

# **MAHARASHTRA METRO RAIL CORPORATION LTD.**

**(Nagpur Metro Rail Project)**

## **REQUEST FOR PROPOSAL (RFP)**

**FOR**

**Development and Operation of a Star Category Hotel cum Convention Centre  
at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail  
Project on Public Private Partnership (DBFOT) Basis**

**TENDER NO. N1PD-27/2020**



**November - 2020**

**Maharashtra Metro Rail Corporation Ltd.  
“Metro Bhavan”, VIP Road, Opp. Dr. Babasaheb Ambedkar College,  
Near Deekshabhoomi, Nagpur – 440010.**

**Website:** <http://www.metrorailnagpur.com>

## **Disclaimer**

### **The Bid Documents for “Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis”**

Contain brief information about the Project and the Works to be executed and various steps involved in the bidding process. The information contained in the Bidding Documents or subsequently provided to Bidders, whether verbally or in documentary or any other form by or on behalf of Maharashtra Metro Rail Corporation Limited (hereinafter referred as “Maha-Metro”) or any of its employees or advisors, is provided to Bidders on the terms and conditions set out in the Bidding Documents and such other terms and conditions subject to which such information is provided.

The Bidding Documents are not an agreement and is neither an offer nor invitation by Maha-Metro to the prospective Bidders or any other person. The purpose of the Bidding Documents is to provide interested parties with information that may be useful to them in making their Bids pursuant to the Bidding Documents. The Bidding Document include statements, which reflect various assumptions and assessments arrived at by Maha-Metro in relation to the Project or the work to be executed pursuant to this bidding process. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. The assumptions, assessments, statements and information contained in the Bidding Documents may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in the Bidding Documents and obtain independent advice from appropriate sources.

Information provided in the Bidding Documents to the Bidders is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. Maha-Metro accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

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


Maha-Metro also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements/information contained in the Bidding Documents.

Maha-Metro may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in the Bidding Documents. Maha-Metro also reserves the right to change any or all conditions/ information set in the Bidding Documents at any time by way of revision, deletion, updating or annulment through issuance of appropriate addendum/corrigendum as Maha-Metro may deem fit without assigning any reason thereof.

The issue of the Bidding Documents does not imply that Maha-Metro is bound to select a Bidder or to appoint the selected Bidder for constructing the work envisaged under the Bidding Documents and Maha-Metro reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidders shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by Maha-Metro or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bid and Maha-Metro-NAGPUR shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the bidding process.

**Maharashtra Metro Rail Corporation Limited**

	<p style="text-align: center;"><b><u>E-TENDER NOTICE</u></b></p> <p style="text-align: center;"><b>MAHARASHTRA METRO RAIL CORPORATION LTD</b>          (A joint venture of Govt. of India &amp; Govt. of Maharashtra)  <b>(Nagpur Metro Rail Project)</b>          “Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College,          Near Deekshabhoomi, Nagpur – 440010.”          E-mail:md.nmrcl.tenders@gmail.com  <b>Website:www.metrotrainnagpur.com</b>          Telefax:0712-2553300</p>
<b>Tender Notice No. : N1PD-27/2020</b>	<b>Date: 02/11/2020</b>
<b>Name of work: Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis.</b>	

**KEY DETAILS**

<b>Concession Period</b>	<b>60 Years</b> from the Effective Date, including construction period of <b>04 Years</b> .
<b>Tender Documents on sale</b>	Documents can be downloaded from <b>17.00 hours</b> of <b>05/11/2020</b> to <b>16.00 hrs</b> of <b>15/12/2020</b> from Maha-Metro’s e-tender Portal.
<b>Cost of documents</b>	<b>INR 88,500/- (Rupees Eighty Eight Thousand Five Hundred only)</b> , non-refundable (inclusive applicable taxes) though e-payment by Credit Card / Debit Card / Net Banking as per procedure given in e-tender portal
<b>Pre-bid Meeting</b>	<b>26/11/2020 at 11.00 Hours</b> at Procurement Section, First Floor, Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College, Near Deekshabhoomi, Nagpur – 440010.
<b>Last date of submission of queries for Pre-bid.</b>	Till <b>17.00 Hours</b> on <b>26/11/2020</b> at Email: <b><u>md.nmrcl.tenders@gmail.com</u></b>
<b>Tender / Bid Security</b>	<b>Rs.55,00,000/- (Rupees Fifty Five Lakhs Only)</b> to be paid online through Net Banking / RTGS / NEFT / Credit Card / Debit Cards.
<b>Date &amp; Time of submission of Tender</b>	Online submission up-till <b>16.00 Hours</b> of <b>15/12/2020</b> at Maha-Metro’s e-tender portal.
<b>Date &amp; Time of Opening of Tender</b>	On <b>15/12/2020 at 16.30 hours</b> or as decided by the Maha-Metro at “Procurement Section, First Floor, Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College, Near Deekshabhoomi, Nagpur – 440010”.
<ol style="list-style-type: none"> <li>1. Sale of document, e-payment procedure, submission and other details are available on Maha-Metro’s tender portal under section in e- tenders <a href="https://mahametrotrain.etenders.in">https://mahametrotrain.etenders.in</a></li> <li>2. To view this tender notice, interested Bidders may visit Maha-Metro’s website “<a href="http://www.metrotrainnagpur.com">www.metrotrainnagpur.com</a>”.</li> <li>3. The Bidder shall bear all costs associated with the preparation and submission of the Bid. Maha-Metro, will in no case, be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process.</li> </ol>	

SD/-  
**Executive Director (Procurement)**  
**Maharashtra Metro Rail Corporation Ltd.**

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## **GLOSSARY**

<b>Associate</b>	As defined in Clause 2.2.9
<b>Authority</b>	As defined in Clause 1.1.1
<b>Bidder(s)</b>	As defined in Clause 1.1.1
<b>Bid</b>	As defined in Clause 1.2.1
<b>Bidding Process</b>	As defined in Clause 1.2.1
<b>Bid Step</b>	As defined in Clause 1.2.1
<b>Bidding Documents</b>	As defined in Clause 1.2.3
<b>Bid Due Date</b>	As defined in Clause 1.1.6
<b>Bid Security/EMD</b>	As defined in Clause 1.2.4
<b>Bank Guarantee</b>	As defined in Clause 2.22.1
<b>Concessionaire</b>	As defined in Clause 1.1.2
<b>Concession Agreement</b>	As defined in Clause 1.1.2
<b>Conflict of Interest</b>	As defined in Clause 2.2.1(c)
<b>Consortium</b>	As defined in Clause 2.2.1 (a)
<b>DBFOT</b>	As defined in Clause 1.1.1
<b>Estimated Project Cost</b>	As defined in Clause 1.1.5
<b>Financial Capacity</b>	As defined in Clause 2.2.2 (b)
<b>Government</b>	Government of Maharashtra
<b>Highest Bidder</b>	As defined in Clause 1.2.7
<b>Jt. Bidding Agreement</b>	As defined in Clause 2.2.6 (g)
<b>Lead Member</b>	As defined in Clause 2.2.6 (c)
<b>LOA</b>	Letter of Acceptance
<b>Member</b>	Member of a Consortium
<b>Net Worth</b>	As defined in Clause 2.2.4 (ii)
<b>Net Present Value</b>	As defined in Clause 1.2.7
<b>PPP</b>	Public Private Partnership
<b>Project</b>	As defined in Clause 1.1.1
<b>Qualification</b>	As defined in Clause 1.2.1
<b>Qualification Step</b>	As defined in Clause 1.2.1
<b>Re. or Rs. or INR</b>	Indian Rupee
<b>RFP or Request for Proposal</b>	As defined in the Disclaimer
<b>SPC</b>	As defined in Clause 2.2.6
<b>Technical Capacity</b>	As defined in Clause 2.2.2 (a)
<b>Sqm</b>	Square Meter
<b>Sqf</b>	Square feet



## 1. INTRODUCTION

### 1.1. Background

#### 1.1.1. Brief Background

- a. The Maharashtra Metro Rail Corporation Ltd. (hereinafter referred to as **“Maha-Metro”**), a joint venture of the Government of India (GOI) and the Government of the Maharashtra, for implementing the Nagpur Metro Rail Project in Nagpur City. Maha-Metro was incorporated on 18<sup>th</sup> February, 2015 with a vision to create safe, reliable, efficient, affordable, commuter friendly and environmentally sustainable rapid public transport system for the Nagpur City and Nagpur Metro Region. Additionally, Maha-Metro shall also undertake to develop certain property development across the metro rail alignment so that the overall city infrastructure can be uplifted and promoted.
- b. Nagpur Metro Rail Project will consist of 38.215 Km metro corridor, 38 stations and 2 Depots. The entire stretch will be divided into 2 alignments or corridors as follows:

Alignment	Corridor	Rail Length	No of Stations
1	North – South Corridor	19.658 Km	18
2	East – West Corridor	18.557 Km	20

As a part of its existing mandate to have substantial non-fare box revenue, Maha-Metro has initiated certain property development projects across the Nagpur Metro Rail Alignment. The Zero Mile Station Building clubbed with the proposed Property Development project above the Zero Mile Metro Station, is conceptualised as one of the most iconic projects/infrastructures of Nagpur Metro Rail Project.

The Zero Mile Metro station is located on Reach - 2 (North-South) line of Nagpur Metro Rail Project and is in close proximity of Sitaburdi Interchange Station. The Zero Mile Metro Station is conceptualised as an iconic 81 Mts high Tower with total development of 17 Floors. This being a station building, the first five floors are dedicated for Zero Mile Metro Station. The remaining floors can be utilised for commercial development.

Apart from Metro rail accessibility, the site is located in the prime commercial (CBD) area of Nagpur City (Sitaburdi Market) on one side and on other side it's very close to Vidhan Bhavan, Nagpur. It is expected that the commercial activities are likely to increase with the development of METRO Services & subsequent increase in footfall of Metro commuters. All these factors make this site attractive for Property development.

- c. Now, through this RFP Maha-Metro is planning to undertake the “Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis” (hereinafter referred to as the **“Project”**). The PPP model proposed for the project is Design, Build, Finance, Operate and Transfer (the **“DBFOT”**) basis.
- d. Maha-Metro has, therefore, decided to carry out the bidding process for selection of a Private Entity as the Selected Bidder to whom the Project may be awarded. Through this tender, it is envisaged to transfer the development rights of airspace above the Zero Mile Metro Station (hereinafter referred to as ‘project site’) to a Successful Bidder/Concessionaire for a lease

period of 60 years from the date of signing of Concession Agreement. The development and operation shall involve the construction of proposed project and its management, operation and maintenance for a period of 60 Years (inclusive of construction period).

e. Brief particulars of this Project are as follows :

Project	Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis
Tender No. and Date	<b>N1PD-27/2020; Date: 02/11/2020</b>
Details of Airspace (hereinafter referred to as “site” or “project site”)	<b>Area admeasuring 22,259.57 Sqm above Zero Mile Metro Station.</b>
Area of Land on which the Zero Mile Station is situated	<b>Area : 13,370.056 Sqm.</b>
Details of Land, where the Zero Mile Metro Station is situated	Survey No. 302 and 303, City Survey Number (1847/1848) Mz. Sitaburdi, Nagpur.
Facilities / premises to be handed over to the Successful Bidder	<ul style="list-style-type: none"> <li>- Airspace admeasuring <b>22,259.57</b> Sqm for development of commercial/Hospitality Building; (14 Floors, 4<sup>th</sup> Floor to 17<sup>th</sup> Floor)</li> <li>- One Entrance Lobby admeasuring <b>414.02</b> Sqm at Road Level of Zero Mile Metro Station Building.</li> <li>- Two Lift Duct of following dimensions.</li> <li>- 3 Floors (2 Basements and One Road Level Space) cumulatively admeasuring <b>14,584.08</b> Sqm for parking purpose, below the Zero Mile Metro Station. Basements, already developed by Maha-Metro.</li> </ul>

**Note :**

1. It is to be noted that Maha-Metro has received advance possession of the said land for development of Zero Mile Metro Station. The Final Notification regarding transfer of ownership of the said land in the name of Maha-Metro is still awaited from GoM.
2. Permission is required to be obtained from GoM for commercial utilization of the said land through Public Private Partnership Mode. Maha-Metro has already applied to GoM for such NoC/permission. Maha-Metro on best effort basis is following up with the proposal submitted. Maha-Metro shall issue the Letter of Acceptance of the project to the Successful Bidder only after obtaining the Permission for commercial exploitation of the said land through PPP mode, from GoM.

f. As per the circular from Govt of Maharashtra vide circular no. TPS-2415/182/CR-98/2015/UD-09 dated 10<sup>th</sup> November, 2017, the designated land use for the plot is “Commercial”.

The Successful Bidder/Developer shall be allowed to use the said airspace for development of a Star Category Hotel cum Convention Centre along with all its allied uses like banquet halls, restaurants, conference hall etc.).

In the event that the Concessionaire proposes to use the said premises for any other activity, then it shall be mandatory for him to take prior approval from MAHA-METRO before such proposed usage of the premises. It is also stated that the activity proposed should not hamper the normal business of the metro rail.

- g. An indicative sketch of Zero Mile Station along with the multi floor structure for property development on the airspace is displayed below. The sketch indicates clear demarcation between area of station and area (airspace) for proposed property development above the Zero Mile Metro station.



The configuration of the Zero Mile Station building and Proposed Property Development over airspace of Zero Mile Station building is as per table attached in Annexure. Attached drawings in Annexure defines the Architectural Controls of Proposed Property Development Building.

- h. Now, the Maha-Metro intends to select suitable bidder (the "Successful Bidder"), for awarding the said project on DBFOT basis, through an open competitive bidding process in accordance with the procedure set out herein.
  - i. Schedule of Various Stages shall be in accordance with Clause 2.20.5 of the RFP document.
- 1.1.2. The Successful Bidder will be required to incorporate the Special Purpose Company (hereinafter referred as "SPC") and meet the requisite provisions laid out in the Concession Agreement.

The Successful Bidder through its SPC (Special Purpose Company) which will be called the "Concessionaire", shall be responsible for designing, engineering, financing, procurement, development, construction, operation, management and maintenance of this Project, at its own cost and expenses, under and in accordance with the provisions of the Concession Agreement to be entered into between the Successful Bidder/Concessionaire and the Maha-Metro (**the "Concession Agreement"**) as per the Draft provided by the Maha-Metro as Volume II - The Draft Concession Agreement.

The Successful Bidder shall design and develop the entire project as stated in the RFP Document/Concession Agreement, and thereafter operate and maintain the premises throughout the concession period, more particularly as set forth in the

Annexure - 2: Scope of Work and ‘Volume – II the Draft Concession Agreement’.

- 1.1.3. The Successful Bidder will be provided with long-term lease of the airspace of the Zero Mile metro station, as per the terms and conditions of the Concession Agreement.

It is clarified that the said airspace rights of Zero Mile Metro Station or part thereof shall not be mortgaged by the Successful Bidder in any manner whatsoever. For raising finances through debt/equity, the Successful Bidder will have the rights to avail project financing and also shall have right to mortgage the built-up area/ constructed area of the project (only limited to the area developed by the Successful Bidder). Maha-Metro upon written request made by the Successful Bidder shall provide NOC for availing project financing.

- 1.1.4. The Maha-Metro shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Maha-Metro pursuant to this RFP as modified, altered, amended and clarified from time to time by the Maha-Metro, (collectively the “Bidding Documents”) and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).

- 1.1.5. The RFP document can be downloaded from e-tendering website on payment of Non-refundable document fee of **INR 88,500/- (Rupees Eighty Eight Thousand Five Hundred only)** to be paid via online Payment Gateway mode only. The information of E-Payment Gateway is available on E-Tendering Website: <https://mahametrorail.etenders.in>.

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

- 1.2.1 Brief description of Bidding Process is as under :

- a. The Maha-Metro has adopted single stage two steps process (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. All Bidders shall submit their Technical Bid and Financial Bid (the “**Bid**”) against this RFP.
- b. The first step (the “**Qualification Step**”) of the process involves qualification (the “**Qualification**”) of interested parties / consortium based on the Technical Bid submitted by the Bidders in accordance with the provisions of RFP.
- c. At the end of the Qualification Step, the Maha-Metro expects to announce short-listed qualified bidders (the “**Qualified Bidders**”).
- d. The Qualified Bidders will be eligible for participation in the second step of Bidding Process (the “**Bid Step**”). ***In the Bid Step, Financial Bids of only Qualified Bidders shall be opened and evaluated for identification of the Successful Bidder.***

- 1.2.2 Further, Government of India has issued guidelines for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Maha-Metro shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at “**Appendix - I: Guidelines of the Department of Disinvestment**”.

- 1.2.3 The Bid shall be valid for a period of 180 days from the date specified in **Clause 1.3** for submission of bids.
- 1.2.4 The Bidding Documents includes this RFP Document, the Draft Concession Agreement along with all the corrigendum/addendums and other information like draft concept plan, existing design & drawings etc. pertaining/relevant to the Project (collectively the “**Bidding Documents**”). The aforesaid documents and any addenda issued subsequent to this RFP Document, or modified RFP documents but before the Bid Due Date, will be deemed to form part of the Bidding Documents.
- 1.2.5 A Bidder is required to deposit, along with its Bid, a Bid Security/Earnest Money Deposit equivalent to **Rs. 55,00,000 (Rupees Fifty-Five Lakhs Only)** (the “**Bid Security**” and/or the “**EMD**”) to be submitted in in the form of online payment, available on the e-tender portal of Maha-Metro. The Bid Security shall be refundable not later than 180 days from the Bid Due Date or from the date of award to the Successful Bidder, whichever is later, except in the case of the Highest Bidder. No interest shall be payable by the Maha-Metro in respect of such deposited Bid Security.
- 1.2.6 The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.7 During the Bidding process, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the concession including implementation of the Project.
- 1.2.8 Bids are invited for the Project on the basis of the Highest Total Consideration to be quoted in the Financial Bid (the “**Total Consideration**”). The Bidder who quotes the **Highest Total Consideration** in their Financial Bid shall be termed as Highest Bidder.
- 1.2.9 In this RFP, the term “**Highest Bidder**” shall mean the Bidder quoting the highest Total Consideration payable to the Maha-Metro. Generally, the Successful Bidder shall be the Highest Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of the RFP be invited to match the Bid submitted by the Highest Bidder, in case such Highest Bidder withdraws or is not selected for any reason. In the event if none of the other Bidders match the Bid of the highest bidder, the Maha-Metro may, in its discretion, invite fresh Bids from all Bidders or annul the Bidding Process, as the case may be.
- 1.2.10 Further, other details of the process and the terms thereof are spelt out in this RFP.
- 1.2.11 Any queries or request for additional information pertaining to this RFP shall be sent to the following e-mail id: md.nmrc.tenders@gmail.com. Reply of pre-bid queries shall be uploaded on E-Tender Portal of Maha-Metro as a corrigendum, no bidder shall be informed individually.

### **1.3. Schedule of Bidding Process**

The Maha-Metro shall endeavour to the schedule as mentioned below –

Documents on sale	Documents can be downloaded from <b>17.00 hours of 05/11/2020 to 16.00 hrs on 15/12/2020</b> from Maha-Metro’s e-tender Portal.
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Pre-bid Meeting	<b>26/11/2020 at 11.00 Hours</b> at Procurement Section, First Floor, Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College, Near Deekshabhoomi, Nagpur – 440010.
Last date of submission of queries for Pre-bid.	Till <b>17.00 Hours</b> on <b>26/11/2020</b> at Email: <a href="mailto:md.nmrcl.tenders@gmail.com">md.nmrcl.tenders@gmail.com</a>
Date & Time of submission of Tender	Online submission up-till <b>16.00 Hours</b> on <b>15/12/2020</b> at Maha-Metro’s e-tender portal.
Date & Time of Opening of Tender	On <b>15/12/2020 at 16.30 hours</b> or as decided by the Maha-Metro at “Procurement Section, First Floor, Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College, Near Deekshabhoomi, Nagpur – 440010”.

- i. The Bids shall be valid for a period of 180 days from the Bid Due Date.
- ii. All bidders are required to submit the Original Bank Guarantees (Bid Security) along with covering letter on bid due date, during office hours in the office of – Executive Director/Procurement, Maharashtra Metro Rail Corporation Ltd., 1<sup>st</sup> Floor Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College, Near Deekshabhoomi, Nagpur – 440010.  
Failure or omission to submit the original documents, as above, shall disqualify the bidder for this bid.
- iii. The bids are invited in two packet system. Initially the technical bid shall be opened. The technically qualified bidder shall be informed online & Bidder may, at his own will, choose to attend the financial bid opening. No separate intimation will be given in this regard.
- iv. Maha-Metro reserves right to reject any or all Bids without assigning any reason and the same shall be at the entire discretion of Maha-Metro. Maha-Metro’s decision in this respect shall be final and binding.
- v. Conditional Bids shall be summarily rejected.
- vi. Bidder should ensure that the none of the part of Financial Bid should be uploaded in anywhere in the technical section, if the bidder does so then the bid submitted will be summarily rejected.
- vii. If bidder furnishes false information, false & forged experience certificate/documents with the bid, which fails in authenticity verification by Maha-Metro, shall lead to disqualification from the tender process and forfeitures of Bid Security and or termination of contract even after award of the contract, including forfeiture of Performance Guarantee and/or Security Deposit.
- viii. Bidders may refer to e-tender procedures (Toolkit for using e-tender portal) at Annexure-3. In case of support or help required during online submission or difficulty encountered during online submission, the Bidders may contact **Mr. Kailas Singh Thakur (Tender Executive): 9167246754** (Helpline for on-line submission of Bid only).

## **2. INSTRUCTION TO BIDDERS**

### **A. GENERAL**

#### **2.1 General terms of Bidding**

- 2.1.1 **Scope of Bid** – At the Bid Stage, the Maha-Metro wishes to receive Bids comprising the following:
- Eligibility Proposal from Bidders, in order to shortlist experienced and capable Bidders; and
  - Financial Bid comprising of its financial offer as Total Consideration (combination of Upfront Premium and Annual Concession Fees) for Maha-Metro from each Bidder for Project.
- 2.1.2 No Bidder shall submit more than one Bid for this Project. A Bidder, bidding individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a Member of any Consortium, as the case may be.
- 2.1.3 The Bidders are expected to carry out at their own cost surveys, investigations and other detailed examination of this Project before submitting their Bids.
- 2.1.4 Notwithstanding anything to the contrary contained in this Bid Document, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- 2.1.5 The Eligibility/Technical Proposal of the Bid should be furnished only in the formats at Bid form – I to Bid Form - IX attached to this Bid Document.
- Similarly, the Financial Proposal of the Bid should be furnished only in the format at Bid Form-X with amount in both figures and words, in Indian Rupees and signed by the Bidder's authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be considered.
- 2.1.6 The Financial Bid shall consist of an offer/ bid of Total Consideration, comprising of **combination of Upfront premium and Annual Concession Fees (expressed as a percentage of Project Revenues)**, payable to the Maha-Metro for undertaking the aforesaid Project in accordance with the RFP Document and the Draft Concession Agreement.

The Total Consideration shall be calculated in the manner as follows –

$$\begin{array}{lcl} \text{Total} & & \text{NPV of Annual Concession Fee @} \\ \text{Consideration} & = & \text{Upfront Premium} + \text{Discounting Rate equivalent to SBI Base} \\ & & \text{Rate applicable on the date of opening} \\ & & \text{of tender.} \end{array}$$

It is clarified that direct and indirect taxes, duties, levies etc., as applicable from time to time, shall be payable by the Successful Bidder, in addition to the amount of the Upfront Premium and Annual Concession Fee as quoted by the bidder in its Financial Bid.



The Total Consideration to be quoted by the Bidders in their Bid shall be for the construction, management, operation and maintenance of the Hotel/ Hospitality Centre as permitted under the Concession Agreement, during the entire lease period of 60 years.

