Qualification Proposals of Bid failed to meet the requirements of the RFP and the reasons for disqualification;
 - (b) their Financial Proposals of Bid shall not be opened; and
 - (c) notify them of the date and time for public opening of Financial Proposals of the Bids.

27.7 The *Jal Nigam* shall, simultaneously, notify in writing those Bidders whose Qualification Proposals have been evaluated as substantially responsive to the RFP and met all Qualifying Criteria, advising them of the following information:

- (a) their Qualification Proposal has been evaluated as substantially responsive to the RFP and met the Qualification Criteria;
- (b) their Financial Proposal of Bid will be opened at the public opening of the Financial Proposals; and
- (c) notify them of the date and time on which their Financial Proposals will be opened.

28. PUBLIC OPENING AND EVALUATION OF FINANCIAL PROPOSALS

28.1 The *Jal Nigam* shall open the Financial Proposals of only those Bidders whose Qualification Proposals meet the criteria set out in this RFP.

28.2 The Financial Proposals of the Bids shall be opened publicly in the presence of Bidders' designated representatives and anyone who chooses to attend, and this could also be viewed by the Bidders online. The *Jal Nigam* shall open the Financial Proposal of each qualified Bidder and announce the Bid Price for Unnao Facilities, Shuklaganj Facilities, Pankha Facilities, Jajmau Facilities, Bingawan Facilities and Sajari Facilities and the aggregate Bid Price quoted by the bidders. The *Jal Nigam* shall prepare the minutes of the online opening of the Financial Proposals which will be signed by the representatives of the Bidders present at the time of opening and upload these minutes for viewing online.

28.3 Evaluation of Financial Proposals

- a. Following the opening of the Financial Proposals,
 - i. the *Jal Nigam* shall evaluate the Financial Proposals for responsiveness. If any Financial Proposal is found not to be complete in all respects;
 - ii. not duly signed by the authorized signatory of the Bidder/Lead Member;
 - iii. not to be in the prescribed format; or
 - iv. to contain any hand-written values
 - v. not in accordance with the clause 21.3.

then such Financial Proposal shall be deemed to be substantially non-responsive.

- b. Financial Proposals, which are substantially responsive to the Bidding Documents (comprising RFP and Concession Agreement), shall be evaluated for each STP included in the scope of work, by adding various components of quoted Bid Prices for each STP as under:
 - (i) Design-Build Price (**Bid Project Cost**) including all taxes & GST;

- (ii) **O&M prices for STP** for n years= (O&M Charges including all taxes & GST for first month after COD) * n*12
 (where n=number of years
 n=15 for Pankha, Unnao and Shuklaganj,
 n=15.56 for Jajmau, ~~and~~
n=16 for Bingawan, and
 n=17 for Sajari)
- (iii) **Cost of Energy Consumption for STP during O&M period**= Average Guaranteed Energy Consumption per MLD flow rate * Base Energy Tariff Rate * STP Design Capacity * Number of days of the O&M period
 For the purpose of this calculation of energy cost:
 Average Guaranteed Energy Consumption per MLD flow rate = Average of different guaranteed energy consumption figures in KWh quoted in Bid Price Sheet for treating various combinations of effluent flow rates and BOD;
 Base Energy Tariff Rate = INR 10.0/KWh; and
 Number of days of the O&M period = n*365
 (where n=number of years
 n=15 for Pankha, Unnao and Shuklaganj,
 n=15.56 for Jajmau, ~~and~~
and n=16 for Bingawan, and
 n=17 for Sajari)
- (iv) **Cost of Land required for the STP** = Land Requirement in square meters as quoted by the Bidder (in sqm) * Land Price per sqm
 For the purpose of evaluation,
 for Pankha, land price = INR 12,000 per sqm
 for Unnao, land price = INR 540 per sqm
 for Shuklaganj, land price = INR 550 per sqm
- (v) **O&M prices for associated infrastructure** for n years= (O&M Charges including all taxes & GST for first month after COD) * n*12
 (where n=number of years
 n=15 for Pankha, Unnao and Shuklaganj,
 n=15.56 for Jajmau, ~~and~~
n=16 for Bingawan, and
 n=17 for Sajari)
- (vi) **Cost of Energy Consumption for associated infrastructure during O&M period**= Average Guaranteed Energy Consumption per MLD flow rate * Base Energy Tariff Rate * Pumping Capacity* Number of days of the O&M period
 For the purpose of this calculation of energy cost:
 Average Guaranteed Energy Consumption per MLD flow rate = Average of different guaranteed energy consumption figures in KWh quoted in Bid Price Sheet for treating various combinations of effluent flow rates and BOD;

Base Energy Tariff Rate = INR 10.0/KWh; and

Number of days of the O&M period = $n \times 365$

(where n = number of years

$n=15$ for Pankha, Unnao and Shuklaganj,

$n=15.56$ for Jajmau, ~~and~~

$n=16$ for Bingawan, and

$n=17$ for Sajari)

Total Evaluated Bid Price for a location = (i) + (ii) + (iii) + (iv) + (v) + (vi)

Evaluated Bid Prices determined in the above manner for each STP and associated infrastructure will be aggregated to arrive at the Total Evaluated Bid Price.