- 2.1.7 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.8 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language. All the documents comprising the Bid (signed wherever required) shall be submitted on or before the Bid Due Date in the prescribed format given in this Bid Document. No other mode of submission is acceptable. Bid Parameter duly filled in is to be submitted in the **format provided in Bid Form-X in the name of “Financial Bid”**.
- 2.1.9 Documents mentioned to be submitted in this Bid Document to the Maha-Metro are required to be submitted by the Bid Due Date.
- 2.1.10 The Bidding Documents including this Bid Document and all attached documents, provided by the Maha-Metro are and shall remain the property of the Maha-Metro and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Maha-Metro will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.11 This Bid Document is not transferable.
- 2.1.12 Any award of this Project pursuant to this Bid Document shall be subject to the terms of Bidding Documents.
- 2.1.13 Maha-Metro shall at its own discretion may further lease out the Project Facility upon the expiry of the lease tenure of the Project through a transparent bidding process.

In the event if the SPC (Special Purpose Company) decides to participate in the said bidding process, the SPC shall have the Right of First Refusal (“ROFR”) (as per terms herein) and will be given an opportunity to match the Highest Bid, failing which the Highest Bidder will be awarded the Project. The SPC shall have the right to ROFR, provided they participate in the Bidding process, conducted then.

## **2.2 Eligibility of Bidders**

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

- (a) The Bidder for qualification and selection may be a single entity or a group of entities (the “**Consortium**”), joining together to implement the Project.

However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both as a single entity and a Consortium.

- (b) For the purpose of this RFP, an Entity shall mean –

- Sole Proprietorship Firm
- Registered Partnership firm
- Company Registered under Companies Act in India
- Limited Liability Partnership registered in India
- **OR** any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium.

The Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.5 below.

- (c) **Conflict of Interest:** The Bidder shall not have a conflict of interest (**the “Conflict of Interest”**) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified<sup>5</sup>. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 10% (ten per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 10% (ten per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.1.1 (b) (i), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
  - (ii) a constituent of such Bidder is also a constituent of another Bidder; or
  - (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
  - (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or

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<sup>5</sup>The provisions of sub-clauses (i), (iii) and (v) shall not apply to government companies.

- (v) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other’s information about, or to influence the Bid of either or each other; or
  - (vi) such Bidder or any Associate thereof has participated as a consultant to the Maha-Metro in the preparation of any documents, design or technical specifications of the Project.
- (d) A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Maha-Metro in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

**Explanation:**

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1 (c), shall include each Member of such Consortium.

- 2.2.2 To be eligible for qualification and short-listing and for evaluation of its Financial Bid, a Bidder shall fulfil the following conditions of eligibility:

**(A) Technical Capacity:**

For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall during the past ten (10) years immediately preceding the Bid Due Date, have continuous experience in owned / developed a Hospitality project for a minimum duration of 5 years, of any one of the following:

- One hospitality project having a minimum of 160 rooms/keys in the single premises.
- Two hospitality projects, each having a minimum of 100 rooms/keys.
- Three Hospitality projects, each having a minimum of 80 rooms/keys.

***In case of consortium***, member(s) of the consortium holding a minimum of 26% equity in the consortium should jointly meet/demonstrate the Technical Capacity criteria as mentioned above.

**(B) Financial Capacity:**

The Bidder shall have a minimum **Net Worth of Rs. 40.00 Crores (Rupees Forty Crores Only)** at the close of the financial year immediately preceding the Bid Due Date.

***In case of consortium***, member(s) of the consortium holding a minimum of 26% equity in the consortium shall cumulatively meet/demonstrate the Financial Capacity as required for the project.

- 2.2.3 The Bidders shall in addition to the formats prescribed in this Bid Document, enclose the following documents/certificate(s) along with its Eligibility Proposal:

- a. Chartered Accountant Certificate for having developed / owned the hospitality project for consecutive 5 years duration, during the last ten years.

**OR**

License/ Occupancy Certificate received from Competent Authority duly stating the number of operational rooms in the premises of which the experience is being claimed.

- b. In case a project has been jointly executed by the Bidder (as part of a consortium), it should further support its claim by providing the share holding pattern of the company owing the eligible project. The same should be duly certified by a practicing-chartered accountant or the client.
- c. For demonstrating the eligibility as per Clause 2.2.2 (B) above, the bidder shall submit a certificate from a Statutory Auditor/ Chartered Accountant of the firm specifying the Net-Worth of the Bidder/Consortium Member, as at the close of the financial year immediately preceding Bid Due Date. The Certificate should also provide the methodology adopted for calculating the Net-Worth along with declaration that the methodology adopted conforms to the provisions of this Bid Document.

- 2.2.4 The Bidder (single entity/consortium) will be required to form an appropriate Special Purpose Company, incorporated under the Companies Act, 2013 and any amendments thereto (the "SPC"), to execute the Concession Agreement and implement the Project, if it is the Successful Bidder and awarded the Project after the Bid Stage.

The initial paid up and subscribed share capital of such SPC shall not be less than 5% (five percent) of the Estimated Project Cost. Further, such Bidder shall also be required to hold at least (a) 100% (One Hundred percent) of the subscribed and paid up equity of the SPC at all times until completion of 04 years from the date of signing of concession agreement or the the commercial operation date of this Project, whichever is later; and (b) 51% (Fifty One per cent) of the subscribed and paid up equity of the SPC at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later; (c) and thereafter, 26% (twenty six percent) of the subscribed and paid up equity of the SPC till the expiry of the Concession Period.

The Bidder shall be responsible to get all the necessary clearances required/obtained for transferring the project title in the name of the new SPC Company.

It shall be mandatory for the Successful Bidder to maintain the Debt: Equity ratio of 70:30 or any other lower ratio.

- 2.2.5 **Consortium** - In case the Bidder is a Consortium, it shall comply with the following additional requirements:

- (a) Number of members in a consortium shall not exceed 3 (three) Members (including Lead Member);
- (b) Subject to the provisions of sub-clause (a) above, the Bid should contain the information required for each Member of the Consortium;
- (c) Members of the Consortium shall nominate one member as the lead Member (the "Lead Member"), shall subscribe to (a) 51% (Fifty one percent) of the paid up and subscribed equity of the SPC at all times until completion of 04 years from the date of signing of

concession agreement or the commercial operation date of this Project, whichever is later; and thereafter, (b) 26% (twenty six per cent) of the subscribed and paid up equity of the SPC at all times till the end of lease period.

The nomination(s) shall be supported by a Power of Attorney, as per the format at Bid Form - VIII: Power of Attorney for , signed by all the other Members of the Consortium;

- (d) The Bid should include a brief description of the roles and responsibilities of individual Members, particularly with reference to financial and technical obligations;
- (e) An individual Bidder cannot at the same time be Member of a Consortium applying in this Bid. Similarly, a Member of a Consortium cannot be Member of other Consortium applying in this Bid;
- (f) Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at **Bid Form-IX (the “Joint Bidding Agreement”)**, duly stamped and notarized, for the purpose of making the Bid. The Joint Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:
  - i) Convey the intent to form an SPC with shareholding/ownership equity commitment(s) in accordance with this Bid Document, which would enter into the Concession Agreement and subsequently perform all the obligations of the Successful Bidder in terms of the Concession Agreement, in case this Project is awarded to the Consortium;
  - ii) Clearly outline the proposed roles and responsibilities, if any, of each Member;
  - iii) Commit the minimum equity stake to be held by each Member;
  - iv) Commit and undertake that the lead Member (the “Lead Member”) of consortium, shall subscribe to at least 51% (Fifty one percent) of the paid up and subscribed equity of the SPC at all times until completion of 04 years from the date of signing of concession agreement or the commercial operation date of this Project, whichever is later; and (b) thereafter 26% (twenty six per cent) of the subscribed and paid up equity of the SPC at all times till the end of lease period.
  - v) Commit/ undertake that the Members of the Consortium undertake that, they shall collectively hold at least (aa) 100% (One Hundred percent) of the subscribed and paid up equity of the SPC at all times until completion of 04 years from the date of signing of concession agreement or the commercial operation date of this Project, whichever is later; and (bb) 51% (Fifty One per cent) of the subscribed and paid up equity of the SPC at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later; and thereafter, (cc) 26% (twenty six percent) of the subscribed and paid up equity of the SPC till the expiry of the Concession Period.
  - vi) Commit that each of the Members, whose technical and financial capability is considered for the purpose of evaluating the Technical Capacity of the Bidder/Consortium, shall subscribe to at least 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPC at all times till the 7th Anniversary of

the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later.

- vii) Commit that each of the members whose experience will be evaluated for the purposes of this Bid Document, shall subscribe to and hold equity share capital not less than 5% (five per cent) of the Estimated Project Cost specified in the Concession Agreement;
  - viii) Include a statement to the effect that all Members of the Consortium shall be liable jointly and severally for all obligations of the Successful Bidder in relation to this Project until the Financial Close of this Project is achieved in accordance with the Concession Agreement; and
- (g) Except as provided under this Bid Document and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Maha-Metro.

*(Note : Dilution of more than 01% of the subscribed and paid up equity of the SPC shall attract clauses related to novation payment as stated in Clause No. 2.2.13. The Novation payment shall be in proportion to the equity dilution and shall be applicable throughout the lease period.)*

- 2.2.6 Any entity (the Bidder, its Member, or Associate was, either by itself or as Member of a consortium) which has been barred by the Central Government / State Government or any entity Controlled by it, from participating in any project (BOT, BOOT, DBFOT or otherwise), and where the bar subsists as on the Bid Due Date, or has been declared by the Maha-Metro as non-performer/blacklisted would not be eligible to submit a Bid, either individually or as Member of a Consortium.
- 2.2.7 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate.
- 2.2.8 In computing the Technical Capacity and Financial Capacity of the Bidder/ Consortium Members, the Technical Capacity and Financial Capacity of their respective Associate/Subsidiary, where the parent company and/or promoter holds at least 50% interest\*\*, would also be eligible hereunder. It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium Member shall be provided to demonstrate that a person is a Associate/Subsidiary of the Bidder or the Consortium Member as the case may be.
- (\*\*interest shall mean subscription in the form of equity shares, non-redeemable compulsory convertible preference shares / debentures)
- 2.2.9 The following conditions shall be adhered to while submitting a Bid:
- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed Bid Forms is insufficient;

- (b) Information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or subsidiary named in the Bid and not, unless specifically requested, to other associated companies or firms; and
- (c) At the time of responding to the qualification submissions, Bidders should demonstrate their capabilities in accordance with this Bid Document.

2.2.10 While this Bid Document is open to persons from any country, the following provisions shall apply:

a. Participation from other Countries:

- i. Where, on the date of the Bid, not less than **15% (fifteen percent)** of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is Controlled by persons resident outside India; or
- ii. if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital or Control, by persons resident outside India, in or of the Bidder or its Member;

Then the Qualification of such Bidder or in the event described in sub clause (ii) above, the continued Qualification of the Bidder shall be subject to approval of the Maha-Metro from national security and public interest perspective. The decision of the Maha-Metro in this behalf shall be final and conclusive and binding on the Bidder.

- b. The holding or acquisition of equity or Control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or Control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Maha-Metro shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 or any substitute thereof, as in force on the date of such acquisition.
- c. The non-resident Bidders/Bidders from other countries/Bidders having any foreign investment/ holding shall be required to comply with applicable foreign exchange rules and regulations including but not limited to Foreign Exchange Management Act, 1999.
- d. The Bidder shall promptly inform the Maha-Metro of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.2.11 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to such year(s) immediately preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.2.12 Novation

The Concessionaire will be allowed to novate the agreement only after the successful completion of 20 years from the date of signing of Concession Agreement of the project.



The Concessionaire shall submit the details of the proposed novatee along with its other qualifications (financial and technical capabilities) to Maha-Metro for its due approval. Such novation shall be subject to execution of proper documents (Document of Deed of Adherence, etc.) by the proposed novatee. Maha-Metro shall reserve the right to reject any novation at any time.

#### **2.2.13 Novation Payment**

At the time of novation, the Concessionaire shall pay to Maha-Metro, the amount (novation payment) equal to 50% of difference between Value of Land as per Annual Schedule of Rates prevailing at the time of Novation and Value of Land as per Annual Schedule of Rates prevailing at the time of signing of Concession Agreement).

Dilution of more than 1% of the subscribed and paid up equity of the SPC shall attract clauses related to novation payment. The Novation payment shall be in proportion to the equity dilution and shall be applicable throughout the lease period.

### **2.3 Change in composition of the Consortium**

2.3.1 Change in the composition of a Consortium will not be permitted by the Maha-Metro after submission of the Bid.

### **2.4 Cost of Bidding**

2.4.1 The Bidders shall be responsible for all the costs associated with the preparation of their Bids and their participation in the Bidding Process. In the event the Bidder is identified as the Successful Bidder at the Bid Stage, it shall be solely responsible for all the costs associated with execution of the Concession Agreement, including applicable stamp duty and registration fee etc. payable thereon. The Maha-Metro will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

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

2.5.1 It is the responsibility of the Bidders to submit their respective Bids after visiting the Project Site and Bidders shall be deemed to have understood and ascertained for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, applicable laws and regulations, and any other matter considered relevant by them. The Maha-Metro assumes no responsibility or liability in respect thereof. Prior to carrying out Site visit, Bidder may contact the Officer In Charge as per details given at Clause 2.11.4 of this RFP Document.

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

- a. made a complete and careful examination of requirements, specifications, instructions and other information set forth in the Bidding Documents;
- b. made complete and careful examination of the Project requirements to determine the challenges, difficulties and matters incidental to performance of its obligations including but not limited to conditions of the proposed project land, Applicable Laws and applicable permits, requirements to get clearances from various authorities and all other matters that might affect the Successful Bidder/ Concessionaire's performance under the Concession Agreement pursuant to the Bidding Documents and Concession Agreement;



- c. determined to its satisfaction the nature and extent of all difficulties, hazards and risks involved in performance of the Project and accepts all such risks and responsibilities directly or indirectly connected with Project execution;
  - d. received all relevant information requested from the Maha-Metro;
  - e. accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Maha-Metro relating to any of the matters specified in Clause 2.5.1 above, Project and the Bidding Process;
  - f. satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of this Project in accordance with the Bidding Documents and performance of all of its /Concessionaire's obligations there under;
  - g. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Maha-Metro, or a ground for termination of the Concession Agreement by the Concessionaire.
  - h. acknowledged that it does not have a Conflict of Interest; and
  - i. Agreed to be bound by the undertakings provided by it under and in terms hereof.
  - j. Acknowledge that Maha-Metro has received only advance possession of the said land for development of Zero Mile Metro Station. The Final Notification regarding transfer of ownership of the said land in the name of Maha-Metro is still awaited. Further acknowledge that in case the Govt. for any reason whatsoever deny/obstruct the issuance of final order, then Maha-Metro shall annul the bidding process and the Successful Bidder/Concessionaire shall not raise any claims/damages from Maha-Metro due to such annulment of Bidding Process.
  - k. Acknowledge that a Permission is required to be procured from GoM for commercial utilization of the said land through Public Private Partnership Mode. Further acknowledges that Maha-Metro has already applied to GoM for such permission and Maha-Metro on best effort basis is following up with the proposal submitted. Maha-Metro shall issue the Letter of Acceptance of the project to the Successful Bidder only after procuring the permission for commercial exploitation of the said land through PPP mode.
  - l. acknowledge that in case the Govt. for any reason whatsoever deny for the issuance of such NOC for commercial utilization of said land, then Maha-Metro shall annul the bidding process and the Successful Bidder/Concessionaire shall not raise any claims/damages from Maha-Metro due to such annulment of Bidding Process.
- 2.5.3 The Maha-Metro does not accept any responsibility and shall not be liable for any omission, mistake, inaccuracies or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the Bidding Documents or the Bidding Process,

including any error or mistake therein or in any information or data given by the Maha-Metro as their verification is the responsibility of the Bidder.

## **2.6 Verification and Disqualification**

- 2.6.1 Notwithstanding anything contained in this Bid Document, the Maha-Metro reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Maha-Metro rejects or annuls all the Bids, it may, in its discretion, invite fresh Bids.
- 2.6.2 The Maha-Metro reserves the right to verify all statements, information and documents submitted by the Bidder in response to the Bid Document or the Bidding Documents and the Bidder shall, when so required by the Maha-Metro, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by the Maha-Metro shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Maha-Metro there under. Notwithstanding anything to the contrary contained in the Bid Document, the Maha-Metro may, at its sole discretion, waive any minor infirmity, non-conformity or irregularity in a Bid that does not constitute a material deviation or does not prejudice or affect the relative position of any Bidder, provided it conforms to all the terms, conditions of the Bid Document without any material deviation, objections, conditionalities or reservations. A material deviation, objection, conditionality or reservation is one that (a) affects in any substantial way, the scope, quality or performance of a contract; (b) that limits, in any substantial way, inconsistent with the Bidding Documents, the Maha-Metro's right or the Successful Bidder's obligations under the contract; or (c) where rectification would unfairly affect the competitive position of other Bidders who are presenting responsive Bids.
- 2.6.3 The Maha-Metro reserves the right to reject any Bid and appropriate the Bid Security if:
- (a) at anytime, a material misrepresentation is made or uncovered, or
  - (b) the Bidder does not provide, within the times specified by the Maha-Metro, the supplemental information sought by the Maha-Metro for evaluation of the Bid. Such misrepresentation / improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member may be disqualified/ rejected.
- 2.6.4 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Successful Bidder either by issue of the LOA or entering into of the Concession Agreement, and if the Successful Bidder/SPC has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this Bid Document, be liable to be terminated, by a communication in writing by the Maha-Metro to the Successful Bidder or the Concessionaire, as the case may be, without being liable any manner whatsoever to the Successful Bidder or Concessionaire In such an event, the Maha-Metro shall be entitled to forfeit and appropriate the Bid Security or

Performance Guarantee and Security Deposit, as the case may be, as damages, without prejudice to any other right or remedy that may be available to the Maha-Metro under the Bidding Documents and/or the Concession Agreement, or under Applicable Law, or otherwise.

## **B. RFP DOCUMENTS**

### **2.7 Contents of the Bid Document**

- 2.7.1 This Bid Document comprises the Disclaimer set forth hereinabove, the contents as listed below, Bid Notice and will additionally include any Addenda issued in accordance with this Bid Document.

#### **VOLUME I - INSTRUCTION TO BIDDERS**

Section 1. Introduction

Section 2. Instructions to Bidders

Section 3. Evaluation of Bids

Section 4. Fraud and Corrupt Practices

Section 5. Pre-Bid Conference

Section 6. Miscellaneous

#### **BID FORMS**

Bid Form-I: Covering Letter for the Bid

Bid Form-II: Details of Bidder

Bid Form-III: Technical Capacity of the Bidder

Bid Form-IV: Details of Eligible Projects

Bid Form-V: Financial Capacity of the Bidder (Net Worth)

Bid Form-VI: Statement of Legal Capacity

Bid Form-VII: Format for Power of Attorney for Signing of Bid

Bid Form-VIII: Format for Power of Attorney for Consortium

Bid Form-IX: Format for Joint Bidding Agreement for Consortium

Bid Form-X: Format for Financial Bid

Bid Form-X (A): Financial Model

Bid Form-X (B): Detail Business Plan

Bid Form-XI: Format for Checklist

#### **APPENDICES**

APPENDIX-I: Guidelines of Department of Disinvestment

APPENDIX- II: Format of undertaking Certifying statement that Entity / Director(s) of Entity are not blacklisted)

APPENDIX-III: Indicative Format for Memorandum of Association of SPC

#### **ANNEXURES**

Annexure - 1: Project Site

Annexure - 2: Scope of Work

Annexure - 3: Site Plan, Details of Elevation and Façade proposed by Maha-Metro

Annexure - 4: Land Related Documents

Annexure - 5: Applicable DCR, TOD Policy for Nagpur City, BOCW Act 1996.

Annexure - 6: Tool Kit for using E-Tender

## **VOLUME II**

Draft Concession Agreement (including all Annexure(s))

- 2.7.2 The exhibits in Volume II, the appendices in Volume I and other document(s) provided by Maha-Metro as part of the Bidding Documents shall be deemed to be part of this Bid Document.

## **2.8 Clarifications**

- 2.8.1 Bidders requiring any clarification on the Bid Document may notify Maha-Metro in writing or by fax or e-mail. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process. Maha-Metro shall endeavour to respond to the queries. Maha-Metro will upload all the queries and its responses thereto on the official website of Authority i.e. <https://mahametrorail.etenders.in> as per the Schedule of Bidding Process, along with the Addendum, if any.
- 2.8.2 Maha-Metro shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, Maha-Metro reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring Maha-Metro to respond to any question or to provide any clarification.
- 2.8.3 Maha-Metro may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by Maha-Metro shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or any manner be binding on Maha-Metro.

## **2.9 Amendment of Bid Document**

- 2.9.1 At any time prior to the Bid Due Date, Maha-Metro may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the Bid Document by the issuance of Addenda.
- 2.9.2 Any Addendum issued hereunder will be uploaded on the web-site of Maha-Metro i.e. [“https://mahametrorail.etenders.in”](https://mahametrorail.etenders.in) along with the amended / revised Bid Document before the Bid Due Date. All Bidders are therefore advised to see the website of Authority for any addendum/ amendment which shall be submitted along with the Bid and will be binding on all Bidders. No separate information will be issued either by post, fax or e-mail to prospective Bidders who have purchased the Bid Document.

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

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

- 2.10.1 Language- The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail, any misrepresentation/wrong translation would make the bid disqualified.
- 2.10.2 The Bidder shall provide all the information/ documents sought under this Bid Document by way of online submission of scan of original copy of the information/documents comprising the Bid to Maha-Metro, on or prior to the Bid Due Date and also as mentioned in the Bid Notice. Maha-Metro will evaluate only those Bids that are received in the required formats and complete in all respects, as well as duly signed for submission. Incomplete and /or conditional Bids shall be liable to rejection.
- 2.10.3 The Bid (information/ documents) shall be typed in indelible ink and signed by the authorized signatory of the Bidder who shall also sign each page, in blue ink. In case of printed and published documents, only the cover shall be signed. All the alterations, omissions, additions or any other amendments made to the Bid shall be signed by the authorized signatory of Bidder. The Bid shall be page numbered.

### **2.11 Submission of online bid.**

- 2.11.1 The bid is to be submitted electronically through E-Tendering of Maha-Metro E-Tender portal <https://mahametrorail.etenders.in>.
- The Bid shall be uploaded under two heads – Technical Bid and Financial Bid.
  - The Bidders will be required to fill up formats for Technical Bid; scanned it and upload the same along with all supporting documents under head Technical Bid.
  - The Bidder shall submit the Financial Bid in the Financial/ Commercial Bid option available online.
  - The contents of Technical Bid and Financial Bid shall be as mentioned in Clause 2.11.2.
- 2.11.2 Contents in BID
- The Technical Proposal should be uploaded in the **“Technical option”** available on the online e-tendering portal and should contain the following :
    - The receipt/ proof of payment of Bid Document Fee
    - The duly filled Checklist as per the format at Bid Form-XII;
    - Covering Letter for Bid in the prescribed format (Bid Form-I) along with Bid Forms – II to IV and Bid Form – V);
    - Statement of Legal Capacity as per the format at Bid Form-VI;
    - Power of Attorney for signing the Bid as per the format at Bid Form-VII;
    - Power of Attorney for Lead Member of Consortium as per the format at Bid Form- VIII, if applicable;

- vii. Joint Bidding Agreement, in case of a Consortium, substantially in the format at Bid Form-IX, if applicable;
- viii. Copies of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership firm then a copy of its partnership deed and other charter documents, PAN card etc., as the case may be; and
- ix. Bidder’s duly audited balance sheet and profit and loss account for the preceding 3 (three) financial years immediately preceding the Bid Due Date along with ITR’s (income tax returns) and its computation of income.
- x. Details regarding projects in hand of essential criteria (Details along the agreement/LoA etc.)
- xi. Duly signed Bid Document including Volume-I & II;

**b. The Financial Bid should be uploaded in the “Financial Section available on the online e-tendering portal and shall be submitted as per Bid Form-XI.**

- 2.11.3 The envelope containing the original documents (all Bank Guarantees, PoA along with supporting Board Resolutions and Joint Bidding Agreement) to be submitted in physical, shall be addressed to:

Designation: **Executive Director (Procurement), Maha-Metro**

Address: Procurement Section, 1<sup>st</sup> Floor, Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College, Near Deekshabhoomi, Nagpur – 440010.