- c. The Executing Agency shall compare the Total Evaluated Bid Prices of all substantially responsive Financial Proposals to determine the Lowest Evaluated Bid.
- d. The Bidder whose Bid has been determined to be the Lowest Evaluated Bid, will be the Preferred Bidder, and shall be selected for award.
- e. The Preferred Bidder shall ordinarily be the Selected Bidder.
- f. If the Bid Price determined for 2 or more qualified Bidders is the same, then the Bidder whose Net Worth is higher shall be the Preferred Bidder.

If the Preferred Bidder is disqualified or rejected for any reason whatsoever, then the procedure set out in Clause 7.2 shall follow.

29. CLARIFICATION ON BIDS

- 29.1 To facilitate evaluation of the Bids, the *Jal Nigam* may, in its sole discretion, seek clarifications and/or any additional information from any Bidder regarding its Bid (including if the Bid is not signed, marked and sealed in accordance with Clauses 23 and 24). Such clarification(s) will be provided within the time specified by the *Jal Nigam* for this purpose. Any request for clarification(s) and all responses to such clarification(s) will be in writing. Any clarification submitted by a Bidder that is not in response to a request by the *Jal Nigam* will not be considered.
- 29.2 If a Bidder does not provide clarifications and/or any additional information sought under Clause 29.1 within the prescribed time, its Bid may be liable for rejection. If the Bid is not rejected, the *Jal Nigam* may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder will be barred from subsequently questioning such interpretation of the *Jal Nigam*.

PART E. AWARD OF PROJECT

30. LETTER OF AWARD (LOA)

30.1 After declaration of the Selected Bidder, the *Jal Nigam* will issue the LOA to the Selected Bidder in duplicate:

- a. declaring it is Selected Bidder
- b. accepting its Financial Proposal;
- c. requesting it to sign and return, as acknowledgement, a copy of the LOA within 15 days of receipt of the LOA;
- d. requesting it to submit the Performance Securities and O&M Securities in accordance with Clause 16, 16A and 16B; and
- e. requesting it to incorporate the Special Purpose Vehicle, which will act as the Concessionaire.

30.2 If the Selected Bidder fails to return a duly signed copy of the LOA to the *Jal Nigam* within 15 days of receipt of the LOA, then the *Jal Nigam* may, unless it consents to an extension, without prejudice to any of its rights under the RFP or law, disqualify the Selected Bidder, revoke the LOA, and forfeit the Bid Security. If the *Jal Nigam* elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.

30.3 After notification of award in accordance with Clause 30.1, the *Jal Nigam* may also notify all other Bidders of the results of the bidding, and may publish in its website and the Procurement Portal, results of the bidding process and the following information:

- (i) name of each Bidder who submitted a Bid;
- (ii) results of evaluation of Qualification Proposals;
- (iii) names of bidders whose Qualification Proposals were rejected and the reasons for their rejection
- (iv) bid prices as read out at opening of Financial Proposals;
- (v) name and evaluated prices of each Bid that was evaluated;
- (vi) names of bidders whose Financial Proposals were rejected and the reasons for their rejection; and
- (vii) name of the Selected Bidder, the Price it offered and summary scope of the contract awarded.

30.4 The *Jal Nigam* shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with Clause 30.3, requests in writing the grounds on which its bid was not selected.

31. EXECUTION OF THE CONCESSION AGREEMENT

- 31.1 The Special Purpose Vehicle incorporated by the Selected Bidder shall execute the Concession Agreement in the draft form provided by the *Jal Nigam*, with minimal changes or amendments to reflect facts or to correct minor errors. The *Jal Nigam* shall, within 15 days of the acceptance of the LOA by the Selected Bidder, provide the Selected Bidder with the final execution draft of the Concession Agreement.
- 31.2 The *Jal Nigam* shall not entertain any request from the Selected Bidder for negotiations of or deviations to the final execution draft of the Concession Agreement provided by the *Jal Nigam* under Clause 31.1.
- 31.3 If the Selected Bidder seeks to materially negotiate or seeks any material deviations from the final execution draft of the Concession Agreement, the *Jal Nigam* may elect to disqualify the Selected Bidder and revoke the LOA issued to the Selected Bidder. If the *Jal Nigam* elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.
- 31.4 Subject to satisfaction of the conditions specified in Clause 30.1 and any other conditions specified in the LOA, the Special Purpose Vehicle incorporated by the Selected Bidder shall execute the Concession Agreement within 45 days from the date of acceptance of the LOA by the Selected Bidder.
- 31.5 If the Special Purpose Vehicle fails to execute the Concession Agreement on or before the date specified in Clause 31.4, the *Jal Nigam* may, unless it consents to an extension, without prejudice to any of its rights under the RFP or law, disqualify the Selected Bidder, revoke the LOA and forfeit the Bid Security. If the *Jal Nigam* elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.

ANNEXURE 1A: FORMAT OF BID LETTER

Date:

Place:

To,

Name of Office/Unit

Jal Nigam

[Location A]

[City name]

Sub: **Bid for [City name] STP PPP Project**

Please find enclosed our Qualification Proposal in respect of the above mentioned project and complying with the Request for Proposal (RFP) issued by the Uttar Pradesh Jal Nigam (Jal Nigam) dated []

We hereby confirm the following:

1. The Qualification Proposal is being submitted by _____ (***name of the Bidder/Lead Member***), who is the Bidder/Lead Member of the Consortium [comprising _____ (***mention the names of the entities who are Members***)] ^{To be deleted for a single} entity bidder, in accordance with the terms and conditions stipulated in the RFP.

2. We have examined in detail and have understood the terms and conditions stipulated for qualification of the Bidders in the RFP issued by the Jal Nigam. We agree and undertake to abide by all these terms and conditions. We acknowledge and agree to submission of an unconditional Bid.

3. This statement is made for the express purpose of qualifying as a Bidder for the design, finance, construction, renovation, completion, rehabilitation, operation and maintenance of the [] Facilities and construction, rehabilitation, operation and maintenance of the [] Facilities in accordance with the Concession Agreement.

4. We acknowledge that the Jal Nigam and NMCG will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Bidder for implementing the Project, and we certify that all information provided in the Bid and Annexures is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.

5. The information submitted with respect to our Qualification Criteria is complete, and strictly as per the requirements stipulated in the RFP. We would be solely responsible for any errors or omissions in our Bid.

6. We shall make available to the Jal Nigam any additional information it may find necessary or require to supplement or authenticate the Bid.

7. We acknowledge the right of the Jal Nigam to reject our Bid without assigning any reason or otherwise and we hereby waive, to the extent permitted by applicable law, our right to challenge the same on any account whatsoever.

8. We acknowledge the right of the Jal Nigam to not award the Project without assigning any reason or otherwise and we hereby waive, to the extent permitted by applicable law, our right to challenge the same on any account whatsoever.

9. We certify that in the 3 Financial Years immediately preceding the Bid Due Date, we or any Member of our Consortium has not been affected by any of the following circumstances:

- (i) (i) failure to perform any contract, as evidenced by the imposition of a penalty by an arbitral or judicial authority or arbitration award or a judicial pronouncement against us or any Member;
- (ii) expulsion from any project or contract by GoI or any State Government, or its instrumentalities;
- (iii) termination of a contract by GoI or any State Government, or its instrumentalities for breach by us or any Member;
- (iv) undergoing any corporate debt restructuring or similar process under the laws of the country of its incorporation;
- (v) having been categorized as a willful defaulter in accordance with Applicable Laws;
- (vi) being subject to proceedings for declaration of or being declared bankrupt, being wound up, or having its affairs administered or conducted by any court, administrator, receiver;
- (vii) having been declared by a court or other competent authority as being unable to pay its debts, or having made any composition or arrangements with creditors or having had the repayment of its debts suspended; or
- (viii) having being convicted or otherwise being found responsible (or having any of its directors, partners, trustees, officers or managers convicted or being found responsible) by any court, tribunal, regulatory, public or other competent authority for a breach of any laws or regulations which:
 - (a) related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation or other payment was levied against us or any of our directors, partners, trustees, officers or managers; or
 - (b) resulted in the permanent or temporary suspension of our rights to provide any service or carry on any type of business or operations.

10. We certify that we or any Member of our Consortium have not been determined to be ineligible by the World Bank under the Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants.

11. We certify that we or any Member of our Consortium have not been barred by GoI or any State Government, or its instrumentalities from participating in any project or being awarded any contract and no such bar subsists on the Bid Due Date.

12. We declare that:

- (a) we have examined and have no reservations to the RFP and do not seek any deviations to the RFP, including any Addendum issued by the Jal Nigam;

(b) we do not have any Conflict of Interest in accordance with Clauses 3.3 of the RFP;

(c) 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 3.4 of the RFP, in respect of any tender or request for proposal issued by or any agreement entered into with the Jal Nigam NMCG; and

(d) we hereby certify that we have taken steps to ensure that in conformity with the provisions of the RFP and submission of the Bid, no person acting for us or on our behalf has engaged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

13. We understand that the Jal Nigam may cancel the Bid Process at any time and that the Jal Nigam is neither bound to accept any Bid that it may receive nor to invite the Bidders to submit a Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 7 of the RFP.

14. The [Bidder/ Consortium of which we are the Lead /Consortium Member (*strike out whichever is not applicable*),] satisfies the legal requirements and in our opinion by itself/along with its Members and Associates meets all the Qualification Criteria and Eligibility Criteria laid down in the RFP.

15. We declare that we and our Associates are not submitting separate Bids for the Project.

16. We declare that we are not submitting more than 1 Bid for the Project.

17. We certify that in regard to matters other than security and integrity of the country, we or any Member has not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project.

18. We further certify that in regard to matters relating to security and integrity of the country, we or any Member has not been charge-sheeted by any agency of the state or convicted by a court of law.

19. We further certify that no investigation by a regulatory authority is pending either against us or against any Member or against our CEO or any of our directors/managers/employees, which could have a material adverse effect on our ability to undertake the Project.

20. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bid Process.

21. Subject to the disclosures made in Annexure 1L, we further certify that any work contracts previously undertaken by us have not been suspended or terminated and/or performance security called by an employer for reasons related to the non-compliance with any ESHS requirements or safeguard in the past 5 years.