- 2.11.4 In case of any clarification or correspondence, the Officer In Charge to be contacted is as under:

Designation: **AGM (Property Development), Maha-Metro**

Address: Property Development Section, 2<sup>nd</sup> Floor, Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College, Near Deekshabhoomi, Nagpur – 440010.

**2.11.5 E-Tender Submission**

**a. Technical Package:**

The Bidder shall submit/ upload the digitally signed Technical Documents (digital signature on e-tender portal of Maha-Metro) in the “Technical Package” / “Technical Section”.

- i. Bidder shall first download the Complete Bid Document along with all Corrigendum/Addendum/Clarification etc. by logging in with E-Tender using his DSC (i.e. DSC of POA/ DSC of authorized person/Owner) read & examine the document & process carefully.
- ii. For submission of Tender Document and Corrigendum, a Tick (v) submission Process has been enabled in Technical Section of E-Tender Portal of Maha-Metro. Bidders have to tick (v) the corresponding checkbox provided in the Technical Section of E-Tendering portal as a token of acceptance of these bid documents & corrigendum / Addendums and its clauses. By clicking on the tick (v) the bid documents & corrigendum /addendum shall automatically attach to offer of bidder. Further bidder may proceed for submission by clicking submit button.

- iii. If the bidder has completed the submission process of his bid before due date & time of submission and in the meantime Authority issue a corrigendum, in this circumstances the bidder has to re-submit his bid by "clicking tick (v)" to the newly added corrigendum, in case the new corrigendum has any implications to his already submitted bid. Bidder may, at his option, amend his bid accordingly & re-submit it prior to final date & time of submission of bid.
- iv. All other enclosure (Physically Signed by authorized person) as per requirement of Bid Document, described in various sections of Bid Document may be attached at appropriate Technical Template or "Additional Document" section of "Technical Envelope/Section" of E-Tender Portal.
- v. If the bid is submitted by a Consortium (If permitted), the digital signature of any of the of the Consortium member may be used for accessing & submitting the tender on E-Tender portal, after authorizing the digital signature of a person of Consortium member by all members separately.
- vi. However where ever physical signature is required only the signature of authorized representative of Lead Member of Consortium (if Permitted) is allowed to sign such documents, supported by appropriate Power Of Attorney as per provision & format given elsewhere in Bid Document
- vii. Scanned copy of all enclosure required as described in the Bid Document at various place shall be uploaded in Technical Section / Technical Envelop of E-Tender Portal.
- viii. Each entity of Technical Section / Technical Envelope have a capacity to upload a document of 10 MB.
- ix. If any enclosures is more than 10 MB, it may be split by bidder to the size of 10 MB or less & proceed further for up loading in Technical Section / Technical Envelope.
- x. If the technical enclosures are more in numbers than the fixed entity of Technical Section / Technical Envelope. Bidders have option to upload any number of documents in "Additional Document" section of "Technical Envelope/ Technical Section" of E-Tender Portal.
- xi. No information pertaining to "Financial Bid" shall be uploaded or disclosed anywhere in "Technical Bid" Technical Section/ Technical Envelope of E-Tender Portal.
- xii. All up loaded enclosures should bear page numbers and Indexed properly. The first file uploaded by the bidder in the technical section shall be "Index Of Enclosures"

**b. Financial Package: to be submitted (Filled Manually, Signed, stamped & Uploaded the scanned copy) in "Financial Section" on E-Tender Portal of Maha-Metro.**

The Financial bid / Price bid as per proforma BID FORM - X: FINANCIAL BID

BID FORM - X: FINANCIAL BID shall be filled, scanned and uploaded in in Financial Section / Financial Envelope of E-Tender Portal.

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



- 2.11.7 It is to be noted that the Financial Bid shall be submitted in the **"Financial"** section only. In the event if the financial bid is submitted in the **"Technical"** Section of the online e-tendering portal, the bids shall be summarily rejected.
- 2.11.8 The following documents shall be submitted by the Bidder/s in physical form as per the terms of RFP on or prior to the Bid Due Date:
- a. Bid Form - VII: Power of Attorney for Signing of Bid
  - b. Bid Form - VIII: Power of Attorney for
  - c. Bid Form – IX: Joint Bidding / Consortium Agreement

## **2.12 Bid Due Date**

- 2.12.1 The Bidders are advised to submit their Bids to Maha-Metro well before the time and Bid Due Date specified above through the online e-tendering portal <https://mahametrorail.etenders.in>.
- 2.12.2 Maha-Metro shall not be responsible for any delay in submission for any reason. In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, Maha-Metro may in its sole discretion, extend the Bid Due Date uniformly for all Bidders, in accordance with the provisions of the Bid Document.
- 2.12.3 Bidders shall submit their Bids in through website- <https://mahametrorail.etenders.in> on or before the Bid Due Date and time given in the Schedule of Bidding Process.
- 2.12.4 The Technical Bids/proposal of the Bidders will be opened as per the Schedule of Bidding Process. The Financial Bids/proposals of only those Bidders who are found to be eligible as per the Eligibility criteria mentioned in the document shall be opened at a subsequent date, after due evaluation of Technical Proposals. The date of opening of Financial Bids shall be decided by Maha-Metro and communicated to all qualified Bidders online. The Financial Bids of Bidders whose Technical Proposals do not meet the Technical and Financial Capacity requirements as per this Bid Document shall not be eligible for consideration.

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

- 2.13.1 As the bid process is through e-tendering portal of Maha-Metro only, any amendment/ modification/substitution of bid can be done by going back into the Re-work option of the e-tender portal prior to the submission of bid.
- 2.13.2 Withdraw of already uploaded & submitted bid is not possible.
- 2.13.3 No Bid shall be modified, substituted or withdrawn by the Bidder after the Bid Due Date & time.
- 2.13.4 The bidder should further note that in case the bidder deposited the Bid Security through the e-tender portal & choose not to participate in the bid further, in this case the already deposited Bid Security amount shall be refunded only after completion/annulment of entire bid process for the proposed project.

## **2.14 Rejection of Bids**

- 2.14.1 Notwithstanding anything contained in this Bid Document, Maha-Metro reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning



any reasons thereof. In the event that Maha-Metro rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

- 2.14.2 Maha-Metro reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

## **2.15 Validity of Bids**

- 2.15.1 The Bids shall be valid for a period of **180 (one hundred and eighty) days** from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and Maha-Metro.

## **2.16 Confidentiality**

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

- 2.16.2 Installation of Integrated Security System at Built up area:

- a. Surveillance and Monitoring of Vehicles by Integrated Security system:

All vehicles entering the building premises will be scanned and monitored.

The Surveillance system will have the following features:

1. Identification of Registered and non-registered vehicles.
2. Hassle free entry to registered vehicle by reading RF Tags pasted on them.
3. Conditional Access for visitor's vehicle.
4. Hand Held Explosive Detector for detection of any explosive in vehicle's body.
5. Capture and Storage of images of the driver of unregistered vehicle.
6. Recording the details of duration of stay of vehicles, their registration No. etc.
7. Automatic activation of boom barriers and bollards when any vehicle tries to make forced entry.
8. Automatic & manual control alarm system.
9. Provision of having different levels of security depending upon the security threat perception.

- b. Personnel Monitoring System:

1. Provision of unique Access Card having biometric read facility.
2. Surveillance and recording of entry and exit of personnel at the leased premises and Maha Metro building through various gates.
3. Video surveillance of all the gates, outer periphery, parking areas and corridors inside the building.
4. Unobtrusive scanning of employee and visitor's baggage for unauthorized equipment and explosives.

## **2.17 Correspondence with the Bidder**

- 2.17.1 Save and except as provided in this Bid Document, Maha-Metro shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

## **D. BID SECURITY**

### **2.18 Bid Security**

- 2.18.1 A Bidder is required to deposit, along with its Bid, a Bid Security/Earnest Money Deposit equivalent to **Rs. 55,00,000 (Rupees Fifty-Five Lakhs Only)** (the "Bid Security" and/or the "EMD") to be submitted in the form of online payment, available on the e-tender portal of Maha-Metro.
- 2.18.2 Maha-Metro shall not be liable to pay any interest on the Bid Security Deposit so submitted/deposited and the same shall be interest free. Bidders may provide their Banker's details (Name of Bank & Branch) along with their own bank details (Account No., Name of Account Holder, NEFT/RTGS details) for refund of Bid Security.
- 2.18.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by Maha-Metro as non-responsive.
- 2.18.4 The Bid Security submitted by Bidders (except the First and Second Highest bidder) shall be refunded, without any interest, and will be returned, subject to terms herein, not later than 180 days from the Bid Due Date or from the date of award of Project to the Successful Bidder, whichever is later. The Bid Security of the Second Highest Bidder and Bank Guarantee of Successful Bidder shall be refunded upon signing of Concession Agreement by the Successful Bidder.
- 2.18.5 The part of Bid Security amounting to **Rs. 55,00,000 (Rupees Fifty-Five Lakhs Only)** shall be adjusted against the Upfront premium to be paid by the Successful Bidder.
- 2.18.6 Maha-Metro shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified herein below. The Bidder, by submitting its Bid pursuant to this Bid Document, shall be deemed to have acknowledged and confirmed that Maha-Metro will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this Bid Document. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.18.7 **Forfeiture of Bid Security-** The Bid Security shall be forfeited and appropriated by Maha-Metro as mutually agreed genuine pre-estimated compensation and damages payable to Maha-Metro for, inter alia, time, cost and effort of Maha-Metro without prejudice to any other right or remedy that may be available to Maha-Metro hereunder or otherwise, under any of the following conditions:
- i. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice;
  - ii. If a Bidder withdraws or modifies its Bid during the Bid validity period or the extended period, as the case may be;

- iii. If a Bidder imposes any condition in the bid at the time of submission of bid and/or within the Bid validity period or the extended period, as the case may be;
- iv. If bidder submits any fake, forged or fabricated documents with the Bid, which fails the verification of its authenticity or having inconsistent or misleading information, shall lead to rejection of Bid & forfeiture of Bid Security.
- v. In the case of Successful Bidder, if it fails within the specified time limit–
  - to furnish the Performance Guarantee; or
  - to pay the Upfront Premium and Annual Concession Fees, as applicable.
  - to sign the Concession Agreement as per the draft Concession Agreement, without imposing any conditions;
  - to pay/bear all the necessary charge towards the stamp duty and registration fees.
- vi. In case the Successful Bidder, before signing the Concession Agreement, commits any breach hereof.

## **2.19 Payments to be made by Successful Bidder/ Concessionaire for Project**

### **2.19.1 Upfront Premium**

The Upfront Premium shall be paid by the Successful Bidder to Maha-Metro within stipulated time as mentioned in the LoA and shall be paid in the form of NEFT/RTGS/Online Transfer /Cheque in favour of Maharashtra Metrorail Corporation Ltd.

If the Upfront Premium remains unpaid for a period exceeding 15 (Fifteen) days from the due date, Maha-Metro shall impose an interest penalty @ 15% per annum from the Bid Security and/or the Performance Security submitted by the Successful Bidder.

Upon such encashment and appropriation from the Bid Security and/or the Performance Security submitted, the Successful Bidder shall, within 30 (thirty) days thereof, replenish the amount to its original level. Unable to provide replenish the Bid Security and/or the Performance Security within 30 (thirty) days period shall make the LoA liable for cancellation.

### **2.19.2 Annual Concession Fees**

- The Annual Concession Fees shall be in the form of % (percentage) of Revenue sharing. The revenue sharing shall be on the Total "**Project Revenue**" accrued to the concessionaire.
- The Successful Bidder agrees to share the same percentage (as quoted by him the financial bid) of its revenue, throughout the lease period.
- The Annual Concession Fees shall be paid on yearly basis and shall be paid in advance i.e. 30 days before the start of the year. At the start of the tenure (i.e. 30 days before), the Annual Concession Fees shall be submitted in accordance with the business plan submitted by the bidder.
- At the end of each agreement year the amount of Annual Concession Fees will be reconciled based on the actual revenue received in the project during that tenure. It will be mandatory for the Successful Bidder/Concessionaire to submit the amount of half yearly license fees within 15 days of completion of such tenure.
- One Hundred Percent (100%) of the Annual Concession Fees based on the Business Plan as submitted by the Successful Bidder shall act as minimum guarantee for the project.
- The Annual Concession Fees shall be paid in the form of NEFT/RTGS/Online Transfer /Cheque in favour of Maharashtra Metrorail Corporation Ltd.

- The Annual Concession Fees shall commence immediately at the end of moratorium period (i.e. at the beginning of 48<sup>th</sup> month from the date of signing of Concession Agreement) and shall be paid thereafter till the end of lease period.

However, if the bidder feels that they can commence the project early and/or can share revenue/pay Annual Concession Fees from an earlier date, they are free to propose the same.

- If the Successful Bidder/ Concessionaire avails the part occupancy for the project during the initial construction period of 04 years, the Annual Concession Fees shall commence from the date of obtaining the part Occupancy certificate, and from the same day the moratorium period shall be considered as officially closed/finished.

The expression "**Project Revenue**" shall mean the following:

- i. Room receipts from realisation of room occupancy charges.
- ii. Receipts from use of Banquet Halls, Convention Centres etc.
- iii. Sale of food, beverages, liquor, and smokes in Banquet Halls, Convention Centres etc.
- iv. Sale of food, beverages, liquor, and smokes from room service, Restaurants, Bars, Banquet rooms, Dining Halls, Public Rooms and other catering outlets like Snack Bars, Pastry Shops, Coffee Shops and charges on account of use of Public Rooms, Banquet Rooms and charges on account of entertainment, shows and catering organised by the said Hotel within the said hotel within the hotel or any other income generated from the said premises.
- v. Income from commercial space on account of fee and/or licence fees of shops, counters, shop windows, showcases or any premises given out to any person /parties.
- vi. Excess of recovery over the expenditure incurred in respect of telephone, telex, charges for laundry, TV, car hire in the event such services are not directly rendered at the said hotel by Successful Bidder.
- vii. Income from swimming pool, sports and recreation facilities, health club and hire charges and other miscellaneous income derived out of operation of the said Hotel.

### 2.19.3 Consideration of Construction already made by Maha-Metro

- i. Maha-Metro has already invested in construction of required parking for the proposed Property Development Project. The cost spent by Maha-Metro on Basement and Foundation is proposed to be recovered in the following 10 instalments –

Sr. No.	Due Date	Amount (Rs. In Crores)
1.	First Instalment (within 60 days from issuance of LoA)	5.03
2.	Second Instalment (within 12 months from date of signing of Agreement)	5.53
3.	Third Instalment (within 24 Months from date of signing of Agreement)	6.08
4.	Fourth Instalment (within 36 Months from date of signing of Agreement)	6.69
5.	Fifth Instalment (within 48 Months from date of signing of Agreement)	7.36
6.	Sixth Instalment (within 60 Months from date of signing of Agreement)	8.09
7.	Seventh Instalment (within 72 Months from date of signing of Agreement)	8.90
8.	Eighth Instalment (within 84 Months from date of signing of Agreement)	9.79
9.	Ninth Instalment (within 96 Months from date of signing of Agreement)	10.77
10.	Tenth Instalment (within 108 Months from date of signing of Agreement)	11.85
	<b>Total</b>	<b>Rs. 80.09 Cores</b>

- ii. In case the Successful Bidder fails to submit the same as per scheduled date, same can also be paid with interest as detailed below: -
- Up to 30 days – Nil
  - 31<sup>st</sup> to 45<sup>th</sup> day -2% Flat
  - 46<sup>th</sup> to 60<sup>th</sup> day – 3% Flat
- iii. The aforesaid mentioned interest is excluding GST and shall be charged on the balance amount remaining unpaid as demand generated by Maha-Metro. This amount shall be paid to Maha Metro in the form of Demand Draft/ Pay order/ RTGS/NEFT only in favour of Maharashtra Metro Rail Corporation Ltd., payable at Nagpur.

### 2.19.4 Delay payment by Successful Bidder to Authority.

Any delay in payments of Upfront Premium and the Annual Concession Fees by the Successful Bidder shall attract penalty of interest @ Prevailing State Bank of India MCLR (+) plus 3% per annum on the amount outstanding (calculated on a per day basis), till the time the respective payments have been received by Maha-Metro.

#### **2.19.5 Payments Security & Escrow Accounts**

- i. The Successful Bidder (Concessionaire) will be required to maintain with a Scheduled Commercial Bank, acceptable to Maha-Metro, an Escrow Account as a payment security mechanism to protect the interest of Maha-Metro. All the revenues of the Concessionaire from the project facilities of whatsoever nature (including revenue from operation of Concessionaire or leased space, upfront/ onetime payments, refundable & non-refundable deposits, rentals, License fees, maintenance fees and user charges, revenue from internal billboards/signages, parking of vehicles, display, signage, play area, events, road shows, promotional activity, hoardings, kiosks, advertisements and counters etc.) shall be credited to this account and outflows of cash on account of payments to Maha-Metro and other purposes shall be debited, in accordance with the provisions of the Concession Agreement.
- ii. Within 2 months from the date of signing of the Concession Agreement, the Concessionaire shall identify a Nationalised/ Scheduled Bank acceptable to Maha-Metro and open the Escrow Account in terms of the Escrow Agreement to be signed between the Concessionaire, Maha-Metro and the Bank. The draft of the Escrow Agreement is annexed as Schedule B to the Draft Concession Agreement in this tender. The Bank will act as the Escrow agent for the purposes of receiving the receivables. The escrow account will be maintained throughout the Concession period.
- iii. For the payment of the amounts becoming due to it, Maha-Metro shall always have the first and paramount charge over all receivables that the lessee is entitled to claim or receive from the sub-lessee for the use of the leased Spaces. The Escrow Bank shall be given irrevocable instruction to remit to Maha-Metro the amounts becoming due to Maha-Metro under the Lease Agreement as per the claims made by Maha-Metro from time to time. So long as any amount is outstanding to Maha-Metro from the lessee, the amounts in the Escrow Account shall not be utilised for any purpose other than for payment to Maha-Metro. After due discharge of all amounts outstanding to Maha-Metro, the Escrow Bank shall be entitled to allow the amount to be utilised by the Lessee till such time further amounts become due from the lessee to Maha-Metro as per the claims made by Maha-Metro. Subject to the above and to the first and paramount charge, Maha-Metro may allow the lessee to create second charge over the receivables in favour of financial institutions.
- iv. Maha-Metro shall have first charge over the project receivables only to the extent of amount to be received by Maha-Metro in that respective year.

#### **2.20 Other Terms**

##### **2.20.1 Special Purpose Company (SPC)**

The Successful Bidder (single entity/consortium) shall incorporate/registered a new SPC under Companies Act, 2013 or any amendments thereto (the "SPC"), within 45 (Forty-Five) days from the date of acceptance of Letter of Acceptance by the Successful Bidder, to execute the Concession Agreement and implementation of this Project. Maha-Metro at its discretion and on reasonable grounds may extend this period.

**The Concession Agreement shall be executed with such SPC.** The Bidder shall be responsible to get all the necessary clearances required/obtained for transferring the project title in the name of the new SPC Company.

It shall be mandatory for the Successful Bidder to maintain the Debt: Equity ratio of 70:30 or any other lower ratio.

The Memorandum of Association (MoA) of the SPC shall be in the indicative format prescribed at Appendix-5 of Volume I.

#### **2.20.2 Minimum paid up & Subscribed Share Capital & Equity Lock-in**

The initial paid-up and subscribed share capital of the SPC at the time of signing of the Concession Agreement shall not be less than [5% (five percent)] of the Estimated Project Cost.

The Successful Bidder shall be required to hold at least -

- a. In case of a Sole Bidder -
  - i. Minimum 100% (One Hundred percent) of the subscribed and paid up equity of the SPC at all times until the completion of 04 years from the date of signing of concession agreement or the commercial operation date of this Project, whichever is later; and
  - ii. Minimum of 51% (fifty one per cent) of the subscribed and paid up equity of the SPC at all times till the end of lease period.
- b. In case of Consortium –
  - i. minimum 100% (One Hundred percent) of the subscribed and paid up equity of the SPC at all times until the completion of 04 years from the date of signing of concession agreement or the commercial operation date of this Project, whichever is later; and
  - ii. thereafter minimum of 51% (twenty six per cent) of the subscribed and paid up equity of the SPC at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later
  - iii. the lead Member (the “Lead Member”) of consortium, shall subscribe to at least 51% (Fifty one percent) of the paid up and subscribed equity of the SPC at all times until completion of 04 years from the date of signing of concession agreement or the commercial operation date of this Project, whichever is later; and (b) thereafter 26% (twenty six per cent) of the subscribed and paid up equity of the SPC at all times till the end of lease period.
  - iv. the Members of the Consortium undertake that, they shall collectively hold at least (aa) 100% (One Hundred percent) of the subscribed and paid up equity of the SPC at all times until completion of 04 years from the date of signing of concession agreement or the commercial operation date of this Project, whichever is later; and (bb) 51% (Fifty One per cent) of the subscribed and paid up equity of the SPC at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later; and thereafter, (cc) 26% (twenty six percent) of the subscribed and paid up equity of the SPC till the expiry of the Concession Period.



### 2.20.3 Communication of Award

- (a) After the selection, a Letter of Acceptance (the “LOA”) shall be issued, in duplicate, by Maha-Metro to the Successful Bidder.
- (b) The LOA will constitute the contract between the Successful Bidder and Maha-Metro for fulfilling the requirements specified in the LOA by the Successful Bidder prior to execution of the Concession Agreement. Notwithstanding anything contained in the LOA and the Bidding Documents, the rights of the Successful Bidder / Concessionaire specified in Concession Agreement shall not become effective until the Concession Agreement has been executed by the Successful Bidder and Maha-Metro and conditions precedent, if any, has been fulfilled by Successful Bidder / Concessionaire.

### 2.20.4 Performance Guarantee and Security Deposit

Successful Bidder shall deposit the Performance Guarantees and Security Deposit for amounts as specified below:

<b>Performance Guarantee for Project</b>	<b>Rs. 8,00,00,000/- (Rs. Eight Crores only)</b> in the form of Bank Guarantee from any Scheduled Bank, initially valid for a period of 54 months from the date of submission, which shall be extended if the construction completion date is extended for any reason whatsoever.
<b>Security Deposit</b>	Amount equivalent to the Annual Concession Fee for the 1 <sup>st</sup> Year of Commercial Operations of the project as submitted/committed in the business plan of the project, which shall be paid in the form of Demand Draft/NEFT/RTGS/other modes of Online transfer etc. and shall be submitted prior to Commercial Operations of the project . The Security Deposit shall be revised every three years.  At the end of every three years from the date of commercial operations of the project, the concessionaire shall deposit an amount equivalent to the Balance amount, i.e. difference between amount already deposited with Maha-Metro and the Annual Concession Fees due in the immediately next agreement year, as per his submitted business plan.