-
22. We undertake that in case due to any change in facts or circumstances during the Bid Process, we attract the provisions of disqualification in terms of the provisions of the RFP, we shall inform the *Jal Nigam* of the same immediately.
 23. In the event of us being declared as the Selected Bidder for the Project, we agree to incorporate a Special Purpose Vehicle, which will enter into a Concession Agreement provided by the *Jal Nigam*. We agree not to seek any changes in or deviations from the aforesaid draft and agree to abide by the same.
 24. We agree and undertake to abide by all the terms and conditions of the RFP.
 25. We have studied the RFP and all the information carefully. We understand that except to the extent expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the *Jal Nigam* or in respect of any matter arising out of or concerning or relating to the Bid Process including the award of the Project.
 26. [A power of attorney, by all Members of the Consortium, appointing the Lead Member, authorizing the Lead Member to sign the Bid related documents and sign the Concession Agreement, is included as part of the Bid.]³
 27. A Power of Attorney from the [Bidder/Lead Member]⁴ authorizing the undersigned as the authorised representative, signatory and contact person who is authorised to perform all tasks including, but not limited to providing information, responding to queries, entering into contractual commitments on behalf of the Bidder etc., in respect of the Project is included as a part of the Bid.
 28. I/We certify that if selected, we will adopt the same technology for the development of new STPs at Kanpur as used in atleast one of the STP(s) for which we are claiming experience to demonstrate our Technical Capacity to undertake the Project.
 29. We certify that in terms of the RFP, our Net Worth is INR [*amount in figure and words*].
 30. We certify that we have the Technical Capacity and Financial Capacity to undertake the Project.
 31. We agree and understand that the Bid is subject to the provisions of the RFP. In no case, we shall have any claim or right against the *Jal Nigam* if the Project is not awarded to us or our Bid is not opened.
 32. We have submitted all the relevant information as per the formats specified in the RFP, in 1 original and, where required, 1 copy, along with the requisite Bid Security.
 33. Our Bid shall remain valid for a period of not less than 180 days from the Bid Due Date.

³ To be deleted for a single entity bidder.

For and on behalf of :
Signature :
(Authorised Representative and Signatory)

Name of the Person :
Designation :

ANNEXURE 1B: DESCRIPTION OF THE BIDDER

1. (a) Name:
(b) Country of incorporation:
(c) Principal Address:
(d) Date of incorporation and/or commencement of business:
(e) GST No:
2. Brief description of the Bidder including details of its main lines of business: [*Note. Such description shall not exceed 5 type-written pages.*]
3. Details of individual(s) who will serve as the point of contact/communication for *Jal Nigam* and NMCG:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Telephone Number:
 - (e) E-mail Address:
 - (f) Fax Number:
4. In case of a Consortium:
 - (a) The information above (1-3) should be provided for all the Members of the Consortium.
 - (b) Additional information regarding each Member of the Consortium should be provided as per table below:

S. No.	Name of Member	Proposed percentage holding in the total Capital of the SPV
1.		
2.		
3.		

ANNEXURE 1C: FORMAT OF POWER OF ATTORNEY AUTHORISING THE SIGNATORY OF THE BID

(on Stamp Paper)

Know all men by these presents, We (*name of the Company and address of the registered office*) do hereby irrevocably constitute, nominate, appoint and authorise Mr./ Ms. (*name*), son/daughter/wife of and presently residing at, who is presently employed with us/the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the **Attorney**) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the [*City name*] STP PPP Project proposed or being developed by the *Jal Nigam (Jal Nigam)* and the National Mission for Clean Ganga (NMCG), including but not limited to signing and submission of all Bid documents and other documents and writings, participate in investor consultations and other conferences and providing information/responses to the *Jal Nigam*, representing us in all matters before the *Jal Nigam* and NMCG, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the *Jal Nigam* and NMCG in all matters in connection with or relating to or arising out of our Bid for the Project and/or upon award of the Project to us and/or till the entering into of the Concession Agreement with the *Jal Nigam* and NMCG.

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

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

For

.....
(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

(Notarised)
Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Instructions:

- (1) 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.*
- (2) Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

ANNEXURE 1D: FORMAT OF CERTIFICATE FROM THE STATUTORY AUDITOR FOR NET WORTH AND COMPLIANCE WITH OTHER FINANCIAL QUALIFICATION CRITERIA

(On the letter head of the statutory auditor of the Bidder/Member)

Based on the books of accounts of (*insert name of the Bidder/Member*) (**Bidder/Member**) and other published information authenticated by it, this is to certify that:

- (a) As on (*insert date*), the Bidder's/Member's Net Worth is Rs..... (Rupees).

Further, the annual Net Worth as per the balance sheets of past 3 Financial Years (including the above) exceeds Rs. [*mention amount in figures and words*]. The details are provided below:

Financial Year	Net Worth (Rs. Crores)
Financial Year []	
Financial Year []	
Financial Year []	

The Net Worth of has been calculated in accordance with the terms set out in the Request For Proposal (**RFP**) issued by the *Jal Nigam* on [*insert date*].

- (b) The Bidder/Member is not affected by and has not been affected by any of the following events, conditions or circumstances in the 3 Financial Years preceding the Bid Due Date:
- (i) having been categorized as a willful defaulter in accordance with Applicable Laws;
 - (ii) being subject to proceedings for declaration of or being declared bankrupt, being wound up, or having its affairs administered or conducted by any court, administrator, receiver; or
 - (iii) having been declared by a court or other competent authority as being unable to pay its debts, or having made any composition or arrangements with creditors or having had the repayment of its debts suspended.

Name of the auditor:

Seal of the auditor:

Signature:

Name:

Membership Number:

Designation:

Date:

ANNEXURE 1E: PART I - FORMAT OF DETAILS OF THE ELGIBILE SEWAGE TREATMENT PLANT

Item (1)	Refer Instruction	Details of the Project
Entity claiming experience		
Capacity of the project and technology		
Entity for which project was developed/developed and constructed	(2)	
Project Cost		
Location		
Date of award, completion/ commissioning of project/Status of project	(3), (4)	
Whether credit is being taken for the experience of an Associate (Yes/No)	(5)	
In case of development experience, shareholding in the company developing and owning the project	(6)	
Confirmation that the STP is or was successfully operational for at least 24 consecutive months in the 7 years immediately preceding the Bid Due Date	(7)	

Instructions:

- (1) *Bidders are expected to provide information in respect of the projects for which they are claiming design and construction/development experience. A separate sheet should be filled for each project.*
- (2) *In case of development experience, details such as name, postal address, email address and contact details of the authority/implementing agency (i.e., concession grantor) should be provided. In case of design and construction experience, details such as name, postal address, email address and contact details of both the developer (i.e., the concessionaire) and the authority/implementing agency (i.e., the concession grantor) should be provided.*
- (3) *The date of award of the project and completion or commissioning of the project, as the case may be, should be indicated.*

-
- (4) *In case of development experience, the completion certificate/commissioning certificate issued by the relevant government authority and signed by the executive engineer or an equivalent officer, certifying the date of award of the project, the date of completion/commissioning of the project and that the project has been commissioned and completed (as required under the relevant concession agreement or similar contract) should be provided.*
- In case of design and construction experience, the completion certificate/commissioning certificate issued by the client and signed by a duly authorized officer, certifying the date of award of the project, the date of completion/commissioning of the project and that the project has been successfully commissioned and completed (as required under the relevant concession agreement or similar contract for the STP) should be provided.*
- (5) *In the event that credit is being taken for the experience of an Associate, the Bidder should also provide a certificate in the format set out at Annexure 1G.*
- (6) *A certificate from the statutory auditor should be furnished stating the shareholding in the entity developing the project in the format set out at Annexure 1F.*
- (7) *A certificate issued by the relevant government authority specifying the number of years for which the STP has been successfully operational, in accordance with the relevant concession agreement or similar contract executed for the STP, should be provided.*
- (8) *Experience for any activity relating to a project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.*
- (9) *It may be noted that in the absence of any detail in the above format and/or the certificate(s) issued by the relevant government authority/client, the information would be considered inadequate and could lead to exclusion of the relevant project in determining whether the Bidder meets the Qualification Criteria.*

ANNEXURE 1E: PART II - FORMAT OF DETAILS OF THE OPERATION AND MAINTENANCE (O&M) OF ELIGIBLE SEWAGE TREATMENT PLANT

Item (1)	Refer Instr uctio n	Details of the Project
Entity claiming experience		
Capacity of the project and technology		
Entity for which project being operated and maintained	(2)	
Location		
Duration for which O&M experience is being claimed (From month, year to month, year)	(3)	
Whether credit is being taken for the experience of O&M as an Associate (Yes/No)	(4)	

Instructions:

- (1) *Bidders are expected to provide information in respect of the STPs for which they are claiming operations and maintenance experience. A separate sheet should be filled for each project.*
- (2) *Details such as name, postal address, email address and contact details of the client and the relevant government authority (i.e., the implementing agency) should be provided.*
- (3) *The duration of the O&M experience must be at least 24 consecutive months in the 7 years immediately preceding the Bid Due Date.
A certificate issued by the relevant government authority (i.e., the implementing agency) and signed by the executive engineer or an equivalent officer certifying the Bidder/Member/Associate that the Bidder/Member/Associate has successfully operated and maintained the STP for at least 24 consecutive months in the 7 years immediately preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such STP, should be provided.*
- (4) *In the event that credit is being taken for the experience of an Associate, the Bidder should also provide a certificate in the format set out at Annexure 1G.*
- (5) *It may be noted that in the absence of any detail in the above format and the certificate(s) issued by the relevant government authority, the information would be considered inadequate and could lead to exclusion of the relevant project in determining whether the Bidder meets the Qualification Criteria.*

ANNEXURE 1F: FORMAT OF CERTIFICATE FROM THE STATUTORY AUDITOR REGARDING DEVELOPMENT EXPERIENCE

Based on its book of accounts and other published information authenticated by it, this is to certify that (*name of the Bidder/Member/Associate*) is/was an equity shareholder in (*title of the project company*) which developed an STP of [*Insert capacity of STP*] MLD at [*Insert location of STP*] for [*Insert name of implementing agency*] and held/holds Rs.cr. (Rupees crore) of equity (which constitutes% of the total paid up and subscribed equity capital) of [*Insert name of the project company*] as on the [Bid Due Date/commercial operations date/date of issuance of the completion certificate or any other equivalent certificate by the relevant government authority.] for such STP.