### 2.20.5 Execution of Concession Agreement

- (a) The duly authorized representative of the Successful Bidder shall be required to appear in person at the office of **Executive Director (Procurement), Maha-Metro** to execute the Concession Agreement on or before the expiry of a period of 120 (One hundred and twenty) days from the date of issuance of LoA.
- (b) The Concession Agreement shall be signed subject to fulfilment of following conditions -



- i. Incorporation of a Special Purpose Company (SPC) under Companies Act, 2013 or any amendments thereto, with a minimum paid up capital as specified in the Bid Document, within prescribed timelines;
  - ii. Payment of Upfront Premium as quoted in the financial bid. (Online Payment/Demand Draft in favour of “Maharashtra Metro Rail Corporation Limited”, payable at Nagpur.)
  - iii. Submission of Performance Security in the form of Bank Guarantee.
  - iv. Payment of appropriate Stamp duty as applicable for of signing of Concession Agreement.
- (c) The Concession Agreement, in terms of this Bid Document, shall be executed in 2 (Two) copies. The original Concession Agreement(s) shall remain in the custody of Maha-Metro till such time it is presented for registration by the Successful Bidder at the relevant Sub Registrar’s office. The original duly registered Concession Agreement will be then retained by Maha-Metro and handed over to the Successful Bidder/Concessionaire once the Successful Bidder/Concessionaire provides to Maha-Metro a certified true copy of the duly registered Concession Agreement. The Concession Agreement shall be executed by the Bidder as per specimen specified in **Volume - II** of this Bid Document.
- (d) The stamp duty and registration fees for the Concession Agreement, if required under Applicable Laws, shall be borne and paid by the Concessionaire/Concessionaire.
- (e) In case of delay in signing the Concession Agreement either on account of delay in fulfilling the above conditions including incorporation of SPC within the specified time limit or otherwise, Authority may extend the period specified above, for a maximum period cumulatively not exceeding 180 (One Hundred and Eighty) days from the LOA.
- (f) Failure to fulfil any of the conditions specified hereinabove shall constitute a breach of the contract submitted by the Bidder in which case the full value of the Bid Security shall stand forfeited without prejudice to any other rights or remedies & the LOA shall be treated as cancelled.
- (g) In the event the Successful Bidder refuses to execute the Concession Agreement as hereinabove provided, Authority may at its sole discretion, conclude that such Bidder has abandoned the contract and thereupon its Bid, LOA and acceptance thereof shall be treated as cancelled and Authority shall be entitled to forfeit the full amount of the Bid Security and/or performance security or any other payments made by the Concessionaire, as damages for such default.
- (h) Schedule of Various Stages : The Successful Bidder shall follow the following time lines:

Stage of Activity	Time Period
Issuance of Letter of Acceptance form Maha-Metro	Within 15 (fifteen) days of acceptance of proposal from the Maha-Metro.
Submission of Performance Security to Maha-Metro-NAGPUR.	<b>Rs. 8,00,00,000/- (Rupees Eight Crores only)</b> , in form of Bank Guarantee, to be submitted within 120 days from the date of issuance of LoA by the Successful Bidder
Payment of Upfront Premium to Maha-Metro	Within 120 days from the issuance of LoA.

Payment of Success Fees	Within 120 days from the issuance of LoA.
Formation of Special Purpose Company (SPC)	Within 120 days from the issuance of LoA.
Deposition of Stamp Duty and Registration Fees	Within 120 days from the issuance of LoA.
Signing of Concession Agreement	Within 120 days of issuance of LoA but only after
Commencement of Concession / Lease Period	From the date of signing of Concession Agreement.
Project Site to be handed over to Successful Bidder.	Within 10 days of signing of Concession Agreement.
Deposition of Interest Free Security Deposit to MAHA-METRO	Amount equivalent to the Annual Concession Fee for the 1 <sup>st</sup> Year of Commercial Operations of the project as submitted/committed in the business plan of the project, which shall be paid in the form of Demand Draft/ NEFT/RTGS/ other modes of Online transfer etc., and shall be submitted prior to 30 (Thirty) Days before expiry of 4 <sup>th</sup> Year reckoned from the date of signing of Concession Agreement.

#### **2.20.6 Damages for delay by Concessionaire in fulfilment of Conditions Precedent**

In the event that the Successful Bidder does not procure the fulfilment of any or all of the Conditions Precedent in Clause 2.20.5 (a) above, on or before 120 days from date of issuance of LOA, and the delay has not occurred on account of a Force Majeure Event, then the Concessionaire shall pay, forthwith, to Maha-Metro liquidated damages of an amount equivalent to 0.5% of the Bid Security for each day of delay in fulfilment of the Conditions Precedent. Upon non-fulfilment of the Conditions Precedent within 180 days from the date of issuance of LOA, Maha-Metro shall, in its sole discretion, be entitled to terminate the LOA.

#### **2.20.7 Genuine Pre-estimate**

The Parties agree and acknowledge that the time and amounts specified in Clause 4.4 of Draft Concession Agreement and Clause 2.20.6 of the RFP Document constitute a genuine pre-estimate of the loss and damage occurring to the non-defaulting Party, on account of a delay and/ or default of the defaulting Party in duly satisfying the Conditions Precedent, and are not by way of penalty.

#### **2.20.8 Termination at Long Stop Date**

- a. Without prejudice to the provisions of Clause 2.20.6 and 2.20.7 of the RFP Document, in the event the Conditions Precedent as specified hereinabove are not fulfilled by the Concessionaire for any reason whatsoever on or prior to the expiry of 180 (One Hundred and

Eighty) days from the date of issuance of LoA, then unless waived by Maha-Metro, the LoA shall be terminated by mutual consent of the Parties.

- b. In the event the termination of the LoA is due to non-fulfilment of Conditions Precedent of Concessionaire within a period stated in Clause 2.20.8 sub point 'a', the Bid Security/Performance Security deposited by the Concessionaire shall be forfeited by Maha-Metro as liquidated damages thereof.
- c. The Maha Metro reserve right to disqualify any bidder should it be so necessary at any stage on grounds of security reasons.

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

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

The bidders have only option to submit their bids electronically through E-Tender portal of Maha-Metro, The electronic bid opening procedure shall be as under:-

- 3.1.1 The Technical Envelope / Packages of Online Submitted Bids shall be opened/ downloaded by the opening committee on due date and time of Bid opening at the office of Executive Director (Procurement), Maharashtra Metro Rail Corporation Ltd., 1<sup>st</sup> Floor, Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College, Near Deekshabhoomi, Nagpur – 440010, in presence of the Bidders who choose to attend. No minimum number of bids is required in order to proceed to bid opening.
- 3.1.2 Bid Security will be checked and details will be read out for the information of representative of Bidders, present at the time of opening of Bid. Technical Envelope/ Package of those Bidders who have not submitted Bid Security shall not be opened. Bid which is accompanied by an unacceptable or fraudulent Bid Security shall be considered as non – compliant and rejected.
- 3.1.3 After evaluation of Technical Bid received electronically via E-Tender portal of Maha-Metro, the Financial/ Commercial Package/ Envelope of bid of technically successful bidder only shall be opened. The date & time of opening of Financial Bid shall be communicated to Technically Successful bidder electronically (E-mail).
- 3.1.4 Bids for which a notice of withdrawal has been submitted in accordance with the Bid Document shall not be opened.
- 3.1.5 Maha-Metro will subsequently examine and evaluate Bids in accordance with the provisions set out in the Bid Document.
- 3.1.6 Bidders are advised that qualification of Bidders will be entirely at the discretion of Maha-Metro. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 3.1.7 Any information contained in the Bid shall not in any way be construed as binding on Maha-Metro, its agents, successors or assigns, but shall be binding against the Bidder if this Project is subsequently awarded to it on the basis of such information.
- 3.1.8 Maha-Metro reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 3.1.9 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, Maha-Metro may, in its sole discretion, exclude the relevant project from computation of the Experience Score of the Bidder.
- 3.1.10 In the event if any Bidder claims credit for any Project, and such claim is determined by Maha-Metro as incorrect or erroneous, Maha-Metro shall reject such claim and exclude the same from computation of the Experience of the Bidder. Where any information is found to be patently false or amounting to a material representation, Maha-Metro reserves the right to reject the Bid in accordance with the provisions of the Bid Document.
- 3.1.11 To facilitate evaluation of Bids, Maha-Metro may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

### **3.2 Evaluation Parameters**

- 3.2.1 Only those Bidders who meet the eligibility criteria specified in Bid Document shall qualify for evaluation. Bids not meeting these eligibility criteria shall be rejected.
- 3.2.2 The Bidder's competence and capability is proposed to be established by the following parameters:
- (a) Technical Capacity; and
  - (b) Financial Capacity

### **3.3 Technical Capacity for purposes of evaluation**

- 3.3.1 Subject to the provisions of Clause 2.2.2 (A), the experience of the Bidder shall be considered as Eligible Experience/ Similar Project only if the projects are executed in the field of Hospitality Industry like Hotels, Resorts, Club Houses, Convention Centres, Hospitality Centres, Banquet Halls etc. (the "Eligible Experience/ Similar Project").
- 3.3.2 For the purpose of this Bid Document, for a project to qualify as an **Eligible Project** :
- (a) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty-six per cent) equity during the entire period of execution of the project for which Eligible Experience is being claimed;
- 3.3.3 Bidder's experience shall be measured as stated above.
- i. Experience for any activity relating to an Eligible Project shall not be claimed by more than one member 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.
  - ii. Details of Experience
    - (a) The Bidder should furnish the details of Eligible Experience for the last 10 (ten) financial years immediately preceding the Bid Due Date.
    - (b) The Bidder must provide the necessary information relating to Technical Capacity as per format at **Bid Form-III**.
    - (c) The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at **Bid Form-IV**.

### **3.4 Financial information for purposes of evaluation**

- 3.4.1 The Bid must be accompanied by the Audited Financial Statements of the Bidder (of each Member in case of a Consortium) for the last **3 (three) financial years**, immediately preceding the year in which the Bid is made.
- 3.4.2 In case the financial statements of the bidder for the latest financial year are not audited and therefore the Bidder (of each Member in case of a Consortium) cannot make it available, the Bidder shall give an undertaking to this effect and a practicing-chartered accountant shall certify the same. In such a case, the Bidder shall provide the financial statements for 3 (three) years immediately preceding the year for which the financial statements is not being provided.
- 3.4.3 The Bidder must establish the minimum Financial Capacity specified in Clause 2.2.2(B), and provide details as per at Bid Form-V.
- 3.4.4 In case of foreign companies, a certificate from a qualified external auditor who audits the books of account of the Bidder or the Consortium Member in the formats provided in the country

where the projects has been executed shall be accepted, provided it contains all the information as required in the prescribed format of the Bid Document.

### **3.5 Tests of responsiveness**

3.5.1 Prior to evaluation of the Eligibility Proposals, Maha-Metro shall determine whether each Eligibility Proposal is responsive to the requirements of the Bid Document. An Eligibility Proposal shall be considered responsive only if:

- (a) it is accompanied by the full amount of Bid Document Fee or receipt/proof of payment in respect thereof;
- (b) it is accompanied by the full amount of Bid Security;
- (c) it is received as per prescribed formats;
- (d) it is received by the Bid Due Date including any extension thereof;
- (e) it is signed, sealed, and marked as stipulated;
- (f) it is accompanied by relevant Power of Attorney(ies) as specified in Bid Document,
- (g) it contains all the information and documents (complete in all respects) as requested in this Bid Document;
- (h) it contains certificates as stipulated in clause 2.2.3 in the formats specified for each Eligible Project;
- (i) it does not contain any condition or qualification; and

3.5.2 Similarly, prior to evaluation of Financial Bids, Maha-Metro shall determine whether each Financial Bid is responsive to the requirements of this Bid Document. A Financial Bid shall be considered responsive only if:

- (a) it is received as per the format at Bid Form-XI;
- (b) it is signed, sealed and marked as stipulated; and
- (c) it does not contain any condition or qualification.

3.5.3 The Maha-Metro reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by Maha-Metro in respect of such Bid. The decision of Maha-Metro on the responsiveness of the Bid shall be final, conclusive and binding on the Bidder and shall not be called into question by any Bidder on any ground whatsoever.

3.5.4 To facilitate checking the responsiveness and evaluation of Bids, Maha-Metro may at its sole discretion, without being under any obligation to do so, reserves the right to call for any clarification from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by Maha-Metro for this purpose. If the Bidder does not provide the clarification sought within the prescribed time, its Bid shall be liable to be rejected. In case it is not rejected, Maha-Metro may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding.

3.5.5 No Bidder shall have the right to give any clarification unless asked for by Maha-Metro or to request either Maha-Metro and/or MOR and/or any ministry or department, authority or body whether statutory or non-statutory of the Government that may be concerned or connected, in any manner whatsoever, with the Bidding Process, to intervene in, any manner whatsoever, in the Bidding Process.

### **3.6 Selection of Bidder**

- 3.6.1 In the first step of evaluation, Technical Bids of Bidders adjudged responsive in terms of Clause 3.5 shall be considered for Technical evaluation as per Clause 2.2.2 (A) and Clause 2.2.2. (B) of this RFP. The Bidders satisfying Technical Capacity and Financial Capacity **(the "Qualified Bidders")** will be considered for next step of evaluation, i.e. opening of Financial Bid.
- 3.6.2 The Financial Bids of only those Bidders whose Eligibility Proposal qualifies as per the Technical Capacity and Financial Capacity as per this Bid Document shall be considered.
- 3.6.3 The qualified Bidder whose Financial Bid is adjudged as responsive in terms of the Bid Document and who quotes the Highest Total Consideration offered to Maha-Metro, shall be declared as the Highest Bidder (the "Highest Bidder") and who shall then be declared as the Successful Bidder.
- 3.6.4 In case the Highest Bidder becomes Successful Bidder and fails to fulfil the requirements of Maha-Metro or execute the Concession Agreement or in case Successful Bidder withdraws or is disqualified for any reason, Maha-Metro may, in its discretion, annul the Bidding Process.
- 3.6.5 In the event that two or more Bidders quote the same highest Total Consideration (the "Tie Bidders"), the bidder quoting the highest upfront premium amongst the tie bidders shall be termed as Successful Bidder. In the event that the 'tie bidders' quote the same upfront premium, Maha-Metro shall identify the Successful Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Bidders who choose to attend.
- 3.6.6 In the event that the highest Bidder withdraws or is not selected for any reason in the first instance (the "first round of bidding"), Maha-Metro may invite the Second Highest Bidder to revalidate or extend his respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the "second round of bidding"). If in the second round of bidding, the Second Highest Bidder matches the highest Bidder, it shall be the Successful Bidder.
- 3.6.7 In the event that no Bidder offers to match the highest Bidder in the second round of bidding as specified in Clause 3.6.6, Maha-Metro may, in its discretion, annul the Bidding Process.
- 3.6.8 After selection, a Letter of Acceptance (the "LOA") shall be issued, in duplicate, by Maha-Metro to the Successful Bidder.
- 3.6.9 Upon fulfilment of condition precedents as stated in the LoA, it shall execute the Concession Agreement within the period prescribed period in Clause 2.20.5 (h) of this RFP Document. The Successful Bidder shall not be entitled to seek any deviation in the Concession Agreement.

### **3.7 Contacts during Bid Evaluation**

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



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

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, Maha-Metro shall reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, Maha-Metro shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to Maha-Metro towards, inter alia, time, cost and effort of Maha-Metro, without prejudice to any other right or remedy that may be available to Maha-Metro hereunder or otherwise.
- 4.2 Without prejudice to the rights of Maha-Metro under Clause 4.1 hereinabove and the rights and remedies which Maha-Metro may have under the LOA or the Concession Agreement or otherwise, if a Bidder or Concessionaire, as the case may be, is found by Maha-Metro to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Successful Bidder shall not be eligible to participate in any tender or RFP issued by Maha-Metro during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by Maha-Metro to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- 4.3.1 **"corrupt practice"** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of Maha-Metro who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of Maha-Metro, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of Maha-Metro in relation to any matter concerning the Project;
- (a) **"fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;

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

## **5. PRE-BID CONFERENCE**

Pre-Bid conferences of the Bidders shall be convened as per the Schedule of Bidding Process, at the date, time and place as mentioned in Clause 1.3 of the RFP Document. Maximum of two representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.

- 5.1 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of Maha-Metro. The Maha-Metro shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.
- 5.2 Non-attendance at the Pre-Bid conference will not be a cause for disqualification of a Bidder.
- 5.3 The Maha-Metro, in its sole discretion and without incurring any obligation, may convene more than one Pre-Bid conference, if considered necessary.
- 5.4 The replies to queries shall be uploaded on website ‘<https://mahametrorail.etenders.in>.’ of Maha-Metro as per the Schedule of Bidding Process along with amendments, if any.

## **6. MISCELLANEOUS**

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Nagpur shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Maha-Metro, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Bidder in order to receive clarification or further information;
  - (c) retain any information and/ or evidence submitted to Maha-Metro by, on behalf of, and/ or in relation to any Bidder; and/ or
  - (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases Maha-Metro, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.4 The Bidding Documents are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Bid Document, in the event of any conflict between them the priority shall be in the following order:
- i. Concession Agreement
  - ii. the Letter of Acceptance,
  - iii. All corrigendum issued if any
  - iv. Conditions of Bid document
  - v. Annexure & Addendum
  - vi. Drawings, if any
  - vii. Enclosures and any other documents forming part of the Contract.
- 6.5 If a Bidder finds discrepancies in or omissions in any of the Bid Forms or if it is in doubt as to their meaning, it should at once notify Maha-Metro on or before the date specified by Maha-Metro for pre-bid queries, which may send written instructions to all Bidders. It shall be understood that every endeavour shall be made to avoid any error which can materially affect the basis of the Bid and the successful Bidder shall take upon itself and provide for the risk of any error which may subsequently be discovered and shall make no subsequent claim on this account thereof.

## **BID FORMS**

**Bid Form - I: Covering Letter for The Bid**

*(On the Letter Head of the Bidder/Lead Member of Consortium)*

**Bid Document No.:** .....

**Dated:**

To,

**The Executive Director (Procurement)**

**Maharashtra Metro Rail Corporation Limited**

Procurement Section, 1<sup>st</sup> Floor, Metro Bhavan,

VIP Road, Opp. Dr. Babasaheb Ambedkar College,

Near Deekshabhoomi, Nagpur – 440010.

**Sub: Bid for “Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis”**

Dear Sir,

1. With reference to your Bid Document dated {.....}, I/ we, having examined the Bid Document and understood their contents, hereby submit my/ our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that Maha-Metro will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Successful Bidder for the aforesaid Project, and we certify that all information provided therein is true and correct: nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Concessionaire for the aforesaid Project.
4. I/ We shall make available to Maha-Metro any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of Maha-Metro to reject our Bid without assigning any reasons or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, I/we/any of the Consortium Members or our/their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:
  - a. I/We have examined and have no reservations to the Bid Document including any Addendum issued by Maha-Metro; and

- b. I/ We do not have any conflict of interest in accordance with the terms/ clauses of the Bid Document that affects the bidding process; and
  - c. I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the Bid Document, in respect of any tender or request for proposal issued by or any agreement entered into with Maha-Metro or any other public sector enterprise or any Government, Central or State; and
  - d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of the Bid Document, no person acting for me/us or on my/ our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
  - e. The undertaking given by me/ us along with the Bid in response to the Bid Document for this Project were true and correct as on the date of making the Bid and are also true and correct as on the Bid Due Date and I/ We shall continue to abide by them.
8. I/ We understand that you may cancel the Bidding Process at anytime and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for this Project, without incurring any liability to the Bidders.
9. I/ We believe that I/ we/ our Consortium satisfy(ies) the Technical Capacity and Financial Capacity as specified in the Bid Document.
10. I/ We declare that I/we/any Member of the Consortium, or our/its Associates am/are/is not a Member of a/any other Bidder/Consortium submitting a Bid for this Project
11. I/ We certify that in regard to matters other than security and integrity of the country, I/ we/any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake this Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the Country, I/ we/ any Member of the Consortium or any of our/ their Associate have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by me/us or by any of my/our Associates, nor is there any such investigation pending against me/us.
13. I/ We further certify that no investigation by a regulatory authority or security agency related to the security and integrity of India is pending either against me/us any Member of the Consortium or against our/their Associates or against our Chief Executive Officer (CEO)/ Chief Financial Officer (CFO) or any of our Directors/Managers/key managerial personnel.
14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/ 2001-DD-II dated July 13, 2001, which guidelines apply mutatis mutandis to the Bidding Process. I have read and understood the contents of the aforesaid guidelines, a copy of which forms part of the Bid Document at Volume I thereof.
15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, I/we am/are attracted by the provisions of disqualification in terms of the guidelines referred to above, I/we shall intimate Maha-Metro of the same immediately.



16. We acknowledge and undertake that –

- (a) Members of the Consortium undertake that, they shall collectively hold at least (aa) 100% (One Hundred percent) of the subscribed and paid up equity of the SPC at all times until completion of 04 years from the date of signing of concession agreement or the commercial operation date of this Project, whichever is later; and (bb) 51% (Fifty One per cent) of the subscribed and paid up equity of the SPC at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later; and thereafter, (cc) 26% (twenty six percent) of the subscribed and paid up equity of the SPC till the expiry of the Concession Period.
  - (b) The lead member of the consortium undertake that it shall subscribe to at least 51% (Fifty one percent) of the paid up and subscribed equity of the SPC at all times until completion of 04 years from the date of signing of concession agreement or the commercial operation date of this Project, whichever is later; and (b) thereafter 26% (twenty six per cent) of the subscribed and paid up equity of the SPC at all times till the end of lease period.
  - (c) Commit that the member(s) of consortium, whose experience will be evaluated for the purposes assessing the technical and Financial capacity of the Bidder, shall subscribe to (aa) 26% (twenty six per cent) of the subscribed and paid up equity of the SPC at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later (bb) shall subscribe to and hold equity share capital not less than 5% (five per cent) of the Estimated Project Cost specified in the Concession Agreement;
17. I/ We acknowledge and agree that, in the event of a change in Control of an Associate whose Technical Capacity and/or Financial Capacity was taken into consideration for the purposes of short-listing and qualification under and in accordance with the Bid Document, I/ We shall inform Maha-Metro forthwith along with all relevant particulars and Maha-Metro may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Acceptance, as the case maybe. I/We further acknowledge and agree that in the event such change in Control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof and the Concession Agreement shall be liable to be terminated without Maha-Metro being liable to us in any manner whatsoever.
18. I/ We understand that in the event of me/us being selected as the Successful Bidder, I/ We shall incorporate a new Special Purpose Company (SPC) under Companies Act 2013 and any amendments thereto and meet other conditions precedent, as Concessionaire, prior to execution of the Concession Agreement.
19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by Maha-Metro in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. I/ We have read and understood the Concession Agreement along with its schedules and annexures, General Conditions of Concession Agreement and the Special Conditions of Concession

Agreement, before submitting our Bid. In the event of my/our being declared as the Successful Bidder, I/ we agree to enter into a Concession Agreement in accordance with the draft Concession Agreement that has been provided to me/ us. We agree not to seek any changes in the aforesaid draft and agree to accept the terms of Concession Agreement without any qualifications and to abide by the same.

21. I/ We have studied the Bid Document carefully, surveyed the Project Land and also acquainted ourselves about all the existing site conditions, applicable laws and regulations, etc. before submitting my/our Bid. I/We understand that except to the extent as expressly set forth in the Concession Agreement, I/we shall have no claim, right or title arising out of any documents or information provided to me/us by Maha-Metro or in respect of any matter arising out of or relating to the Bidding Process including the award of this Project.

22. I/ We offer a Bid Security of Rs. 55,00,000 (Rupees Fifty Five Lakhs only) to Maha-Metro in accordance with the Bid Document. I/ We understand that the full value of the Bid Security shall stand forfeited in case I/We fail to fulfil the requirements laid down in the Bid Document.

The Bid Security amounting to Rs. 55,00,000 (Rupees Fifty Five Lakhs only) is paid through NEFT/RTGS reference number ..... dated ..... from ..... Bank

23. The Bid Document Fee amounting to Rs 88,500/- (Rupees Eighty Eight Thousand Five Hundred only) is paid online via ..... and the reference number is ..... dated .....

24. I/ We declare that the information stated above and in the aforementioned attachments is complete and absolutely correct and any error or omissions therein, accidental or otherwise, will be sufficient for Maha-Metro to reject my/our Bid and forfeit the Bid Security.

25. I/ We agree and understand that the Bid is subject to the provisions of the Bid Document. In no case, I/ We shall have any claim or right of whatsoever nature if this Project is not awarded to me/ us or our Bid is not opened or rejected.

26. I/ We hereby submit our Financial Bid in the prescribed format as per the Bid Document of Maha-Metro for undertaking the aforesaid Project in accordance with the Bid Document and the Concession Agreement.