Name of the audit firm:

Seal of the audit firm:
signatory)

(Signature, name and designation of the authorised

Date:

ANNEXURE 1G: FORMAT OF SELF-ATTESTED CERTIFICATE REGARDING ASSOCIATE

Self-Attested Certificate regarding Associate

Based on the authenticated record of [*Insert name of the Company*], this is to certify that [more than 50% (fifty per cent) of the subscribed and paid up voting equity of (name of the Bidder/Member/ Associate) is held, directly or indirectly, by (name of Bidder/Member/Associate)

By virtue of the aforesaid, the latter exercises control over the former, who is an Associate.]

[..... (name of Bidder/Member/Associate) has the power, directly or indirectly, to direct or influence the management and policies of (Bidder/Member) by operation of law, contract or otherwise]. By virtue of the aforesaid, the former exercises control over the latter, who is an Associate.]

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

{Describe the share-holding of the Bidder/Member and the Associate. In the event the Associate is under common Control with the Associate/Consortium Member or the Control is exercised by operation of law, the relationship may be suitably described and similarly certified herein. }

Name of the Bidder/Member:

Seal of the Bidder/Member:

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

Date:

ANNEXURE 1H: FORMAT OF INFORMATION ON LITIGATION

(To be provided by the Bidder/each Member)

S. No.	Name	Forum and Counterparty	Brief Description of the matter	Estimated financial liability	Current Status of Litigation	Orders passed against the Bidder/Member

ANNEXURE 11: FORM OF BID SECURITY (BANK GUARANTEE)

(in stamp paper)

B.G.No:

Dated:

WHEREAS,(name of Bidder including names of all Joint Venture Participants) (hereinafter called “the Bidder”) has submitted its Bid (hereinafter called the “Bid”) dated (date) for the performance of (name of Contract).

KNOW ALL PEOPLE by these presents that We (name of Bank) of (name of country) having our registered office at (hereinafter called “the Bank”) are bound unto (hereinafter called “the Owner”) in the sum offor which payment well and truly to be made to the said Owner, the Bank binds itself, its successors, and assigns by these presents.

[The Bidder should insert the amount of the guarantee in words and in figures. This figure should be the same amount as set out in Clause 15(a) and the Bid Data Sheet. The details related to the Bid Security are set out in the same Clause 15..]

The CONDITIONS of this obligation are:

- a. if the Bidder withdraws its Bid during the Bid Validity Period; or
- b. if the Bidder, having been notified of the acceptance of its Bid by the Owner during the period of Bid validity,
 1. fails to sign the Form of Contract in accordance with and when required by Clause 23; or
 2. fails to provide the performance security to the Owner in accordance with and when required by Clause 16.

We undertake to pay to the Owner up to the above amount upon receipt of its first written demand, without the Owner having to substantiate its demand, provided that in its demand the Owner will note that the amount claimed by it is due to it owing to the occurrence of one or more of the conditions set out above, specifying the occurred condition or conditions. This Guarantee will remain in full force up to and including 45 days after the expiry of the Bid Validity Period and it may be extended by the Owner in accordance with the Bidding Documents, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date or the extended date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758 except that the supporting statement under Article 15(a) is hereby excluded.

SEALED with the Common Seal of the said Bank this day of, [Year].

WITNESS
(signature, name and address)

SIGNATURE OF THE BANK
SEAL

Name: _____

Position: _____

ANNEXURE 1J: FORMAT OF POWER OF ATTORNEY FOR APPOINTING LEAD MEMBER

(On Requisite Stamp Paper)

Whereas the *Jal Nigam* (the *Jal Nigam*) has invited Bids from interested parties for the **NMCG-Jal Nigam [City name] STP PPP Project** (the **Project**).

Whereas,,, and (collectively, the **Consortium**) being Members of the Consortium are interested in submitting a Bid for the Project in accordance with the terms and conditions of the Request for Proposal (**RFP**) issued by the *Jal Nigam* on [Insert Date], and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and *Jal Nigam* to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's Bid for the Project and its implementation.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, having our registered office at, and having our registered office at, (hereinafter collectively referred to as the **Principals**) do hereby irrevocably designate, nominate, constitute, appoint and authorise having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the **Attorney**). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bid Process and, in the event the Consortium is awarded the Project, during the implementation of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of the Consortium's Bid for the Project, including but not limited to signing and submission of all Bid related documents and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with *Jal Nigam* and the National Mission for Clean Ganga, and/or any other government agency or any person, in all matters in connection with or relating to or arising out of the Consortium's Bid for the Project and/or upon award of the Project and/or till the Concession Agreement is entered into with the *Jal Nigam* and the National Mission for Clean Ganga.

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

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

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

Witnesses:

- 1.
 - 2.
-

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

(Notarised)
Accepted
.....

(Signature)

(Name, Title and Address of the Attorney)

Instructions:

- (1) *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.*
- (2) *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- (3) *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 the Bidders from countries that have signed the Hague Legislation Convention, 1961 are not*

required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

ANNEXURE 1K: FORMAT OF JOINT BIDDING AGREEMENT

THIS JOINT BIDDING AGREEMENT ("**Agreement**") is entered into on this [●] Day of [●] 201[●]

AMONGST

1. [●], with its registered office at (referred to as the **First Part** which expression will, unless repugnant to the context include its successors and permitted assigns);

AND

2. [●], with its registered office at (referred to as the **Second Part** which expression will, unless repugnant to the context include its successors and permitted assigns);

[[AND

3. [●], with its registered office at [●] (referred to as the **Third Part** which expression will, unless repugnant to the context include its successors and permitted assigns).]

The above mentioned parties of the FIRST [and] [,] SECOND, [and] [,] [THIRD] are collectively referred to as the **Parties** and each is individually referred to as a **Party**.

WHEREAS

- (A) *Jal Nigam* (referred to as the **Jal Nigam**, which expression will, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids by its Request for Proposal No. [___] dated [___] (the **RFP**) for selection of a Bidder for the design, finance, construction, completion, operation and maintenance of the Facilities in [*City name*], on a hybrid annuity PPP basis in accordance with the Concession Agreement (the **Project**).
- (B) The Parties are interested in jointly bidding for the Project as Members of a Consortium and in accordance with the terms and conditions of the RFP.
- (C) It is a necessary condition under the RFP that the Members will enter into a Joint Bidding Agreement and furnish a copy of it with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. **Definitions and interpretations**

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

2. Consortium

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

3. Covenants

- 3.1 The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it will incorporate a special purpose vehicle (**SPV**) under the Companies Act for entering into the Concession Agreement with NMCG and *Jal Nigam* for undertaking the Project.
- 3.2 The Members of the Consortium undertake that they shall be jointly and severally responsible and liable for all matters arising out of or in relation to this RFP.

4. Role of the Parties

- 4.1 The Parties hereby agree that Party of the First Part will be the Lead Member of the Consortium and will have the power of attorney from all Parties and bind all Parties for and in conducting all business for and on behalf of the Consortium during the Bid Process and, if the Consortium is declared as the Selected Bidder, during the execution of the Project.
- 4.2 Party of the Second Part will be [].
- [4.3 Party of the Third Part will be [].]

5. Shareholding in the SPV

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

First Party:

Second Party:

[Third Party:]

- 5.2. The Parties undertake that:
- (a) the First Party, acting as the Lead Member of the Consortium, will control the SPV and subscribe for and hold a minimum of 26% of the total Capital and voting rights of the SPV from the Effective Date until 3 years after the Unnao

Facilities COD or Shuklaganj Facilities COD or Pankha Facilities COD or Jajmau Facilities COD or, whichever is later;

- (b) the [Second and/or the Third] Party, whose [Technical Capacity and/or Financial Capacity] is being assessed, will hold at least 26% of the total Capital and voting rights of the SPV from the Effective Date until 3 years after the Unnao Facilities COD or Shuklaganj Facilities COD or Pankha Facilities COD or Jajmau Facilities COD, whichever is later.

5.3. The Parties undertake that they will comply with all equity lock-in requirements set out in this Agreement and in the Concession Agreement.

6. Representations of the Parties

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

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

individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it;
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement; and
- (e) there is no suspension or termination of any contract of any Party and/or calling of any performance security by an employer for reasons related to the non-compliance by such Party with any ESHS requirements or safeguard in the past 5 years that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

7. Termination

This Agreement will be effective from the date hereof and will continue in full force for the entire duration of the Project in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is not selected for award of the Project, the Agreement will stand terminated upon return of the Bid Security as per the RFP.

8. Miscellaneous

- 8.1 This Agreement will be governed by the laws of India.
- 8.2 The Parties acknowledge and accept that this Agreement will not be amended by the Parties without the prior written consent of *Jal Nigam*.

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

SIGNED, SEALED AND DELIVERED For and on behalf of the PARTY OF THE FIRST PART by:	SIGNED, SEALED AND DELIVERED For and on behalf of the PARTY OF THE SECOND PART by:
Signature) (Name) (Designation) (Address)	Signature) (Name) (Designation) (Address)

SIGNED, SEALED AND DELIVERED For and on behalf of the PARTY OF THE THIRD PART by:	
Signature) (Name) (Designation) (Address)	

In the presence of:

1

2.

Instruction:

1. *The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by 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.*

ANNEXURE 1L: FORMAT OF ENVIRONMENTAL, SOCIAL, HEALTH, AND SAFETY PERFORMANCE DECLARATION

[The following table shall be filled by the Bidder or each Member, in case of a Consortium]

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Member: *[insert full name]*

RFP No. and title: *[insert RFP number and title]*

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

Environmental, Social, Health, and Safety Performance Declaration in accordance with Section II, Eligibility and Qualification Criteria			
<input type="checkbox"/> No suspension or termination of contract: An employer has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental, Social, Health, and Safety (ESHS) performance since the <i>[insert the date]</i> specified in Section II, Eligibility and Qualification Criteria, Clause 3.5(d).			
<input type="checkbox"/> Declaration of suspension or termination of contract: The following contract(s) has/have been suspended or terminated and/or performance security called by an employer(s) for reasons related to Environmental, Social, Health and Safety (ESHS) performance since the <i>[insert the date]</i> specified in Section II, Eligibility and Qualification Criteria, Clause 3.5(d).			
Year	Suspended or terminated portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
...	...	<i>[list all applicable contracts]</i>	...
Performance security called by an employer(s) for reasons related to ESHS performance			
Year	Contract Identification		Total Contract Amount (current

		value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	<p>Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i></p> <p>Name of Employer: <i>[insert full name]</i></p> <p>Address of Employer: <i>[insert street/city/country]</i></p> <p>Reason(s) for calling of performance security: <i>[indicate main reason(s)]</i></p>	<i>[insert amount]</i>