27. The Total Consideration (combination of Upfront Premium and Annual Concession Fees) has been quoted by me/us after taking into consideration all the terms and conditions stated in the Bid Document, draft Concession Agreement, our own estimates of the cost and revenues and after a careful assessment of the reserved metro land and all the other conditions that may affect the project cost and implementation of this Project.

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

29. I/ We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement.

30. I/ We shall keep this offer valid for 180 days (One Hundred and Eighty days) from the Bid Due Date specified in the Bid Document.

31. I/We undertake that neither the bidder nor its Member, or Associate was, either by itself or as Member of a consortium has been barred by the Central Government / State Government or any entity Controlled by it, from participating in any project (BOT, BOOT, DBFOT or otherwise), and the bar doesn't subsists as on the Bid Due Date, nor has been declared by Maha-Metro as non-performer/blacklisted.

In witness thereof I/ We submit this Bid under and in accordance with the terms of the Bid Document.

Yours faithfully

Date:.....

(Signature of the Authorised signatory)

Place:.....

(Signature, name and designation of the Authorized signatory)

Name of Bidder/Lead Member of Consortium

**Note:-**

- i. All blank spaces in the Bid Forms of this Bid Document shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder. Any information which is not applicable for the bidder may be omitted or modified as necessary to reflect Bidder-specific particulars.
- ii. Strike out whichever is not applicable, if the Bidder is not an individual/consortium, as the case may be.
- iii. If the Bidder is not a consortium, the provisions applicable to consortium may be omitted.

**Enclosed:-**

1. Checklist of documents submitted by me/us
2. Scanned copy of Bid Security
3. Other documents as per the prescribed formats

**Bid Form - II : Details of Bidder**

**(To be filled by Bidder/each Member of the Consortium)**

**Bid Document No.:** .....

**Dated:**

**Name of Project: Bid for “Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis”**

**Details of Bidder (In case of consortium, details of each Member of the Consortium must be provided)**

1. (a) Full Name of Bidder/Member of Consortium (in block letters):  
(b) Country of incorporation/ nationality (whichever is applicable):  
(c) Address of the corporate headquarters and its branch office(s), if any, in India  
(d) Date of incorporation and/ or commencement of business/ date of registration/date of birth:  
(e) Constitution of Bidder:  
(f) Registration /Registration Number:  
(g) PAN/TAN Number:  
(h) GST Registration Number (if applicable):  
(i) Other Documents:
2. Brief description of the Company/ Firm including details of its main lines of business and proposed role and responsibilities in this Project:  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....
3. Details of individual(s) who will serve as the point of contact/ communication for Maha-Metro:
  - (a) Name:
  - (b) Designation:
  - (c) Company:
  - (d) Address:
  - (e) Telephone Number:
  - (f) E-Mail Address:
  - (g) Fax Number:

4. Particulars of the Authorised Signatory of the Bidder:

- (a) Name:
- (b) Designation:
- (c) Address:
- (d) Phone Number:
- (e) Fax Number:
- (f) E-mail Address:

5. In case of a Consortium:

- (a) The information above (1-4) should be provided for all the Members of the Consortium.
- (b) A copy of the Joint Bidding Agreement as per the prescribed Bid Form should be attached to the Bid.
- (c) Information regarding the role of each Member should be provided as per table below:

Sr. No	Name of the Member	Role <sup>\$</sup>	Percentage of equity in the Consortium <sup>\$\$</sup> as per Joint Bidding Agreement
1			
2			
3			

<sup>\$</sup> The role of each Member, as may be determined by the Bidder, should be indicated in accordance with instruction 4 at Bid Form-IV.

<sup>\$\$</sup> The percentage of equity should be in accordance with Clause 2.2.6 of the RFP Document.

- (d) The following information shall also be provided for the Bidder, including each Member of the Consortium:

**Name of Bidder / member of Consortium**

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

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

(Signature of the Authorised Signatory)

(Name and designation of the Authorised Signatory)

(Name of the Bidder/Lead Member)

Enclosures :

- a. Registration Certificate of Bidder
- b. GST Registration Certificate of Bidder
- c. License/ Gumasta for operation of Business
- d. PAN Card of Bidder
- e. TAN of Bidder
- f. MoA & AoA/ Partnership Deed/ relevant By-Laws of the Bidder
- g. Latest shareholding pattern in the Bidder.
- h. Details of present Directors/ Partners of the Bidders & their present holdings in the Bidder.

# **BID FORM - III : Technical Capacity of the Bidder**

Technical Capacity of the Bidder®

Bid Document No.: .....

Dated:

**Name of Project: Bid for “Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis”**

(Refer to Clauses 2.2.2 (A) and Clause 3.3 and Clause of the RFP)

Sr. No	Name of the Bidding Company/ Consortium Member whose experience is considered #	Owned / Developed the Eligible Project For minimum duration of 05 years duration, during the last 10 financial years preceding the Bid Due Date		Project Cost <sup>\$</sup>	Date of Commencement of Construction	Date of Completion of Construction	Commercial Operation Date of the Project.
		Name of the project	Number of Rooms / Keys in the project				
(1)	(2)	(3)	(4)				
1							
2							
3							

Signature of the Authorised Signatory)

(Name and designation of the Authorised Signatory)

(Name of the Bidder/Lead Member)

## **Certified by Statutory Auditor/Chartered Accountant:-**

I/We ....., in our capacity as the Statutory Auditor/Chartered Accountant to M/s..... (Name of the Bidder/Member of the Consortium)..... certify that above details in this Bid Form are correct.



(Signature of the Statutory Auditor/Chartered Accountant)

(Name and seal of the Statutory Auditor/Chartered Accountant)

**Notes:**

1. Enclosure : License/ Occupancy Certificate received from Competent Authority duly stating the number of operational rooms in the premises.
2. @ Provide details of only those projects that have been undertaken by the Applicant under its own name and/ or by an Associate specified in Clause 2.2.9 and/ or by a project company eligible under Clause 2.2.1(b).
3. # In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Applicant with such Associate, in terms of Clause 2.2.9, shall be provided.
4. \$ For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 70 (seventy)] to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Application Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

## Bid Form – IV: DETAILS OF ELIGIBLE PROJECTS

**Bid Document No.:** .....

**Dated:**

**Name of Project:** Bid for “Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis”

*(Refer to Clauses 2.2.2 (A) and Clause 3.3 of the Bid Document)*

*(In case of Consortium, this Bid Form to be filled separately for each Member whose Technical Capacity is to be counted)*

**Member Name:**

**Project Code:**

**Member Code:**

Sr. No	Item	Refer Instruction	Particulars of the Project
1	Name of the Project		
2	Location, address of the Project and project area		
3	Date of commencement of Construction of the project.		
4	Date of Completion of Construction		
5	Commercial Operation Date of the Project.		
6	Number of Operational rooms in the project.		
7	Name of Entity Holding the Project		
8	Entity for whom the project was developed (name, address and contact details of owner/ Authority) or Self		
9	Equity shareholding (with period during which equity was held)		
10	Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)		
11	Name of Associate Entity		
12	Relationship with the Bidder (Equity Holding of the Bidder in the Associate Firm with period during which equity was held)		

Signature of the Authorised Signatory)

(Name and designation of the Authorised Signatory)

(Name of the Bidder/Lead Member)

**Certified by Statutory Auditor/Chartered Accountant:-**

I/We, in our capacity as the Statutory Auditor/Chartered Accountant \_\_\_\_\_ (Name of the Bidder/Member of the Consortium) certify that above details in this Bid Form are correct.

(Signature of the Statutory Auditor/Chartered Accountant)

(Name and seal of the Statutory Auditor/Chartered Accountant)

**Note:** - In this Bid Form is spread on more than one page, then all pages have to be signed with seal by Statutory Auditor/Chartered Accountant, as the case may be.

**Instructions:**

1. Bidders are expected to provide information in respect of each Eligible Projects in this Bid Form. The projects cited must comply with the eligibility criteria specified in 2.2.2 (A) and Clause 3.3 of the Bid Document, as the case may be. Information provided in this section is intended to serve as a back-up for information provided in the Bid.
2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each Eligible Project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write "Associate" along with Member Code.
5. The date of commissioning of the project, upon completion, should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
6. The equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.3.3).
7. Duly Certified Building permit along with Certificate from the Bidder's Project Architect must be furnished as per formats below for each Eligible Project.

8. If the Applicant is claiming experience for a project where the Applicant has paid for construction works , it should provide a certificate from its statutory auditor in the format below:

**Certificate from the Statutory Auditor regarding projects where the Applicant has paid for construction works**

Based on its books of accounts and other published information authenticated by it, this is to certify that ..... *(name of the Applicant/Member/Associate)* is/ was an equity shareholder in ..... *(title of the project company)* and holds/ held Rs. .... cr. (Rupees ..... crore) of equity (which constitutes .....% of the total paid up and subscribed equity capital) of the project company from ..... *(date)* to ..... *(date)*<sup>¥</sup>. The project was commissioned on ..... *(date of commissioning of the project)*.

We further certify that the total estimated capital cost of the project is Rs. .... cr. (Rupees .....crore)

Name of the audit firm:

Seal of the audit firm:

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

9. <sup>F</sup> Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.
10. <sup>¥</sup> In case the project is owned by the Applicant company, this language may be suitably modified to read: “It is certified that ..... *(name of Applicant)* constructed and/ or owned the ..... *(name of project)* from ..... *(date)* to ..... *(date)*.”
11. Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.
12. <sup>Y</sup> In case the Applicant owned the Eligible Project and engaged a contractor for undertaking the construction works, this language may be modified to read: “ this is to certify that ..... *(name of Applicant/Member/ Associate)* held 26% or more of the paid up and subscribed share capital in the..... *(name of Project company)* when it undertook construction of the ..... *(name of Project)* through..... *(name of the contractor)*

13. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.9, the Applicant should also provide a certificate in the format below:

**Certificate from Statutory Auditor/ Company Secretary regarding Associate\$**

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty percent) of the subscribed and paid up voting equity of ..... (name of the Associate) is held, directly or indirectly£, by ..... (name of Applicant/ Consortium Member). By virtue of the aforesaid share-holding, the latter exercises Control over the former, who is an Associate in terms of Clause 2.2.9 of the RFP.

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

{Describe the share-holding of the Applicant/ Consortium Member in the Associate}

Name of the audit firm:

Seal of the audit firm:

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

Date:

\$ In the event that the Applicant/ Consortium Member exercises Control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

£ In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of “Control” is not broken.

13. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Technical Capacity

### Bid Form – V: Financial Capacity of The Bidder (Net Worth)

**Bid Document No.:** .....

**Dated:**

**Name of Project:** Bid for “Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis”

*(Refer to Clauses 2.2.2(B) and Clause 3.4 of the Bid Document)*

*(In case of Consortium, this Bid Form to be filled separately for each Member whose Financial Capacity is to be counted)*

**(In Rs. crore)**

<b>Bidder type<sup>\$</sup></b>	<b>Member Code</b>	<b>Proposed Equity Shareholding in the Consortium (%) as per joint Bidding Agreement</b>	<b>Net Worth at the close of preceding financial year</b>
Single entity Bidder			
<b>In Case of Consortium</b>			
Lead Member			
Member 1			
<b>TOTAL</b>			

Note : mention detailed methodology adopted for computation of Net-worth.

*(Signature of the Authorised Signatory)*

*(Name and designation of the Authorised Signatory)*

*(Name of the Bidder/Lead Member)*

**Certified by Statutory Auditor/Chartered Accountant:-**

I/We, in our capacity as the Statutory Auditor/Chartered Accountant \_\_\_\_\_ (Name of the Bidder/Member of the Consortium) certify that above details in this Bid Form are correct.

*(Signature of the Statutory Auditor/Chartered Accountant)*

*(Name and seal of the Statutory Auditor/Chartered Accountant)*

**Instructions:**

1. The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 2.2.8.
2. The Bidder/ Lead Member shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years immediately preceding the Bid Due Date. The financial statements shall:
  - (a) reflect the financial situation of the Bidder or Lead Member and its/ their Associates where the Bidder is relying on its Associate's financials;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
4. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.11.
5. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth. The Auditor's Certificate shall include the following undertaking: "I/We certify that Net Worth of the Bidder has been calculated in accordance with Clauses 2.2.2(B) and 3.4 of the Bid Document."
6. For those Bidders /Lead Member Members whose accounts are not required to be audited as per the law "Statutory Auditor" will be replaced with "practicing Chartered Accountant" who is a member of ICAI. The Chartered Accountant's shall include the following undertaking: "I/We certify that Net Worth of the Bidder has been calculated in accordance with Clauses 2.2.2(B), 2.2.3(b) and 3.4 of the Bid Document." Further, their full income tax return along with financial statements containing the profit & loss/income & expenditure account duly certified by a practicing chartered accountant should be submitted.
7. The format is being provided for illustrative and information purposes only. It is the Bidder's sole responsibility to ensure that the information and calculations provided in the forms are accurate and complete.
8. In case this Bid Form consists of more than one page, Statutory Auditor/ Chartered Accountant Authorised Signatory shall sign and seal on all pages.
9. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due falls within 3 (three) months of the close of the latest financial year, refer to Clause.
10. Net Worth shall mean:

**For Company/LLP** = "(Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + accrued liabilities)"

**For Partnership** = "Aggregate of Partner's Capital Account + Reserves – Aggregate of drawings by partners – Aggregate of advances to partners"

**For Proprietorship** = "Proprietor's Capital Account + Reserves – Drawings by Proprietor – Advances to Proprietor"



**Bid Form - VI: Statement Of Legal Capacity**

**Bid Document No.:** .....

**Dated:**

*(Refer to Clauses 2.2.2(b), 2.2.3(b) and 3.4 of the Bid Document)*

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

**To,**

**The Executive Director (Procurement)**

**Maharashtra Metro Rail Corporation Limited**

Procurement Section, 1<sup>st</sup> Floor, Metro Bhavan,

VIP Road, Opp. Dr. Babasaheb Ambedkar College,

Near Deekshabhoomi, Nagpur – 440010

**Sub: Bid for “Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis”**

Dear Sir,

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

I/We have agreed that ..... (insert Member’s name) will act as the Lead Member of our consortium.

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

Note :

1. Strike out whichever is not applicable.
2. Copy of charter/registration/incorporation documents or in case of Bidders falling under the category of individuals, a self-certified photocopy of proof of photo identity and address as is accepted by a nationalized bank for opening a bank account along with a self-attested photocopy of PAN Card should be enclosed with this Bid Form.

## **Bid Form - VII: Power of Attorney for Signing of Bid**

**Bid Document No.:** .....

**Dated:**

**Name of Project: Bid for "Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis"**

*(This Bid Form is to be submitted only by Bidder/Lead Member of the Consortium)*

*(To be executed on Non Judicial Stamp Paper of appropriate value as prescribed by the Stamp Act of the respective State in which this document is executed (but not less than Rs.100) and duly notarized.)*

Know all men by these presents, I/We, {.....} (insert name of the Bidder 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 me/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 my/our name and on my/our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of my/our Bid for the **Bid for "Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis"**, proposed by Maha-Metro (the "Maha-Metro") including but not limited to signing and submission of the Bid and all other documents and writings, participate in Bidders' and other conferences and providing information/responses to Maha-Metro, representing me/us in all matters before Maha-Metro, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with Maha-Metro in all matters in connection with or relating to or arising out of my/our Bid for the said Project and/or up on award thereof to me/us and/or till the entering into of the Concession Agreement with Maha-Metro.

AND whereby I/we agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by my/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 my/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.....

Date:

Place:

For.....

{Signature, name, designation and address of person authorised by Board Resolution

(in case of Bidder/Lead Member )}

Witnesses:

1.

2.

Accepted

Notarised

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

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

(\*Notary to specify as applicable)

(Signature, Name and Address of the Notary)

Seal of Notary

Registration Number of the Notary

Date:.....

**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. The Power of Attorney should be duly supported with the enabling Board Resolutions of the executants. 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/consularised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised/consularised by the Indian Embassy if it carries a conforming Apostille certificate.
4. Strike out whichever is not applicable.

### **Bid Form - VIII: Power of Attorney for Consortium**

**Bid Document No.:** .....

**Dated:**

**Name of Project: Bid for “Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis”**

(To be executed on Non Judicial Stamp Paper of appropriate value as prescribed by the Stamp Act of the respective State in which this document is executed (but not less than Rs.100) and duly notarized.)

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

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, .....having our registered office at ....., and M/s. .... having our registered office at ..... and M/s. .... having our registered office at ..... (hereinafter collectively referred to as the **“Principals”**) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S ..... having its registered office at ....., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the **“Attorney”**). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its Bid for the Project, including but not limited to signing and submission of all Bids and other documents and writings, participate in bidding process 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 Maha-Metro, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s Bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with Maha-Metro.

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

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

For Member 1 (Signature, Name & Title )

For Member 2 (Signature, Name & Title)

For Member 3 (Signature, Name & Title)

(Executants)

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

Witnesses:

- 1.
- 2.

Accepted

Notarised

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

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

(\*Notary to specify as applicable)

(Signature, Name and Address of the Notary)

Seal of Notary

Registration Number of the Notary

Date:.....

**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. The Power of Attorney should be duly supported with the enabling Board Resolutions of the executants. Also, wherever required, the Bidder/Member 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 her under on behalf of such Bidder/Member-.
3. For a Power of Attorney executed and issued overseas, the document will also have to be legalised/consularised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed The Hague Legislation Convention, 1961 are not required to be legalised/consularised by the Indian Embassy if it carries a conforming Appostille certificate.
4. Strike out whichever is not applicable.

## **Bid Form – IX: Joint Bidding / Consortium Agreement**

**Bid Document No.:** .....

**Dated:**

**Name of Project:** Bid for “Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis” *(To be executed on Non Judicial Stamp Paper of appropriate value as prescribed by the Stamp Act of the respective State in which this document is executed (but not less than Rs.100) and duly notarized.)*

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

### **AMONGST**

1. .... Limited, a company incorporated under the Companies Act, 1956/2013<sup>¥</sup> and having its registered office at ..... (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

### **AND**

2. .... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at ..... (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

### **AND**

3. .... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at ..... (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

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

### **WHEREAS,**

- (A) The Maharashtra Metro Rail Corporation Ltd. Maha-Metro (the “**Maha-Metro**”), a joint venture of the Government of India (GOI) and the Government of the Maharashtra, for implementing the Nagpur Metro Rail Project in Nagpur City having its office at Metro House, 28/2 Anand Nagar, C K Naidu Road, Civil Lines, Nagpur-440001 ((Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College, Near Deekshabhoomi, Nagpur – 440010) (hereinafter referred to as the “**Maha-Metro**” or “**Maha-Metro**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the “**Bids**”) by its Request for Proposal No. .... dated .....(the “**RFP**”) for “**Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis**” (the “**Project**”)

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<sup>¥</sup>A Bidder who is registered abroad may substitute the words,viz “a company registered under the Companies Act, 1956/2013” by the words,viz “a company duly organized and validly existing under the laws of the jurisdiction of its incorporation”. A similar modification may be made in Recital 2, as necessary.

- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

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

**2. Consortium**

2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

3.1 The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPC**”) under the Indian Companies Act 2013 for entering into a Concession Agreement with Maha-Metro and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

**4. Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead Member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the signing of the Concession Agreement when all the obligations of the SPC shall become effective; (Technical and/or Financial Member of the Consortium)
- (b) Party of the Second Part shall be {the Technical Member of the Consortium;}

**5. Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the Bid Document and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement. The Parties shall mutually and jointly take all the decisions in respect of the Project on behalf of the Consortium. {Insert name of Lead Member} shall be authorized to act on behalf of the Consortium as their representative for bidding and implementation of the Project.

## **6. Shareholding in the SPC**

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

First Party:

Second Party:

Third Party:

6.2 The Parties undertake to form a new Special Purpose Company (SPC) with minimum joint shareholding of (aa) 100% (One Hundred percent) of the subscribed and paid up equity of the SPC at all times until completion of 04 years from the date of signing of concession agreement or the the commercial operation date of this Project, whichever is later; and (bb) 51% (Fifty One per cent) of the subscribed and paid up equity of the SPC at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later; and thereafter, (cc) 26% (twenty six percent) of the subscribed and paid up equity of the SPC till the expiry of the Concession Period; be held by the Parties of the First Part, Second Part and Third part whose technical capacity and financial capacity have been reckoned for the purposes of eligibility of Bidder for the Project in terms of the Bid Document.

6.3 The Parties undertake that the lead member of consortium shall subscribe to at least 51% (Fifty one percent) of the paid up and subscribed equity of the SPC at all times until completion of 04 years from the date of signing of concession agreement or the commercial operation date of this Project, whichever is later; and (b) thereafter 26% (twenty six per cent) of the subscribed and paid up equity of the SPC at all times till the end of lease period.;

6.4 The Parties undertake that the member of consortium whose experience will be evaluated for the purpose of evaluating the Technical Capacity and Financial Capacity of the Bidder/Consortium, shall subscribe to at least 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPC at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later;

6.5 The Parties undertake that each of the members whose experience will be evaluated for the purposes of this Bid Document, shall subscribe to and hold equity share capital not less than (bb) 5% (five per cent) of the Estimated Project Cost specified in the Concession Agreement;

6.6 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.



## **7. Representation of the Parties**

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

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - (i.) require any consent or approval not already obtained;
  - (ii.) violate any Applicable Law presently in effect and having applicability to it;
  - (iii.) violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
  - (iv.) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v.) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

## **8. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved/fulfilment of all Conditions Precedent under and in accordance with the Concession Agreement (as may be applicable) and thereafter the legal liabilities of the Members shall be governed by the relevant provisions of the Concession Agreement. However, in case the Consortium is either not qualified/eligible for the Project or does not get selected for award of the Project or upon return of the Bid Security by Maha-Metro to the Bidder, as the case may be, the Agreement will stand terminated.

## **9. Miscellaneous**

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

- (b) The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of Maha-Metro.

**IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS CONSULTANCY AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN  
SIGNED, SEALED AND DELIVERED**

For and on behalf of  
PARTY OF THE FIRST PART  
By;  
(Signature)  
(Name)  
(Designation)

For and on behalf of  
PARTY OF THE SECOND PART  
By;  
(Signature)  
(Name)  
(Designation)

For and on behalf of  
PARTY OF THE THIRD PART  
By;  
(Signature)  
(Name)  
(Designation)

**In Presence of**

- 1.
- 2.

Accepted

Notarised

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

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

(\*Notary to specify as applicable)

(Signature, Name and Address of the Notary)

Seal of Notary

Registration Number of the Notary

Date:.....

**Notes:**

- The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this

Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.

- For a Joint Bidding Agreement executed and issued overseas, the document will also have to be legalised/consularised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Joint Bidding Agreement provided by Bidders from countries that have signed The Hague Legislation Convention, 1961 are not required to be legalised/consularised by the Indian Embassy if it carries a conforming Appostille certificate.
- Strike out whichever is not applicable.

**BID FORM - X: FINANCIAL BID**

**BID FORM - X: FINANCIAL BID**

**Bid Document No.:** .....

(To be submitted and signed by the Bidder's authorised signatory)

**The Executive Director (Procurement)**

**Maharashtra Metro Rail Corporation Limited**

Procurement Section, 1<sup>st</sup> Floor, Metro Bhavan,

VIP Road, Opp. Dr. Babasaheb Ambedkar College,

Near Deekshabhoomi, Nagpur – 440010.

**Subject : Financial Bid for Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis"**

Sir,

We hereby submit our Financial Proposal for the captioned project. If the project is awarded to us, we agree to make the following payments to MAHA-METRO as per the terms and conditions given in the Request for Proposal (RFP) Document.

**A. Upfront Premium**

We hereby submit our offer for Upfront Premium amounting to Rs. ..../- (.....in words .....), exclusive of all applicable taxes. We agree that the Upfront Premium amount shall be deposited by us within 30 days of acceptance of LoA.