ANNEXURE 2: EXPERIENCE CERTIFICATE FOR BIOGAS POWER PLANT

(On the letter head of the Bidder/ Member)

From

[insert name of Bidder/Member]

[insert address of Bidder/Member]

Date: *[insert date]*

To

Jal Nigam

[]

Dear Sir,

Sub: Experience Certificate for Biogas Power Plant for the Namami Gange *[City name]* STPs PPP Project

We, the undersigned *[insert name of the Bidder/ Member]* having read, examined and understood in detail the RFP for development of the Project, hereby confirm that we have *[developed]/[designed and constructed]*⁴ the following biogas power plant based on STP effluent:

Capacity of the biogas power plant	Location	Entity for which biogas plant was set up	Date of completion	Duration for which O&M experience is being claimed (From month, year to month, year)

The certificate(s) issued by relevant government authorities to demonstrate that: (1) the biogas power plant was developed or designed and constructed in the 7 years immediately preceding the Bid Due Date in accordance with the contract executed for the biogas power plant; and (2) the biogas power plant *[was/has been]* in successful operation for at least 24 months in the 7 years immediately preceding the Bid Due Date; have been attached.

⁴ Delete as applicable.

If selected as the Selected Bidder, we undertake that the Concessionaire shall set up a biogas power plant in accordance with the Concession Agreement.

Dated the _____ day of _____ 2018.

Thanking you,
Yours truly,

.....
(Name and signature of Authorized Signatory)

ANNEXURE 3: CONSENT LETTER FOR EXPERIENCE BIOGAS POWER PLANT

(On the letter head of the entity issuing the consent letter)

From

[insert name of the entity issuing the consent letter]

[insert address of the entity issuing the consent letter]

Date: [insert date]

To

Jal Nigam

[]

Dear Sir,

Sub: Consent Letter for Experience for Biogas Power Plant for the [City name] STPs PPP Project

We, the undersigned [insert name of the entity issuing the consent letter] hereby confirm that we have [developed]/[designed and constructed]⁵ the following biogas power plant based on STP effluent:

Capacity of the biogas power plant	Location	Entity for which biogas plant was set up	Date of completion	Duration for which O&M experience is being claimed (From month, year to month, year)

The certificate(s) issued by relevant government authorities to demonstrate that: (1) the biogas power plant was developed or designed and constructed in the 7 years immediately preceding the Bid Due Date in accordance with the contract executed for the biogas power plant; and (2) the biogas power plant [was/has been] in successful operation for at least 24 months in the 7 years immediately preceding the Bid Due Date; have been attached.

We hereby agree that if [Insert name of the single Bidder/details of Consortium] is selected as the Selected Bidder, we shall enter into a contract with the special purpose vehicle incorporated

⁵ Delete as applicable.

by the Selected Bidder to develop a biogas power plant at the *[Location A]* Site in accordance with the Concession Agreement:

Dated the _____ day of _____ 2018.

Thanking you,
Yours truly,

.....
(Name and signature of Authorized Signatory)

ANNEXURE 4: FORM OF PERFORMANCE SECURITY

FORM OF PERFORMANCE SECURITY

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Owner]

Date: _____

PERFORMANCE GUARANTEE NO.: _____

We have been informed that _____ [name of Operator] (hereinafter called "the Bidder") has entered into Contract No. _____ [reference number of the contract] dated _____ with you, concerning a contract to design, build, operate and transfer STP, New/Replace Outfall/Interceptor sewer Line Pumping Stations, all appurtenant structures and allied works in the city of Kanpur (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Operator, we _____ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [amount in figures] (____) [amount in words], upon receipt by us of your first demand in writing accompanied by a written statement stating that the Operator is in breach of its obligations under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than the earlier of:

- (a) six months after the End Date, as defined in the Contract; or
- (b) six months after the date of termination of the Contract pursuant to its terms.

Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758 except that the supporting statement under Article 15(a) is hereby excluded.

Yours truly,

[Name of Bank]

Authorised Signature

ANNEXURE 5: FORMAT OF ENVIRONMENTAL, SOCIAL, HEALTH AND SAFETY (ESHS) PERFORMANCE SECURITY

ESHS Demand Guarantee

ESHS Demand Guarantee

[On requisite stamp paper]

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: *Jal Nigam* with its registered office –*[insert address]*

Date: *[Insert date of issue]*

ESHS PERFORMANCE GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that _____ (hereinafter called **the Applicant**) has been selected as the Selected Bidder for award of contract by the Beneficiary for undertaking the Project (hereinafter called the **Contract**).

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee to secure the Concessionaire's ESHS obligations is required to be submitted by the Applicant prior to signing of the Contract.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of INR [] (Rupees []) (*Insert amount equal to [1%] of the relevant Bid Project Cost*), such sum being payable in the types and proportions of currencies in which the contract price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its Environmental, Social, Health and Safety (ESHS) obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall be valid for the term of the Contract, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.