**B. Annual Concession Fees:**

- We hereby submit our offer of Annual Concession Fees as .....% of the Project Revenue.
- For evaluation of bids, the minimum expected revenue of the project is during the entire lease period is projected for provided for ready reference. One Hundred Percent (100%) of the Annual Concession Fees based on the Business Plan as submitted by the Successful Bidder shall act as minimum guarantee for the project.
- The Successful Bidder agrees to share the same percentage (as quoted by him the financial bid) of its revenue, throughout the lease period.
- The Annual Concession Fees shall be paid on yearly basis and shall be paid in advance i.e. 30 days before the start of the year. At the start of the tenure (i.e. 30 days before), the Annual Concession Fees shall be submitted in accordance with the business plan submitted by the bidder.
- At the end of each agreement year the amount of Annual Concession Fees will be reconciled based on the actual revenue received in the project during that tenure. It will be mandatory for the Successful Bidder/Concessionaire to submit the amount of half yearly license fees within 15 days of completion of such tenure.

- The revenue sharing shall be done on the Total **"Project Revenue"** accrued to the concessionaire.

The expression **"Project Revenue"** shall mean the following:

- i. Room receipts from realisation of room occupancy charges.
- ii. Receipts from use of Banquet Halls, Convention Centres etc.
- iii. Sale of food, beverages, liquor, and smokes in Banquet Halls, Convention Centres etc.
- iv. Sale of food, beverages, liquor, and smokes from room service, Restaurants, Bars, Banquet rooms, Dining Halls, Public Rooms and other catering outlets like Snack Bars, Pastry Shops, Coffee Shops and charges on account of use of Public Rooms, Banquet Rooms and charges on account of entertainment, shows and catering organised by the said Hotel within the said hotel.
- v. Income from commercial space on account of fee and/or licence fees of shops, counters, shop windows, showcases or any premises given out to any person /parties.
- vi. Excess of recovery over the expenditure incurred in respect of telephone, telex, charges for laundry, TV, car hire in the event such services are not directly rendered at the said hotel by Successful Bidder.
- vii. Income from swimming pool, sports and recreation facilities, health club and hire charges and other miscellaneous income derived out of operation of the said Hotel.

#### C. Total Consideration

<b>Total Consideration</b>	<b>=</b>	<b>Upfront Premium</b>	<b>+</b>	<b>NPV of Annual Concession Fees @ Discounting Rate equivalent to SBI Base Rate applicable on the date of opening of tender.</b>
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**For evaluation of Bids**, the aforesaid amount is the minimum Total Consideration offered by us for undertaking the aforesaid Project in accordance with the bidding documents and draft Concession Agreement.

We have reviewed all the terms and conditions of the RFP and undertake to abide by all the terms and conditions contained therein. We hereby declare that there are, and shall be no deviations from the stated terms in the RFP.

We are making this proposal after taking into consideration all the terms and conditions stated in the RFP document, and after careful assessment of the site, all risks and contingencies and all other conditions that may affect the financial proposal.

We agree to keep our offer valid for 180 (One Hundred and Eighty) days from the due date of submission of this Proposal to MAHA-METRO.

Yours faithfully, For and on behalf of ...(Name of the Bidder).....

(Signature of Authorized Signatory)

(Name and designation of the Authorised Person)

**Bid Form - X (A): Financial Model**

Bidders are required to submit the soft copy in Microsoft excel format 2007 of their Financial Model in non-rewritable compact disc.

**Bid Form - X (B): Detailed Business Plan**

To be provided separately.

Should include brief details covering following -

- A. COMPANY OVERVIEW
- B. BUSINESS DESCRIPTION
- C. MARKET ANALYS
- D. DETAILS OF DEVELOPMENT MIX AND PROJECT COST
- E. OPERATING PLAN
- F. MARKETING AND SALES PLAN
- G. FINANCIAL PLAN



## BID FORM - XI: Format for Checklist

**Bid Document No.:** .....

**Dated:**

**Name of Project:** Bid for “Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis”

The Bidder shall also submit a copy of the duly filled and completed Checklist in the format prescribed herein. The Bidder shall not amend the order or change the contents of this Checklist.

S.No.	Item	Checked by Bidder	Remarks of Maha-Metro
<b>TECHNICAL ENVELOPE</b>			
1	Bid Document Fee or receipt thereof		Shall be paid online on E-tender portal
2	Receipt of Bid Security		Shall be paid online on E-tender portal
1	Bid Form-I – Covering Letter for Bid (along with full Bid Document Volume I and II and duly signed)		
2	Bid Form-II – Details of Bidder		
3	Bid Form-III – Technical Capacity of the Bidder		
4	Bid Form-IV – Details of Eligible Projects		
5	Bid Form-V - Financial Capacity of the Bidder (Net Worth)		
7	Bid Form-VI – Statement of Legal Capacity		
8	Bid Form-VII - Power of Attorney for signing of Bid		
9	Bid Form-VIII - Power of Attorney for Lead Member of Consortium		
10	Bid Form-IX - Joint Bidding Agreement for Consortium		

### Note:

1. All the documents should be uploaded online
2. All pages to be numbered serially;
3. Each page of the document to be initialed in Blue ink by the Authorized Signatory.

Yours faithfully,

Date

Place Signature of Authorised Signatory of the Bidder/Lead Member

(Name, Designation, Address)

Stamp of Bidder/Lead Member

## **Appendix - I: Guidelines of the Department of Disinvestment<sup>1</sup>**

*(Refer Clause 1.2.1)*

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

Dated 13th July, 2001.

### **OFFICE MEMORANDUM**

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

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

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

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<sup>1</sup> These guidelines may be modified or substituted by the Government from time to time.

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

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

**Appendix - II: Format of undertaking Certifying statement that Entity / Director(s) of Entity are not blacklisted)**

*(On the appropriate value Stamp Paper )*

**Affidavit**

I/ We M/s .....(Bidder), (the name and address of the registered office) hereby certify and confirm that we or any of our promoter/s / director/s are not barred by Government of India or Government of Maharashtra or blacklisted by any other State Government or Central Government / Department / Successful Bidder/ in India from participating in project, as on .....(Mention the bid due date) We further confirm that we are aware that as per this undertaking given by us our Bid for the project of "Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis " would be liable for rejection in case any material misrepresentation is made or discovered with regard to these requirements at any stage of the Bidding Process or thereafter during the Contact Agreement period.

Dated this ..... Day of ..... ,20.....

Name of the Bidder

Signature of the Authorized Person

Name of the Authorized Person

**Note:**

1- Please strike out whichever is not applicable

**Appendix - III: Indicative Format for Memorandum of Association of SPC**

INDICATIVE FORMAT FOR MEMORANDUM OF ASSOCIATION OF SPC<sup>2</sup>

**(Under The Companies Act, 2013)**

**(COMPANY LIMITED BY SHARES)**

**MEMORANDUM OF ASSOCIATION**

**OF**

“ \_\_\_\_\_ ”

- 1<sup>st</sup>. The name of the company is “ \_\_\_\_\_ ”
- 2<sup>nd</sup>. The Registered Office of the Company will be situated at..... in the State of \_\_\_\_\_ i.e. within the jurisdiction of Registrar of Companies \_\_\_\_\_.-
- 3<sup>rd</sup>. a) The objects to be pursued by the company on its incorporation are:
  5. To engage in the activities of designing, development, construction and operation and maintenance at project site in accordance with the provisions of a concession agreement **(the "Concession Agreement")** to be executed into between the Company and The Maharashtra Metro Rail Corporation Ltd. **(the "Maha-Metro")**;
  6. To undertake commercial development (at Metro land) that may be leased to the Company by Maha-Metro on design, build, operate and transfer model as may be laid down in the Concession/lease agreement and other documents to be entered into with Maha-Metro to take all actions as may be required for development of such metro land.
  7. To carry on the business of real estate and infrastructure promoters, Concessionaires, builders, managers, contractors, sub-contractors, planners, designers, construction engineers, decorators, interior decorators, fabricators, engineers, survivors, appraisers, mortgagors of commercial complexes and to engage in all types of construction activities incidental or in relation to the project carried on by the Company at railway land and air space and leased to the Company by Maha-Metro in term of objects above.
  8. To re-construct, re-build, re-erect, repair, re-model, alter, re-develop, improve, demolish, remove, grade, and maintain, enlarge, decorate and furnish or make advancement in abovementioned objects of construction, project management, development & designing

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<sup>2</sup> This is only an indicative format.

for whatever use or any business as may be incidental or necessary for the achievement of the same.

9. To engage in the activities of management and maintenance of the assets and facilities developed on the reserved railway land and air space at railway station in terms of the objects mentioned above;

(b) Matters which are necessary for furtherance of the objects specified in clause 3rd.a are:-

1. To apply for and obtain any order or other authority for enabling the Company to carry any of its objects into effect or for effecting any modifications of the Company's constitution or for any other purpose, which may seem expedient and to make representations against any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests;
2. To enter into any contract, Agreements, Memorandum of understanding, Arrangements or such other mode of Contracts with Government of India, State Governments, Municipal/Local Authorities, Bodies Corporate, Persons or such other Authorities or such other methods for the purposes of carrying out the objects of the Company.
3. To purchase and otherwise acquire, own, import, all materials, substances, appliances, machines, containers and such other articles and apparatus and things capable of being used in the main business and to own, take on lease and otherwise acquire and use facilities of whatever kind as may be convenient or useful or conducive to carry out the main objects of the Company effectively and efficiently.
4. To acquire by way of concessions, grants, purchase, licences or otherwise, lands, buildings and/or machinery, farms, water rights and other works, privileges, rights and hereditaments of all types in connection with main objects of the Company.
5. To acquire, build, alter, maintain, enlarge, remove or replace and to work manage and control any land, buildings, offices, factories, mills, shops, machinery and conveniences which may seem necessary to achieve the main Objects of the company.
6. To transact every kind of guarantee, corporate guarantee and counter guarantee and to guarantee the payment/repayment of loans borrowings of any nature whatsoever granted by any institution and/or any person to the Company.
7. To purchase, take on lease or tenancy or in exchange, hire take options over or otherwise acquire any estate or interest whatsoever and to hold, develop, work concessions, grants, decrees, licenses, privileges, claims, potions, leases, property, real or personal or rights or powers of any kinds which may appear to be necessary for the main objects of the Company.

8. To pay for preliminary and pre-incorporation expenses of the Company in connection with promotion, formation and incorporation of the Company.
9. To exchange, mortgages, royalty or tribute grant licenses, easements options and such other rights over and dispose of the whole or any part of the undertaking, property, assets, rights and effects of the Company for such consideration as may be thought fit and in particular for stocks, shares debentures whether fully or partly paid up or securities of any other company having objects whole or in part similar to those of the Company.
10. To pay for any rights or property acquired by the Company and to remunerate any person, firm or body corporate rendering services to the Company either by cash payment or by allotment to him or them of shares or securities of the Company as paid up in full subject to the applicable provisions of the Companies Act, 2013.
11. to the applicable regulatory provisions, to advance money, either with or without security and give credit to such persons (including government) and upon such terms and conditions as the Company may deem fit to attain the main objects of the Company provided that the Company shall not do banking business within the meaning of Banking Regulation Act, 1949.
12. To undertake financial and commercial obligations, transactions and operations of all kinds, as may be necessary to carry out the main object(s) of the company.
13. To guarantee the performance of any contract or obligation and the payment of money or dividends and interest on any stock, shares or securities of any company, corporation, firm or person in any case in which such guarantee may be considered directly or indirectly to fulfil the main objects of the Company.
14. To guarantee the payment of money unsecured or secured or payable under or in respect of promissory notes, bonds, debentures, stocks, contracts, mortgages, charges, obligations, instruments and securities of any company or of any authority, supreme, municipal, local or of any persons whether incorporated or not incorporated and to guarantee or become sureties for the performance of any contracts or obligations as may be necessary for the main objects of the Company.
15. To subscribe for acquire, hold and dispose of shares, share-stock, debentures, bonds, debenture-stock, mortgages, obligations securities of any kind issued or guaranteed by any company (body corporate/undertaking) of whatsoever nature and howsoever constituted and to subscribe or acquire and hold shares, debentures and debenture-stocks and debenture bonds, mortgages, obligations and such other securities issued or guaranteed by any government, trust, municipal, local or such other authority or body of whatever nature, whether in India or elsewhere as may be conducive to the main objects of the Company.

16. Subject to the provisions of section 67 of The Companies Act, 2013, to invest other than investment in Company's own shares, any money of the Company not immediately required in any investments movable or immovable as may be thought proper.
17. Subject to Sections 73, 179, 180, 185 and 186 of the Companies Act, 2013 and Rule and Regulations made there under and the directions issued by Reserve Bank of India, to receive money on deposit or loan and borrow or raise money in such manner as the Company shall think fit and in particular by the issue of debentures (perpetual or otherwise) and to secure the payment of any money borrowed, raised or owing on the mortgage, charge or lien upon all or any of the property or assets of the Company (both present or future) including its uncalled capital and also by similar mortgage, charge or lien to secure and guarantee the performance by the Company, or any other such person or company of any obligation undertaken by the Company.
18. To open Bank accounts of all nature including overdraft account, to operate the same and to draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading, warrants and the other negotiable or transferable instruments and to deal with all documents mercantile or otherwise, in the ordinary course of business..
19. To apply for, purchase or otherwise acquire and protect, prolong and renew in any part of the world, any patent rights, brevets, inventions trademarks, designs, licenses, protections, and concessions conferring any exclusive or non-exclusive or limited right to their use or other information as to any invention, process or privileges which may seem capable of being used for the main objects of the Company or the acquisition of which may seem calculated directly or indirectly to benefit the company and to use exercise develop or grant licenses or privileges in respect of the property rights and information so acquired.
20. To spend money in experimenting upon and testing and improving or seeking to improve any patents, rights, inventions, discoveries, processes or information of the Company or which the Company may acquire or propose to acquire.
21. To do all or any of the main business activities either as principals, agents, trustees, contractors or otherwise and either alone or in conjunction with others and either by or through agents, sub-contractors, trustees or otherwise.
22. To acquire and takeover all, or any part of the business property and liabilities of any person, firm or company which this Company is authorized to do or possess property, suitable for the main objects of the Company.
23. To procure the registration or recognition of the company in or under the laws of any place outside India.
24. To form, incorporate or promote any company or companies whether in India or elsewhere having amongst its or their objects the acquisition of all or any of the assets or



controls, management or development of the Company or any other such objects which in the opinion of the Company could or might directly or indirectly assist the Company in the management of its main business or the development of its properties or otherwise prove advantageous to the Company and to pay all or any of the costs and expenses incurred in connection with such promotion or incorporation and to remunerate any person or company in any manner it shall fit for services rendered or to be rendered in or about the promotion of any other such company in which the Company may have any interest.

25. Subject to the provisions of Sections 230 to 233 of the Companies Act, 2013 to amalgamate or to enter into partnership or into any arrangement for sharing profits, union of interest, cooperation, joint venture or reciprocal rights with any person or persons or company or companies engaged in the main objects of the Company.
26. To enter into any arrangements and take all necessary or proper steps with government or with other such authorities supreme, national, local municipal or otherwise of any place in which the Company may have interests and to do negotiations or operations for the purpose of directly or indirectly carrying out the main objects of the Company or effecting any modification in the constitution of the Company or for furthering the interests of the members and to oppose any such steps taken by any other such company firm or person which may be considered likely directly or indirectly, to prejudice the interest of the Company or its members, and to assist in the promotion whether directly or indirectly of any legislation which may seem advantageous to the company and to obtain from any such Government Authority and company and charters, contracts, decrees, rights, grants, loans, privileges or concessions which the company may think it desirable to obtain and exercise and comply with any such arrangements, charters, decrees, rights, privileges of concessions.
27. To adopt such means of making known the main objects of the Company as may seem expedient and in particular by advertising in the press by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes, rewards and donations.
28. (a) To undertake and execute any trust, the undertaking of which may seem to the Company desirable and either gratuitously or otherwise vest any real or personal property, rights or interests acquired by or belonging to the company in any person of Company on behalf of or for the benefit of the company and with or without any declared trust in favour of the Company.  
  
(b) To accept gifts including by way of awards/prizes from Govt. and semi-Govt. bodies and to give gifts and donations to create trust for the welfare of employees, members, directors and/ or their dependents heirs and children and for deserving objects any other persons, also to act as trustees.

29. To apply the assets of the Company in any way in or towards the establishment, maintenance or extension of any association, institution or fund in any way connected with any particular trade or business or commerce and particularly with the trade, including any association, institution or fund for the interests of masters, owners and employers against loss by bad debt, strike, combustion, fire, accident or otherwise or for the benefit of any employee workman or other at any time employed by the Company or any of its predecessors in business or their families or dependents and whether or not in common with such other persons or classes of persons and in particular of friendly co-operative and such other societies, reading rooms, libraries educational and charitable institutions, dining and recreation rooms, temples, churches, chapels, school and hospitals and to grant gratuities, pensions and allowances and to contribute to any funds raised by public or local subscription for any purpose.
30. To give pecuniary otherwise to any association, body or movement having for an object the solution, settlement of industrial or labour problems or troubles or the promotion of industry or trade.
31. To subscribe or guarantee money for any national, charitable benevolent, public, general or useful object of and for exhibition, subject to the provisions of Sections 181, 182 and 183 of the Companies Act, 2013.
32. To establish and maintain or procure the establishment and maintenance of any contributory or non-contributory pension or superannuation funds for the benefit of and give, or procure the giving of donations, gratuities, pensions, allowances or emoluments to any person who are or were at any time in the employment or service of the Company or are allied to or associated with the company or with any subsidiary Company or who are or were at any time Directors or Officers of the company as aforesaid and the wives, widows, families and dependants of any such persons and also establish and subscribe to any institutions, associations, clubs or funds calculated to be for the benefit of or to advance the interest and well-being of the Company or of any such other Company as aforesaid and make payments to or towards the insurance of any such persons as aforesaid and do any of the matters aforesaid, either alone or in conjunction with any such other company as aforesaid.
33. To insure with any person, firm, association or Company against losses, damages, risks and liabilities of any kind which may affect the Company either wholly or partially and if thought fit, to effect any such insurance by joining or becoming a member of any mutual insurance, protection or indemnity association, federation or society and to accept any such insurance or any part thereof for the account of the Company.
34. To employ experts to investigate and examine into the conditions, prospects, value, character and circumstances of any business concerns and undertakings and generally of any assets property or rights.

4th. The liability of the members is limited and this liability is limited to the amount unpaid, if any, on the shares held by them.

5th. (a) The Share Capital of the Company is `----- (Rupees\_\_\_\_) divided into ----  
----- (-----) Equity shares of `----- (-----) each.

(b) The minimum Paid Up Share Capital of the Company shall be Rs.\_\_\_\_\_(\_\_\_\_\_).

VI We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set against our respective names:

Sl. No	Names, Addresses, Descriptions and Occupations of the Subscribers	Number of Shares taken by each subscriber	Signature of subscriber	Signatures, Names, Addresses, Descriptions and Occupations of the Witnesses
	Total			

Place:

Date:

## **Annexure - 1: Project Site**

### **1. Details of Land on which the Zero Mile Metro Station is situated.**

- a. The Zero Mile metro station is being developed on land admeasuring 13370.056 Sqm bearing Survey No. 302 and 303, City Survey Number (1847/1848) Mz. Sitaburdi, Nagpur.
- b. The Designated Land Use for the site is “Commercial and Parking”. However, the tender is envisaged for the use of said premises for Hotel cum Convention Centre, thus the Successful Bidder/Developer shall be allowed to use the project site for Hotel cum Convention Centre only.
- c. Maha-Metro has received only advance possession of the said land for development of Zero Mile Metro Station. The Final Notification regarding transfer of ownership of the said land in the name of Maha-Metro is still awaited.
- d. At present, Maha-Metro vide letter dated 15/10/2019 has sought permission from GoM for commercial utilization of the said land through Public Private Partnership Mode. Maha-Metro on best effort basis is following up with the proposal submitted.
- e. Maha-Metro shall issue the Letter of Acceptance of the project to the Successful Bidder only after obtaining the permission for commercial exploitation of the said land through PPP mode.
- f. The Zero Mile Station Building is clubbed with the proposed Property Development project above the Zero Mile Metro Station. The infrastructure is conceptualised as one of the most iconic projects/ infrastructures of Nagpur Metro Rail Project.

### **2. Area and Surrounding**

- a. The screen shot of Google Map showing location of land and the close vicinity of the site is as follows –



- b. The Zero Mile Metro station is located on Reach - 2 line (North-South) of Nagpur Metro Rail Project and is in close proximity of Sitaburdi Interchange Station. The Zero Mile Metro Station is being developed as one of the most iconic stations of the Nagpur Metro Rail.
- c. Apart from Metro rail accessibility, the station area is well connected with prime commercial area of Nagpur City (Sitaburdi Market) on one side and on other side its very close to Vidhan Bhavan, Nagpur.
- d. It is expected that the commercial activities are likely to increase with the development of METRO Services & subsequent increase in footfall of Metro commuters. All these factors make this site attractive for Property development.
- e. Thus, in order to value capture the potential of the said site, Maha-Metro has planned for commercial development above the Zero Mile Metro Station.
- f. The surrounding area in the site witnesses prominent retail stores. This micro market has presence of several malls and few unclassified hotels.

### **3. Connectivity**

- a. Distances of the property from the nearest civic amenities and transport nodes have been given below:

Sitaburdi bus depot	700m.
Nagpur Railway station	2 km
Nagpur Airport	7 Kms
Sitaburdi Market	400 Mts
Vidhan Bhavan, Nagpur	1 Kms
Sitaburdi Fort	2 km
MIHAN Industrial Area	20 kms
Zero Mile Stone	100 mts
Ganesh Peth Bus Depot	2.00 Kms.

### **4. Details of Airspace and other infrastructure being offered to Successful Bidder**

As per the concept drawings of Zero Mile station, the Property Development is planned from Fourth floor (Technical Floor) to Seventeenth floor plus two basements parking (lower basement and upper basement) and street level. The Metro station is planned in Concourse level and Platform level. The lower basement, upper basement & street level floor are proposed for parking of star category hotel. Entrance to the star category hotel is from street level with entrance lobby and reception area of 414 sqm.

4.1. The Airspace and the other infrastructure (project premises) being offered to Successful Bidder are as follows -

- a. An floor plate to be offered to successful bidder above Zero Mile Metro Station is approximate 1,560.40 Sqm, which will be handed over to Successful Bidder for development of commercial/Hospitality Building; (14 Floors, 4<sup>th</sup> Floor to 17<sup>th</sup> Floor). The maximum permissible development is 22,259.57 Sqm (2,39,600 Sqft) say 2,40,000 Sqft.
- b. One Entrance Lobby admeasuring 414.02 Sqm at Street Level of Zero Mile Metro Station Building.
- c. 3 Floors (2 Basements and One Floor at Street Level) cumulatively admeasuring 14584.08 Sqm for parking purpose, below the Zero Mile Metro Station. The parking floors already constructed by Maha-Metro.
- d. Two Lift Duct.

e. The details of floor area is as below:

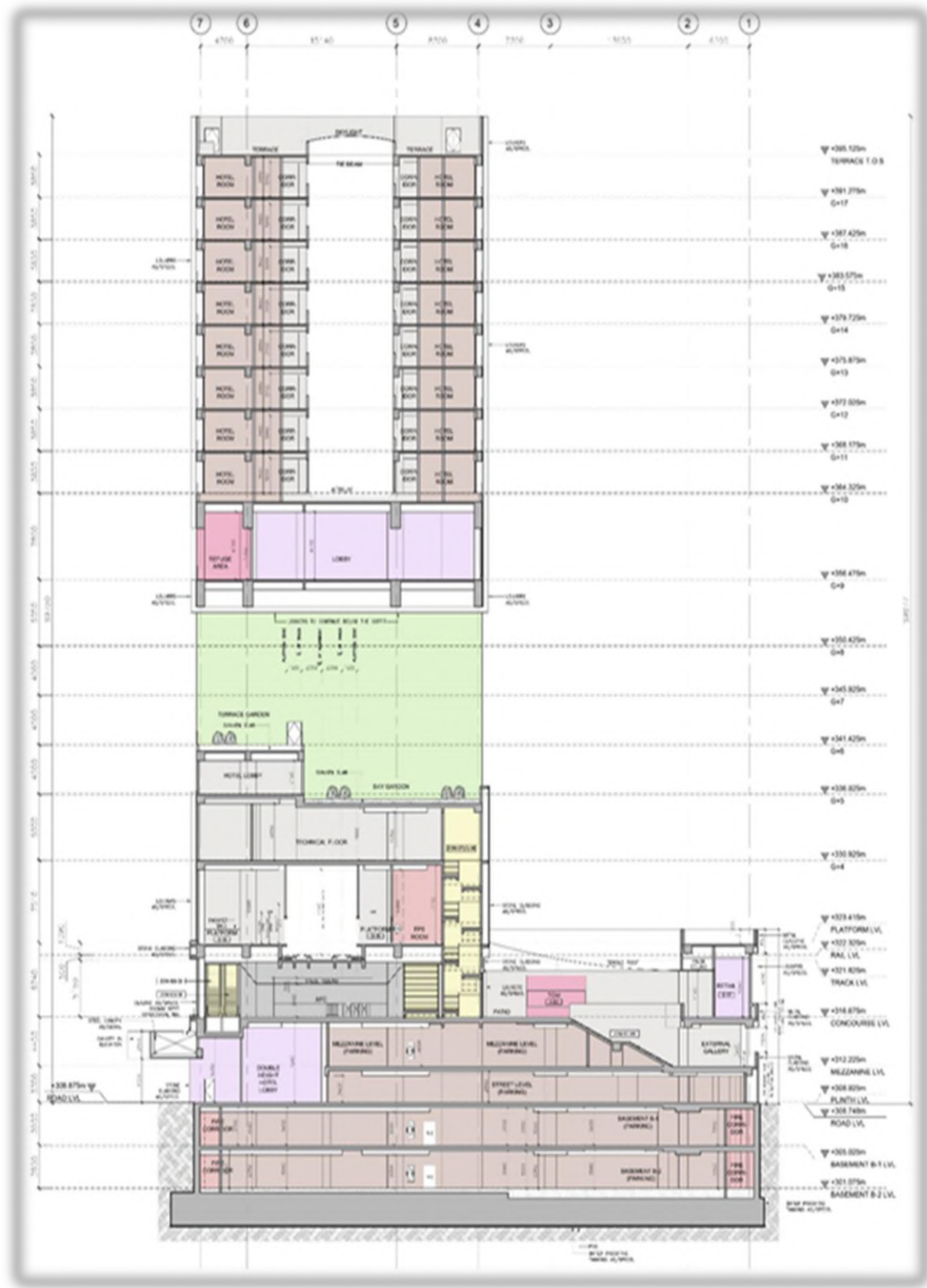
S.N.	Floor	Area (Sq. m.)	Area (Sq. ft.)	Stage of Construction
1	Lower Basement	5,130.43	55,223.49	Already Constructed by Maha-Metro To be handed over to PPP operator for O/M
2	Upper Basement	5,013.65	53,966.48	
3	Street Level (4,854.02 – 414.02)	4,440.00	47,791.76	
	<b>Total</b>	<b>14,584.08</b>	<b>156,981.73</b>	
4	Entrance lobby at Street Level	414.02	4,456.47	To be constructed and develop by PPP operator
5	Tech Floor / Service floor	1,753.81	18,877.85	
6	Fifth Floor	1,983.88	21,354.31	
7	Sixth Floor	1,321.60	14,225.58	
8	Seventh Floor	868.97	9,353.51	
9	Eighth Floor	868.97	9,353.51	
10	Ninth Floor	1,712.56	18,433.84	
11	Tenth Floor	1,685.22	18,139.56	
12	Eleventh Floor	1,685.22	18,139.56	
13	Twelfth Floor	1,612.22	17,353.79	
14	Thirteenth Floor	1,685.22	18,139.56	
15	Fourteen Floor	1,685.22	18,139.56	
16	Fifteenth Floor	1,685.22	18,139.56	
17	Sixteenth Floor	1,612.22	17,353.79	
18	Seventeenth Floor	1,685.22	18,139.56	
	<b>Total</b>	<b>22,259.57</b>	<b>239,600.01</b>	<b>Say 2,40,000 Sqft.</b>

(Note: Areas indicated above are approximate.)

4.2. The project premises as stated in clause 4.1 above, shall be free of all encumbrances.



#### 4.3. Conceptualize section of property development:





## **Annexure - 2: Scope of Work**

Maha-Metro with a view to undertake commercial development on airspace above the Zero Mile Metro Station has invited tenders for "Development and Operation of a Star Category Hotel Cum Convention Centre at the Airspace above the Zero Mile Metro Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis" (hereinafter referred to as the "**Project**").

The development is proposed on Design, Build, Finance, Operate and Transfer (the "**DBFOT**") basis. The general scope of Project shall involve the construction of proposed project and its management, operation and maintenance for a period of 60 Years (inclusive of construction period).

The detailed terms and conditions for development are as follows –

### **1. Site Details**

- 1.1. The details of project site and site location is provided in Annexure - 1: Project Site

### **2. Period of Lease**

- 2.1 The Successful Bidder shall be handed over the possession of the Site after signing of Concession Agreement.
- 2.2 Maha-Metro will provide encumbrance free leased space for the term of concession period of 60 years. The concession period shall be inclusive of construction period of 4 Years and shall commence from the date of signing of Concession Agreement.

### **3. Minimum Development Obligation**

- 3.1. It shall be mandatory for the Successful Bidder to develop/construct the total area of 2,40,000 Sqft at the airspace above the Zero Mile Metro Station. The Successful Bidder shall have to plan and develop the project in such a way that minimum area of 2,40,000 Sqft is developed above the Zero Mile Metro Station.
- 3.2. The development of project shall have to be completed within the allowed construction period as mentioned in Clause 4 of Annexure -2 Scope of Work.
- 3.3. In the event if the concessionaire desires to avail the part completion certificate/ Part Occupancy Permit of the project, the same shall be issued subject to completion of construction of more than 50% of the permissible built-up area of the project.
- 3.4. In the event if the full completion certificate / 100% completion of project is not completed within the allowed time limit, it shall be treated as major breach of conditions and action shall be initiated in accordance with provisions of Draft Concession Agreement of the project.
- 3.5. It should be noted that, in the event of termination of project due to concessionaire default of non-completion of construction of the project i.e. before obtaining the full Occupancy Permit for the project, no termination payment shall be paid by Maha-Metro to the Concessionaire.
- 3.6. The Successful Bidder shall be responsible to make all necessary fire-fighting arrangements as required for the Project. Such fire-fighting arrangements should be in conformity with the National Building Code, Nagpur Building Bye-laws, Nagpur Fire Safety (Fire Prevention) Rules and all other applicable rules and its further amendments, throughout the Concession Period.

#### **4. Construction Period**

- 4.1. The total Construction period for the project is **4 (four) years** from the date of signing of Concession Agreement. It shall be mandatory for the Concessionaire to complete the construction of the project with this time frame.
- 4.2. The construction period (4 (four) Years starting from the date of signing of Concession Agreement) shall include time required for designing and planning of project, obtaining all approvals/ sanctions including but not limited to Building Permit, Environmental Clearance, Fire NoC etc. and actual execution of construction of the project etc..
- 4.3. The said construction period shall be extendable by another 365 days, subject to approval of Maha-Metro, on payment of an additional fees amounting to Rs. 5.00 Crores only. The said additional fees shall be levied on a pro-rata basis subject to a maximum of 100% (one hundred percent) of the amount of Annual Concession Fee for a delay in the completion of Project by 365 days.
- 4.4. In case the Concessionaire fails to complete the Project within the Construction period along with extension thereof, it may be considered as breach of Concession Agreement and Maha-Metro shall forfeit the Performance Security submitted for the project and the agreement shall be liable for termination.
- 4.5. Upon completion of the construction of the project, the Successful Bidder shall inform Maha-Metro about completion of the construction. No payment shall be made to the Successful Bidder towards the construction, operations and maintenance of the project including any incidental charges as incurred by the Successful Bidder for the construction/development of the project.

#### **5. Proposed Building Structure**

- 5.1. The Zero Mile Station and proposed Property Development has been planned to accommodate 3 levels of parking, One Mezzanine Floor for usage by metro commuters, one level of station concourse along with retail shops, one level of platform and '14' Floors of proposed property development building.
- 5.2. The proposed building is envisaged to be iconic in nature and one of the highest tower in the City. Building height approval from Airports Authority of India has been received which is 89.81 mts.
- 5.3. Dedicated areas for Property Development like Hotel Entry Block (Reception Area), Parking, Water tanks/Pump Room etc. (as marked in attached drawing) are constructed by Maha-Metro, bare shell structure, but shall be finished by Successful Bidder.
- 5.4. The table below is a list of areas that will be furnished, maintained and operated by the Concessionaire (within the station building which is being constructed by Maha-Metro). The use of such areas are restricted to specific use of Hospitality Project –
  - for Grand Entry on Ground Floor
  - Parking, services & service lifts, service lift lobbies on parking floors
  - Service Lifts and lift lobbies on Concourse & Mezzanine floors.
  - Service Lifts, lift lobbies and hotel fire escape stairs on technical floor

## 5.5. Architectural Control

- Considering the Iconic Nature of the project, Maha-Metro has engaged International Architects for developing the designs and hence it is proposed to maintain the “architectural intent” of the project as per the attached designs & drawings.
- Following are some of the Architectural Controls that the Licensee shall have to adhere to:
  - **Height of the building :** +399.18 AMSL TOP LEVEL
  - **Size of the building:** 76.9M x28.94M (Excluding Cladding)
  - **Façade Control:** Use of double envelope in glazing area (glass windows and 50mmX500mm vertical louvers spacing ranging from 250mm to 500mm c/c). Vertical Louvers form a design in the façade that has to be adhered to.
  - To maintain the building as an “urban marker”, façade is proposed to be punctured as per **attached elevation drawings.**
  - Façade is to proposed to be cladded with “beige coloured stone / stone veneer / or other modern cladding material matching to the one used/to be used for the station building.

## 6. Building Sanction

- 6.1. It shall be sole responsibility of the Successful Bidder to take all Statutory Approvals from the concerned Statutory Authorities. All mandatory charges, premium, fees, penalties etc. if any, with regards obtaining of such approvals shall be borne solely by the Successful Bidder. It is to be clearly understood that all such clearances are to be obtained by the Successful Bidder and the Maha-Metro shall only provide assistance wherever possible without any binding obligation.
- 6.2. The development shall be carried out as per the Development Control Regulations as applicable, Transit Oriented Development Policy for Nagpur City, local by-laws and regulations, FSI Limits, latest amended National Building Code of India, statutory requirements, laws of land, other applicable Govt. rules/ regulations and the principles of good industry practices.
- 6.3. The Building Plans shall be prepared in accordance with the DCR of Nagpur City and approved TOD Policy for Nagpur City.
- 6.4. The Successful Bidder shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the development of the Project, the conceptual plans Maha-Metro for review, within 180 (one hundred and eighty) days from the date of signing of Concession Agreement by Maha-Metro.
- 6.5. The successful bidder shall submit the building plans and detail design to Maha-Metro for acceptance. Based on inputs and observations as suggested by the authority, the Successful Bidder shall resubmit the final drawings.
- 6.6. Subject to that the building plans are found in accordance with the prevailing DCR of Nagpur City, Maha-Metro shall provide “Tentative Sanction” to the submitted Building Plans for further submission of the same to Environmental Clearance (if applicable) and Fire NOC.
- 6.7. Maha-Metro shall issue the Final Approval to Building Plans only after submission of Fire NOC and Environmental Clearance Certificate to Maha-Metro.

- 6.8. The maximum timeline for sanctioning of building plans shall be in accordance with the DCR of Nagpur City.
- 6.9. Upon obtaining the Building Sanction from Maha-Metro for the proposed Commercial Project, the Successful Bidder shall be responsible to develop the Project as per the approved plans.
- 6.10. No additional parking shall be provided for the use of Concessionaire, its staff and visitors outside the Project premises. The provision of minimum parking for the project shall be in accordance with the prevailing Development Control Rules of Nagpur City and approved TOD policy for Nagpur City.
- 6.11. The Successful Bidder shall ensure that no part of building is projected outside airspace allotted to it. Any such projections or part of building out site the project site shall be demolished by the authority and no claims or damages will be entertained by Maha-Metro in this regards.
- 6.12. Maha-Metro has designed the façade and elevation for the Project. The existing façade has been designed keeping in consideration the vision of Maha-Metro, landscape of Nagpur and essential design principles.
- 6.13. The Concessionaire shall have the flexibility to propose a design as long as they adhere to the basic design principles considered by Maha-Metro. The design is available in **Annexure-4** for the reference of the Concessionaire. In the event, the Successful Bidder desires any change in the façade and elevation design, it should take prior approval from Maha-Metro for such change in façade and elevation design. Maha-Metro reserves the right to approve and disapprove such request.
- 6.14. It is mandatory for Successful Bidder to undertake construction of the Project as per IGBC regulations.

## **7. Construction Completion Certificate**

- 7.1. It shall be mandatory for the Successful Bidder to obtain the Construction Completion Certificate before the commencement of business in the project premises.
- 7.2. On receipt of intimation of completion of Construction Works, the work shall be inspected by the Officer In-charge, of Maha-Metro. The work shall be inspected and verified in accordance with the terms and conditions of this agreement. The Successful Bidder shall have to carry out rectifications, if any, as may be directed by the Officer In-charge, of Maha-Metro.
- 7.3. On satisfactory completion of the Construction Works the Successful Bidder shall have to avail the Construction Completion Certificate for the project from the Maha-Metro.
- 7.4. In the event if the concessionaire desires to avail the part completion certificate/ Part Occupancy Permit of the project, the same shall be issued subject to completion of construction of more than 50% of the sanctioned built-up area of the project.
- 7.5. In the event if the full completion certificate / 100% completion of project is not completed within the allowed time limit, the Part OC issued earlier shall be withdrawn and action shall be initiated in accordance with provisions of Draft Concession Agreement of the project.
- 7.6. It should be noted that, in the event of termination of project due to concessionaire default of non-completion of construction of the project i.e. before obtaining the full Occupancy Permit for the project, no termination payment shall be paid by Maha-Metro to the Concessionaire.

## **8. Usage**

- 8.1. The Successful Bidder/Developer shall be allowed to use the said airspace for development of a Hotel cum Convention Centre along with all its allied uses like banquet halls, restaurants, conference hall etc.).
- 8.2. In the event that the Concessionaire proposes to use the said premises for any other activity, then it shall be mandatory for him to take prior approval from MAHA-METRO before such proposed usage of the premises. It is also stated that the activity proposed should not hamper the normal business of the metro rail.
- 8.3. Procuring all the required permissions/ licenses etc. required from the statutory/ regulatory/ civic authorities concerned, to be able to use the project premises for hospitality purpose, will be sole responsibility of the Successful Bidder. Maha-Metro shall not be responsible for the same and shall not entertain any claims in this regard.
- 8.4. The Successful Bidder shall obtain all the necessary statutory clearances from the concerned departments before commencement of Business and such clearance shall also be made available for inspection of Maha-Metro.

## **9. Mortgage**

- 9.1. The Successful Bidder will be provided with the development rights of airspace above the Zero Mile Metro Station as per the terms and conditions of the Concession Agreement.

It is clarified that the said airspace rights of Zero Mile Metro Station or part thereof shall not be mortgaged by the Successful Bidder in any manner whatsoever. For raising finances through debt/equity, the Successful Bidder will have the rights to avail project financing and also shall have right to mortgage the built-up area/ constructed area of the project (only limited to the area developed by the Successful Bidder). Maha-Metro upon written request made by the Successful Bidder shall provide NOC for availing project financing.

## **10. Right to Sub-Lease**

- 10.1. The Successful Bidder shall be allowed to sub-lease the built-up premises, however, the Sub-Lessee shall have no right to further sub-lease the premises.
- 10.2. The sub-Lease shall however be for the use of the built-up areas within the project premises, during the subsistence of the Leased Period only with a clear stipulation that all such sub-Lease granted shall terminate simultaneously with the termination of the Lease Agreement, including on sooner determination of the Lease Period for any reason whatsoever. All contracts, agreements or arrangements with Sub-Lessee shall specifically stipulate this covenant of termination of the rights of the Sub-Lessee, and further that such Sub-Lessee shall not have any claim or seek any compensation from Maha-Metro for such termination.
- 10.3. The list of terms to be included in the Sub-Lease Agreement are at "Schedule L of the Draft Concession Agreement".
- 10.4. The Successful Bidder shall, every quarter, submit copies of each such sub-lease deed to Maha-Metro for verification and record.

- 10.5. At any point of time, the Lessee shall not enter or cause any of its Sub- Lessee to enter into any sub-Lease agreement with any person or entity for transfer of its rights which would adversely affect the interests of Maha-Metro or is not available to the Successful Bidder in the first place. Any such act of the Successful Bidder or Sub-Lessee shall render the Concession Agreement liable for termination at the sole cost and expense of the Lessee.
- 10.6. In case the Successful Bidder fails to pay the Concession Fees to the authority for two consecutive years the authority has right to receive the Concession Fee from the Sub-Lessee directly, on pro-rata basis for surface area under use of Sub-Lessee taking in to consideration of prevailing Concession fees of entire premise.
- 10.7. In the circumstance of Clause No 10.6 above , all clauses, terms & conditions of this Concession Agreement shall be applicable to Sub-Lessee mutatis mutandis
- 10.8. The Successful Bidder shall not have any ownership or title right over the leased property, and he has no right to sell it to any individual/institution/ organisation at the any stage of concession period and thereafter.
- 10.9. The Successful Bidder shall be allowed to execute any related party transaction (sub-lease the built-up premises to related party) only after taking prior approval from Maha-Metro. Any transaction executed without prior approval of Maha-Metro shall be considered null and void. Execution of such transactions shall be treated as major default and in such event Maha-Metro shall forfeit the Security Deposit deposited by the Successful Bidder.

#### **11. End of the Lease Period**

- 11.1. At the end of the Lease Period by efflux of time or premature termination for any reason whatsoever, all rights given under the Concession Agreement shall cease to have effect including its rights over the project premises and the entire facility thereof shall transfer back to Maha-Metro (METRO), free of cost. The Concession Agreement does not create any property rights in favour of the Lessee and the property at all times belongs to Maha-Metro. All the immovable furniture and fixtures and other assets permanently attached to the Project Facility shall revert to Maha-Metro without any obligation on Maha-Metro, pay or adjust any consideration or other payment to the Lessee.
- 11.2. For the purpose of clarification, at the end of the Lease Period, on any ground whatsoever, the Maha-Metro shall have the absolute right to run the project premises on its own, or re-Lease or lease it to any third party or to manage it in any other manner as it may deem fit in its sole discretion.
- 11.3. Maha-Metro shall at its own discretion may further lease out the Project Facility/ premises upon the expiry of the lease period by a transparent bidding process. In the event if the Successful Bidder decides to participate in the said bidding process, the Successful Bidder shall be provided the Right of First Refusal ("ROFR") (as per terms herein) and will be given an opportunity to match the Highest Bid, failing which the Highest Bidder will be awarded the Project.
- 11.4. **Right of First Refusal (ROFR):** At the end of 60 years, the Successful Bidder shall have the Right of First Refusal (ROFR) for operations and maintenance of the said Commercial space, however this shall be subject to participation in the tendering process and matching the highest offer received during the tendering process then.

## **12. ASSIGNABILITY & ENCUMBRANCES**

- 12.1. Except for mortgage of built-up space with the banks for raising finances, novation and sub-leasing the use of the project premises as per the terms of this RFP, the Successful Bidder shall not assign any of its rights, or interest in the Concession Agreement in favour of any company/person(s) at any time and for any reasons whatsoever.
- 12.2. The Successful Bidder may subject to the first and paramount charge of Maha-Metro over the receivables from the sub-licensees and other users of the built up space and facilities, for the payment of the amounts becoming due to Maha-Metro-NAGPUR, create second or further charge over the receivables as the security to recognized Financial Institution(s)/Banks for financial assistance and funding of the Project.
- 12.3. Any assignments and encumbrances created by the Concessionaire shall be co-terminus with the Concession Agreement.
- 12.4. Except for the purpose of sub- leasing the use of the Leased Site(s) as per the terms of this RFP, the Concessionaire shall take prior approval of Maha-Metro before assigning any of its rights, or interest in the Concession Agreement in favour of any company/person(s) at any time and for any reasons whatsoever.

## **13. General Conditions**

- 13.1. The Maintenance of the constructed premises shall be at the sole discretion and cost of the concessionaire. However, The Successful Bidder shall be responsible for carrying out the necessary Operation and Maintenance works as suggested by Officer In-charge of Maha-Metro from time-to-time. The Successful Bidder shall abide by the direction/rules that may be fixed by Maha-Metro in consonance with the said agreement.
- 13.2. No advertisement/hoardings shall be permitted on the metro premises (full or part thereof) or any other structure of Nagpur Metro.
- 13.3. Further, it is clarified that the Successful Bidder will be completely responsible for any loss of life or property in case of an emergency and/or due to the non-functioning of any system, including but not limited to the fire safety system that is exclusively under scope and control of the Successful Bidder. The Maha-Metro shall not be responsible for any loss of life and property in the project site/premises due to any reason including but not limited to malfunctioning of the fire system in case of any fire emergency within the project premises. The Successful Bidder would be responsible for the payments arising out of any third-party claims. The Successful Bidder is advised to procure insurance for meeting such liabilities at his own cost.
- 13.4. The Successful Bidder shall provide unfettered access to the authorized representative of Maha-Metro and its operation staff for the purpose of maintenance works (with respect to Nagpur Metro Rail Project), if applicable, inside the specified area at all times during the Lease period.
- 13.5. The shifting of the existing operational structures and utilities, on the project premises shall be done by the Lessee within 6 (six) months period under the supervision of Maha-Metro.
- 13.6. The Successful Bidder shall undertake the Project in accordance with rules and regulations as set out in the Building and Other Constructions Workers Act, 1996 including all time-to-time amendments (hereinafter referred to as the "BOCW Act") and other applicable rules. During



the construction activities the Lessee shall strictly follow the guidelines issued by Maha-Metro-NAGPUR and Maha-Metro's manuals on Safety, Health and Environment and Safety, Health and Occupational Hazard on construction sites (OHSAS Manual).

- 13.7. Close Circuit Television (CCTV) – The Successful Bidder shall supply, install the Close Circuit Television (CCTV) System complete in all respect at the project site. The Camera's shall be installed at all prominent locations on the project facilities. The CCTV system shall be installed in accordance to the timely instructions received from Police Department. It shall be binding on the Successful Bidder to follow the instructions of Maha-Metro in this regards.
- 13.8. It shall be the duty of the Successful Bidder to ensure peace law and order within the premises of Project. All civil and criminal liability if any shall be Concessionaire's responsibility.
- 13.9. The Successful Bidder shall be responsible for civil maintenance works (pertaining to commercial project only) within the project premises like repairing or replacement/ fixtures of water pipe, repairing or replacement of pathways, and maintenance of project assets if any at his own cost and expense.
- 13.10. Maha-Metro shall not be made party between any litigation arising between the Successful Bidder and any third party during associated with the development and operations/maintenance of the project. All civil and criminal liability shall be the responsibility of the Concessionaire.
- 13.11. The Successful Bidder shall not employ any person who is under the age of 18 years.
- 13.12. At the expiry of the initial Concession period of 60 (sixty) years, the Successful Bidder shall -
- the Successful Bidder shall voluntarily waives right for concession renewal at the end of concession period
  - Handover the concession land, building, assets, and fixtures, including all immoveable property free of charge to Maha-Metro.
  - Maha-Metro shall be free to dispose of the said land and assets as per the prevailing rules and regulations then.

#### **14. Water, Power/Electricity & Disposal of waste water**

- 14.1. The Successful Bidder shall obtain separate connections for water supply, sewerage disposal and electricity etc. from the concerning departments by paying the applicable charges. The Successful Bidder shall be responsible for payment of installation charges for various utilities, payment of electricity bills and water charges with respect to the project premises. The maintenance of electric, sewerage disposal and water installations shall be done by the Successful Bidder at his own expense.
- 14.2. The Successful Bidder shall in consultation with the statutory authority manage and dispose the day-to-day garbage generated from the project. The garbage shall be disposed outside the metro station premises and should be made at location indicated by Statutory Authority.
- 14.3. Any violation of sanitation, spillage of waste-water, littering & non-disposal of solid waste from the Hospitality project shall attract suitable penalty. In case such violation is disturbing the regular course of operations of Nagpur Metro, then such violations shall attract a penalty of



Rs. 5000/per day, Maha-Metro shall have power to impose such penalty upon the Successful Bidder till correction of such violation.

This penalty amount shall be in addition to Annual Concession Fees, Upfront Premium and other taxes payable to Authority.

**15. Infringement of Maha-Metro premises /Services and penalty**

- 15.1. The Successful Bidder shall not have any right to infringe Maha-Metro premises and normal business, operation and commuters facilities of Metro Rail Services.
- 15.2. Upon observation of any such infringement Maha-Metro shall issue a notice of compliance. If the Successful Bidder fails to comply the three such notice and continue such infringement, the authority have right to impose a penalty of Rs. 5000/ per day. This penalty shall be in addition to Annual Concession Fees, Upfront Premium and other taxes payable to Authority.

**Annexure - 3: Site Plan, Details of Elevation and Façade proposed by Maha-Metro**

- A. Site Plan
- B. Façade proposed by Maha-Metro
- C. Design Brief
- D. Technical Level Floor Plan
- E. Parking Level Plans

**Attached as a separate file.**

**Annexure - 4: Land Related Documents**

- A. Possession Receipt
- B. Notification for Change of Land Use.
- C. Special Planning Authority Notification.
- D. SPA Sheet No. 18

**Attached as a separate file.**

**Annexure - 5: Applicable DCR, TOD Policy for Nagpur City, BOCW Act 1996**

- A. DCR of Nagpur City  
(Link - <http://nitnagpur.org/pdf/dcr.pdf> )
- B. Final Notification of TOD Policy for Nagpur City  
(Link- <http://www.metrorailnagpur.com/pdf/Final%20Approved%20TOD%20Notification%2002.11.2018.pdf> )
- C. BOCW Act 1996 and its latest amendments, if any  
(Link - <https://maitri.mahaonline.gov.in/pdf/building-and-other-construction-workers-act-1996.pdf> )

**Attached as a separate file.**

## **Annexure - 6: Tool Kit for using E-Tender**

### **(Tool Kit for using E-Tender Portal of Maha-Metro)**

#### **TENDERING PROCEDURE**

##### **A] Tender Forms.**

- i. Tender Forms can be purchased from the e-Tendering Portal of Maha-Metro, i.e. <https://mahametrorail.etenders.in> after paying Tender Fees via online **mode** as Per the **Tender Schedule**.
- ii. Bidder should have valid class II/III digital signature certificates (DSC) obtain from any certifying authorities.
- iii. Bidder should install the Java and NxtCrypto service available on the Home Page of Download section URL :- <https://mahametrorail.etenders.in>

##### **B] Pre-requisites to participate in the Tenders processed by Maha-Metro:**

###### **i. Enrolment of Contractors on Electronic Tendering System:**

The Contractors interested in participating in the Tenders of Maha-Metro processed using the Electronic Tendering System shall be required to enrol on the Electronic Tendering System to obtain User ID.

If the information is found to be complete, the enrolment submitted by the Vendor shall be approved automatically.

The Contractors may obtain the necessary information on the process of enrolment either from Helpdesk Support Team or may visit the information published under the link Help manual and tutorials on the Home Page of the Electronic Tendering System.

###### **ii. Obtaining a Digital Certificate:**

The Bid Data that is prepared online is required to be encrypted and the hash value of the Bid Data is required to be signed electronically using a Digital Certificate (Class - II or Class -III). This is required to maintain the security of the Bid Data and also to establish the identity of the Contractor transacting on the System.

The Digital Certificates are issued by an approved Certifying Authority authorized by the Controller of Certifying Authorities of Government of India through their Authorized Representatives upon receipt of documents required to obtain a Digital Certificate.

Bid data / information for a particular Tender may be submitted only using the Digital Certificate which is used to encrypt the data / information and sign the hash value during the Tender Submission stage. In case during the process of preparing and submitting a Bid for a particular Tender, the Contractor loses his/her Digital Signature Certificate (i.e. due to virus attack, hardware problem, operating system problem); he / she may not be able to submit the Bid online.

Hence, the Users are advised to store his / her Digital Certificate securely and if possible, keep a backup at safe place under adequate security to be used in case of need.

In case of online tendering, if the Digital Certificate issued to an Authorized User of a Partnership Firm is used for signing and submitting a bid, it will be considered equivalent to a no objection certificate / power of attorney to that User to submit the bid on behalf of the Partnership Firm. The Partnership Firm has to authorize a specific individual via an authorization certificate signed by a partner of the firm (and in case the applicant is a partner, another partner in the same form is required to authorize) to use the digital certificate as per Indian Information Technology Act, 2000.

Unless the Digital Certificate is revoked, it will be assumed to represent adequate authority of Maha-Metro User to bid on behalf of the Firm for the Tenders processed on the Electronic Tender Management System of Government of Maharashtra as per Indian Information Technology Act, 2000. The Digital Signature of this Authorized User will be binding on the Firm. It shall be the responsibility of Partners of the Firm to inform the Certifying Authority or Sub Certifying Authority, if the Authorized User changes, and apply for a fresh Digital Signature Certificate. The procedure for application of a Digital Signature Certificate will remain the same for the new Authorized User.

The same procedure holds true for the Authorized Users in a Private / Public Limited Company. In this case, the Authorization Certificate will have to be signed by the Director of the Company or the Reporting Authority of the Applicant.

For information on the process of application for obtaining Digital Certificate, the Contractors may visit the section Digital Signature Forms on the Home Page of the Electronic Tendering System.

iii. **Recommended Hardware and Internet Connectivity:**

To operate on the Electronic Tendering System, the Contractors are recommended to use Computer System with at least 1 GB of RAM and broadband connectivity with minimum 512 kbps bandwidth.

iv. **Set up of Computer System for executing the operations on the Electronic Tendering System:**

To operate on the Electronic Tendering System of Maha-Metro, the Computer System of the Contractors is required be set up. The Contractors are required to install Utilities available under the section Downloads on the Home Page of the System.

The Utilities are available for download freely from the above mentioned section. The Contractors are requested to refer to the Help manual and Tutorials available online on the Home Page to understand the process of setting up the System, or alternatively, contact the Helpdesk Support Team on information / guidance on the process of setting up the System.

**C) The e-tender portal contains two section Technical Bid Submission & Financial Bid Submission.**

- i. **Technical Bid Section:** Technical Bid Section shall contain all Documents and enclosures as directed in NIT, ITT and EQ. Bidder shall upload the PDF copy of such documents in Technical Section only.

- ii. **Financial Bid Section:** All prices/Commercial offers/ or any information pertain to commercial offer required by Maha-Metro from the bidders, shall be filled/ uploaded (If directed by Maha-Metro) in Financial bid Section only.
- iii. No information pertaining to Financial Bid section should be uploaded/disclosed in Technical Bid Section or vice versa.

**D) Steps to be followed by Contractors to participate in the e-Tenders processed by Maha-Metro.**

**i. Preparation of online Briefcase:**

All Contractors enrolled on the Electronic Tendering System of Maha-Metro are provided with dedicated briefcase facility to store documents / files in digital format. The Contractors can use the online briefcase to store their scanned copies of frequently used documents / files to be submitted as a part of their bid response. The Contractors are advised to store the relevant documents in the briefcase before starting the Tender Submission stage.

In case, the Contractors have multiple documents under the same type (e.g. multiple Work Completion Certificates) as mentioned above, the Contractors advised to either create a single .pdf file of all the documents of same type or compress the documents in a single compressed file in .zip or .rar formats and upload the same.

**Note:** Uploading of documents in the briefcase does not mean that the documents are available to Maha-Metro at the time of Tender Opening stage unless the documents are specifically attached to the Tender during the Tender Submission stage.

**ii. Online viewing of Detailed Notice Inviting Tenders:**

The Contractors can view the Detailed Tender Notice (NIT) along with the Time Schedule (Key Dates) for all the Live Tenders released by Maha-Metro and Eligibility Criteria (EQ) on the home page of Maha-Metro e-Tendering Portal on <https://mahametrorail.etenders.in> under the section Online Tenders. Viewing & downloading the NIT & EQ is free of cost.

**iii. Download of Tender Documents:**

After going through the NIT & EQ, if bidder finds himself eligible for the bidding, he may purchase the complete bid document via online mode by paying the cost of Tender Document by Debit Card/Credit Card/ Net Banking as described on E-Tender Portal. After paying the cost of the document, bidder may download the complete bid documents.

**iv. Online Submission of Bid:**

- a. At the stage of EMD, the EMD payment may be either in the form of Cash or Bank Guarantee or combination of both. Bidders are advised to refer the Instruction to Tenderers and Bid Data Sheet of the concerning Bid. For detail provision of payment of EMD, bidders are advised to refer concerning clause of Bid Document
- b. For Payment of Bid Security, which bidder has to either pay through Bank Guarantee or make payment online using any one online pay mode as **RTGS, NEFT, Debit Card, Credit Card & Net Banking** through payment gateway of E-Tender Portal. For Bid Security payment, if bidder use NEFT or RTGS then system will generate a challan (in two Copies) with unique challan No

- specific to the tender. Bidder will use this challan in his bank to make NEFT/RTGS Payment against the challan.
- c. Bidder should ensure the payment of online EMD, 72 Hours (Excepting Holiday if any) prior to the final submission date of the Bid.\*
  - d. Bidder have the option to pay Bid Security either at the initial stage of submission of bid or at the final stage of submission of bid, when all mandatory formats/ documents filled/ uploaded.
  - e. If the Bid Security is in form of Bank Guarantee or part of EMD in form of BG, scan copy of such BG shall be uploaded by bidders in technical section of E-Tender Portal.
  - f. Bidder shall download the Complete Bid Document along with all Corrigendum/Addendum/Clarification etc. by logging in with E-Tender Portal using his DSC (i.e. DSC of POA/ Owner) & read the all tender Instruction & clauses carefully.
  - g. **For submission of Tender Document and Corrigendum, Tick (v) Submission Process has been enabled in Technical section of E-Tender Portal of Maha-Metro. Bidders have to tick (v) the corresponding checkbox provided in the Technical Section of E-Tendering portal as a token of acceptance of these bid documents & corrigendum / Addendums. By clicking the tick (v) the bid documents & corrigendum /addendum shall automatically attached to offer of bidder. Further bidder may proceed for submission by clicking submit button.**
  - h. **If the bidder has completed the submission process of his bid before due date of submission and in between Authority issue a corrigendum, in this circumstances the bidder has to re-submit his bid by "clicking tick (v)" to the new added corrigendum, in case the new corrigendum has any implications to his already submitted bid. Bidder may, at his option, amend his bid accordingly & re-submit it.**
  - i. Physical Sign & seal of bidder on each page of Bid Documents available online is not required.
  - j. All required enclosures as per bid document shall be uploaded in "Technical Envelope" / "Technical Section" of E-Tender portal by using DSC of bidder.
  - k. The "Technical Envelope" / "Technical Section" of E-Tender portal has been provided with facilities to upload a file of maximum size of 10 mb only at each entity.
  - l. If bidder are desirous to upload a file more than 10mb size , he shall spilt the file in two or more parts of 10mb or lesser than 10mb each and can upload the same at appropriate **Technical Template** or "**Additional Document**" section of "**Technical Envelope/section**" of E-Tender Portal.

**Note:-**

- \* **Realization of NEFT/RTGS payment normally takes 24 hours, so it is advised to make Sure that NEFT/RTGS payment activity should be completed well before time.**
  - \* **NEFT/RTGS option will be depend on the amount of EMD.**
  - \* **Help File regarding use of e-Payment Gateway can be downloaded from e-Tendering Portal.**
- v. **Short listing of Contractors for Financial Bidding Process:**



The Tendering Authority will first open the Technical Bid documents of all Contractors and after scrutinizing these documents will shortlist the Contractors who are eligible for Financial Bidding Process. The shortlisted Contractors will be intimated by email.

**vi. Opening of the Financial Bids:**

The Contractors may remain present in the Office of the Tender Opening Authority at the time of opening of Financial Bids.

**vii. Tender Schedule (Key Dates):**

All the online activities are time tracked and the Electronic Tendering System enforces time-locks that ensure that no activity or transaction can take place outside the Start and End Dates and Time of the stage as defined in the Tender Schedule.

At the sole discretion of the Tender Authority, the time schedule of the Tender stages may be extended.

**Note: - For details illustrations, please refer or down load the PPT demonstration available on E-Tender portal of <https://mahametrorail.etenders.in>**

**Terms and Conditions for Online-Payments**

The Terms and Conditions contained herein shall apply to any person ("User") using the services of Maha-Metro Maharashtra, hereinafter referred to as "Merchant", for making Tender fee and Bid Security payments through an online Payment Gateway Service ("Service") offered by ICICI Bank Ltd. in association with E Tendering Service provider and Payment Gateway Service provider through Maha-Metro Maharashtra website i.e. <https://mahametrorail.etenders.in> Each User is therefore deemed to have read and accepted these Terms and Conditions.

**Privacy Policy:**

The Merchant respects and protects the privacy of the individuals that access the information and use the services provided through them. Individually identifiable information about the User is not willfully disclosed to any third party without first receiving the User's permission, as covered in this Privacy Policy.

This Privacy Policy describes Merchant's treatment of personally identifiable information that Merchant collects when the User is on the Merchant's website. The Merchant does not collect any unique information about the User (such as User's name, email address, age, gender etc.) except when you specifically and knowingly provide such information on the Website. Like any business interested in offering the highest quality of service to clients, Merchant may, from time to time, send email to the User and other communication to tell the User about the various services, features, functionality and content offered by Merchant's website or seek voluntary information from The User.

Please be aware, however, that Merchant will release specific personal information about the User if required to do so in the following circumstances:

- a) In order to comply with any valid legal process such as a search warrant, statute, or court order, or available at time of opening the tender.
- b) if any of User's actions on our website violate the Terms of Service or any of our guidelines for specific services, or
- c) to protect or defend Merchant's legal rights or property, the Merchant's site, or the Users of the site or;
- d) to investigate, prevent, or take action regarding illegal activities, suspected fraud, situations involving potential threats to the security, integrity of Merchant's website/offerings. General

#### **Terms and Conditions for E-Payment on E-Tender Portal**

1. Once a User has accepted these Terms and Conditions, he/ she may register on Merchant's website and avail the Services.
2. Merchant's rights, obligations, undertakings shall be subject to the laws in force in India, as well as any directives/ procedures of Government of India, and nothing contained in these Terms and Conditions shall be in derogation of Merchant's right to comply with any law enforcement agencies request or requirements relating to any User's use of the website or information provided to or gathered by Merchant with respect to such use. Each User accepts and agrees that the provision of details of his/ her use of the Website to regulators or police or to any other third party in order to resolve disputes or complaints which relate to the Website shall be at the absolute discretion of Merchant.
3. If any part of these Terms and Conditions are determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth herein, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of these Terms and Conditions shall continue in effect.
4. These Terms and Conditions constitute the entire agreement between the User and Merchant. These Terms and Conditions supersede all prior or contemporaneous communications and proposals, whether electronic, oral, or written, between the User and Merchant. A printed version of these Terms and Conditions and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms and Conditions to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
5. The entries in the books of Merchant and/or the Payment Gateway Service Providers kept in the ordinary course of business of Merchant and/or the Payment Gateway Service Providers with regard to transactions covered under these Terms and Conditions and matters therein appearing shall be binding on the User and shall be conclusive proof of the genuineness and accuracy of the transaction.
6. **Refund for Charge Back Transaction:** In the event there is any claim for/ of charge back by the User for any reason whatsoever, such User shall immediately approach Merchant with his/ her

claim details and claim refund from Merchant alone. Such refund (if any) shall be affected only by Merchant via payment gateway or by means of a demand draft or such other means as Merchant deems appropriate. No claims for refund/ charge back shall be made by any User to the Payment Gateway Service Provider(s) and in the event such claim is made it shall not be entertained.

7. In these Terms and Conditions, the term "**Charge Back**" shall mean, approved and settled credit card or net banking purchase transaction(s) which are at any time refused, debited or charged back to merchant account (and shall also include similar debits to Payment Gateway Service Provider's accounts, if any) by the acquiring bank or credit card company for any reason whatsoever, together with the bank fees, penalties and other charges incidental thereto.
8. Refund for fraudulent/duplicate transaction(s): The User shall directly contact Merchant for any fraudulent transaction(s) on account of misuse of Card/ Bank details by a fraudulent individual/party and such issues shall be suitably addressed by Merchant alone in line with their policies and rules.
9. Server Slow Down/Session Timeout: In case the Website or Payment Gateway Service Provider's webpage, that is linked to the Website, is experiencing any server related issues like 'slow down' or 'failure' or 'session timeout', the User shall, before initiating the second payment,, check whether his/her Bank Account has been debited or not and accordingly resort to one of the following options:
  - i. In case the Bank Account appears to be debited, ensure that he/ she does not make the payment twice and immediately thereafter contact Merchant via e-mail or any other mode of contact as provided by Merchant to confirm payment.
  - ii. In case the Bank Account is not debited, the User may initiate a fresh transaction to make payment.

However, the User agrees that under no circumstances the Payment Gateway Service Provider shall be held responsible for such fraudulent/duplicate transactions and hence no claims should be raised to Payment Gateway Service Provider No communication received by the Payment Gateway Service Provider(s) in this regard shall be entertained by the Payment Gateway Service Provider.

#### **Limitation of Liability of Merchant/ Payment Gateway**

1. Merchant has made this Service available to the User as a matter of convenience. Merchant expressly disclaims any claim or liability arising out of the provision of this Service. The User agrees and acknowledges that he/ she shall be solely responsible for his/ her conduct and that Merchant reserves the right to terminate the rights to use of the Service immediately without giving any prior notice thereof.
2. Merchant and/or the Payment Gateway Service Providers shall not be liable for any inaccuracy, error or delay in, or omission of (a) any data, information or message, or (b) the transmission or delivery of any such data, information or message; or (c) any loss or damage arising from or occasioned by any such inaccuracy, error, delay or omission, non-performance or interruption in any such data, information or message. Under no circumstances shall the Merchant and/or the Payment Gateway Service Providers, its employees, directors, and its third party agents

involved in processing, delivering or managing the Services, be liable for any direct, indirect, incidental, special or consequential damages, or any damages whatsoever, including punitive or exemplary arising out of or in any way connected with the provision of or any inadequacy or deficiency in the provision of the Services or resulting from unauthorized access or alteration of transmissions of data or arising from suspension or termination of the Services.

3. The Merchant and the Payment Gateway Service Provider(s) assume no liability whatsoever for any monetary or other damage suffered by the User on account of:  
(i) the delay, failure, interruption, or corruption of any data or other information transmitted in connection with use of the Payment Gateway or Services in connection thereto; and/ or (ii) any interruption or errors in the operation of the Payment Gateway.
4. The User shall indemnify and hold harmless the Payment Gateway Service Provider(s) and Merchant and their respective officers, directors, agents, and employees, from any claim or demand, or actions arising out of or in connection with the utilization of the Services.

The User agrees that Merchant or any of its employees will not be held liable by the User for any loss or damages arising from your use of, or reliance upon the information contained on the Website, or any failure to comply with these Terms and Conditions where such failure is due to circumstance beyond Merchant's reasonable control.

#### **Miscellaneous Conditions:**

Any waiver of any rights available to Merchant under these Terms and Conditions shall not mean that those rights are automatically waived.

1. The User agrees, understands and confirms that his/ her personal data including without limitation details relating to debit card/ credit card transmitted over the Internet may be susceptible to misuse, hacking, theft and/ or fraud and that Merchant or the Payment Gateway Service Provider(s) have no control over such matters.
2. Although all reasonable care has been taken towards guarding against unauthorized use of any information transmitted by the User, Merchant does not represent or guarantee that the use of the Services provided by/ through it will not result in theft and/or unauthorized use of data over the Internet.
3. The Merchant, the Payment Gateway Service Provider(s) and its affiliates and associates shall not be liable, at any time, for any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communications line failure, theft or destruction or unauthorized access to, alteration of, or use of information contained on the Website.
4. The User may be required to create his/ her own User ID and Password in order to register and/ or use the Services provided by Merchant on the Website. By accepting these Terms and Conditions the User agrees that his/ her User ID and Password are very important pieces of information and it shall be the User's own responsibility to keep them secure and confidential. In furtherance hereof, the User agrees to;

- i. Choose a new password, whenever required for security reasons.
- ii. Keep his/ her User ID & Password strictly confidential.
- iii. Be responsible for any transactions made by User under such User ID and Password.

The User is hereby informed that Merchant will never ask the User for the User's password in an unsolicited phone call or in an unsolicited email. The User is hereby required to sign out of his/ her Merchant account on the Website and close the web browser window when the transaction(s) have been completed. This is to ensure that others cannot access the User's personal information and correspondence when the User happens to share a computer with someone else or is using a computer in a public place like a library or Internet cafe.

#### **Debit/Credit Card, Bank Account Details**

1. The User agrees that the debit/credit card details provided by him/ her for use of the aforesaid Service(s) must be correct and accurate and that the User shall not use a debit/ credit card, that is not lawfully owned by him/ her or the use of which is not authorized by the lawful owner thereof. The User further agrees and undertakes to provide correct and valid debit/credit card details.
2. The User may make his/ her payment (Tender Fee/Earnest Money deposit) to Merchant by using a debit/credit card or through online banking account. The User warrants, agrees and confirms that when he/ she initiates a payment transaction and/or issues an online payment instruction and provides his/ her card / bank details:
  - i. The User is fully and lawfully entitled to use such credit / debit card, bank account for such transactions;
  - ii. The User is responsible to ensure that the card/ bank account details provided by him/ her are accurate;
  - iii. The User is authorizing debit of the nominated card/ bank account for the payment of Tender Fee and Earnest Money Deposit
  - iv. The User is responsible to ensure sufficient credit is available on the nominated card/ bank account at the time of making the payment to permit the payment of the dues payable or the bill(s) selected by the User inclusive of the applicable Fee.

#### **Personal Information**

1. The User agrees that, to the extent required or permitted by law, Merchant and/ or the Payment Gateway Service Provider(s) may also collect, use and disclose personal information in connection with security related or law enforcement investigations or in the course of cooperating with authorities or complying with legal requirements.
2. The User agrees that any communication sent by the User vide e-mail, shall imply release of information therein/ therewith to Merchant. The User agrees to be contacted via e-mail on such mails initiated by him/ her.

3. In addition to the information already in the possession of Merchant and/ or the Payment Gateway Service Provider(s), Merchant may have collected similar information from the User in the past. By entering the Website the User consents to the terms of Merchant's information privacy policy and to our continued use of previously collected information. By submitting the User's personal information to us, the User will be treated as having given his/her permission for the processing of the User's personal data as set out herein.
4. The User acknowledges and agrees that his/ her information will be managed in accordance with the laws for the time in force.

**Payment Gateway Disclaimer:** The Service is provided in order to facilitate payment of Tender Fees/Earnest Money Deposit online. The Merchant or the Payment Gateway Service Provider(s) do not make any representation of any kind, express or implied, as to the operation of the Payment Gateway other than what is specified in the Website for this purpose. By accepting/ agreeing to these Terms and Conditions, the User expressly agrees that his/ her use of the aforesaid online payment service is entirely at own risk and responsibility of the User.